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No. ICC-01/14-01/22

Date: 13 February 2023

PRE-TRIAL CHAMBER II

Before:

**Judge Rosario Salvatore Aitala, Presiding
Judge Antoine Kesia-Mbe Mindua
Judge Tomoko Akane**

SITUATION IN THE CENTRAL AFRICAN REPUBLIC II

IN THE CASE OF

THE PROSECUTOR v. MAXIME JEOFFROY ELI MOKOM GAWAKA

Public

Second order on the conduct of the confirmation of charges proceedings

Order 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
Mr Mame Mandiaye Niang
Mr Kweku Vanderpuye

Counsel for Mr Mokom

Mr Philippe Larochelle

Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparations**

The Office of Public Counsel for Victims

Ms Paolina Massida

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

States Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

PRE-TRIAL CHAMBER II of the International Criminal Court issues this ‘Second order on the conduct of the confirmation of charges proceedings’.

I. PROCEDURAL HISTORY

1. On 10 December 2018, the Chamber issued the ‘Warrant of Arrest for Maxime Jeoffroy Eli Mokom Gawaka’ (‘Mr Mokom’).¹

2. On 14 March 2022, Mr Mokom was surrendered to the Court and arrived at the Detention Centre.² On 22 March 2022, Mr Mokom made his first appearance before the Chamber, during which it set the date for the commencement of the confirmation of charges hearing for 31 January 2023.³ On 3 February 2023, the Chamber, following its postponement of the confirmation of charges hearing until a date to be determined subsequently,⁴ scheduled the hearing to commence on 22 August 2023.⁵

3. On 25 March 2022, the Chamber revoked the appointment of Mr Nicholas Kaufman (‘Mr Kaufman’) as counsel for Mr Mokom due to an impediment to representation or a conflict of interest.⁶ As a result, Mr Gregory Townsend was appointed as Duty Counsel to Mr Mokom on 4 April 2022.⁷ The Appeals Chamber, by majority, ultimately confirmed the removal of Mr Kaufman on 19 December 2022.⁸ On

¹ ICC-01/14-01/22-2-US-Exp (redacted under seal, *ex parte*, only available to the Prosecutor and the Victims and Witnesses Unit, version notified on 31 January 2019, ICC-01/14-01/22-2-US-Exp-Red; a public redacted version was issued on 22 March 2022, ICC-01/14-01/22-2-Red2).

² Transcript of Hearing, ICC-01/14-01/22-T-001-CONF-ENG, p. 1 (public redacted version notified on 29 March 2022, ICC-01/14-01/22-T-001-Red-ENG) (the ‘22 March 2022 Transcript’).

³ 22 March 2022 Transcript, p. 11.

⁴ Order postponing the confirmation of charges hearing, 23 January 2023, ICC-01/14-01/22-137.

⁵ Decision setting the date for the confirmation of charges hearing, ICC-01/14-01/22-151.

⁶ Order to the Registry concerning the appointment of Mr Nicholas Kaufman as counsel for Mr Maxime Jeoffroy Eli Mokom Gawaka, 25 March 2022, ICC-01/14-01/22-26-Conf-Exp (public redacted version notified on 13 June 2022, ICC-01/14-01/22-26-Red).

⁷ Notification of the Appointment of Mr Gregory Townsend as Duty Counsel for Mr Maxime Jeoffroy Eli Mokom Gawaka, ICC-01/14-01/22-33-Conf-Exp, with confidential *ex parte* Annex I.

⁸ Judgment on the appeal of Maxime Jeoffroy Eli Mokom Gawaka against the decision of Pre-Trial Chamber II of 19 August 2022 entitled “Decision on legal representation further to the Appeals Chamber’s judgment of 19 July 2022”, ICC-01/14-01/22-124-Conf, with annex containing dissenting opinion of Judges Bossa and Ibáñez Carranza (public redacted versions notified on the same day, ICC-01/14-01/22-124-Red and ICC-01/14-01/22-124-Anx-Red).

