

Annex 20

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From: Pre-Trial Chamber II communications [REDACTED]
[REDACTED]

Sent: 17 October 2023 15:08

To: OTP CARIIB-MM Communications; D34 Mokom Defence Team; Rabesandratana, Elisabeth; Fall, Yare; Adangabomoussa, Abdou; MDouzima-icc

Cc: Associate Legal Officer-Court Officer; Court Management-Court Records; Chamber Decisions Communication; Pre-Trial Chamber II communications

Subject: ICC-01/14-01/22 – Email putting on the record decision of the Chamber

The Chamber recalls that it has adjudicated a request submitted by the Defence by means other than by email or filing due to the technical issues affecting the Court's operations. For the completeness of the record of the case, the Chamber hereby puts on the record the relevant request as well as its decision.

On 18 September 2023, the Defence submitted the 'Request for Defence Consolidated Response to Prosecution Submissions', as follows:

Dear Pre-Trial Chamber,

We are writing with reference to the post-confirmation briefing schedule, which currently provides that the Defence may file a response to the Prosecution submissions no later than 26 September 2023, and then may reply to the Prosecution response by 2 October 2023. The Pre-Trial Chamber ruled that the responses shall not exceed 15 pages, and the reply shall not exceed 10 pages.

The Defence seeks leave to consolidate its second and third filing, and file one response on 2 October 2023, which will respond to the Prosecution's submissions and response in no more than 25 pages. A consolidated filing will promote efficiency of the Defence submissions, avoid repetition, and allow the Defence to focus its submissions on the core issues which remain in dispute between the parties, with the aim of assisting the Chamber and facilitating its deliberations. The Defence will be in a better position to do this and identify the remaining core issues in dispute, once it has reviewed the full articulation of the Prosecution case including in the Prosecution response to its 14 September submissions. A consolidated filing will therefore ensure the direct relevance and responsiveness of the Defence submissions, thereby also promoting judicial economy by ensuring the Pre-Trial Chamber is only seized with submissions that are directed specifically towards the differences which remain between the parties.

A consolidated filing would cause no prejudice to the Prosecution. The Prosecution response on 26 September would remain unaffected; the Prosecution would respond to the same Defence submission regardless of whether the Defence files one or two additional filings. It is also relevant that the Prosecution has the advantage of having filed hundreds of pages of written submissions in the pre-trial phase in the form of the DCC and the accompanying annexes.

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For these reasons, the Defence respectfully submits that the Pre-Trial Chamber vary its original oral order to reduce the number of post-confirmation filings while at the same time ensuring their direct relevance to the outstanding divergences in the position of the parties.

On 19 September 2023, the Prosecution submitted its response as follows:

The Prosecution hereby informs the Chamber that it does not oppose the Defence's request to vary the original oral order for additional submissions by the Parties issued at the end of the confirmation of charges hearing.

On 19 September 2023, the Chamber issued the 'Decision on 'Request for Defence Consolidated Response to Prosecution Submissions', as follows:

The Chamber notes the 'Request for Defence Consolidated Response to Prosecution Submissions' submitted by way of email on 18 September 2023, at 10:38 (the 'Defence Request'), and the Prosecution's response submitted on 19 September 2023.

The Defence seeks leave to file one set of submissions not exceeding 25 pages on 2 October 2023 combining its response and reply, due on 26 September 2023 and 2 October 2023 respectively. The Prosecution does not oppose the Defence Request.

In setting the time limits for the post-confirmation submissions of the parties and participants, the Chamber took into consideration the need to ensure that the parties' submissions are specifically focused on the particular arguments raised in the separate sets of submissions, and received in an orderly manner with a view to assisting the Chamber in its adjudication of the Prosecution's request to confirm the charges in the most efficient manner. The Chamber does not consider that receiving consolidated submissions in the manner described by the Defence is compatible with these considerations, and therefore rejects the Defence Request. It is recalled that the parties shall diligently observe the instructions of the Chamber.

The Chamber further instructs the parties to submit public redacted versions of the submissions already provided as soon as possible (ICC-01/14-01/22-269-Conf and ICC-01/14-01/22-270-Conf), as well as of any additional submissions to be provided.