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**No. ICC-01/14-01/18
Date: 18 October 2024**

TRIAL CHAMBER V

Before: Judge Bertram Schmitt, Presiding Judge
Judge Péter Kovács
Judge Chang-ho Chung
Judge Beti Hohler, Alternate Judge

SITUATION IN THE CENTRAL AFRICAN REPUBLIC II

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

Public

**Decision on the Ngaïssona Defence Request for Reconsideration of the ‘Decision
on the Ngaïssona Defence Motion for Disclosure of Material Related to the
Withdrawal of Charges in the *Mokom* Case’**

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

The Office of the Prosecutor

Karim A. A. Khan
Mame Mandiaye Niang
Kweku Vanderpuye

Counsel for Alfred Yekatom

Mylène Dimitri
Thomas Hannis
Anta Guissé
Sarah Bafadhel

Counsel for Patrice-Edouard Ngaïssona

Geert-Jan Alexander Knoops
Marie-Hélène Proulx
Lauriane Vandeler

Legal Representatives of Victims

Abdou Dangabo Moussa
Elisabeth Rabesandratana
Yaré Fall
Marie-Edith Douzima-Lawson
Paolina Massidda
Dmytro Suprun

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

Osvaldo Zavala Giler

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

TRIAL CHAMBER V of the International Criminal Court, in the case of *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, having regard to Article 67(2) of the Rome Statute (the ‘Statute’) and Rule 77 of the Rules of Procedure and Evidence (the ‘Rules’), issues this ‘Decision on the Ngaïssona Defence Request for Reconsideration of the “Decision on the Ngaïssona Defence Motion for Disclosure of Material Related to the Withdrawal of Charges in the *Mokom* Case”’.

I. Procedural history and submissions

1. The Chamber recalls the procedural history set out in its ‘Decision on the Ngaïssona Defence Motion for Disclosure of Material Related to the Withdrawal of Charges in the *Mokom* Case’ (the ‘Decision’).¹ In this decision, the Chamber rejected the Ngaïssona Defence’s (the ‘Defence’) request to order the Office of the Prosecutor (the ‘Prosecution’) to ‘disclose all items and information relating to the Withdrawal’, in particular regarding the ‘sudden unavailability’ of certain witnesses who were due to testify in the *Mokom* Case.²
2. On 7 October 2024, the Defence requested the Chamber to reconsider its Decision and ‘order the disclosure of the items and information relating to the “unavailability” of witnesses who were due to testify in the [*Mokom* Case], who are also witnesses in the present case, including several insider witnesses’ (the ‘Sought Information’, the ‘Overlapping Witnesses’, and the ‘Request’, respectively). Alternatively, it requested the Chamber to order the Prosecution to disclose the Sought Information to the Chamber *ex parte* (the ‘Alternative Request’). Finally, it sought the shortening of the participants’ response deadlines to five days (the ‘Shortening Request’).³
3. The Defence argues that reconsideration is warranted in light of the new facts and arguments that arose since the Decision was rendered, notably the fact that the Prosecution filed a report before the Article 85 Chamber in the

¹ Decision, 2 May 2024, ICC-01/14-01/18-2474-Conf (public redacted version notified on 26 September 2024, ICC-01/14-01/18-2474-Conf-Red), paras 1-6.

² Decision, ICC-01/14-01/18-2474-Red, para. 3, p. 5.

³ Ngaïssona Defence Request for Reconsideration of the “Decision on the Ngaïssona Defence Motion for Disclosure of Material Related to the Withdrawal of Charges in the *Mokom* Case (ICC-01/14-01/18-2474-Conf)” dated 2 May 2024, ICC-01/14-01/18-2721-Conf, p. 21.

Mokom Case, ‘summaris[ing] the most significant information known about the unavailability of certain witnesses in the *Mokom* case at the time of the Prosecutor’s decision to withdraw the charges’ (the ‘*Mokom* Report’).⁴ It also argues that the Decision contains a ‘clear error of reasoning’ and that reconsideration is necessary to prevent an injustice.⁵ Furthermore, it alleges that the Prosecution’s oral submissions before the Article 85 Chamber in the *Mokom* Case confirm that the Prosecution is ‘indeed withholding disclosable items and/or information surrounding the non-cooperation of insider witnesses’.⁶

4. On the same day, the Single Judge granted the Shortening Request.⁷
5. On 14 October 2024, the Prosecution opposed the Request and Alternative Request (the ‘Response’).⁸

II. Analysis

6. At the outset, the Chamber recalls the applicable law in relation to the Prosecution’s disclosure obligations under Article 67(2) of the Statute and Rule 77 of the Rules.⁹
7. The Chamber considers that the Defence failed to meet the threshold for reconsideration, as previously set out.¹⁰ First, the Chamber does not consider the *Mokom* Report, which purportedly details information leading to the

⁴ Request, ICC-01/14-01/18-2721-Conf, referring to *The Prosecutor v. Maxime Jeoffroy Eli Mokom Gawaka*, Prosecution’s response to the Chamber’s request for further information, 13 September 2024, ICC-01/14-01/22-352 (with one under seal *ex parte* annex, only available to the Prosecution) (the ‘Prosecution *Mokom* Submissions’), paras 1-2.