23 January 2023, Mr Philippe Larochelle was appointed as permanent counsel for Mr Mokom (the ‘Defence’).⁹

4. On 21 March, 31 March and 7 April 2022, respectively, the Chamber received: (i) the ‘Prosecution’s Request for an E-Court Protocol, a Redaction Protocol, and a Protocol on the Handling of Confidential Information and Contacts with Witnesses’;¹⁰ (ii) the ‘Prosecution’s Observations on the Modalities and Procedure for Evidence Disclosure’;¹¹ and (iii) the ‘Application for recognition of the status of victims in the case of *The Prosecutor v. Maxime Jeoffrey [sic] Eli Mokom Gawaka* to victims participating in the case of *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*’.¹²

5. On 17 May 2022, the Chamber issued the ‘Order seeking observations on matters related to the conduct of the confirmation proceedings’,¹³ pursuant to which it received submissions and observations from the Prosecution, Duty Counsel and the Registry on the disclosure process and victims-related matters.¹⁴

6. On 27 June 2022, the Chamber issued the ‘Order on the conduct of the confirmation of charges proceedings’ (the ‘First Order on Conduct of Proceedings’),¹⁵

⁹ Notification of the Appointment of Mr Philippe Larochelle as Counsel for Mr Maxime Jeoffroy Eli Mokom Gawaka, ICC-01/14-01/22-136, with public Annexes I, II and IV, and confidential Annex III.

¹⁰ ICC-01/14-01/22-24.

¹¹ ICC-01/14-01/22-31.

¹² Office of Public Counsel for Victims (‘OPCV’), ICC-01/14-01/22-35, with two public annexes.

¹³ ICC-01/14-01/22-50.

¹⁴ Registry’s Observations on the “Prosecution’s Request for an E-Court Protocol, a Redaction Protocol, and a Protocol on the Handling of Confidential Information and Contacts with Witnesses”, 23 May 2022, ICC-01/14-01/22-52; Mr. Mokom’s Response to the Prosecution’s Protocol Request and the Prosecution’s Observations on Evidence Disclosure, 23 May 2022, ICC-01/14-01/22-53 (notified on 24 May 2022); Prosecution’s Response to the ‘Order seeking observations on matters related to the conduct of the confirmation proceedings’ (ICC-01/14-01/22-50), 25 May 2022, ICC-01/14-01/22-54-Conf (public redacted version notified on 30 May 2022, ICC-01/14-01/22-54-Red); Registry Observations pursuant to Pre-Trial Chamber II’s “Order seeking observations on matters related to the conduct of the confirmation Proceedings” (ICC-01/14-01/22-50), 25 May 2022, ICC-01/14-01/22-55, with public annexes I-II and confidential, *ex parte*, annex III; Mr. Mokom’s Response to OPCV’s Application for recognition of the status of victims in the case of Prosecutor v. Mokom to victims participating in the case of Prosecutor v. Yekatom and Ngaïssona, 25 May 2022, ICC-01/14-01/22-56 (notified on 26 May 2022); Mr. Mokom’s Response to the Registry’s Observations on victim participation, 3 June 2022, ICC-01/14-01/22-57 (notified on 6 June 2022); Mr. Mokom’s Response to the “Order seeking observations on matters related to the conduct of the confirmation proceedings” (ICC-01/14-01/22-50), 6 June 2022, ICC-01/14-01/22-58.

¹⁵ ICC-01/14-01/22-62.

thereby adopting the principles and procedure governing disclosure and victims' participation, as well as a disclosure calendar.

7. On 23 September 2022, a status conference to discuss matters related to the conduct of the proceedings took place.¹⁶

8. On 7 November 2022, the Chamber issued the 'Order on disclosure and related matters' (the 'First Order on Disclosure'),¹⁷ thereby providing further instructions to the parties regarding the disclosure process.

9. On 11 November 2022, the Chamber, pursuant to the First Order on Disclosure, received submissions from the Prosecution on disclosure-related issues,¹⁸ to which Duty Counsel responded on 17 November 2022.¹⁹

10. On 30 November 2022, the Chamber issued the 'Second order on disclosure and related matters' (the 'Second Order on Disclosure'),²⁰ thereby *inter alia* authorising the Prosecution to commence the 'migration process' of evidentiary material from the record of the case of *The Prosecutor v. Alfred Yekatom & Patrice-Edouard Ngaïssona* (the '*Yekatom and Ngaïssona Case*') to the record of this case.

