

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 18 June 2024

TRIAL CHAMBER VI

Before:

**Judge Miatta Maria Samba, Presiding Judge
Judge María del Socorro Flores Liera
Judge Sergio Gerardo Ugalde Godínez**

SITUATION IN THE CENTRAL AFRICAN REPUBLIC II

IN THE CASE OF

THE PROSECUTOR v. MAHAMAT SAID ABDEL KANI

Public

**Decision on the Prosecution's Request for Authorisation to Disclose Material into
the case of *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona***

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 Ms Holo Makwaia	Counsel for the Defence Ms Jennifer Naouri Mr Dov Jacobs
Legal Representatives of Victims Ms Sarah Pellet	Legal Representatives of Applicants
Unrepresented Victims	Unrepresented Applicants for Participation/Reparations
The Office of Public Counsel for Victims	The Office of Public Counsel for the Defence
States Representatives	Amicus Curiae
REGISTRY	
Registrar Mr Osvaldo Zavala Giler	Counsel Support Section
Victims and Witnesses Unit Mr Nigel Verrill	Detention Section
Victims Participation and Reparations Section	Other Trial Chamber V

TRIAL CHAMBER VI of the International Criminal Court, in the case of *The Prosecutor v. Mahamat Said Abdel Kani*, having regard to articles 64(2), 64(6)(c), 64(6)(e) and 68(1) of the Rome Statute (the ‘Statute’), rule 74 of the Rules of Procedure and Evidence (the ‘Rules’) and regulation 42 of the Regulations of the Court (the ‘Regulations’), issues this ‘Decision on the Prosecution’s Request for Authorisation to Disclose Material into the case of *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*’.

I. PROCEDURAL HISTORY

1. On 10 June 2024, the Office of the Prosecutor (the ‘Prosecution’) requested, via email: (i) the authorisation of the Chamber to disclose into the case of *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona* (the ‘*Yekatom and Ngaïssona* case’) confidential transcripts of the testimonies of witnesses P-0291, P-0884, and P-2251, as well as any additional statement provided by these witnesses in the present case; and (ii) an advance authorisation, if the Chamber deems it appropriate at this time, for the same types of items regarding witnesses P-0119, P-1339, P-2328, and P-2232 who are yet to testify in the present case (the ‘Request’).¹
2. On 12 June 2024, the Defence indicated via email that it will not respond to the Request and defers to the Chamber.²

II. SUBMISSIONS

3. In support of the Request, the Prosecution submits that the items that it wishes to have disclosed are relevant to the *Yekatom and Ngaïssona* case ‘since the seven witnesses have provided oral evidence in that case regarding the conflict in the Central African Republic involving the Seleka and the Anti-Balaka’. In this regard, the Prosecution notes that the ‘subject matter of their testimonies or anticipated testimonies

¹ Email from the Prosecution to the Chamber, dated 10 June 2024, at 15:23.

² Email from the Defence to the Chamber, dated 12 June 2024, at 18:06.

in this case cover the same conflict and are likely to encompass issues in adjudication in the *Yekatom and Ngaïssona* case’ and therefore it considers the items to be material to the preparation of the Defence in the *Yekatom and Ngaïssona* case.

4. In respect of the confidentiality of the items that the Prosecution wishes to have disclosed, it submits that it will apply any relevant redactions and notes that the Defence in the *Yekatom and Ngaïssona* case are bound by the relevant confidentiality obligations.

III. ANALYSIS

5. At the outset, the Chamber notes that, in respect of P-0291, no protective measures were sought by the Prosecution for him and he testified in public session. Accordingly, the Chamber finds that regulation 42(2) of the Regulations is not applicable to material relating to P-0291 and therefore the Prosecution does not need to seek authorisation from the Chamber to disclose such material to the participants in the *Yekatom and Ngaïssona* case. Similarly, no protective measures have been sought for P-2328, who is still due to testify. In this regard, at present, regulation 42(2) of the Regulations is currently not applicable to any material relating to P-2328.

6. In respect of the remaining witnesses (P-0884, P-2251, P-0119, P-1339, and P-2232), the Chamber notes that they have been granted protective measures.³

7. The Chamber notes that the disclosure of transcripts and other related material to participants in different proceedings before this Court does not vary the protective measures in this case, since they will remain in place towards the public.⁴ The Chamber

³ See Decision on the Prosecution’s Request for In-Court Protective Measures dated 21 September 2022 (ICC-01/14-01/21-481-Conf), 26 September 2022, [ICC-01/14-01/21-481-Red](#) (the ‘First Protective Measures Decision’). A confidential version was filed on 21 September 2022 (ICC-01/14-01/21-481-Conf); Decision on the Prosecution’s Request for Continued In-Court Protective Measures for Witness P-0119, 24 May 2024, [ICC-01/14-01/21-767](#) (the ‘P-0119 Protective Measures Decision’).

