



Original: English

**No. ICC-01/14-01/21
Date: 4 October 2021**

PRE-TRIAL CHAMBER II

**Before: Judge Rosario Salvatore Aitala, Presiding Judge
Judge Antoine Kesia-Mbe Mindua
Judge Tomoko Akane**

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

Public

Decision on the Defence's request for postponement of the confirmation hearing

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

The Office of the Prosecutor

Mr Karim A. A. Khan, Prosecutor
Mr James Stewart
Mr Eric MacDonald

Counsel for the Defence

Ms Jennifer Naouri
Mr Dov Jacobs

Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparations**

The Office of Public Counsel for Victims

Ms Sarah Pellet

**The Office of Public Counsel for the
Defence**

States Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Peter Lewis

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Language Services Section

PRE-TRIAL CHAMBER II of the International Criminal Court (the ‘Chamber’ and the ‘Court’) in the case of *The Prosecutor v. Mahamat Said Abdel Kani*, issues this ‘Decision on the Defence’s request for postponement of the confirmation hearing’.

I. PROCEDURAL HISTORY

1. On 7 January 2019, Judge Rosario Salvatore Aitala, acting as Single Judge on behalf of the Chamber, issued the ‘Warrant of arrest for Mahamat Said Abdel Kani’.¹
2. On 24 January 2021, Mr Said was surrendered to the Court and arrived at the Court’s Detention Centre on 25 January 2021.²
3. On 29 January 2021, Mr Said appeared before the Single Judge³ pursuant to article 60(1) of the Rome Statute (the ‘Statute’) and rule 121(1) of the Rules of Procedure and Evidence (the ‘Rules’).⁴ The Single Judge, *inter alia*, scheduled the confirmation of charges hearing to commence on 5 October 2021.⁵
4. On 30 June 2021, the Single Judge issued the ‘Second order on disclosure and postponement of the confirmation hearing’ (the ‘Disclosure Order’), in which, *inter alia*, the confirmation hearing was postponed to 12 October 2021.⁶
5. On 7 September 2021, the Defence filed the ‘Requête de la Défense visant à ce que lui soient communiqués tous les éléments de l’affaire connexe *Yekatom et Ngaïssona* utiles à la préparation de l’audience de confirmation des charges dans

¹ ICC-01/14-01/21-2-US-Exp (public redacted version filed on 17 February 2021 ([ICC-01/14-01/21-2-Red2](#))).

² Registry, Report of the Registry on the Arrest and Surrender of Mr Mahamat Said Abdel Kani and Request for Guidance, 27 January 2021, ICC-01/14-01/21-6-US-Exp, paras 13-27 (confidential redacted, *ex parte* version filed on 19 February 2021 (ICC-01/14-01/21-6-Conf-Exp-Red); confidential, lesser redacted, *ex parte* version filed on 18 March 2021 (ICC-01/14-01/21-6-Conf-Exp-Red2)).

³ On 25 January 2021, Judge Rosario Salvatore Aitala was designated by the Chamber as Single Judge responsible for carrying out the functions of the Chamber in the present case until otherwise decided. *See Decision on the designation of a Single Judge*, ICC-01/14-01/21-3. *See also Decision on the designation of a Single Judge*, 17 March 2021, ICC-01/14-01/21-42.

⁴ [Transcript of 29 January 2021](#), ICC-01/14-01/21-T-002-ENG. *See also Decision on the convening of a hearing for the initial appearance of Mr Mahamat Said Abdel Kani*, ICC-01/14-01/21-4; [Transcript of 28 January 2021](#), ICC-01/14-01/21-T-001-ENG, p. 4, line 20 to p. 5, line 4.

⁵ [Transcript of 29 January 2021](#), ICC-01/14-01/21-T-002-ENG, p. 11, lines 11-12.