11. On 9 December 2022, the Chamber, pursuant to the Second Order on Disclosure, received the 'Prosecution's Submission on its Approach to Material in the *Yekatom and Ngaïssona Case* to which Access may be authorised',²¹ to which Duty Counsel responded on 21 December 2022.²²

¹⁶ Transcript of hearing, ICC-01/14-01/22-T-004-CONF-ENG (public redacted version notified on same day, ICC-01/14-01/22-T-004-Red-ENG). See also Order convening a status conference and decision designating a Single Judge, 15 September 2022, ICC-01/14-01/22-88-Conf-Exp (public redacted version notified on same day, ICC-01/14-01/22-88-Red).

¹⁷ ICC-01/14-01/22-104.

¹⁸ Prosecution's Submissions pursuant to the Chamber's Order on Disclosure and Related Matters (ICC-01/14-01/22-104), ICC-01/14-01/22-109.

¹⁹ Mr. Mokom's Response to the 'Prosecution's Submissions on Disclosure and Related Matters', ICC-01/14-01/22-111.

²⁰ ICC-01/14-01/22-116.

²¹ ICC-01/14-01/22-118. See Prosecution's Request to grant Maxime Jeoffroy Eli Mokom Gawaka access to the record of the Yekatom and Ngaïssona case, 8 April 2022, ICC-01/14-01/18-1353; Trial Chamber V, Decision on the Prosecution Request to Grant Maxime Mokom Access to the Record of the Yekatom and Ngaïssona Case, 23 August 2022, ICC-01/14-01/18-1552; Transcript of hearing, ICC-01/14-01/22-T-004-CONF-ENG (public redacted version notified on same day, ICC-01/14-01/22-T-004-Red-ENG), p. 19 line 17 to p. 22 line 14.

²² Mr. Mokom's Response to the Prosecution's Submission on its Approach to Material in the Yekatom and Ngaïssona Case to which Access may be authorised, ICC-01/14-01/22-125.

12. On 24 January 2023, the Chamber: (i) ordered the Defence to provide observations on various matters relating to the conduct of proceedings; and (ii) convened a status conference for 7 February 2023 (the ‘24 January 2023 Order’).²³

13. Pursuant to the 24 January 2023 Order, the Defence filed: (i) on 30 January 2023, the ‘Mokom Defence Observations on the “Prosecution’s Submission on its Approach to Material in the Yekatom and Ngaïssona Case to which Access may be authorised”’;²⁴ and (ii) on 3 February 2023, the ‘Mokom Defence Observations on the Conduct of the Proceedings Related to the Confirmation of Charges Hearing’.²⁵

14. On 2 February 2023, the Chamber issued the ‘Decision regarding the Prosecution’s submission on material in the *Yekatom and Ngaïssona* case to which access may be authorised’,²⁶ finding *inter alia* 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’.

15. On 7 February 2023, a status conference to discuss various matters relating to the conduct of the confirmation proceedings took place (the ‘7 February 2023 Status Conference’).²⁷

²³ Order for observations and decision on the Prosecution’s request for a status conference, ICC-01/14-01/22-138. See also Corrected version of “Prosecution’s Request for a Status Conference, 21 December 2022, ICC-01/14-01/22-126-Conf”, 22 December 2022, ICC-01/14-01/22-126-Conf-Corr (public redacted version notified on 4 January 2023, ICC-01/14-01/22-126-Corr-Red); Mr. Mokom’s Response to the ‘Corrected version of “Prosecution’s Request for a Status Conference, 21 December 2022, ICC-01/14-01/22-126-Conf”’, 23 December 2022, ICC-01/14-01/22-128; Email decision dated 30 December 2022 (11:34) rejecting the Prosecution’s request to schedule a status conference on 16 January 2023 and deferring its decision on the remainder of the Prosecution’s request while noting that a decision as to the scheduling of a status conference would be issued in due course.

