

1 International Criminal Court
2 Pre-Trial Chamber II
3 Situation: Central African Republic II
4 In the case of The Prosecutor v. Maxime Jeoffroy Eli Mokom
5 Gawaka - ICC-01/14-01/22
6 Presiding Judge Rosario Salvatore Aitala
7 Status Conference - Courtroom 2
8 Friday, 23 September 2022
9 (The hearing starts in open session at 9.31 a.m.)
10 THE COURT USHER: [9:31:37] All rise.
11 The International Criminal Court is now in session.
12 Please be seated.
13 PRESIDING JUDGE AITALA: [9:31:58] Good morning, everyone.
14 Mr Court Officer, will you please call the case.
15 THE COURT OFFICER: [9:32:05] Good morning, Mr President.
16 This is the situation in the Central African Republic, in the case of The Prosecutor
17 versus Maxime Jeoffroy Eli Mokom Gawaka, case reference ICC-01/14-01/22.
18 And for the record, we're in open session.
19 PRESIDING JUDGE AITALA: [9:32:27] Thank you very much, sir.
20 I would ask the parties to introduce themselves, just for the matter of the records.
21 Mr Prosecutor.
22 MR VANDERPUYE: [9:32:34] Thank you. Good morning, Mr President. Good
23 morning. Good morning, everyone. Today the Prosecution is represented by
24 Massimo Scaliotti, Jasmina Suljanovic and myself Kweku Vanderpuye. Good
25 morning.

1 PRESIDING JUDGE AITALA: [9:32:45] Good morning, sir. Thank you.
2 Mr Counsel, good morning. Will you please do the same, for the purpose of
3 the records, please.
4 MR TOWNSEND: [9:32:54] Good morning, your Honour. Gregory Townsend,
5 duty counsel, appearing with Julien Maton, legal assistant.
6 Mr Maton is trying to get the headset into the language he understands.
7 I see a thumbs up. We're okay, your Honour. Thank you.
8 And Mr Maxime Mokom is present in court.
9 PRESIDING JUDGE AITALA: [9:33:19] Thank you very much.
10 Mr Mokom, can you hear translation now?
11 Well, before going into technical matters, I would like to start with you, Mr Mokom, if
12 you so wish. I would like to hear from you about your health and detention, if
13 there's anything that you wish to tell the Chamber. And if you wish to speak about
14 personal matters, you can tell me and then we will go into private session. It means
15 that only the people within this room will listen what you will tell us, so ...
16 MR TOWNSEND: [9:34:01] Thank you very much, your Honour. At this time,
17 based on your invitation, I'd ask for a private session of an estimated two to three
18 minutes.
19 PRESIDING JUDGE AITALA: [9:34:10] Okay.
20 Mr Court Officer, let's go into private session.
21 (Private session at 9.34 a.m.)
22 THE COURT OFFICER: [9:34:25] We're in private session, Mr President.
23 (Redacted)
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10 (Open session at 9.39 a.m.)

11 THE COURT OFFICER: [9:39:09] We're back in open session, Mr President.

12 PRESIDING JUDGE AITALA: [9:39:08] Thank you, Mr Court Officer.

13 Okay. Now, going to the objective of this hearing. I will start with summing up
14 the developments which have -- have led to this hearing.

15 Now, Mr Mokom was surrendered to the Court and transferred to the detention
16 centre in Scheveningen on 14 March 2022. He's been in pretrial detention since that
17 moment. He first appeared before the Chamber on 25 March and the confirmation
18 of charges hearing was scheduled to commence on 31 January 2023.

19 Now, on 25 March, the Chambers -- the Chamber ordered -- instructed the Registry to
20 revoke the appointment of Mr Kaufman as counsel for Mr Mokom and ordered
21 the appointment of a duty counsel.

22 On 4 April we held a status conference in closed session, *ex parte*, with Mr Mokom,
23 with the duty counsel, on the matter of legal representation.

