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**No. ICC-01/14-01/18
Date: 23 August 2022**

TRIAL CHAMBER V

**Before: Judge Bertram Schmitt, Presiding Judge
Judge Péter Kovács
Judge Chang-ho Chung**

SITUATION IN THE CENTRAL AFRICAN REPUBLIC II

**IN THE CASE OF
*THE PROSECUTOR v. ALFRED YEKATOM AND PATRICE-EDOUARD
NGAISSONA***

Public

**Decision on the Prosecution Request to Grant Maxime Mokom Access to the
Record of the *Yekatom and Ngaïssona* Case**

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

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TRIAL CHAMBER V of the International Criminal Court, in the case of *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, having regard to Articles 64(2)(6)(c), (e), 67 and 68(1) of the Rome Statute, and Regulation 42(2) of the Regulations of the Court (the ‘Regulations’), issues this ‘Decision on the Prosecution Request to Grant Maxime Mokom Access to the Record of the *Yekatom and Ngaïssona* Case’.

I. Procedural history

1. On 8 April 2022, the Office of the Prosecutor (the ‘Prosecution’) requested that the Chamber direct the Registry to grant Mr Maxime Mokom access to materials placed on the trial record of this case, namely: (i) all confidential, excluding *ex parte*, submissions of the participants; (ii) all transcripts of testimonies, including private sessions; (iii) all confidential, excluding *ex parte*, decisions issued by this Chamber; (iv) all confidential exhibits deemed formally submitted into evidence; and (v) all witness statements, with the existing redactions applied (the ‘Material’ and the ‘Request’, respectively).¹
2. On 14 April 2022, the Yekatom Defence and the Common Legal Representative of Victims of Other Crimes indicated that they do not intend to file a response to the Request.²
3. On 23 May 2022,³ the Ngaïssona Defence filed its response, requesting that the Chamber reject the Request in its entirety. In the alternative, it requests that the Chamber either (i) reject the disclosure of several documents which are irrelevant, pertain to Mr Ngaïssona’s private life or contain information relating to the Ngaïssona Defence’s confidential strategy; or (ii) allow the Ngaïssona Defence to propose redactions to private information before disclosure. In addition, the Ngaïssona Defence requests that the Chamber direct the Prosecution to ‘seek an

¹ Prosecution’s Request to grant Maxime Jeoffroy Eli Mokom Gawaka access to the record of the *Yekatom and Ngaïssona* case, ICC-01/14-01/18-1353, paras 1, 6.

² Email from the Yekatom Defence, 14 April 2022, at 13:24; email from the Common Legal Representative of Victims of Other Crimes, 14 April 2022, at 13:33.

³ Following a request for extension by the Ngaïssona Defence, the Single Judge extended the deadline to respond to the Request until 23 May 2022 (email from the Chamber, 19 April 2022, at 15:46).

amendment to its request ICC-01/14-01/22-24 before Pre-Trial Chamber II, such that the protocol on handling of confidential information and contacts with witnesses⁴ applies across the [case of *The Prosecutor v. Maxime Jeoffroy Eli Mokom Gawaka Mokom*] and the present cases’ (the ‘Protocol’, the ‘Mokom Case’ and the ‘Protocol Request’, respectively).⁵

II. Analysis

4. At the outset, the Chamber recalls that the disclosure of items to participants in different proceedings before the Court would not vary the protective measures in this case, since they will remain in place towards the public. The Chamber therefore considers that Regulation 42(2) of the Regulations is applicable.⁶
5. Furthermore, to the extent that the Request relates to public parts of transcripts or public witness statements, the Chamber recalls its previous guidance in this regard, albeit given in relation to associated items.⁷
6. The Prosecution submits that the Material is relevant to the Mokom Defence due to, *inter alia*, the substantive geographical, temporal and material overlap between the Mokom Case and the present one, given that the two proceedings ‘involve the same facts and circumstances concerning the conflict in the Central African Republic, the context, temporal period, and crimes committed by the Anti-Balaka, of which [Mr Mokom and the accused in the present case] were members’.⁸

⁴ The Chamber understands the Ngaïssona Defence to make reference to Annex 5 to the Decision on Protocols at Trial, 8 October 2020, ICC-01/14-01/18-677-Anx5.