⁶ [ICC-01/14-01/21-112](#), p. 9.

l'affaire *Said*', in which it sought access to material in the case of *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona* (the '*Yekatom and Ngaïssona* case').⁷

6. On 14 September 2021, the Chamber issued the 'Order setting the schedule for the confirmation of charges hearing' (the 'Order on Hearing Schedule'),⁸ in which it, *inter alia*, allowed the Defence to file written submissions on the merits of the case by no later than 16:00 on Monday, 4 October 2021, should it wish to do so.⁹

7. On 23 September 2021, the Defence filed the 'Demande déposée en vertu de la Règle 121(7) du Règlement de procédure et de preuve afin d'assurer le respect du droit fondamental de la Défense à disposer du temps et des facilités nécessaires à la préparation de l'audience de confirmation des charges pour pouvoir y contester les charges et les éléments de preuve présentés par l'Accusation' (the 'Defence's Request'), requesting the Chamber to take note that Mr Said's right to a fair trial would be violated should the confirmation hearing be held on 12 October 2021, that the Office of the Prosecutor (the 'Prosecution') has not fulfilled its disclosure obligations and to order the Prosecution to disclose all documents in its possession that would be useful for the preparation of the defence for the purposes of the confirmation hearing.¹⁰ The Defence also requests the Chamber to postpone the confirmation hearing to at least 22 November 2021, and suspend the running of the time limits for the filing of the defence list of evidence and its written submissions on the merits of the charges in advance of the hearing.¹¹

8. On 27 September 2021, the Chamber issued the 'Decision on the Defence's request for disclosure of material from *The Prosecutor v. Alfred Yekatom and Patrice-*

⁷ ICC-01/14-01/21-161-Conf (public redacted version dated 26 September 2021 and registered on 27 September 2021 ([ICC-01/14-01/21-161-Red](#))). See also Prosecution's Response to « Requête de la Défense visant à ce que lui soient communiqués tous les éléments de l'affaire connexe *Yekatom et Ngaïssona* [sic] utiles à la préparation de l'audience de confirmation des charges dans l'affaire *Said* », 10 September 2021, ICC-01/14-01/21-166-Conf (public redacted version dated 24 September 2021 and registered on 27 September 2021 (ICC-01/14-01/21-166-Red)).

⁸ [ICC-01/14-01/21-172](#).

⁹ [Order on Hearing Schedule](#), ICC-01/14-01/21-172, para. 30, p. 12.

¹⁰ ICC-01/14-01/21-175-Conf-Exp (confidential redacted version filed on the same day (ICC-01/14-01/21-175-Conf-Red) and public redacted version filed on 26 September 2021 ([ICC-01/14-01/21-175-Red2](#))), with two confidential annexes (ICC-01/14-01/21-175-Conf-Anx1 and ICC-01/14-01/21-175-Conf-Anx2), pp. 18-19.

¹¹ [Defence's Request](#), ICC-01/14-01/21-175-Red2, p. 19.

Edouard Ngaïssona case’ (the ‘Decision on Access to Material in the *Yekatom and Ngaïssona* Case’), rejecting the Defence’s request for access to such material in that case.¹²

9. On 28 September 2021, the Prosecution filed its response to the Defence’s Request (the ‘Prosecution’s Response’), arguing that the Defence’s Request should be rejected as unfounded.¹³

10. On the same day, the Office of Public Counsel for Victims (the ‘OPCV’) informed the Chamber that it did not intend to file a response to the Defence’s Request.¹⁴

11. On 29 September 2021, the Chamber rejected the Defence’s request for leave to appeal the Order on Hearing Schedule.¹⁵

II. SUBMISSIONS

A. The Defence’s Request

12. The Defence submits that, in order to effectively challenge the charges and the evidence relied upon by the Prosecution at the confirmation hearing, it must be able to analyse all items of evidence disclosed by the Prosecution, whether incriminatory or disclosed under rule 77 of the Rules (‘Rule 77 items’). It further argues that the Prosecution disclosed the majority of Rule 77 items at a late stage, with 2494 items disclosed on 30 August 2021, the last day of the prescribed time limit, and that since that date the Prosecution has continued to disclose items of evidence under the category ‘other’, which, in the Defence’s view, fall in fact under rule 77 of the Rules.

¹² [ICC-01/14-01/21-182](#).

