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**No. ICC-01/14-01/18
Date: 26 September 2024
Date of original: 2 May 2024**

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 redacted version of

**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:

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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 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 Motion for Disclosure Related to the Withdrawal of Charges in the *Mokom* Case’.

1. On 16 October 2023, the Office of the Prosecutor (the ‘Prosecution’) withdrew the charges in the case of *The Prosecutor v. Maxime Jeoffroy Eli Mokom Gawaka* (the ‘*Mokom* case’ and ‘the Withdrawal’), on the basis that several ‘critical witnesses’, including insider witnesses providing ‘critical information’ regarding the charges against Mr Mokom, were unavailable to testify.¹
2. On 2 April 2024, Pre-Trial Chamber II, in the *Mokom* case, dismissed the Ngaïssona Defence’s (the ‘Defence’) request for disclosure of items and information relating to the Withdrawal,² noting that it was not the appropriate forum to rule on this request. It further stated that its decision was ‘without prejudice to any consideration by Trial Chamber V of the matters raised’.³
3. On 15 April 2024, the Defence directed its request at this Chamber, asking it to order the Prosecution to disclose all items and information relating to the Withdrawal, pursuant to Article 67(2) of the Statute and Rule 77 of the Rules (the ‘Sought Material’ and the ‘Request’). In particular, it seeks information relating to the ‘sudden unavailability’ of witnesses who were due to testify in the *Mokom* case.⁴
4. On 19 April 2024, the Yekatom Defence informed the Chamber that it joined and supported the Defence’s request.⁵

¹ *The Prosecutor v. Maxime Jeoffroy Eli Mokom Gawaka*, Notice of Withdrawal of the Charges against Maxime Jeoffroy Eli Mokom Gawaka, ICC-01/14-01/22-275.

² *The Prosecutor v. Maxime Jeoffroy Eli Mokom Gawaka*, Ngaïssona Defence Motion for Disclosure, 9 February 2024, ICC-01/14-01/22-322-Conf (public redacted version notified on 5 April 2024).

³ Pre-Trial Chamber II, *The Prosecutor v. Maxime Jeoffroy Eli Mokom Gawaka*, Decision on the Ngaïssona Defence Motion for Disclosure, ICC-01/14-01/22-328-Conf (the ‘PTCII Decision’).

⁴ Ngaïssona Defence Motion for Disclosure, ICC-01/14-01/18-2448-Conf. The Chamber notes that this request was preceded by *inter partes* discussions between the Defence and the Prosecution, *see* Request, ICC-01/14-01/18-2448-Conf, paras 4-7.

⁵ Email from the Yekatom Defence, 19 April 2024, at 12:56.

5. On 25 April 2024, the Common Legal Representatives of Victims (the ‘CLR V’) filed a joint response, opposing the Request (the ‘CLR V Response’).⁶
6. On the same day, the Prosecution also opposed the Request (the ‘Prosecution Response’).⁷ It submits, *inter alia*, that the material which led the Prosecution to conclude that witnesses were unavailable in the *Mokom* case does not touch upon the credibility of the relevant witnesses, nor is it otherwise relevant to the preparation of the Defence in the present case. Therefore, the Sought Material is not disclosable in the Prosecution’s view.⁸ Additionally, it claims that the reasons for the Withdrawal are based on the Prosecution’s internal strategic analysis, thus falling under the disclosure restriction of Rule 81(1) of the Rules.⁹
7. 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.¹⁰ In particular, it recalls that the determination of whether an object is material to the preparation of the defence depends upon the specific circumstances of the case¹¹ and is performed by the Prosecution.¹²
8. In this instance, the Prosecution confirmed on several occasions that it has reviewed all material in its possession and not identified any disclosable material

⁶ Victims’ Joint Response to the ‘Ngaïssona Defence Motion for Disclosure’ (ICC-01/14-01/18-2448-Conf), ICC-01/14-01/18-2464-Conf, paras 2, 23.

⁷ Réponse de l’Accusation à la “*Ngaïssona Defence Motion for Disclosure*” (ICC-01/14-01/18-2448-Conf), ICC-01/14-01/18-2465-Conf, paras 1, 12.

⁸ Prosecution Response, ICC-01/14-01/18-2465-Conf, paras 2, 5.

⁹ Prosecution Response, ICC-01/14-01/18-2465-Conf, para. 11.

¹⁰ *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) (the ‘30 May 2022 Decision’), paras 6-9.

¹¹ *See Appeals Chamber, The Prosecutor v. Abdallah Banda Abakaer Nourain and Saleh Mohammed Jerbo Jamus*, Judgment on the appeal of Mr Abdallah Banda Abakaer Nourain and Mr Saleh Mohammed Jerbo Jamus against the decision of Trial Chamber IV of 23 January 2013 entitled “Decision on the Defence’s Request for Disclosure of Documents in the Possession of the Office of the Prosecutor”, 28 August 2013, ICC-02/05-03/09-501 OA 4, para. 39. *See also* 30 May 2022 Decision, ICC-01/14-01/18-1438-Red, para. 9 and the jurisprudence cited therein.

¹² *See for example also* Pre-Trial Chamber II, *The Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman*, Corrected version of the Decision on the confirmation of charges against Ali Muhammad Ali Abd-Al-Rahman (‘Ali Kushayb’), 23 November 2021, ICC-02/05-01/20-433-Corr (original version notified on 9 July 2021), para. 16.

in relation to the Withdrawal.¹³ In view of this, the Chamber finds the Defence's allegations that the Prosecution is withholding disclosable material¹⁴ speculative at best and sees no reason to doubt that the Prosecution has complied with its disclosure obligations. In this respect, the Chamber also notes Pre-Trial Chamber II's finding that [REDACTED].¹⁵

9. In light of the above, there is no need to determine whether any restrictions of disclosure under Rule 81(1) of the Rules apply. Accordingly, the Chamber rejects the Request.

FOR THESE REASONS, THE CHAMBER HEREBY

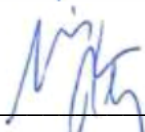
REJECTS the Request; and

ORDERS the Defence, the Prosecution and the CLRV to file public redacted versions of the Request, ICC-01/14-01/18-2448-Conf, the Prosecution Response, ICC-01/14-01/18-2465-Conf, and the CLRV Response, ICC-01/14-01/18-2464-Conf, respectively, within one week of notification of this decision.

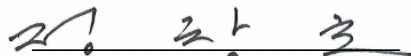
Done in both English and French, the English version being authoritative.



Judge Bertram Schmitt
Presiding Judge



Judge Péter Kovács



Judge Chang-ho Chung

Dated 26 September 2024

At The Hague, The Netherlands

¹³ See Prosecution Response, ICC-01/14-01/18-2465-Conf, para. 2; *The Prosecutor v. Maxime Jeoffroy Eli Mokom Gawaka*, Prosecution's Response to the Ngaissona Defence Motion for Disclosure, 15 February 2024, ICC-01/14-01/22-326-Conf (public redacted version notified on 5 April 2024), para. 9, which was filed in the *Mokom* case before Pre-Trial Chamber II; as well as the *inter partes* emails from the Prosecution to the Defence on 2 November 2023, at 16:22 and on 9 January 2024, at 17:08 (which have been acknowledged by both parties in their submissions, see the Prosecution Response, ICC-01/14-01/18-2465-Conf, n. 7 and Request, ICC-01/14-01/18-2448-Conf, paras 4-7).

¹⁴ See in particular Request, ICC-01/14-01/18-2448-Conf, paras 21, 25.

¹⁵ PTCII Decision, ICC-01/14-01/22-328-Conf, para. 9.