



Original: **English**

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

Date: **17/11/2022**

**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**

*The Prosecutor v. Maxime Jeoffroy Eli Mokom Gawaka*

**PUBLIC**

**Mr. Mokom's Response to the  
'Prosecution's Submissions on Disclosure and Related Matters'**

**Source:** Gregory Townsend, Duty Counsel

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, K.C.  
Mame Mandiaye Niang  
Kweku Vanderpuye

**Counsel for the Defence**

Gregory Townsend, Duty Counsel

**Legal Representatives of the Victims**

**Legal Representatives of Applicants**

**Unrepresented Victims**

**Unrepresented Applicants  
(Participation/Reparation)**

**The Office of Public Counsel for  
Victims**

**The Office of Public Counsel for the  
Defence**

**States' Representatives**

**Amicus Curiae**

**REGISTRY**

---

**Registrar**

Peter Lewis

**Counsel Support Section**

**Deputy Registrar**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

**Other**

## Introduction

1. On behalf of Mr. Mokom and pursuant to Regulation 24(1) of the Regulations of the Court as well as the Pre-Trial Chamber's Order on disclosure and related matters,<sup>1</sup> I file this response to the '*Prosecution's Submissions pursuant to the Chamber's Order on Disclosure and Related Matters (ICC-01/14-01/22-104)*'.<sup>2</sup>
2. Because, to date, Mr. Mokom is still not yet represented by permanent counsel, I file this Response on the Submissions, as Duty Counsel for Mr. Mokom, pursuant to the Chamber's Order of 7 November 2022.

## Submissions

3. The Prosecution requests the Pre-Trial Chamber to authorize the migration of the items disclosed in the *Yekatom and Ngaiissona* case to the *Mokom* case record to assist the Defence with its preparation.<sup>3</sup> As stated in the Prosecution's Submissions, I have been consulted by the Prosecution on the matter of the migration process.<sup>4</sup>
4. On behalf of Mr. Mokom, I can confirm that I do not oppose the Prosecution's proposed 'migration', as described in the Prosecution's Submissions.<sup>5</sup> However, I must add one caveat at the outset, namely that if permanent counsel for Mr. Mokom is appointed before the Pre-Trial Chamber's adjudication on this matter, permanent counsel should be given an opportunity to consult with the Prosecution on the migration process and file submissions. As Duty Counsel, I consider that my agreement should not bind or bar permanent counsel, once appointed, from

---

<sup>1</sup> Pre-Trial Chamber II, 'Order on disclosure and related matters', 7 November 2022, ICC-01/14-01/22-104 (the 'Order').

<sup>2</sup> Office of the Prosecutor, 'Prosecution's Submissions pursuant to the Chamber's Order on Disclosure and Related Matters (ICC-01/14-01/22-104)', 11 November 2022, ICC-01/14-01/22-109 (the 'Prosecution's Submissions').

<sup>3</sup> ICC-01/14-01/22-109, paras. 3, 15, 16. The Defence understands 'migration' is from the Prosecution's possession to a 'Nuix' database to which the Defence has access and administrative rights.

<sup>4</sup> *ibid.*, para. 3.

<sup>5</sup> *ibid.*, paras 4-6.

assessing whether the migration process is an efficient and effective means to facilitate Mr. Mokom's defence preparations, as stated by the Prosecution.<sup>6</sup>

5. I also concur with the Prosecution's submissions that the proposed migration process does not equate to or satisfy the Prosecution's disclosure obligations under the Statute and Rules.<sup>7</sup> If the proposed migration is authorized by the Pre-Trial Chamber, the Defence submits that the Prosecution should initiate its separate disclosure process, in accordance with the Pre-Trial Chamber's Orders on disclosure.<sup>8</sup>

6. In this regard, the Prosecution's Submissions state, 'Once the items are migrated, the Prosecution will start its formal disclosure process by labelling *migrated items* with the relevant disclosure-related meta-data (i.e., the 'legal classification' of the documents, the 'Disclosures' and 'Date Filed').'<sup>9</sup> I note that the Prosecution states that the disclosure process will concern 'migrated items' and not *the* 'migrated items', which suggests that the Prosecution will populate only certain migrated items with the disclosure-related metadata. If that is the case, it is the Defence's position, however, that the Prosecution must provide all migrated items with disclosure-related metadata, in particular regarding their legal classification.<sup>10</sup> The absence of such metadata would create ambiguity and confusion, and waste preparation time.

7. In addition, the Prosecution indicates in its Submissions that, in relation to the provision of the items it intends to migrate under Rule 77, its understanding of the Chamber's instructions on disclosure is that the Prosecution is not bound to identify the relevant sections of any Rule 77 items in a metadata field, relying on the 27 June Order.<sup>11</sup> However, whilst the 27 June Order does not expressly impose such requirement, the Pre-Trial Chamber's Order of 7 November does so, by clearly

---

<sup>6</sup> *ibid.*, para. 15.

<sup>7</sup> *ibid.*, para. 7.

<sup>8</sup> ICC-01/14-01/22-104; Pre-Trial Chamber II, 'Order on the conduct of the confirmation of charges proceedings', 27 June 2022, ICC-01/14-01/22-62 (the '27 June Order').

<sup>9</sup> ICC-01/14-01/22-109, para. 8.

<sup>10</sup> See also ICC Transcript, ICC-01/14-01/22-T-004-Red-ENG, 23 September 2022, p. 8, l. 5-12.

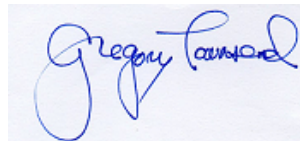
<sup>11</sup> *ibid.*, para. 13.

holding that for *each* disclosed item, the Prosecution must indicate the sections deemed to contain incriminating, exonerating and/or other information [...] and 'provide the relevant information by using the codes PEXO, INCRIM, R-77, or other, and by **indicating the corresponding page and paragraph numbers of the relevant sections** of documents, statements and transcripts in a dedicated metadata field.'<sup>12</sup> The wording of the 7 November Order is clear and unambiguous: the Prosecution must identify the legal basis for disclosure (or 'code') and the relevant, corresponding page(s), paragraph(s), and/or section(s) in a separate metadata field, as this Pre-Trial Chamber has ordered this, for all disclosed items in the case.

### Conclusion

8. In conclusion, on behalf of Mr. Mokom, I request that the Pre-Trial Chamber **GRANT** the Prosecution's request to proceed with the migration of items disclosed in the *Yekatom and Ngaïssona* case to the *Mokom* case, in accordance with the strict requirements on disclosure ordered by the Pre-Trial Chamber in the *Mokom* case.

Respectfully submitted,



---

Gregory Townsend,  
Duty Counsel

The Hague, The Netherlands  
Thursday, November 17, 2022

---

<sup>12</sup> ICC-01/14-01/22-104, para. 8 (emphasis added).