24 Now, on 19 July 2022, a judgment was issued by the Appeals Chamber.

25 The majority remanded the matter to the Chamber to issue a new decision based on

1 all available information and setting out precise and detailed reasons. The Chamber,
2 on 19 August, issued a decision setting out further reasons and it granted Mr Mokom
3 leave to appeal. Now the matter is pending before the Appeals Chamber.
4 Now, the Chamber has considered that the -- during this time leading up to
5 the judgment of Appeals Chamber, we have received Defence submissions from
6 the parties, observations from the Registry on the conduct of proceedings. And on
7 27 June, the Chamber has issued an order on the conduct of the confirmation of
8 charges proceedings, adopting the principles and procedure governing disclosure, as
9 well as a disclosure calendar, and established the principles and procedure applicable
10 to victims participation in these proceedings.
11 So these are the reasons why we're here today, because we believe that it is time to
12 discuss the disclosure process and matters related to Mr Mokom's detention.
13 I want to emphasise, with reference to the disclosure process, that in the Chamber's
14 order on 27 June we have underlined that the Prosecution is expected to organise
15 evidence in a manner apt to ensure that the disclosure is focused and carried out
16 efficiently and expeditiously, also in light of the delays which have occurred due to
17 the ongoing litigation on legal representation of Mr Mokom.
18 The Prosecution is expected to disclose only evidence of true relevance. And I mean
19 this. This is not just a formality. It's always repeated, but we really mean this. So
20 we expect that you will be disclosing only evidence which is truly relevant to
21 the charges, which you will be putting forward in -- in the near future. And it is
22 absolutely critical to allow the Defence to prepare their case, but also the Chamber,
23 to -- to appraise and evaluate the evidence, that the process is well organised. And I
24 would say organised better than in past situations, so that we see progress. And this
25 we have mentioned, and I would like to emphasise again, may or, I believe should

1 include organising the evidence well, by categories or by teams, for example, by
2 charged modes of liability, by alleged crimes, by locations in which crimes were
3 allegedly committed, and so on and so forth.

4 Now, Mr Prosecutor, I think you're very clear on what we expect and would like to
5 give the floor to you. Specifically, let me remind the three points which we have
6 specified, paragraph 9 of the order: Any updates -- the order of 15 September: Any
7 updates or changes with regard to disclosure since the -- your submissions, your
8 office submissions of 25 May. Prosecution preparation and organisation of evidence
9 it intends to rely upon for the confirmation hearing, material to be disclosed under
10 Rule 77 of the Rules of Procedure, and the evidence disclosed as potentially
11 exonerating.

12 And, third point, any change or update on request for nonstandard redactions,
13 identity redactions pursuant to Rule 81(4) of the Rules, nondisclosure of entire items.

14 And I'm asking you to give any additional observation which may assist the Chamber
15 and the parties at this stage.

16 And, of course, Mr Duty Counsel, you will be afterwards allowed to make your
17 observations in response on behalf of Mr Mokom.

18 So, Mr Prosecutor, now the floor is yours.

19 MR VANDERPUYE: [9:46:14] Thank you, Mr President. It's a pleasure to see you
20 again.

21 We have a few things that we'd like to update the Chamber on. The first, I think,
22 and the most important one is, as you know, in the order that was issued in
23 July -- June, I guess -- 27 June, the disclosure obligation or disclosure paradigm was
24 linked to the representation of the accused by a permanent counsel. And so, to some
25 extent, there is -- there is a mass of information that is available that we expect to be

1 made available relatively easily, but because we have not permanent representation
2 yet, that material is simply sitting in the system awaiting to be disclosed. I'll tell you
3 a little bit about how we are hoping to go about that. And it's -- it's kind of unusual
4 and new in the way we propose to do it.

5 Because the two cases are linked, that is the Mokom case and the Ngaïssona and
6 Yekatom case are linked, both theoretically and in terms of the nature of the evidence
7 that the Prosecution intends to present in this case, we have liaised with CMS to
8 determine whether or not it would be possible to migrate the information that's
9 already disclosed in the Yekatom and Ngaïssona case that is material, or
10 incriminating, or potentially exonerating information relative to the Mokom case, and
11 simply migrate that information so it's available immediately, or at least promptly, for
12 the suspect and his counsel to at least look through.

13 Beyond that, it is our intention just to further circumscribe the amount of
14 INCRIM - we call it INCRIM - but the information we intend to rely on for
15 the purpose of our DCC and the confirmation of charge proceeding, severely.