²⁴ ICC-01/14-01/22-144.

²⁵ ICC-01/14-01/22-150.

²⁶ ICC-01/14-01/22-147. See also Prosecution, 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), 7 February 2023, ICC-01/14-01/22-153; Mokom Defence Response to ‘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)’, 10 February 2023, ICC-01/14-01/22-156.

²⁷ Transcript of hearing, ICC-01/14-01/22-T-005-ENG (‘7 February 2023 Transcript’).

II. INSTRUCTIONS ON THE CONDUCT OF THE PROCEEDINGS

A. Time limits

16. With a view to facilitating the parties' preparations for the confirmation of charges hearing and ensuring the orderly conduct of the proceedings preceding this hearing, the Chamber adopts the following time limits:

- (i) any and all motions on matters relating to the disclosure process shall be submitted by no later than 4 May 2023;
- (ii) any and all motions regarding the Document Containing the Charges ('DCC') shall be submitted by no later than 17 May 2023; and
- (iii) any and all motions pertaining to any other issue arising from the proceedings leading up to the confirmation of charges hearing shall be submitted by no later than 7 July 2023.

17. The Chamber will assess, on a case by case basis, whether any motions filed after 7 July 2023 will be adjudicated by way of a separate decision or in the context of the overall examination of the charges and the evidence for the purposes of the decision on the confirmation of the charges, as appropriate.

18. In addition, in order to guarantee that the proceedings are conducted efficiently and expeditiously, the Chamber further decides that:

- (i) the ten-day time limit for responding to any document filed by a party or participant, as set out in regulation 34(b) of the Regulations of the Court (the 'Regulations'), is shortened to five days of notification of such document; and
- (ii) any requests to vary a time limit must be submitted, as a minimum, four calendar days prior to expiry of the time limit for which variation is requested.

B. Preparation for the confirmation hearing

1. Defence observations on the conduct of the proceedings

19. In its observations pursuant to the 24 January 2023 Order, the Defence, noting that it was premature for it to respond on a number of issues at this stage, undertook 'to

provide further information related to the [posed] questions as soon as practicable' and anticipated 'being able to provide this information in April 2023'.²⁸ Accordingly, the Chamber hereby instructs the Defence to provide such observations by no later than 17 April 2023.

2. Amendment of charges pursuant to rule 121(4) of the Rules, Prosecution's presentation of new evidence pursuant to rule 121(5) of the Rules and Defence list of evidence pursuant to rule 121(6) of the Rules

20. The Chamber recalls that, should the Prosecution intend to amend the charges pursuant to article 61(4) of the Rome Statute (the 'Statute') and/or present new evidence at the hearing, it shall do so no later than 15 days before the confirmation hearing, in accordance with rule 121(4) and (5) of the Rules of Procedure and Evidence (the 'Rules'). Pursuant to rule 121(6) of the Rules, the same time limit applies for the Defence should it intend to present evidence pursuant to article 61(6) of the Statute.

21. Noting that, in the present circumstances, such deadlines would fall within the Court's judicial recess, the Chamber deems it appropriate to amend them. As previously stated by the Chamber, the deadlines referred to in rules 121(3), (4), (5) and (6) of the Rules 'are only indicative of the *minimum* notice period a party may avail itself to comply with its disclosure obligations. They serve the purpose of allowing the suspect to prepare adequately for the confirmation hearing as guaranteed in article 67(1)(b) of the Statute'.²⁹ The Chamber therefore instructs the parties to take any steps pursuant to rule 121(4), (5) and/or (6) of the Rules, if they so wish, by no later than 14 July 2023.

3. Submissions pursuant to rule 121(9) of the Rules

22. Pursuant to rule 121(9) of the Rules, '[t]he Prosecutor and the person may lodge written submissions with the Pre-Trial Chamber, on points of fact and on law, including grounds for excluding criminal responsibility set forth in article 31, paragraph 1, no

²⁸ Mokom Defence Observations on the Conduct of the Proceedings Related to the Confirmation of Charges Hearing, 3 February 2023, ICC-01/14-01/22-150, para. 17.