¹³ Prosecution’s Response to «*Demande déposée en vertu de la Règle 121(7) du Règlement de procédure e [sic] de preuve afin d’assurer le respect du droit fondamental de la Défense a [sic] disposer du temps et des facilités nécessaires a [sic] la préparation de l’audience de confirmation des charges pur [sic] pouvoir y contester les charges et les éléments de preuve présentes [sic] par l’Accusation*», (ICC-01/14-01/21-175-Conf-Red)’, ICC-01/14-01/21-185-Conf (public redacted version filed on 29 September 2021 ([ICC-01/14-01/21-185-Red](#))), with a confidential annex (ICC-01/14-01/21-185-Conf-AnxA).

¹⁴ Email from OPCV Counsel sent at 12:17.

¹⁵ [Decision on the Defence’s request for leave to appeal the ‘Order setting the schedule for the confirmation of charges hearing’](#), ICC-01/14-01/21-188. *See also* [Demande d’autorisation d’interjeter appel de l’« Order setting the schedule for the confirmation of charges hearing » \(ICC-01/14-01/21-172\)](#), 20 September 2021, ICC-01/14-01/21-173.

13. The Defence further avers that the Prosecution has failed to disclose (i) the transcripts of some of the video material upon which the Prosecution intends to rely for the purpose of the confirmation hearing; (ii) items of exculpatory evidence; and (iii) further Rule 77 items, including statements of some witnesses linked to items of evidence disclosed. In addition, the Defence maintains that it must have access to and analyse material, including transcripts of hearing, related to witnesses who are common to the present case and the *Yekatom and Ngaißsona* case. The Defence also submits that the chain of custody of some of the disclosed items is incorrect, which makes the Defence's analysis time-consuming.

14. Lastly, the Defence argues that, as part of its preparation for the confirmation hearing, it must be able to organise investigations and analyse any evidence collected during such investigations.

B. The Prosecution's Response

15. The Prosecution submits that the Defence's Request is 'unfounded and should be rejected', and that the confirmation hearing should 'proceed as scheduled on 12 October 2021'.

16. The Prosecution submits that disclosure issues should be raised *inter partes* and that '[a]ll alleged non-disclosed items of evidence were disclosed to the Defence'. The Prosecution further argues that it has met its disclosure obligations. In particular, the Prosecution argues that it has not withheld statements of witnesses from disclosure, as some witnesses, who the Defence believes gave statements in the context of the present case, were only screened or interviewed with no connection to the case. The Prosecution submits that it did not disclose some items as exonerating evidence, as initially forecast, but it did disclose them as incriminatory evidence or Rule 77 items. It adds that '[w]here an item classified as INCRIM, also included PEXO or Rule 77 evidence, this was highlighted in the Ringtail/eCourt disclosure notes'. It also avers that the transcripts of all the videos containing the sounds of persons speaking included on its list of evidence have been disclosed.

17. Furthermore, the Prosecution avers that it met its disclosure deadlines, provided regular updates to the Chamber and the Defence on the progress of the disclosure

process, disclosed material to the Defence on a rolling basis, and provided indication as to the timing of the disclosure of Rule 77 items. The Prosecution also submits that Mr Said received the ‘bulk of the incriminating evidence already by the end of July 2021’. The Prosecution maintains that items disclosed under the category ‘other’ are items for which the materiality to the preparation of the defence is unclear. It avers that there is no basis to the Defence’s argument about a ‘blanket notion or categorisation for all materials related to witnesses whose information has been disclosed under Rule 77 or PEXO’. The Prosecution adds that it is ‘disclosing the fruits of its on-going investigation as per its statutory obligations’ and that it will not rely upon evidence disclosed after the deadline.

18. Lastly, the Prosecution argues that the Defence’s investigation request is too late as it has had sufficient time to conduct investigative activities.

III. DETERMINATION BY THE CHAMBER

19. The Chamber notes articles 61(1), 61(3), 61(6), 61(7), 67(1)(b), 67(2) of the Statute, and rules 63(1), 76, 77, 121(1) to (3), (6) and (7) of the Rules.