16 You may recall that in the Ngaïssona case, Ngaïssona, Yekatom case, we identified
17 material in the area of around 7 or 8,000 items, I think, for the purposes of
18 the confirmation hearing. Our intention is in this case to rely on less than half of that
19 material, because I think we can do it. Even -- perhaps even more than that. We've
20 identified, just so you know, a pool of information which we consider critical, at least
21 for that case, and it should be about the same for this case, that we cited to in our
22 DCC in the other case, in the pretrial brief in the other case, and as well as what was
23 identified and relied on by the Pre-Trial Chamber II in the issuance of the arrest
24 warrants. And that comes to about 800 documents.

25 There's other information that we had, and we have acquired since that process has

1 occurred, and so that may also figure into it. But I think relative to the other
2 proceeding, the amount of material that we will be relying on as INCRIM will be
3 substantially circumscribed. So I just wanted to put that out there so you -- you
4 understand how we intend to do that.

5 It means, though, that the remaining material, which is quite substantial - and I'll give
6 you the numbers in a moment - would otherwise normatively be identified as Rule 77
7 material, or what we call other material, that is information that may be helpful to
8 the Defence but isn't necessarily, quote-unquote, "material" within the meaning of
9 Rule 77. But that will happen at a later point.

10 The numbers we're talking about look like this: Since our decision -- since our
11 submission, we have disclosed 805 items, formally. That was done in July. We
12 have, in addition to that, identified some 2,700 items. All together actually it's more,
13 it's about 3,000 -- about 3,400 items as well, that we will -- that we will disclose and
14 are lined up to be disclosed. And these comprise also some items that are redacted
15 in the other case which we'll simply migrate into the Mokom, for lack of a better term,
16 Ringtail, so the Defence has access to it.

17 We have about 29,000 items, which would otherwise comprise rule -- as I describe,
18 Rule 77, or something like that. And that would include items that are relevant, for
19 example, to the extent of the attack, for the purposes of Article 7, in various locations,
20 things of that nature, that we will -- that we will migrate over to make available as
21 well to the -- to the Defence.

22 And they comprise quite a significant number of pages. In fact, the number
23 of -- the items that we've disclosed that I described already, the 3,000 or so items that
24 we -- we would rely on at the outside as INCRIM comprise over 50,000 pages worth
25 of material, including testimony of insider witnesses, statements of insider witnesses.

1 As you know, a number of witnesses have already testified in the -- in the Yekatom
2 and Ngaïssona case. Their transcripts, obviously, he would have to have access to as
3 well, and so that also would have to figure into what we would rely on and what
4 would be disclosed or provided for INCRIM.
5 So that roughly comes to around some 50,000 pages.
6 The 29,000 items, which are possible Rule 77, which could be migrated, that's going to
7 comprise four times this. A hundred thousand pages, or something like this, as well
8 as videos, a number of hours. We've already provided those numbers and I think
9 that hasn't changed. So the number of videos we had were -- I think amounted to
10 some 50 hours' worth of material. I'm looking for the number here in my outline. I
11 think they were - bear with me one moment - 334 items and amounting to about
12 50 -- 51 hours. So that hasn't changed at all.
13 Obviously, there are a number of statements, and I think I've given -- we've given
14 roughly the same numbers we've done before.
15 As you may know, in the Yekatom and Ngaïssona case, the witness lists that we filed
16 in that case was about 150 -- 147 witnesses. We've identified probably around 40
17 that we will not be referring to or relying on for the purposes of this case against
18 Mr Mokom. So that's almost about 25 -- a little bit more than 25 per cent reduction
19 there. We expect to be able to reduce it further. So we're in the process of making
20 that evaluation.
21 I should add though, that we are also conducting additional investigations. I think
22 we alluded to that in our submission. And that's -- that's still ongoing. But we
23 don't anticipate that we're going to come with a huge number of witnesses as a result
24 of that additional investigation. So the number should be substantially reduced
25 relative to the other case.