⁵ Defence response to the “Prosecution’s Request to grant Maxime Jeoffroy Eli Mokom Gawaka access to the record of the Yekatom and Ngaïssona case” (ICC-01/14-01/18-1353), ICC-01/14-01/18-1427-Conf (the ‘Response’), paras 1-3, 51. *See also The Prosecutor v. Maxime Jeoffroy Eli Mokom Gawaka*, Prosecution’s Request for an E-Court Protocol, a Redaction Protocol, and a Protocol on the Handling of Confidential Information and Contacts with Witnesses, 21 March 2022, ICC-01/14-01/22-24.

⁶ *See for example* Decision on the Third Prosecution Request for Authorisation to Disclose Certain Materials in the Case of *The Prosecutor v. Mahamat Said Abdel Kani* concerning Witnesses P-0291, P-0884, P-0966, P-0975, P-1339, P-2232, P-2251, P-2269, and P-2328, 17 June 2022, ICC-01/14-01/18-1465 (the ‘Third Said Decision’), para. 7; Decision on the Prosecution Request for Authorisation to Disclose Certain Transcripts in the case of *The Prosecutor v. Mahamat Said Abdel Kani*, 5 October 2021, ICC-01/14-01/18-1129, para. 7, *with further references to the jurisprudence of the Court*.

⁷ Third Said Decision, ICC-01/14-01/18-1465, para. 8.

⁸ Request, ICC-01/14-01/18-1353, paras 2-3 *referring to* Corrected version of ‘Decision on the confirmation of charges against Alfred Yekatom and Patrice-Edouard Ngaïssona’, 11 December 2019,

7. The Chamber notes the Ngaïssona Defence's submissions that the Request 'is impermissibly broad' and that it 'amounts to a blanket request for disclosure of the near entirety of the case file to third parties'.⁹ In particular, it argues, *inter alia*, that by adopting an 'indiscriminate approach', the Prosecution shifts the burden of reviewing the Material with a view to identifying confidentiality-related concerns arising from disclosure into the *Mokom* Case onto the defence. It therefore submits that it is the Prosecution's obligation to clearly identify disclosable material.¹⁰ The Chamber also takes note of the Ngaïssona Defence's submissions that the Request is premature.¹¹
8. To the extent that there appears to exist an overlap between the two proceedings – which is not contested by the Ngaïssona Defence – the Chamber is of the view that at least some of the Material may indeed be relevant to Mr Mokom.¹²
9. However, the Chamber considers it necessary that the Prosecution specifies the Material sought to be provided to the Mokom Defence. The Chamber is of the view that consultations in this regard should take place *inter partes*. In particular, the Chamber finds it appropriate that the Prosecution provides the Yekatom Defence and the Ngaïssona Defence with a list detailing all items which are to be provided as soon as possible (the 'List').
10. The Chamber further clarifies that certain items in the case record appear, on their face, of no relevance to the Mokom Defence. The Prosecution is therefore directed to exclude such filings from the List, unless exceptional circumstances require their disclosure to Mr Mokom. These items include (i) confidential items related to the accused's detention; (ii) *ex parte* items, in particular when concerning personal matters such as medical information; (iii) items collected

ICC-01/14-01/18-403-Conf-Corr (corrected version notified on 14 May 2020; public redacted version notified on 28 June 2021, ICC-01/14-01/18-403-Corr-Red), paras 81-83, 101, 111-112, 169, 174; Pre-Trial Chamber II, *Mokom* Case, Warrant of Arrest for Maxime Jeoffroy Eli Mokom Gawaka (ICC-01/14-01/22-2-US-Exp), 10 December 2018 (public redacted version notified on 22 March 2022, ICC-01/14-01/22-2-Red2).

⁹ Response, ICC-01/14-01/18-1427-Conf, para. 16.