20. The Chamber recalls that in assessing a request for the postponement of the confirmation of charges hearing made pursuant to rule 121(7) of the Rules, the Chamber ‘must ensure the overall fairness and expeditiousness of proceedings bearing in mind the competing interests at stake’.¹⁶ Such assessment must be made taking into account the reasons advanced and in light of the circumstances of each case.¹⁷ The Chamber underlines that a postponement of the confirmation hearing is a serious measure that

¹⁶ Pre-Trial Chamber II, *The Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman* (‘*Ali Kushayb*’), Decision on the Prosecutor’s Request for Postponement of the Confirmation Hearing and related deadlines, 2 November 2020, ICC-02/05-01/20-196 (the ‘[Abd-Al-Rahman Postponement Decision](#)’), para. 11, quoting Pre-Trial Chamber II, *The Prosecutor v. Dominic Ongwen*, Decision Postponing the Date of the Confirmation of Charges Hearing, 6 March 2015, ICC-02/04-01/15-206 (the ‘[Ongwen Postponement Decision](#)’), para. 25. See also Pre-Trial Chamber II, *The Prosecutor v. Bosco Ntaganda*, [Decision on the ‘Prosecution’s Urgent Request to Postpone the Date of the Confirmation Hearing’ and Setting a New Calendar for the Disclosure of Evidence Between the Parties](#), date 17 June 2013 and registered on 18 June 2013, ICC-01/04-02/06-73, para. 13; Pre-Trial Chamber II, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, Decision on the ‘Prosecution’s Request to Postpone the Confirmation Hearing and all Related Disclosure Deadlines’, 15 May 2019, ICC-01/14-01/18-199 (the ‘[Yekatom and Ngaïssona Postponement Decision](#)’), para. 30.

¹⁷ [Ongwen Postponement Decision](#), ICC-02/04-01/15-206, para. 25; [Yekatom and Ngaïssona Postponement Decision](#), ICC-01/14-01/18-199, para. 30.

may only be taken on an exceptional basis, in light of its important implications on the competing interests of the parties to the proceedings.¹⁸

21. The Chamber notes the Defence's arguments that a large number of items of evidence were disclosed to it and that it will need time to analyse all of them. The Chamber, however, finds that this argument is based on an erroneous understanding of the scope of the confirmation hearing. The Chamber reiterates that the review of evidence for purposes of the confirmation of charges must be seen in light of the standard of review provided for in article 61(7) of the Statute and is considered to be a 'light review'.¹⁹ The Chamber takes note of the time limits applicable to the confirmation proceedings, such as the 30-day time limit for the provision of a description of the charges and a list of evidence by the Prosecution,²⁰ or the 60-day time limit for the Pre-Trial Chamber's written decision on the confirmation of the charges.²¹ These statutory time limits are relatively short, which shows that the review of evidence is not meant to be overly detailed.²²

22. As regards the Defence's request for access to material from the *Yekatom and Ngaïssona* case, the Chamber recalls that it already rejected the Defence's request in this respect.²³ While the Defence may receive some additional material in relation to this request, notably transcripts of hearing in relation to eight witnesses,²⁴ the number of such transcripts is not high and the analysis of these transcripts, if they are disclosed

¹⁸ [Abd-Al-Rahman Postponement Decision](#), ICC-02/05-01/20-196, para. 12; [Yekatom and Ngaïssona Postponement Decision](#), ICC-01/14-01/18-199, para. 31.

¹⁹ [Order on Hearing Schedule](#), ICC-01/14-01/21-172, para. 20, quoting Appeals Chamber, *The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*, Judgment on the appeal of Mr Al Hassan against the decision of Trial Chamber X entitled 'Decision on application for notice of possibility of variation of legal characterisation pursuant to Regulation 55(2) of the Regulations of the Court', 1 July 2021, ICC-01/12-01/18-1562-Red (OA3) (the '[Al Hassan OA3 Judgment](#)'), para. 92.

²⁰ Rule 121(3) of the Rules.