1 In addition, some of those witnesses were called under Rule 68(2) for the purposes of
2 establishing, for lack of a better term, testimonial evidence regarding the scope of
3 the contextual elements, which we may not need for the purposes of this case,
4 especially if we can hopefully reach some agreement as to those kinds of issues.
5 I don't -- I don't think there's any -- any reason why the parties can't agree to facts
6 which would expedite or facilitate the confirmation process the same as we would
7 during a trial. I have to check the rule, but I think that's -- that's probably right.
8 And so there's the opportunity to reduce the amount of information we would have
9 to rely on there as well.

10 So what does this mean? It means that, for Rule 77 purposes, the idea here would be
11 to migrate this information. It's a mass, as I said, but at least it will give counsel
12 relatively prompt access to the material. That way they can determine, you know,
13 how they want to use that information, regardless of how we characterise it. But in
14 order to facilitate that, and not to waste everyone's time, we'll also provide
15 the information specifically that we intend to rely on. We're still working on that
16 because of the pending investigation. But the pool of that information, as I described
17 before, will not be -- it will first be less than half of what we did in the previous case,
18 and we expect it will be substantially less than that. But I don't want to -- I don't
19 want to suggest to the Chamber, okay, it's going to be 500 documents, and then it
20 turns out to be, you know, 800 documents.

21 So I would say, at the outside, it's at least -- it will be half of what we've done before,
22 it will probably be in the area of about a thousand documents, or less. But that's a bit
23 unofficial, because we're still working on identifying specifically what we want to use
24 for this case.

25 I should say, though, that the intention is to make all the material available to counsel

1 so they can actually determine, on the basis of the auxiliary documents we call them,
2 the DCC, the AWA -- or, rather, the arrest warrant, the pretrial brief in the other case
3 what the case against Mr Mokom looks like. And they're largely defined -- as well as
4 the confirmation decision in the other case. They are largely defined, the theory is
5 the same, the involvement is the same as has been previously pled. So that should
6 also facilitate the Defence's preparation.

7 So we have a number of identifying --

8 PRESIDING JUDGE AITALA: [9:57:06] Mr Prosecutor.

9 MR VANDERPUYE: [9:57:08] Yes.

10 PRESIDING JUDGE AITALA: [9:57:09] You know, you're saying that you want to
11 migrate those materials. But if I remember well, because I've done so many things
12 meanwhile, those materials weren't so well organised at that time. Do you plan to
13 organise these materials anyway? You're just -- just throwing everything on
14 the other side without any particular order or category, as I said earlier. There I
15 would think it would be quite relevant. So it's not only a matter of how massive is
16 the number of documents, but how disordered is that mass?

17 MR VANDERPUYE: [9:57:44] I see what you mean.

18 At the moment, the metadata that accompanies that information doesn't define, for
19 example, to what its specific relevance is. So it may be a statement, let's take
20 the statement as an example of an insider witness. That witness's evidence may be
21 relevant to the organisation of the National Coordination, it may be relevant to
22 the attack, it may be relevant to the interrelationship between the members of
23 the organisation and it may be relevant to a number of issues.

24 And so it's very difficult to say, "All right. Well, this statement just relates to
25 the National Coordination, just relates to Mr Mokom's involvement or his presence in

1 X location or Y location." So that's one of the reasons why it's very difficult to
2 organise it in that way.

3 What I would say though, is, when that's material disclosed, because it's also linked to
4 the timing of the filing of the Document Containing the Charges, as the Chamber has
5 indicated as well, the annex that accompanies the Document Containing the Charges
6 will identify the material relevant to the topics that are discussed in there and
7 the theory of prosecution and so on.

8 So, in that sense, it is organised. Because you simply look at the Document
9 Containing the Charges, or the annex, you look at the documents that are cited in
10 there, and then you'll know which -- how the Prosecution is relying on any given
11 document relative to the -- relative to the charge, mode of liability, incident, and so on.
12 So that's how we're sort of viewing it.

13 For the incriminating -- and this is for the -- this is for the what we call Rule 77
14 material. For the incriminating documents, those will be more specifically identified
15 because we are specifically relying on them, or intend to, during the course of -- of
16 our submissions on confirmation.