⁴ Trial Chamber V, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, Decision on the Prosecution Request for Authorisation to Disclose the Transcripts of D30-4756’s Testimony to the Said Defence, 8 May 2024, [ICC-01/14-01/18-2487](#) (the ‘May 2024 *Yekatom/Ngaïssona* Disclosure Decision’), para. 4; Trial Chamber V, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, 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](#) (the

further takes note of the fact that confidential material from the *Yekatom and Ngaïssona* case has been authorised for disclosure into the present case,⁵ and a number of the witnesses referred to in the Request are also witnesses in the *Yekatom and Ngaïssona* case and have received protective measures in that case.⁶

8. Based on the foregoing, the Chamber finds that disclosure of the material relating to P-0884, P-2251, P-0119, P-1339 and P-2232 to the participants in *Yekatom and Ngaïssona* case will not negatively impact the security and safety of the concerned witnesses. As highlighted by the Prosecution, counsel in the *Yekatom and Ngaïssona* case are bound by confidentiality obligations pursuant to article 8 of the Code of Professional Conduct for counsel and the protocol on the handling of confidential information.

9. Accordingly, pursuant to regulation 42(2) of the Regulations, the Chamber authorises the Prosecution to disclose the transcripts and other requested material relating to P-0884, P-2251, P-0119, P-1339 and P-2232. The Prosecution is instructed to inform the participants in the *Yekatom and Ngaïssona* case of the nature of the protective measures of those witnesses.⁷ In addition, the Chamber notes that P-0884 and P-2251 have received rule 74 assurances in the present proceedings and the Prosecution is instructed to inform the participants in the *Yekatom and Ngaïssona* case accordingly.

‘October 2021 *Yekatom/Ngaïssona* Disclosure Decision’), para. 7. See also Trial Chamber IV, *The Prosecutor v. William Samoei Ruto and Joshua Arap Sang*, Decision on Prosecution Request for Transfer of Parts of the Record of the Case into Another Case Record, 15 January 2021, ICC-01/09-01/11-2043-Conf (with confidential Annex I and confidential *ex parte* Annex II, only available to the Prosecution) (the ‘*Ruto* Decision on the Prosecution Request for Transfer’), para. 9; Trial Chamber I, *The Prosecutor v. Thomas Lubanga Dyilo*, Decision on the request from the defence in the Katanga and Ngudjolo case for disclosure of transcripts in the Lubanga case, 11 June 2010, [ICC-01/04-01/06-2471](#), paras 28-29; Trial Chamber III, *The Prosecutor v. Jean-Pierre Bemba Gombo*, Decision on “Prosecution’s Second Further Request for Disclosure of Evidence in a Related Article 70 Proceeding”, 26 June 2014, [ICC-01/05-01/08-3098-Red](#), para. 14. A confidential version notified simultaneously (ICC-01/05-01/08-3098-Conf).

⁵ See May 2024 *Yekatom/Ngaïssona* Disclosure Decision, [ICC-01/14-01/18-2487](#); October 2021 *Yekatom/Ngaïssona* Disclosure Decision, ICC-01/14-01/18-1129.

⁶ See First Protective Measures Decision, [ICC-01/14-01/21-481-Red](#), para. 95; P-0119 Protective Measures Decision, [ICC-01/14-01/21-767](#), para. 3.

⁷ See Trial Chamber II, *The Prosecutor v. Paul Gicheru*, Decision on the Prosecution Request to Transfer Part of the Ruto and Sang Case into the Case Record of the Gicheru Case, 24 August 2021, [ICC-01/09-01/20-165-Corr](#), para. 11; *Ruto* Decision on the Prosecution Request for Transfer, ICC-01/09-01/11-2043-Conf, para. 10.

10. In respect of P-2328, as noted above, regulation 42(2) of the Regulations is currently not applicable to any material relating to him. However, this position will change should protective measures be granted to him by the Chamber or should any of his testimony take place in private session. The Chamber finds that this uncertainty should not inhibit it in granting advance authorisation for disclosure of material relating to him (should such authorisation be required). In this regard, should protective measures be granted to P-2328, pursuant to regulation 42(2) of the Regulations, the Prosecution should inform the participants in the *Yekatom and Ngaïssona* case of the nature of any protective measures relating to P-2328.

FOR THESE REASONS, THE CHAMBER HEREBY

GRANTS the Request.

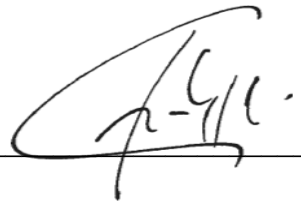


Judge Miatta Maria Samba

Presiding Judge



Judge María del Socorro Flores Liera



Judge Sergio Gerardo Ugalde Godínez

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

Dated 18 June 2024

At The Hague, The Netherlands