²¹ Regulation 53 of the Regulations of the Court.

²² See [Al Hassan OA3 Judgment](#), ICC-01/12-01/18-1562-Red, fn. 180; Appeals Chamber, *The Prosecutor v. Jean-Pierre Bemba Gombo*, Judgment on the appeal of Jean-Pierre Bemba Gombo against Trial Chamber III's 'Judgment pursuant to article 74(2) of the Statute', [Dissenting Opinion of Judge Sanji Mmasenono Monageng and Judge Piotr Hofmański](#), 8 June 2018, ICC-01/05-01/08-3636-Anx1-Red (confidential version filed on the same day (ICC-01/05-01/08-3636-Conf-Anx1)), para. 34, fn. 44.

²³ [Decision on Access to Material in the Yekatom and Ngaïssona Case](#), ICC-01/14-01/21-182, p. 7.

²⁴ See Office of the Prosecutor, *The Prosecutor v. Alfred Yekatom And Patrice-Edouard Ngaïssona*, Prosecution's urgent request for authorisation to access and disclose transcripts of the testimony of eight witnesses in the case *Prosecutor v. Mahamat Said Abdel Kani*, 29 September 2021, ICC-01/14-01/18-1122, with a confidential annex (ICC-01/14-01/18-1122-Conf-AnxA).

to the Defence, will not unduly affect the defence's preparation for the confirmation of charges hearing.

23. The Chamber further notes the Defence's arguments concerning the timeliness and completeness of the Prosecution's disclosure of evidence. It recalls that the Prosecution was directed to disclose 'the totality of evidence, including all witness statements, intended to be relied upon at the confirmation hearing' by 16 August 2021, and 'all evidence within the meaning of article 67(2) of the Statute and all material referred to in rule 77 of the Rules' by 30 August 2021.²⁵ The Prosecution disclosed incriminating evidence in 45 packages, of which 43 were communicated to the Defence before the deadline of 16 August 2021. The packages were disclosed on a rolling basis beginning in early March 2021²⁶ and the bulk of the incriminating evidence was disclosed in packages 29-35 on 7 July 2021.²⁷ Although two packages were disclosed after the deadline set in the Disclosure Order, the Prosecution expressly indicated that it would not rely on that material for the purpose of the confirmation of charges hearing.²⁸

24. With respect to Rule 77 material, the Prosecution began disclosing Rule 77 items in May 2021,²⁹ and disclosed those items in 20 packages, of which 19 were communicated to the Defence before the deadline set by the Single Judge.³⁰ The Chamber notes that a total of 2,494 Rule 77 items were disclosed in packages 9-19 on

²⁵ [Disclosure Order](#), ICC-01/14-01/21-112, pp. 9-10.

²⁶ Prosecution's Communication of the Disclosure of Evidence on 2 March 2021, 3 March 2021, ICC-01/14-01/21-30-Conf.

²⁷ [Prosecution's Communication of the Disclosure of Evidence on 7 July 2021](#), 8 July 2021, ICC-01/14-01/21-118.

²⁸ [Prosecution's Communication of the Disclosure of Evidence on 20 August 2021](#), dated 23 August 2021 and registered on 24 August 2021, ICC-01/14-01/21-150, para. 4; [Prosecution's Communication of the Disclosure of Evidence on 13 September 2021](#), dated 13 September 2021 and registered on 14 September 2021, ICC-01/14-01/21-169, paras 4-5.

²⁹ [Prosecution's Communication of the Disclosure of Evidence on 18 May 2021](#), dated 18 May 2021 and registered on 19 May 2021, ICC-01/14-01/21-77.

³⁰ [Prosecution's Communication of the Disclosure of Evidence on 8 June 2021](#), 8 June 2021, ICC-01/14-01/21-94; [Prosecution's Communication of the Disclosure of Evidence on 29 July 2021](#), 30 July 2021, ICC-01/14-01/21-134; [Prosecution's Communication of the Disclosure of Evidence on 20 August 2021](#), dated 23 August 2021 and registered on 24 August 2021, ICC-01/14-01/21-150; [Prosecution's Communication of the Disclosure of Evidence on 27 August 2021](#), dated 29 August 2021 and registered on 30 August 2021, ICC-01/14-01/21-154; [Prosecution's Communication of the Disclosure of Evidence on 30 August 2021](#), 31 August 2021, ICC-01/14-01/21-157.