17 So that's -- that's sort of our idea. And we've checked with CMS to see whether or
18 not it's technically possible to do that, that is the migration, because it hasn't generally
19 been done, there haven't been that many related cases for it to be done, and they've
20 told us it is -- it's absolutely doable. And so we think that's probably the best way to
21 at least make the material available to the Defence in the fastest way. And then
22 before the confirmation and within the disclosure deadline set by the Chamber, we
23 will provide the Defence with the specific information relating to what we will be
24 citing to or submitting during the confirmation process. So that's -- that's the idea.
25 Now, in terms of Rule 81(2), Rule 81(4) redactions or withholding of information.

1 We don't have anything new there. The only thing that may occur in that respect
2 is -- would be the result of our sort of follow-up investigations. So if we come with
3 a new witness, for example, and we consider that security measures need to -- need to
4 be imposed, we'll make that application at that time. Those are on the way and
5 we're hoping to be able to complete them relatively soon. But it depends also on
6 the timing of the confirmation process, given the representation issue and so on. But
7 that's the only thing that would be outstanding.

8 And as I mentioned before, we're not talking about coming -- coming to the Chamber
9 and saying these are the hundred witnesses we need this. We're really talking about
10 a handful. You know, maybe, maybe 10 witnesses, at most, that we would identify
11 that were -- that may be -- that may be vital to the confirmation process. But I don't
12 expect even that. So I think it will be a very -- a very limited number. So there's no
13 real change there to report.

14 And as you -- as you know also from the other cases, if that should happen, then we
15 will have to vet them through our Protection Strategies Unit. The name has changed
16 now, I don't -- I don't remember the new acronym. But there are certain steps that
17 have to be made in terms of making sure that those witnesses are secure and safe.
18 This would only relate to the new ones, not the ones that have already been disclosed,
19 so we hope to make that material available.

20 I think that's about -- maybe I'm forgetting something. I think that's basically
21 covering the points that were raised in the -- in the decision. Let me just look very
22 quickly and make sure I haven't left something out.

23 Potentially exonerating information, that hasn't changed. I think we represented
24 previously that we had about 200-something documents. That hasn't changed
25 substantially. As -- as you know, the theory of the Prosecution in the case is broad

1 and so it's not -- it shouldn't be to anyone's surprise that the number of exculpatory
2 documents or documents disclosed as such is not great. I should also add that,
3 following your order, we are evaluating those documents to identify the specific
4 pages or paragraphs that are -- that contain the exculpatory information in those -- in
5 documents disclosed as such.

6 So I think, with that, that's basically it. And I'm happy to answer
7 the Chamber's -- any -- any question you may have with respect to either the numbers,
8 or the modes, or where we are in terms of our evaluation of that evidence,
9 Mr President.

10 PRESIDING JUDGE AITALA: [10:03:31] Thank you, Mr Prosecutor.

11 Mr Prosecutor, I have a few questions on protective measures for witnesses. I'm not
12 talking new ones, past ones.

13 Let's move into closed session.

14 Mr Court Officer, please.

15 (Private session at 10.03 a.m.)

16 THE COURT OFFICER: [10:03:58] We're in private session, Mr President.

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8 (Open session at 10.12 a.m.)

9 THE COURT OFFICER: [10:12:25] We're back in open session, Mr President.

10 PRESIDING JUDGE AITALA: [10:12:29] Thank you very much.

11 Mr Prosecutor, now we have closed the part on protective measures. I just asked
12 you more or less what's the strategy of the Prosecution with respect to the scope of
13 the charges, of course taking into account that it is your prerogative to shape
14 the charges as you believe appropriate just the day before you -- you will file it.
15 And please, if you can start again on what you were saying. Thank you.

16 MR VANDERPUYE: [10:12:59] Thank you, Mr President.

17 Yes, what I was saying was, having evaluated the warrant and also consider, you
18 know, the process that's occurred in the Yekatom and Ngaïssona case, what I can say,
19 and I think I can stick to it for sure, is that the case against Mr Mokom will not be
20 expanded from what is detailed already in the warrant of arrest. I think it is likely
21 that it will be reduced somewhat, but that is under evaluation and it depends on
22 a number of factors.