²⁹ See First Order on Conduct of Proceedings, para. 34.

later than three days before the date of the hearing. A copy of these submissions shall be transmitted immediately to the Prosecutor or the person, as the case may be’.

23. Submissions pursuant to rule 121(9) of the Rules shall therefore be filed by no later than 18 August 2023. However, the Chamber recalls that rules 79(2) and 80(1) of the Rules oblige the Defence to notify the Prosecution of its intent to raise the existence of an alibi or a ground for excluding criminal responsibility ‘sufficiently in advance to enable the Prosecutor to prepare adequately and respond’. Further, to the extent that the Defence is already in possession of evidence supporting any claimed alibi or other defence, which it intends to present during the confirmation hearing, this must be disclosed to the Prosecution by no later than 14 July 2023 in accordance with the preceding instruction relating to rule 121(6) of the Rules.³⁰

4. *Objections and observations pursuant to rule 122(3) of the Rules*

24. Rule 122(3) of the Rules provides that, ‘[b]efore hearing the matter on the merits, the Presiding Judge of the Pre-Trial Chamber shall ask the Prosecution and the person whether they intend to raise objections or make observations concerning an issue related to the proper conduct of the proceedings prior to the confirmation hearing’.

25. The Chamber instructs the parties to provide their submissions on these issues, if any, in writing in advance of the hearing by no later than 18 August 2023. It is reminded that rule 122(3) of the Rules provides an opportunity for raising issues or objections that were not previously brought to the Chamber’s attention. The parties shall therefore refrain from repeating or reformulating previous submissions, raising matters that have already been adjudicated, or raising issues for which a remedy could have been sought at an earlier juncture.

³⁰ See para. 21 above.

5. *Abridged version of the DCC for the purposes of rule 122(1) of the Rules*

26. In light of the limited time available during the confirmation of charges hearing, as well as for the purposes of clarity, the Chamber deems it appropriate to instruct the Prosecution to produce an abridged version of the DCC to be read in public session by the Court Officer at the start of the confirmation of charges hearing in accordance with rule 122(1) of the Rules. The document should be apt to be read out at the confirmation of charges hearing within a reasonable time with the aim of informing the public of the charges brought by the Prosecution against the suspect. The abbreviated version should therefore focus on the alleged criminal conduct, with less emphasis to be placed on the corresponding legal qualification thereof. Repetition and unnecessary technical language should be avoided as much as possible.

27. Should Mr Mokom be opposed to have an abridged version of the DCC, as opposed to the full text of the charges, read out at the confirmation hearing, the Defence shall indicate so by no later than 31 March 2023. Absent any opposition from Mr Mokom, the Prosecution shall submit the abridged version of the DCC to the Chamber by email by no later than 18 August 2023.

6. *Agreements as to evidence pursuant to rule 69 of the Rules*

28. Pursuant to rule 69 of the Rules, '[t]he Prosecutor and the defence may agree that an alleged fact, which is contained in the charges, the contents of a document, the expected testimony of a witness or other evidence is not contested and, accordingly, a Chamber may consider such alleged fact as being proven, unless the Chamber is of the opinion that a more complete presentation of the alleged facts is required in the interests of justice, in particular the interests of the victims'.

29. The Chamber notes that the possibility for the parties to agree on issues and facts relevant to the charges constitutes an important procedural tool, which allows both the parties and the Chamber to narrow the scope of the matters to be addressed and to focus on those in dispute by eliminating the need to discuss the facts covered by the agreement. As such, it is a tool directly instrumental to the overall efficiency and expeditiousness of the proceedings. The parties are therefore instructed to liaise for

these purposes and to report back to the Chamber at the earliest possible opportunity. Whilst the scope of an agreement can always be expanded at a later stage, the parties are expected to submit a first report by no later than 26 May 2023.

30. The Chamber clarifies that, whilst desirable in light of its potential usefulness in enhancing the efficiency of the confirmation proceedings, any agreement reached between the parties on relevant facts will be without prejudice to the Chamber's prerogative to order 'a more complete presentation of the alleged facts', whenever such complete presentation 'is required in the interests of justice, in particular the interests of the victims'. The Chamber also recalls that, under article 69(6) of the Statute, the Court may take judicial notice of facts of common knowledge.