30 August 2021 and thus on the day of the expiry of the time limit.³¹ The only package of Rule 77 items disclosed after the deadline contained ‘recently received translations’ of previously disclosed statements of witnesses.³²

25. The Chamber therefore finds that the Prosecution did not fail to fulfil its disclosure obligations. While it would have been preferable for the Prosecution not to have disclosed such a large number of Rule 77 items on the day of the expiry of the time limit set in the Disclosure Order, the Chamber recalls that this time limit expired six weeks in advance of the confirmation hearing. It is earlier than, for instance, the expiry of the 30-day time limit, set in rule 121(3) of the Rules, for the provision of the list of evidence which the Prosecution intends to present at the hearing. The Chamber therefore considers that the timing of disclosure of Rule 77 items in this case did not unduly affect the preparation of the defence for the confirmation of charges hearing. In that regard, the Chamber observes that a significant number of Rule 77 items had been disclosed before the day of the expiry of the time limit.

26. As regards the disclosure of potentially exonerating material, the Chamber accepts the Prosecution’s explanation that, contrary to what it initially forecast, it disclosed such material, upon a second review, as incriminating evidence or Rule 77 items.³³ It also notes that the disclosed video recordings, listed by the Prosecution, are accompanied by transcripts, where applicable, and there is no indication that the Prosecution failed to disclose any of those transcripts to the Defence.³⁴

27. Furthermore, it appears that in most cases, the statements of witnesses, who the Defence believes were given in the context of the present case, but not disclosed, either

³¹ [Prosecution’s Communication of the Disclosure of Evidence on 30 August 2021](#), 31 August 2021, ICC-01/14-01/21-157.

³² [Prosecution’s Communication of the Disclosure of Evidence on 21 September 2021](#), dated 21 September 2021 and registered on 22 September 2021, ICC-01/14-01/21-174, para. 4.

³³ [Prosecution’s Response](#), ICC-01/14-01/21-185-Red, para. 12.

³⁴ [Prosecution’s Response](#), ICC-01/14-01/21-185-Red, para. 11, fn. 14. The Chamber notes in that regard that the Prosecution listed the disclosed transcripts of 11 video recordings that contain the sounds of persons speaking (*see* [Prosecution’s Response](#), ICC-01/14-01/21-185-Red, fn. 14). Based on the available information, the Chamber notes that, of these 11 transcripts, two were disclosed on 13 September 2021, which is after the deadline of 30 August 2021 set by the Single Judge (*see* Email Order of 23 July 2021 sent at 15:11). However, the Chamber observes that these two transcripts are very short (5 lines and 2 pages, respectively) and is therefore of the view that the late disclosure of these transcripts does not unduly affect the preparation of the defence for the confirmation of charges hearing.

do not exist, as those witnesses were only screened, or they have no connection to the case. With respect to three of the five cases where the Prosecution erroneously failed to disclose witness statements, the Prosecution specifically indicated that it would not rely on them for the purposes of the confirmation of charges hearing.³⁵ As for the other two cases, the Prosecution only indicates that the statements of two witnesses were not disclosed. The Chamber understands from the Prosecution's submission that these statements were not disclosed on the ground that they bear no connection to the present case.³⁶ Therefore, the Chamber is not persuaded that the non-disclosure or delayed disclosure of these very few items unduly affects the defence's preparation for the confirmation of charges hearing.

