

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: **ICC-01/14-01/22**
Date: **6 February 2023**

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 *PROSECUTOR v. MAXIME JEOFFROY ELI MOKOM
GAWAKA***

Public

Request for Clarification concerning the “Decision regarding the Prosecution’s submission on material in the Yekatom and Ngaïssona case to which access may be authorised” (ICC-01/14-01/22-147)

Source: Office of the Prosecutor

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

The Office of the Prosecutor

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I. INTRODUCTION

1. The Office of the Prosecutor (“Prosecution”) seeks clarification on one of Pre-Trial Chamber II’s (“Chamber”) findings in its Decision regarding the Prosecution’s submission on material in the *Yekatom and Ngaïssona* case to which access may be authorised (“Decision”).¹ For the avoidance of all doubt, the Prosecution seeks confirmation that its disclosure obligations are limited to material that is duly disclosable, and do not extend to other, non-disclosable material from the *Yekatom and Ngaïssona* case record to which access may nevertheless be granted.

II. SUBMISSIONS

2. The Prosecution refers to the second limb of the Chamber’s disposition in the Decision, namely that:

“... the Prosecution must discharge the established disclosure obligations regarding any material from the *Yekatom and Ngaïssona* case record to which access may be granted.”

3. The *Yekatom and Ngaïssona* case record contains both disclosable material under the Court’s statutory framework (*i.e.* material falling under rule 76 or rule 77 of the Rules of Procedure and Evidence, or under article 67(2) of the Statute), and non-disclosable material (*i.e.* material not falling under these provisions), for the purposes of the *Mokom* proceedings. Further, the material in the *Yekatom and Ngaïssona* case record is not strictly in the Prosecution’s possession and control, but in that of the Registry.

4. The Decision could be read to impose a standard inconsistent with the Court’s statutory framework and practice, to the extent that it could impose a duty on the Prosecution to perform its disclosure obligations in relation to material that is non-

¹ ICC-01/14-01/22-147 (emphasis added).

disclosable or otherwise not in its possession, to which the MOKOM Defence has been granted access by the Registry. In other words, the Decision could be read to conflate the two separate standards of disclosure and access in terms of the Prosecution's disclosure obligations.

5. The Prosecution seeks to confirm its understanding that its disclosure obligations (including identifying relevant portions of the documents²) extends only to such material that is disclosable under the Court's statutory framework. As such, the Prosecution understands the Decision to mean that its statutory obligations apply *independently* of the MOKOM Defence's access to material in the *Yekatom and Ngaïssona* case. While this is readily apparent from the restrictive wording of paragraph 11,³ also referenced in the first limb of the Chamber's disposition in the Decision⁴ - as well as the Chamber's observations on the limited scope of the confirmation of charges hearing⁵ - the unrestricted use of the word "any" in the second limb of the Decision creates ambiguity. Clarification is therefore necessary.

² ICC-01/14-01/22-104, para. 8.

³ "Any material from the *Yekatom and Ngaïssona* case record for which formal disclosure to Mr Mokom is required will thus have to be disclosed before the prescribed time limits." (emphasis added).

⁴ "INSTRUCTS the Prosecution to comply with its disclosure obligations as set out at paragraph 11 above...".

⁵ ICC-01/14-01/22-104, para. 7.

III. CONCLUSION

6. In order to facilitate the expeditious conduct of the proceedings and to inform the Prosecution in its future steps, the Prosecution seeks clarification as explained above of the Chamber's Decision.

A handwritten signature in black ink, appearing to be 'K.A.K.', with a horizontal line underneath it.

Karim A. A. Khan KC, Prosecutor

Dated this 6th day of February 2023
At The Hague, The Netherlands