III. DISCLOSURE

A. *Inter partes* consultations

31. During the 7 February 2023 Status Conference, the Defence raised several matters revealing the possible existence of disagreements with the Prosecution on various aspects of the disclosure process.³¹ Noting the Prosecution's indication that it has taken to heart the Chamber's concern about the scope of disclosure in the present case³² and the Defence's willingness to communicate with the Prosecution regarding potential disclosure-related issues,³³ the Chamber reiterates the instructions and relevant time limits imposed in previous orders,³⁴ and further instructs the parties to liaise and solve *inter partes* any issues that may arise with regard to the implementation of these instructions. The Chamber calls upon the professionalism and good faith of the parties to ensure that the disclosure process is completed in a timely and orderly manner. The

³¹ See e.g. 7 February 2023 Transcript, p. 19 lines 13-25; p. 33 lines 20-25 to p. 34 lines 1-2; p. 36 line 25 to p. 37 lines 1-4.

³² 7 February 2023 Transcript, p. 8 lines 17-22.

³³ 7 February 2023 Transcript, p. 20 lines 7-11; p. 21 lines 15-17; p. 28 lines 18-22.

³⁴ See Order on the conduct of the confirmation of charges proceedings, 27 June 2022, ICC-01/14-01/22-62, paras 20-37; Order on disclosure and related matters, 7 November 2022, ICC-01/14-01/22-104, paras 8-10; Second order on disclosure and related matters, 30 November 2022, ICC-01/14-01/22-116, paras 13-16; Order for observations and decision on the Prosecution's request for a status conference, 24 January 2023, ICC-01/14-01/22-138, para. 12.

parties may only seize the Chamber where an agreement cannot be found with regard to a specific matter after all *inter partes* consultations.

B. ‘Migration’ of material from the *Yekatom and Ngaiissona* Case

32. The Chamber notes that, in accordance with the Second Order on Disclosure,³⁵ the Prosecution is in the process of limiting the pool of 30,000 items ‘migrated’ from the *Yekatom and Ngaiissona* Case.³⁶ Nonetheless, a large amount of ‘migrated’ items, which in the Prosecution’s view are not ‘pertinent to this case’ and ‘completely irrelevant to the charges’, have been placed at the disposal of the Defence merely to put it at liberty to review this material by running searches or analysing it otherwise.³⁷

33. The Prosecution’s approach has introduced a degree of confusion in respect of the disclosure process. Following the Chamber’s authorisation to proceed with the ‘migration’ of materials from the *Yekatom and Ngaiissona* Case,³⁸ it was specifically stipulated that the Prosecution was required to discharge the disclosure obligations identified by the Chamber (in particular providing the legal classification of the material at issue and including disclosure notes in the metadata) *or* to re-evaluate its approach to the volume of the material to be disclosed.³⁹ In view of its decision to limit the pool of materials to those that are truly relevant to the present case, the Prosecution should not have made the remainder of the ‘migrated’ materials available to the Defence without a clear basis in the provisions regulating disclosure. The Prosecution cannot place a large amount of materials at the disposal of the Defence without an appropriate basis in the Court’s regulatory framework and, in addition, expect the Defence to review that material without further guidance. Accordingly, the ‘migrated’ materials that will not be formally disclosed in the present proceedings in accordance with the Chamber’s instructions will not be taken into account in any manner.

³⁵ See Second Order on Disclosure, para. 16 (‘given that the Prosecution’s responsibility with regard to Rule 77 Material “cannot be discharged by making everything that is in its possession or control available to Mr Mokom”, the Chamber emphasises that the Prosecution remains at liberty to re-evaluate its approach to the Rule 77 Material’).

³⁶ 7 February 2023 Transcript, p. 34 lines 22-25 to p. 35 lines 3-19; p. 36 lines 8-20.

³⁷ 7 February 2023 Transcript, p. 9 lines 1-5; p. 15 lines 15-25; p. 21 lines 11-15; p. 25 lines 9-25 to p. 26 lines 1-13.