⁵ Request, ICC-01/14-01/18-2721-Conf, paras 2, 33-39.

⁶ Request, ICC-01/14-01/18-2721-Conf, para. 30, referring to Article 85 Chamber, *The Prosecutor v. Maxime Jeoffroy Eli Mokom Gawaka*, transcript of hearing, ICC-01/14-01/22-T-009-Red2-ENG (the ‘*Mokom* Hearing’).

⁷ Email from the Chamber, 7 October 2024, at 13:05.

⁸ Prosecution’s Response to the “Ngaïssona Defence Request for Reconsideration of the “Decision on the Ngaïssona Defence Motion for Disclosure of Material Related to the Withdrawal of Charges in the *Mokom* Case” (ICC-01/14-01/18-2721-Conf), ICC-01/14-01/18-2725-Conf.

⁹ See e.g. Decision on the Yekatom Defence Motion for Disclosure of Prior Statement of Witness P-0801, 15 June 2020, ICC-01/14-01/18-551-Conf (public redacted version notified the same day), para. 25; Decision on the Ngaïssona Defence Request for Disclosure of Reports related to Seizure of Digital Materials from P-0889, 30 May 2022, ICC-01/14-01/18-1438-Conf (public redacted version notified on 30 September 2022, ICC-01/14-01/18-1438-Red), paras 6-9.

¹⁰ See for example Decision on the Ngaïssona Defence Request for Reconsideration of the Further Directions on the Conduct of the Proceedings, 29 August 2023, ICC-01/14-01/18-2068, para. 4 with further references.

Prosecution's decision to withdraw the charges against Mr Mokom on 16 October 2023, to be a new fact or argument. As is obvious from the Prosecution's submissions,¹¹ these facts already existed at the time the Chamber rendered its Decision. The mere fact that the Prosecution has now put them into writing before the Article 85 Chamber does not render this information 'new'.

8. Second, in relation to the alleged clear error of reasoning, the Chamber considers that the Defence misreads the Decision. The Chamber did not assess whether the 'substance of the allegations brought against Mr Mokom may be overlapping with those brought against Mr Ngaïssona'.¹² Rather, it was fully cognisant that the Defence's arguments were based 'on the Overlapping Witnesses'.¹³ With this in mind, the Chamber recalled that the determination of disclosable materials falls within the purview of the Prosecution and considered the Defence's allegations that the Prosecution withheld disclosable information speculative.¹⁴
9. The Chamber continues to find these allegations speculative. In the Chamber's view, neither the filing of the *Mokom* Report nor the Prosecution's oral submissions before the Article 85 Chamber¹⁵ 'confirm' that any disclosable information exists, as alleged by the Defence.¹⁶ In the absence of any such indication, the Chamber thus trusts that the Prosecution is complying with its disclosure obligations. Consequently, it will not address whether any restrictions to disclosure apply under Rule 81(1) of the Rules.¹⁷
10. In this context, the Chamber further notes that it is, in any event, still not convinced that the reasons and circumstances behind any alleged unavailability of the Overlapping Witnesses in the *Mokom* Case might assist in its assessment

¹¹ Prosecution *Mokom* Submissions, ICC-01/14-01/22-352, para. 5; Response, ICC-01/14-01/18-2725-Conf, paras 9, 12.

¹² See Request, ICC-01/14-01/18-2721-Conf, para. 34.

¹³ See Request, ICC-01/14-01/18-2721-Conf, para. 34.

¹⁴ Decision, ICC-01/14-01/18-2474-Red, paras 7-8.

¹⁵ *Mokom* Hearing, ICC-01/14-01/22-T-009-Red2-ENG.

¹⁶ Request, ICC-01/14-01/18-2721-Conf, paras 30-32.

¹⁷ See Request, ICC-01/14-01/18-2721-Conf, paras 41-47; Response, ICC-01/14-01/18-2725-Conf, paras 18-21.

of the evidence of these witnesses in the present proceedings and in the determination of the truth, in light of the information presently available.¹⁸

11. Third, and particularly noting that the Defence was able to examine the Overlapping Witnesses during the trial, the Chamber considers that it failed to demonstrate that reconsideration is warranted to prevent an injustice.
12. In light of the above, the Chamber rejects the Request and Alternative Request.

FOR THESE REASONS, THE CHAMBER HEREBY

REJECTS the Request;

REJECTS the Alternative Request; and

ORDERS the Defence and the Prosecution to file public redacted versions of the Request, ICC-01/14-01/18-2721-Conf, and the Response, ICC-01/14-01/18-2725-Conf, within two weeks 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
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Dated 18 October 2024

At The Hague, The Netherlands

¹⁸ See also Decision on the Ngaiissona Defence Request to Compel the Prosecution to Comply with the Contact Protocol, 15 May 2024, ICC-01/14-01/18-2493-Conf, para. 12.