

Annex 5

Public

From: Pre-Trial Chamber II communications
Sent: 11 August 2023 11:10
To: D34 Mokom Defence Team
Cc: OTP CARIIB-MM Communications; von Braun, Leonie; [REDACTED]; Associate Legal Officer-Court Officer; Pre-Trial Chamber II communications; Chamber Decisions Communication
Subject: ICC-01/14-01/22 - Decision on the Defence regulation 35 Requests dated 7 August 2023 and 9 August 2023 - confidential

[ICC] RESTRICTED

Dear Counsel,

The Chamber notes the Defence email requesting an extension of time regarding the disclosure of 5 Call Sequence Tables (the ‘CSTs’) included in its list of evidence pursuant to regulation 35 of the Regulations of the Court (the ‘Regulations’) (email dated 7 August 2023, 20:34, supplemented on 8 August 2023, 16:26 and 9 August 2023, 13:57; the ‘First Request’). It further notes the Prosecution’s response (email dated 8 August 2023, 10:18).

The Defence clarified that the Prosecution provided the Call Data Records (the ‘CDRs’) used to create the CSTs at the latest in February 2023 and that the CSTs were ready in June and July 2023. Moreover, the remaining reasons advanced by the Defence are irrelevant in respect of a request under regulation 35 of the Regulations. Accordingly, the Chamber is not satisfied that the Defence’s inability to disclose the CSTs within the applicable time limit results from reasons outside its control. Therefore, the First Request is rejected. The Chamber does not consider that this rejection impacts on Mr Mokom’s ability to raise a defence, as the Defence remains free to convey the information included in the CSTs to the Chamber as part of its submissions in connection with the confirmation of charges procedure.

The Chamber further notes the Defence’s request to amend its List of Evidence to add items, pursuant to regulation 35 of the Regulations (email dated 9 August 2023, 15:08; the ‘Second Request’) and the Prosecution response (email dated 10 August 2023, 10:32).

Regarding the items associated with P-0876, the Chamber finds that the Defence has demonstrated that its inability to include these items in its List of Evidence results from reasons outside its control. The items were made available to the Defence on 3 August 2023 without metadata allowing for a swift and thorough review of the relevance of the items. While these items came into the possession of the Defence shortly before the 7 August 2023 time limit to provide its List of Evidence, this does not detract from the finding that the Defence was not able to add the items to its List of Evidence for reasons outside its control in view of the need to analyse the materials in the context of the large volume of materials made available to the Defence in this case. The Chamber further considers that the fact that the Prosecution acted in good faith and complied with its obligation is irrelevant in the present instance. Accordingly, this aspect of the Second Request is granted.

Regarding the remaining items belonging to the Second Request, the Chamber is not satisfied that the Defence’s inability to include these items into its List of Evidence emanates from reasons outside its control. The reason is that these items came into the possession of the Defence significantly before the time limit to provide its List of Evidence.

Furthermore, contrary to the Defence’s assertion set out in connection with the First Request, the Chamber specifically ordered 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*’ (email of 3 August 2023, 10:31; emphasis added). Accordingly, the Defence shall file its List of Evidence into the record of the case as soon as possible, and in any case by no later than 14 August 2023, 16:00 hours. In accordance with the present decision, the items associated with P-0876 as identified in the Second Request may be included in the List of Evidence, whereas the items set out in the First Request shall be excluded and the remaining items arising from the Second Request may not be included.

Lastly, the Chamber notes that the Defence has not fully complied with its instructions on a number of occasions. The Chamber emphasizes that the Defence shall strictly comply with its instructions henceforth.

Best regards,

██████████ on behalf of Pre-Trial Chamber II