

**Cour
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**International
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Court**



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No.: ICC-01/14-01/22

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PRE-TRIAL CHAMBER II

Before: Judge Rosario Salvatore Aitala, Presiding Judge
Judge Tomoko Akane
Judge Sergio Gerardo Ugalde Godínez

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC II
IN THE CASE OF *PROSECUTOR v. MAXIME JEOFFROY ELI MOKOM
GAWAKA***

Confidential

**Prosecution's Response to the Mokom Defence Request to Rectify Deficiencies in
Disclosure Metadata**

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. Pre-trial Chamber II should dismiss the Defence request to rectify alleged deficiencies in disclosure metadata.¹ *First*, the Prosecution has reviewed all disclosed items and conducted additional metadata updates concerning the "ICC-01/14-01/22 - Related to Witness" category. Thus, this part of the Request is moot. *Second*, in relation to the items made available to the Defence which do not form part of the formally disclosed materials, *i.e.* the rest of the accessible and migrated materials ("non-disclosed items"), the Prosecution is not obliged to provide the same type of metadata. Accordingly, the Chamber should reject the Defence's request where it concerns alleged deficiencies in the metadata in this set of material.

2. Similarly, the Chamber should reject the Defence's request for a list of all persons screened, interviewed, or otherwise met by the Prosecution by 24 April 2023, as beyond the Prosecution's disclosure obligations under the E-Court Protocol. In any case, providing such a list is neither necessary nor proportionate in the circumstances, as the Defence has sufficient information and metadata to perform searches on the disclosed *and*—to the extent relevant—non-disclosed materials.

3. The Prosecution will continue to assist the Defence on an *inter partes* basis with any specific question related to both disclosed items and non-disclosed migrated items.

II. CONFIDENTIALITY

4. Pursuant to regulation 23*bis*(2) of the Regulations of the Court ("RoC"), this document is filed as "Confidential" because it responds to a filing of the same classification. A public redacted version will be filed as soon as practicable.

¹ ICC-01/14-01/22-201-Conf ("Request").

III. SUBMISSIONS

a. The Request is moot with respect to the metadata updates sought

5. As noted, the Prosecution has reviewed the materials formally disclosed in the *Mokom* case record and updated the "related to witness" field in accordance with the requirements of the E-Court Protocol.² This metadata update was undertaken in response to the Defence's informal request, and was completed on 19 May 2023.

6. Having thus fully addressed the disclosed items which form part of the case record and to which its formal disclosure obligations under the E-Court Protocol apply,³ it is important to underscore that these items are distinguishable from the non-disclosed migrated materials otherwise placed at the disposal of the Defence.⁴ Insofar as the examples cited by the Defence exclusively concern non-disclosed migrated materials, they are inapposite and do not warrant the relief sought. The Protocol does not apply to those items which were "only" migrated and have not been formally disclosed, which naturally contain the metadata from the other case only.⁵

7. The Prosecution concedes that in a previous filing dated 11 November 2022,⁶ it had indicated that the migrated items would come with the following metadata fields: Type, Title, date, Chain of Custody, Confidentiality Level, Basis of Confidentiality, Language, Source Identity, Pseudonyms, Related to Witness, People/Org, and Source/Attachment. However, this means that the migrated items contain the same metadata as in the *Yekatom and Ngaïssona* case record. Contrary to the Request,⁷ this

² ICC-01/14-01/22-64-Anx.

³ See e.g. ICC-01/14-01/22-62-Conf, "all evidence disclosed", para. 22; ICC-01/14-01/22-62, para. 21, fn. 31.

⁴ See ICC-01/14-01/22-158, paras. 6-8. See also ICC-01/14-01/22-157, para. 33.

⁵ See e.g. ICC-01/14-01/22-62-Conf, "all evidence disclosed", para. 22; ICC-01/14-01/22-62, para. 21, fn. 31.

⁶ ICC-01/14-01/22-109, para. 5.

⁷ See Request, para. 17.

cannot be understood to oblige the Prosecution in the *Mokom* case to add or otherwise update metadata of non-disclosed documents migrated from the other case.

8. Even assuming *arguendo* that the Prosecution could be considered to have any such obligation, from a technical perspective, it is not possible to change the metadata of the migrated materials without going through a formal disclosure process. The non-disclosed migrated items were intended to serve as an additional resource for the Defence to the extent it considered that it may wish to avail itself of such information. However, the formally disclosed materials comprise those items which the Prosecution has reasonably and carefully assessed as truly relevant for the Defence's preparation. Effectively, they are the relevant universe of material documents and information.

9. The Prosecution will continue to assist the Defence in relation to any specific queries that may arise in relation to the non-disclosed migrated materials on an *inter partes* basis in a timely and complete manner. The Prosecution will also continue its review of any materials in its collection and discharge its disclosure obligations if triggered.

b. The Prosecution is under no obligation to provide a list of all persons screened, interviewed or it has otherwise met with

10. The Defence's request for a list of all persons, with their names and witness numbers, interviewed by the Prosecution, which had been "disclosed/migrated" on NUIX,⁸ is without merit. Such a list is not required under the applicable protocol and

⁸ See Request, paras. 9, 19.

the request is over-broad as it would encompass persons who are not part of the evidentiary record of the *Mokom* case at this point of the proceedings.⁹

11. In any case, such a list is not necessary nor would it be proportionate in the circumstances, given the completed metadata update concerning the disclosed items, together with the metadata already available for the non-disclosed items. As noted above, the Prosecution has conducted a review of the formally disclosed items again. Where applicable the related to witness field has been populated following the E-Court Protocol and the Defence can use this field to identify witnesses and easily create their own list. In addition, other fields such as Source Code, Title, Type, and Main Date are available to search the materials according to the needs of the Defence. Furthermore, the Prosecution has provided the Defence with a witness table listing relevant documents related to each witness on which it relies in the *Mokom* case.¹⁰ If there are open questions in relation to any item or source – including in the non-disclosed migrated items – the Prosecution stands ready to assist the Defence with further information.

12. Given the apparent confusion as to the status of items derived from the *Yekatom* and *Ngaïssona* case (whether migrated or to which access has been authorised) with the formally disclosed items, the Prosecution undertakes to consult with the Defence as soon as possible with a view to better separating the two classes of material. This may take the form of a proposal to, for example, re-organise such material in the E-

⁹ A list as requested by the Defence would also take considerable time to assemble. The main reason is that many "sources" of items are not confirmation witnesses, and therefore are not individuals whom the Prosecution has already cleared for disclosure through its normal processes. In order to provide the identity and other details of a source an individual security assessment would have to be made for each person. This would take a considerable amount of time and resources. If there are particular sources in which the Defence is interested, specific requests can be made to the Prosecution upon which the Prosecution can act.

¹⁰ See ICC-01/14-01/22-193-Conf-Anx, Annex "Amended version of "Annex B to the Prosecution's Submission Related to the Chamber's Decision on issues arising from the submission of the Document Containing the Charges", ICC-01/14-01/22-179-Conf-AnxB, 24 March 2023".

Court database in consultation with the Registry or even the creation of a new E-Court database.

IV. CONCLUSION

13. For the above reasons, the Chamber should reject the Request.



Karim A. A. Khan KC, Prosecutor

Dated this 22nd day of May 2023
At The Hague, The Netherlands