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No.: **ICC-01/14-01/21**

Date: **4 June 2021**

PRE-TRIAL CHAMBER II

Before: Judge Rosario Salvatore Aitala, Single Judge

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC II
IN THE CASE OF *PROSECUTOR v. MAHAMAT SAID ABDEL KANI***

Public

with Confidential Annexes A and B

**Public Redacted Version of “Prosecution’s Second Report on Disclosure and
Related Matters”, ICC-01/14-01/21-87-Conf-Exp, dated 1 June 2021**

Source: Office of the Prosecutor

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

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I. INTRODUCTION

1. The Office of the Prosecutor (“Prosecution”) hereby submits its Second Report on Disclosure and Related Matters (“Second Disclosure Report”) as requested in the Order on Disclosure and Related Matters¹ (“Order”). Additionally, the Prosecution submits in confidential Annex A, further information on Disclosed Items and in confidential Annex B an updated Disclosure Schedule.

II. CONFIDENTIALITY

2. The Second Disclosure Report is classified confidential, *ex parte* in accordance with regulation 23*bis* of the Regulations of the Court (“Regulations”) because it includes aspects of witness protection and related to the ongoing investigation. Annexes A and B are classified confidential in accordance with regulation 23*bis*(2) of the Regulations as they relate to the Order and the Prosecution’s First Report on Disclosure and Related Matters (“First Disclosure Report”).² A confidential redacted version of the Second Disclosure Report will be filed concurrently, and a public redacted version will be filed as soon as practicable.

III. SUBMISSIONS

3. In his Order, the Single Judge requested the Prosecution to provide updates on the progress relating to the following issues:

- a. the number and type of evidence and other materials disclosed during the relevant period,

¹ ICC-01/14-01/21-50-Conf, para. 30.

² ICC-01/14-01/21-55-Conf.

- b. the number and type of items of evidence and other material that have been identified for disclosure but have yet to be disclosed,
- c. including a detailed explanation as to their relevance to the Prosecution's case,
- d. the obstacles preventing the Prosecutor from disclosing such items, and the steps taken to overcome them;
- e. any relevant developments regarding the issues to be detailed in the initial report to be submitted on 16 April 2021, and
- f. any other matters bearing on the investigation and the disclosure process.

A. Number and type of evidence and other materials disclosed during the relevant period

4. Since the start of the reporting period, the Prosecution has disclosed 16 Pre-Confirmation INCRIM packages, one Pre-Confirmation Rule 77 package and one Pre-Confirmation PEXO package for a total of 1,920 items (13,414 pages). The types of evidence and other items disclosed are listed in the Annexes provided with each disclosure notification. In confidential Annex A, an overview is provided which lists the disclosure packages, disclosure dates, number of items disclosed and describes the content of the disclosure packages.

5. In addition, the Prosecution submits an updated Disclosure Schedule in confidential Annex B. This updated Disclosure Schedule projects the estimated dates, types and amount of items identified for disclosure at this point in the review process.

The review process is ongoing and accordingly, the schedule is continuously refined. Another updated schedule will be provided in the next disclosure report.

B. The number and type of items of evidence and other material that have been identified for disclosure but have yet to be disclosed

6. The Prosecution refers to the updated Disclosure Schedule in Annex B for details on the number and types of evidence and other items relevant to the case that have been identified for disclosure but have not yet been disclosed.

7. [REDACTED]. [REDACTED].

8. [REDACTED]. [REDACTED].

9. [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED].

10. [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED].

C. Detailed explanation as to their relevance to the Prosecutor's case

11. The updated Disclosure Schedule in Annex B sets out which parts of the Prosecution's case the evidence and other materials to be disclosed are relevant by categorising the packages into information relating to the two incidents of the OCRB and the CEDAD or relevant to the chapeau elements of articles 7 and 8 of the Rome Statute. Evidence relevant to the individual criminal responsibility of Mr. SAID is included in the INCRIM packages relating to the two incidents. For packages with information considered to fall under rule 77 or to be PEXO, the types of documents are listed as well.

D. The obstacles preventing the Prosecutor from disclosing such items, and the steps taken to overcome them

12. The Prosecution continues to disclose all evidence and relevant information aligned with this evidence on a rolling basis in accordance with Annex E of the First Disclosure Report, which is now further updated as set out in Annex B of this Second Disclosure Report. As outlined already in the First Disclosure Report, the items that are relevant to the case have been identified, which include evidence as well as related or supporting documents. A large portion of these items has already been disclosed in the past reporting period as outlined in Annex A.

13. The factors or obstacles that influence disclosure are: witness protection, the process of disclosure preparation, the amount of data to be reviewed and the ongoing investigation.

14. [REDACTED].³ [REDACTED],⁴ [REDACTED]. [REDACTED].

15. [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED].

16. [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED].

17. The process of preparing materials deemed relevant for disclosure is the second factor influencing the disclosure schedule. Materials have to be reviewed carefully for the application of the standard redactions categories set out in the Protocol on Redactions. The Prosecution team is conducting this process diligently to avoid inadvertent disclosures, especially of information falling under rule 81(4). This is a time consuming exercise and it follows that disclosures can only be processed on a

³ Ibid., para. 11.

⁴ [REDACTED].

rolling basis rather than all at once. Furthermore, the capacities of the support sections such as the Information and Evidence Unit (“IEU”), who handle multiple cases and situations, have to be taken into account.⁵

18. As outlined in the First Disclosure Report, the Prosecution is conducting discrete additional investigations.⁶ [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED].

19. [REDACTED]. [REDACTED].

E. Any relevant developments regarding the issues to be detailed in the initial report submitted on 16 April 2021

20. [REDACTED]. [REDACTED].⁷

F. Any other matters bearing on the investigation and the disclosure process

21. As outlined above, and in the First Disclosure Report, the ongoing COVID 19 pandemic continues to significantly impact on the Prosecution’s ability to operate in Bangui. [REDACTED]. Anything gathered from these activities which is to be relied upon at the confirmation of charges hearing or is otherwise material to the preparation of the Defence will, however, be disclosed by 5 September 2021.

IV. CONCLUSION

22. The Prosecution has progressed in its review and disclosure of evidence and related information relevant to the case against Mr. SAID in the past reporting period and proposes to continue as outlined in the updated Disclosure Schedule of Annex B.

⁵ [REDACTED].

⁶ Ibid., paras. 17-19 and Confidential, *ex parte* Annex D.

⁷ Ibid., para. 9.

The next progress report will be provided for consideration by the Single Judge on 1 July 2021.



Fatou Bensouda, Prosecutor

Dated this 4th day of June 2021
At The Hague, The Netherlands