

Annex 2

Public

[ICC] RESTRICTED

From: Pre-Trial Chamber II communications
Sent: 03 August 2023 10:31
To: D34 Mokom Defence Team
Cc: OTP CARIIB-MM Communications; [REDACTED]; [REDACTED];
Chamber Decisions Communication; Pre-Trial Chamber II communications
Subject: ICC-01/14-01/22 - Order regarding the Defence rule 121(6) list of evidence - public

Dear Counsel,

Noting the Defence clarification, the Chamber emphasises that the 5 July 2023 email order concerned material to be disclosed by the Defence and did not affect the Chamber's instructions concerning the rule 121(6) list of evidence contained in the 13 February 2023 order. The Chamber recalls that the rule 121(6) list of evidence must contain all material to be used by the Defence at the confirmation hearing, including the materials disclosed by the Defence and materials emanating from the Prosecution. Nevertheless, the Chamber considers that the delay in providing the rule 121(6) list does not prejudice the Prosecution insofar as the Defence complied with its own disclosure obligations and the Defence rule 121(6) list would be supplemented with materials already in the possession of the Prosecution. Therefore, the Chamber instructs the Defence to file in the case record a list of evidence in application of rule 121(6) of the Rules of Procedure and Evidence, by no later than 7 August 2023.

Best regards,

[REDACTED], on behalf of Pre-Trial Chamber II

From: [REDACTED]
Sent: 02 August 2023 14:27
To: Pre-Trial Chamber II communications [REDACTED]; D34 Mokom Defence Team [REDACTED]
Cc: OTP CARIIB-MM Communications [REDACTED]; [REDACTED]; Chamber Decisions Communication [REDACTED]
Subject: RE: ICC-01/14-01/22 - Order to provide clarification regarding the list of items disclosed by the Defence - public

Dear Mr [REDACTED],

Thank you for your email.

The Defence understood that it was following the instructions of the Pre-Trial Chamber, as set out in the 5 July 2023 email, which post-dated the Second Order 13 February 2023. The Chamber's email read as follows:

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

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Defence intends to rely **shall be formally disclosed by 31 July 2023, together with a final list of any such material.**

The Defence understood the link being made between the disclosed material and a reference to “the list”, as being a list of the material that was disclosed on those two dates. Our understanding was reinforced by the 15-day deadline prescribed in Rule 121(6) of the Rules.

If we misunderstood this instruction, we apologise to the Chamber and the parties. We have immediately turned all our attention to completing our Rule 121(6) list as soon as possible, which we undertake to circulate by this coming Friday 4 August at the latest.

With kind regards,

[REDACTED]

Legal Assistant

On behalf of the Mokom Defence

From: Pre-Trial Chamber II communications [REDACTED]
Sent: 02 August 2023 09:23
To: D34 Mokom Defence Team [REDACTED]
Cc: OTP CARIIB-MM Communications [REDACTED]; Pre-Trial Chamber II communications [REDACTED]; Chamber Decisions Communication [REDACTED]
Subject: ICC-01/14-01/22 - Order to provide clarification regarding the list of items disclosed by the Defence - public

Dear Counsel,

The Chamber recalls that, pursuant to the ‘Second order on the conduct of the confirmation of charges proceedings’ (ICC-01/14-01/22-157, paras 20-21) and email order dated 05/07/2023 17:43, the Defence, in addition to its disclosure obligation, was to file a list of evidence on which it intends to rely for the purposes of the confirmation hearing by no later than 31 July 2023. The Chamber notes the updated list of items disclosed by the Defence as of 31st of July 2023 (‘List of Disclosed Items’) and observes that it does not contain any items disclosed (e.g., as exculpatory or under rule 77) by the Prosecution. Therefore, the Chamber instructs the Defence to clarify whether it will rely exclusively on the items included in the List of Disclosed Items at the confirmation hearing and whether the List of Disclosed Items constitutes a list of evidence within the meaning of rule 121(6) of the Rules of Procedure and Evidence by no later than 3 August 16:00 hours.

Best regards,

[REDACTED], on behalf of Pre-Trial Chamber II

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From: [REDACTED]
Sent: 31 July 2023 19:28
To: Pre-Trial Chamber II communications [REDACTED]
Cc: OTP CARIIB-MM Communications [REDACTED]; von Braun, Leonie [REDACTED]; D34 Mokom Defence Team [REDACTED]
Subject: Mokom Defence disclosure lists

Dear Pre- Trial Chamber II,
Dear Prosecution Team,

Kindly find enclosed the Mokom Defence list of items formally disclosed from the migration, as well as a global list of items disclosed by the Defence as of 31st of July 2023.

Kind Regards,
[REDACTED], On Behalf of the Defence Team of Mr Mokom
[REDACTED]

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