³⁸ Second Order on Disclosure, para. 9.

³⁹ Second Order on Disclosure, paras 13-16.

34. Nevertheless, the Chamber does not consider that the Prosecution's approach has materially prejudiced the Defence at the present stage of the proceedings. The disclosure process remains ongoing and, as mentioned, the Prosecution has undertaken to limit the pool of 'migrated' materials in compliance with the Chamber's instructions. As such, the Defence will have sufficient time to prepare for the confirmation of charges hearing. Even so, noting that the Defence has received a large amount of materials without a proper basis, the Chamber instructs the Prosecution to provide, in *inter partes* consultations, any guidance and assistance the Defence may require if it decides to review these materials in accordance with the preceding instruction.

IV. ANNEX TO THE DCC ON CALL DATA RECORDS ('CDR')

35. At the 7 February 2023 Status Conference, the Prosecution requested to be allowed to provide an annex to the DCC that would contain the analysis of CDR submitted as evidence in the case, which is, in the Prosecution's view, 'necessary as to what the evidence means and the substance of the charges and in particular the mode of liability'.⁴⁰

36. The Chamber notes that it has already ordered the Prosecution to 'present, as an annex to the DCC, a detailed explanation of the material or evidence supporting the points of law and fact included in the DCC', which 'shall not exceed 60 pages'.⁴¹ The Chamber understands that an annex specifically devoted to the analysis of CDR would have exactly the same purpose and function as the annex to the DCC, and would therefore be duplicative. Any explanation as to how evidence relied upon by the Prosecution, including CDR, supports the allegations included in the DCC shall be set out in the 60-page document already ordered by the Chamber.

37. It is the Chamber's view that the Prosecution's request rather amounts to a request for an extension of the page limit. In light of the technical nature of the issues relating to CDR, the Chamber exceptionally allows an extension of ten pages that is limited to the Annex to the DCC. The Chamber further takes this opportunity to indicate that no further annexes shall be attached to the DCC.⁴²

⁴⁰ 7 February 2023 Transcript, p. 16 lines 12-25 and p. 17 lines 1-4;

⁴¹ First Order on Conduct of Proceedings, para. 36.

⁴² See 7 February 2023 Transcript, p. 16 lines 22-25.

V. VICTIMS' PARTICIPATION

38. The Chamber recalls that '[t]he Registry shall transmit the Group A and B applications to the Chamber no later than 15 days before the confirmation hearing, and the Group C applications to the Chamber and the parties no later than 30 days before the confirmation hearing. The parties have 10 days to make observations, if any, on the Group C applications'.⁴³

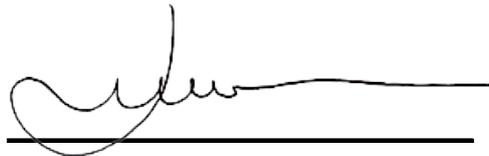
39. Noting that, following the postponement of the confirmation of charges hearing, the deadline for the transmission of Group A and B applications falls within the Court's judicial recess, and in order to allow the parties to make observations, if any, on Group C applications and the Chamber to take a decision thereon sufficiently in advance of the confirmation of charges hearing, the Chamber deems it appropriate to instruct the Registry to transmit the final Group A, B and C applications by no later than 28 June 2023. The parties shall file their observations, if any, on the Group C applications no later than 5 July 2023.

⁴³ First Order on Conduct of Proceedings, para. 41.

FOR THESE REASONS, THE CHAMBER HEREBY

ORDERS the parties and participants to comply with the above instructions.

Done in English. A French translation will follow. The English version remains authoritative.

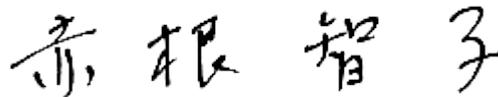


Judge Rosario Salvatore Aitala

Presiding



Judge Antoine Kesia-Mbe Mindua



Judge Tomoko Akane

Dated this Monday, 13 February 2023.

At The Hague, The Netherlands.