



Original: English

No. ICC-01/14-01/22

Date: 16 March 2023

PRE-TRIAL CHAMBER II

Before:

Judge Rosario Salvatore Aitala, Presiding

Judge Tomoko Akane

Judge Sergio Gerardo Ugalde Godínez

SITUATION IN THE CENTRAL AFRICAN REPUBLIC II

IN THE CASE OF

THE PROSECUTOR v. MAXIME JEOFFROY ELI MOKOM GAWAKA

Public

Decision on issues arising from the submission of
the Document Containing the Charges

Decision 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 Massidda

**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 decision on issues arising from the submission of the Document Containing the Charges.

I. PROCEDURAL HISTORY AND SUBMISSIONS

1. On 9 March 2023, the Prosecution submitted a cover filing (the ‘Cover Filing’) together with: (i) the Document Containing the Charges (Annex A) (the ‘DCC’) and a French translation (Annex B); (ii) the Annex to the DCC (Annex C), consisting of an explanation of the supporting evidence for the allegations presented in the DCC (Annex C.1), and an analysis of call data records (Annex C.2); and (iii) the List of Evidence (Annex D).¹ In the Cover Filing, the Prosecution further: (i) indicates that the ERNs referred to in Annex C.2 and the ERNs referred to in the attribution table (CAR-OTP-00001197, referenced in Annex C.2) are not in the List of Evidence (Annex D);² (ii) advises that there are references to witness statements in the Annex to the DCC (Annex C) that are not contained in the witness table submitted on 23 February 2023 (the ‘Witness Table’);³ and (iii) requests the Chamber’s authorisation to amend the disclosure metadata of 21 documents provided under rule 77 of the Rules of Procedure and Evidence to INCRIM, and the disclosure notes relating to the identification of the relevant passage(s) for 39 INCRIM items, as well as to formally disclose nine trial transcripts referenced in the Annex to the DCC (Annex C).⁴

2. On 15 March 2023, the Defence for Maxime Jeoffroy Eli Mokom Gawaka (the ‘Defence’) responded to two issues contained in the Cover Filing (the ‘Defence Response’).⁵ According to the Defence, the Prosecution’s request to formally disclose nine trial transcripts referenced in the Annex to the DCC (Annex C) should be rejected as it has been submitted after the expiry of the disclosure deadline of 23 February 2023 without any justification or showing of good case.⁶ The Defence adds that the Prosecution recognises that it failed to abide by the Chamber’s instructions to

¹ [Prosecution’s Submission of the Document Containing the Charges](#), ICC-01/14-01/22-174, public, with annexes A-D, confidential (public redacted versions of annexes A and B were submitted on 13 March 2013, [ICC-01/14-01/22-174-AnxA-Red](#) and [ICC-01/14-01/22-174-AnxB-Red](#)).

² [Cover Filing](#), para. 6.

³ [Cover Filing](#), paras 7-8; see ICC-01/14-01/22-167-Conf-AnxB.

⁴ [Cover Filing](#), para. 9.

⁵ Mokom Defence Response to ‘Prosecution’s Submission of the Document Containing the Charges’, ICC-01/14-01/22-175, public.

⁶ Defence Response, paras 12-19.

ensure that the evidence referenced in the Annex to the DCC (Annex C) corresponds exactly to the evidentiary items listed in the List of Evidence (Annex D) and the Witness Table, and it requests the Chamber to require the Prosecution to submit a list of the references not included in the Witness Table or a new version of that table.⁷

II. DETERMINATION

3. Commencing with the first two issues arising from the Cover Filing, the Chamber recalls that it has specifically ordered the Prosecution to ensure that the evidence referenced in the Annex to the DCC corresponds exactly to the evidentiary items listed in the List of Evidence and the Witness Table.⁸ The Prosecution has not requested prior authorisation to deviate from this instruction. It has also not provided any persuasive justification for doing so. The assertion that the List of Evidence should remain concise cannot displace the need to ensure that the Defence is clearly and sufficiently informed of the material relied upon by the Prosecution for the confirmation of charges procedure. No explanation has been offered as to the references to witness statements in the Annex to the DCC that were not previously included in the Witness Table.

4. Accordingly, the Prosecution shall submit revised versions of the List of Evidence (Annex D) and the Witness Table in compliance with the aforementioned instruction by no later than 24 March 2023. The Chamber further considers that providing a list of references to witness statements not initially included in the Witness Table, as proposed by the Prosecution, would not provide the required clarification.

5. Lastly, as to the Prosecution's request to amend disclosure metadata or disclosure notes relating to the items referred to in the Cover Filing, and to formally disclose nine trial transcripts referenced in the Annex to the DCC (Annex C), it is recalled that the deadline for the Prosecution to complete its disclosure obligations expired on 23 February 2023.⁹ Therefore, the Prosecution is essentially requesting an extension of time after the lapse of a time limit under regulation 35(2) of the Regulations of the Court (the 'Regulations'). While the Prosecution refers to the early stage of the

⁷ Defence Response, paras 20-22.

⁸ [Order on disclosure and related matters](#), 7 November 2022, ICC-01/14-01/22-104, public, para. 10.

⁹ [Order for observations and decision on the Prosecution's request for a status conference](#), 24 January 2023, ICC-01/14-01/22-138, public, para. 12.

proceedings and the absence of prejudice, it does not demonstrate that it was unable to submit such a request before 23 February 2023 for reasons outside its control.

6. Therefore, the Chamber rejects the Prosecution's request. This means that, without prejudice to a properly substantiated request under regulation 35(2) of the Regulations, the disclosure metadata or disclosure notes of the relevant items shall not be amended, while the trial transcripts under consideration shall not be considered for the purposes of the confirmation of charges procedure. Nevertheless, with a view to avoiding any prejudice to the Defence, the Prosecution shall inform the Chamber and the Defence for which specific items amendments to the disclosure metadata or disclosure notes were sought by no later than 24 March 2023.

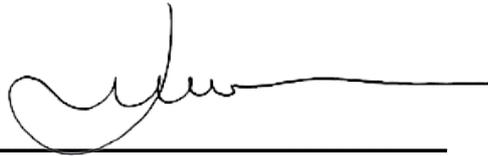
FOR THESE REASONS, THE CHAMBER HEREBY

ORDERS the Prosecution to provide revised versions of the List of Evidence (Annex D) and the Witness Table in compliance with the Chamber's instruction to ensure that the evidence referenced in the Annex to the DCC corresponds exactly to the evidentiary items listed in the List of Evidence and the Witness Table by no later than 24 March 2023;

REJECTS the Prosecution's request to amend the disclosure metadata and disclosure notes of the items referred to in the Cover Filing, and to disclose the trial transcripts identified in the Cover Filing; and

ORDERS the Prosecution to inform the Chamber and the Defence for which specific items amendments to the disclosure metadata or disclosure notes were sought by no later than 24 March 2023.

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



Judge Rosario Salvatore Aitala

Presiding



Judge Tomoko Akane



Judge Sergio Gerardo

Ugalde Godínez

Dated this Thursday, 16 March 2023.

At The Hague, The Netherlands.