

Annex 12

Public

From: Pre-Trial Chamber II communications
Sent: 05 July 2023 17:43
To: [REDACTED]; D34 Mokom Defence Team
Cc: Chamber Decisions Communication; Court Management-Court Records; Pre-Trial Chamber II communications; OTP CARIIB-MM Communications; Massidda, Paolina
Subject: ICC-01/14-01/22 - Decision on Defence's requests in relation to the organisation of the confirmation of charges hearing - Public

[ICC] RESTRICTED

Dear Counsel,

The Chamber notes the Defence's submissions in relation to the time it anticipates it will need for the presentation of its oral arguments at the confirmation of charges hearing and its request to be permitted to file written submissions following the hearing. The Chamber will address these submissions at a later stage.

In relation to the Defence's request to be permitted to provide 'a definitive and final list of migrated material to be relied upon by 15 days prior to the confirmation hearing', the Chamber notes that the Defence's submissions in effect amount to a request for a variation of the time limit imposed by the Chamber for the filing of its list of evidence pursuant to rule 121 (6) of the Rules of Procedure and Evidence. The Chamber partially grants this request pursuant to regulation 35 of the Regulations of the Court. In the view of the Chamber, good cause has been shown considering the nature of the 'migrated' materials, including the absence of categorisation as INCRIM, PEXO or Rule 77, and the fact that additional PEXO documents have been formally disclosed recently which has had an impact on its overall preparation, including its review of 'migrated' material. At the same time, it is noted that, in the assessment of the Prosecution, the majority of the 'migrated' materials are of no relevance to the present proceedings. In light of this, the Chamber instructs the Defence to formally disclose any new material, and to the extent possible any 'migrated' material it has reviewed so far, on which it intends to rely for the purpose of the confirmation hearing by no later than 14 July 2023, together with a list of such material. Any remaining 'migrated' material on which the Defence intends to rely shall be formally disclosed by 31 July 2023, together with a final list of any such material.

In relation to the Defence's request that the Prosecution updates the metadata field 'Disclosure Notes' of 'migrated' material the Defence intends to rely upon, the Chamber recalls that it has previously ordered that 'migrated' material should be formally disclosed should a party wish to rely on it for the confirmation hearing (ICC-01/14-01/22-116, ICC-01/14-01/22-157, and Email from the Chamber to the Parties, 3 July 2023 at 16:52). The Chamber considers that an amendment of the metadata of the 'migrated' material as suggested by the Defence is insufficient to effectuate formal disclosure. At present, 'migrated' materials have merely been made available to the Defence, and their formal disclosure, should a party wish to rely upon it at the confirmation hearing, is essential for the clarity and proper organisation of the case record in light of the previously identified issues arising from the Prosecution's resort to the 'migration' of materials. The Chamber therefore rejects the Defence's request in this regard. Moreover, the Defence's submissions as to the confusion that the formal disclosure of 'migrated' material may cause are noted. The Chamber invites the Defence to liaise with the Registry and the Prosecution so as to explore ways to avoid the duplication of documents or ERNs in the case record to the extent that this is possible. Should this not be possible, the Chamber emphasizes that this should not prevent the Defence from formally disclosing any 'migrated' material they intend to rely upon for the confirmation hearing by 14 July 2023, or where that is not feasible, 31 July 2023.

Thank you and kind regards,

Pre-Trial Chamber II

From: [REDACTED]
Sent: 04 July 2023 15:54
To: Pre-Trial Chamber II communications [REDACTED]; D34 Mokom Defence Team [REDACTED]; OTP CARIIB-MM Communications [REDACTED]; [REDACTED]; Massidda, Paolina [REDACTED]
Cc: Chamber Decisions Communication [REDACTED]; Court Management-Court Records [REDACTED]
Subject: RE: ICC-01/14-01/22 - Order for observations on the organisation of the confirmation of charges hearing

Dear Pre-Trial Chamber II,

At this stage, the Defence anticipates being able to present our oral submissions, including opening and closing statements, within five hours. We also request the opportunity to file written submissions, following the confirmation hearing.

We will disclose any new material that we may also seek to rely on during the hearing, by 14 July 2023, in accordance with the Pre-Trial Chamber's order (ICC-01/14-01/22-157, 13 February 2023, para. 23).

Following the Pre-Trial Chamber's email of yesterday, 3 July 2023, we now understand that the migrated material is not considered to have been formally "disclosed" in the record of the case. Our understanding was that these migrated documents had already been disclosed to us, and that there was no need for any other procedural step before we could rely on them in the confirmation hearing, and we have been proceeding on this basis.

As would be understandable, the Defence has prioritised its review of the material that has been formally disclosed in the case and designated by the Prosecution as either incriminating, exonerating, or Rule 77 material. Importantly, this now includes an additional 372 documents which have been newly-designated as PEXO following the Prosecution's second review.

The migrated material, by contrast, is not necessarily designated, nor is it indexed or organised in any manner to facilitate our review of these 28,000 documents. The review of this migrated material is certainly underway, but takes second place in the list of Defence priorities for evidence review. On this basis, the Defence may not necessarily be in a position to formally "disclose" those materials from within the migrated material by 14 July.

With a view to finding an efficient solution to take into account the status of this migrated material in the case file, the Defence suggests the following:

- (i) the Defence provides a definitive and final list of migrated material to be relied upon by 15 days prior to the confirmation hearing; and
- (ii) for this migrated material, the Prosecution updates the metadata field 'Disclosure Notes' to indicate that the Defence intends to rely on the item for the purposes of the confirmation hearing.

This would be consistent with the Chamber's instruction to the Prosecution to provide the Defence with the assistance it may require as regards migrated material, and would obviate the need for the Defence to "re-disclose" items from within the migrated material. It would also circumvent the confusion which may arise from these documents then existing in the case record with both a Prosecution ERN and a new Defence stamp (ERN), which could easily lead to confusion.

Kind regards,

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[REDACTED]
Case Manager

On behalf of the Mokom Defence Team

From: Pre-Trial Chamber II communications [REDACTED]
Sent: 28 June 2023 09:51
To: D34 Mokom Defence Team [REDACTED]; OTP CARIIB-MM Communications [REDACTED]; Paolina Massidda_icc-cpi [REDACTED]
Cc: Pre-Trial Chamber II communications [REDACTED]; Chamber Decisions Communication [REDACTED]; Court Management-Court Records [REDACTED]
Subject: ICC-01/14-01/22 - Order for observations on the organisation of the confirmation of charges hearing

Dear Counsel,

Please be advised that Pre-Trial Chamber II wishes to receive observations from the parties and participants in relation to the organisation of the confirmation of charges hearing scheduled to commence on 22 August 2023. These observations should include the estimated time you wish to be allotted during the confirmation hearing and what you intend to use it for, bearing in mind the scope of the case and the number of charged crimes. Any observations should be submitted by 11 July 2023, at the latest.

Thank you and kind regards,

Pre-Trial Chamber II

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