¹⁰ Response, ICC-01/14-01/18-1427-Conf, paras 17, 19.

¹¹ Response, ICC-01/14-01/18-1427-Conf, para. 25.

¹² See similar Trial Chamber VI, *The Prosecutor v. Bosco Ntaganda*, Order on Defence access to confidential material in the Lubanga case, 1 September 2015, ICC-01/04-02/06-806, paras 10-11.

during the Ngaïssona Defence's investigations; and (iv) other irrelevant documents of a purely procedural nature.¹³

11. The Yekatom and Ngaïssona Defence may review the List and indicate within one month whether they object to any items included and/or indicate which redactions they deem necessary. In the absence of objections or in case of unopposed redactions, the Prosecution may proceed as soon as possible with the provision of the items to the Mokom Defence. In case of disagreement regarding the provision of specific items or categories thereof, and/or the application of redactions, the parties may seize the Chamber.
12. As regards the Ngaïssona Defence's submissions regarding the disclosure of future material,¹⁴ the Chamber recalls its previous ruling concerning 'advance authorisation'.¹⁵
13. With regard to the Protocol Request, the Ngaïssona Defence submits that the Protocol should apply to both cases because the interests and considerations that the Protocol seeks to protect within a given case and also between the co-accused are equally applicable between trials if there is a 'substantive overlap'.¹⁶
14. The Chamber does not consider itself competent to direct the Prosecution to amend request ICC-01/14-01/22-24 before Pre-Trial Chamber II. Notwithstanding, it observes that Pre-Trial Chamber II adopted the updated common protocol annexed to the Chambers Practice Manual, which contains similar dispositions to the Protocol in this case, including with regard to contacts with witnesses of other parties or participants.¹⁷ To the extent that the Ngaïssona Defence considers further action necessary, it is free to explore the possibility of

¹³ See also Response, ICC-01/14-01/18-1427-Conf, paras 29-47.

¹⁴ Response, ICC-01/14-01/18-1427-Conf, paras 20-24.

¹⁵ Third *Said* Decision, ICC-01/14-01/18-1465, para. 13 *referring to* Decision on the Second Prosecution Request for Authorisation to Disclose Certain Transcripts in the case of *The Prosecutor v. Mahamat Said Abdel Kani* concerning witnesses P-0287, P-0801, P-0808, P-0876, P-0889, P-0992, P-0966, P-0975, P-1339, P-1521, P-1719, P-2232, P-2269, and P-2843, 7 June 2022, ICC-01/14-01/18-1448, para. 8.

¹⁶ Response, ICC-01/14-01/18-1427-Conf, paras 48-49.

¹⁷ *Mokom* Case, Order on the conduct of the confirmation of charges proceedings, 27 June 2022, ICC-01/14-01/22-62, para. 24 *with reference to* Annex to Chambers Practice Manual, 'Protocol on the handling of confidential information during investigations and contact between a party or participant and witnesses of the opposing party or of a participant', ([20220323-chambers-practice-manual-fifth-edition-eng_2.pdf](https://www.icc-cpi.int/eng/2.pdf) ([icc-cpi.int](https://www.icc-cpi.int))).

an agreement to be mutually bound by the Protocol across the two cases with the Mokom Defence.

FOR THESE REASONS, THE CHAMBER HEREBY

REJECTS the Request;

DIRECTS the Prosecution to provide the Yekatom and Ngaïssona Defence with a list of the material to be provided to the Mokom Defence as soon as feasible, as indicated in paragraphs 9 to 10 above;

DIRECTS the Yekatom and Ngaïssona Defence to indicate within one month of the provision of this list whether they object to any items included and/or indicate which redactions they deem necessary, as indicated in paragraph 11 above;

REJECTS the Protocol Request; and

ORDERS the Ngaïssona Defence to file a public redacted version of the Response, ICC-01/14-01/18-1427-Conf, within one week of notification of the present decision.

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

 	 	
Judge Péter Kovács	Judge Bertram Schmitt Presiding Judge	Judge Chang-ho Chung

Dated 23 August 2022

At The Hague, The Netherlands