28. The Chamber further notes the Defence's argument about an alleged improper use of the category 'Other' to disclose material that should fall within Rule 77 items.³⁷ The Chamber also notes the Prosecution's submission that the use of that category was necessary where the Prosecution could not ascertain with clarity 'whether the information could be material to the preparation of the defence or not', but on 'a preliminary and *prima facie* review', was assessed as 'likely not relevant'.³⁸ Without prejudice to the question of permissibility of disclosure under the category 'Other', the Chamber considers that, contrary to the Defence's argument, material related to (parts of) statements of witnesses upon which the Prosecution does not intend to rely for the purposes of the confirmation of charges hearing is not automatically material to the preparation of the defence, within the meaning of rule 77 of the Rules. Rather, the materiality needs to be assessed on a case-by-case basis. Therefore, the Chamber sees no apparent prejudice to the Defence due to the fact that the Prosecution did not disclose such material as Rule 77 items.

29. Regarding the Defence's investigations, the Chamber finds, in light of the foregoing considerations, that the timing of the Prosecution's disclosure of evidence had no undue impact on the Defence's ability to conduct its investigations. It recalls

³⁵ Annex A to Prosecution's Response, ICC-01/14-01/21-185-Conf-AnxA.

³⁶ See [Prosecution's Response](#), ICC-01/14-01/21-185-Red, para. 9; Annex A to Prosecution's Response, ICC-01/14-01/21-185-Conf-AnxA.

³⁷ [Defence's Request](#), ICC-01/14-01/21-175-Red2, paras 24-27.

³⁸ [Prosecution's Response](#), ICC-01/14-01/21-185-Red, paras 18-21.

that the Defence received the document containing the charges, the list of evidence for the confirmation hearing, as well as the evidence on which the Prosecution intends to rely, well in advance of the expiry of the time limit provided in rule 121(3) of the Rules, and the pre-confirmation brief a month ago.³⁹ Furthermore, as discussed above, the time limits set in the Court's legal texts for the confirmation of charges proceedings are short, which may not always enable thorough and complex investigations, such as those that defence counsel may envisage to conduct in preparation for trial. However, this does not mean that the right of the suspect to have adequate time and facilities for the preparation of his or her defence is thereby impaired. Rather, this limitation is inherent to the confirmation proceedings, which are meant to be conducted expeditiously and with due regard to the limited scope of the Pre-Trial Chamber's enquiry.

30. Finally, the Defence's arguments regarding alleged errors in the chain of custody of some of the disclosed items⁴⁰ appears to be in fact a request for clarification from the Prosecution. The Chamber considers that, in such circumstances, the Defence should have first communicated this, and any other, request for clarification to the Prosecution. Only once such *inter partes* communications fail to provide the required clarifications the Defence may address the Chamber.

31. In view of the foregoing and having regard to the need to ensure the fairness and expeditiousness of the proceedings, the Chamber is not persuaded that an exceptional basis has been demonstrated to warrant the serious measure of postponement of the confirmation of charges hearing in the present case.

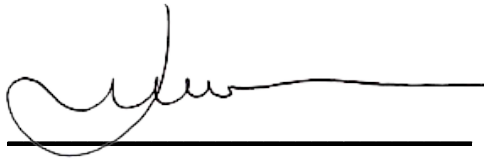
FOR THESE REASONS, THE CHAMBER HEREBY

REJECTS the Defence's Request.

Done in both English and French, the English version being authoritative.

³⁹ Document Containing the Charges, 16 August 2021, ICC-01/14-01/21-144-Conf (public redacted version filed on 17 September 2021 ([ICC-01/14-01/21-144-Red](#))); Pre-Confirmation Brief, 30 August 2021, ICC-01/14-01/21-155-Conf (public redacted version filed on 21 September 2021 ([ICC-01/14-01/21-155-Red](#))).

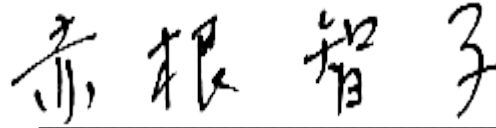
⁴⁰ [Defence's Request](#), ICC-01/14-01/21-175-Red2, para. 46.



**Judge Rosario Salvatore Aitala,
Presiding Judge**



Judge Antoine Kesia-Mbe Mindua



Judge Tomoko Akane

Dated this Monday, 4 October 2021

At The Hague, The Netherlands