23 One factor it depends on is the ongoing investigation with respect to certain
24 follow-up steps that we are making, because we didn't anticipate his -- his arrest at
25 this time and there were some ends relating to his specific criminal responsibility that

1 were basically on hold until there was a likelihood of his -- of his arrest and transfer,
2 and so we're following up that.

3 The second thing that is important is that we have an ongoing trial in the Ngaïssona
4 and Yekatom case wherein there is evidence that is being introduced, testimonial
5 evidence under oath, of witnesses which pertain also to Mr Mokom's liability in
6 respect of matters that are the subject of the warrant of arrest and which may
7 influence the strength of the evidence for those specific incidents or charges against
8 him. So that's why I don't commit to it's going to be reduced for sure, but, rather, it's
9 dependent -- it's likely, but it's dependent on some -- on some fluid factors. So I
10 hope that answers your question.

11 I know it's not --

12 PRESIDING JUDGE AITALA: [10:14:36] It does. It does. Thank you.

13 I have another question. Now, you made a point earlier saying that, with reference
14 to incriminating materials, you will be actually following the Chamber's direction to
15 present the evidence in an organised manner, and do you already have an idea on
16 how you're going to do this and how will you indicate the relevance of the material to
17 the Defence? Do you have an idea about this all ready? I mean, do you have
18 a framework in mind where you will be feeding different materials or we're still at --

19 MR VANDERPUYE: [10:15:21] We expect to have -- we will draft the DCC, which is
20 a compact document, no footnotes, just simply an accusatory instrument, so to speak.
21 We will draft together with the DCC the annex which the Chamber has indicated,
22 which we understand to be essentially like a pre-confirmation brief which will be
23 organised topically, so in terms of the contextual elements, the nature of the charges,
24 the time frame, the different personalities. All of that -- all of that material will be
25 organised topically and will be footnoted. And all of the, you know, all of

1 the registration numbers and the pin cites will be provided to the Chamber and
2 the parties in that document.

3 From that document, it will be readily accessible to the Defence to identify the ERN
4 numbers and how they are being used to support the specific allegations in
5 the Document Containing the Charges, and in that way it will be communicated to
6 them. Aside from that, normatively incriminating information is identified in a very
7 nominal way through the Ringtail system. it's called something else now, Nuix. And
8 it just simply indicates INCRIM, or Rule 77, or other, or PEXO, potentially
9 exonerating information. That's normatively how it will be done because that's what
10 the system allows us to do. So it's the combination of those two things which will
11 make it very specific as to what the -- what the Defence will be focusing on in terms of
12 the INCRIM.

13 On the other hand, I think it's worthwhile for the Defence to have information which
14 we haven't identified necessarily as INCRIM but which they may consider important
15 for their defence, Rule 77 material, or whatever else there might be available to them.
16 But I want to stress that, and I know there's a concern of the Chamber and has been
17 a concern of chambers generally, that although it's a large amount of material, it's not
18 what we would call a dump of information that just overwhelms the parties. It's
19 a lot though, and I certainly do not want to play that down, but it's -- it is material in
20 the sense that the scope of the charges doesn't necessarily -- reducing the scope of
21 the charges doesn't necessarily reduce the scope of material information relevant to
22 those charges.

23 So although it may very well be that we do reduce the scope of charges or the number
24 of charges, it doesn't necessarily translate one on one to the -- to the scope of
25 otherwise -- of material the Defence might otherwise need.

1 So that's basically -- I think that's basically how we plan to identify that material.

2 But what's important for us, I think, at this stage is, because we have established
3 protocols on the disclosure of evidence, is the Chamber's buy-in, for lack of a better
4 term, to allow us to migrate information already disclosed, already -- already
5 disclosed in the Yekatom case into this one as a means of at least facilitating
6 the availability of that information to the Defence.

7 PRESIDING JUDGE AITALA: [10:18:45] Well, on this matter we will see.

8 Now, Mr Prosecutor, thank you for your point. But honestly, I mean, I haven't heard
9 anything new. Because of course, yes, in the pretrial brief you will be connecting
10 things. But our idea, what was in our order is to try at an earlier stage when you go
11 for disclosure to help the Defence and facilitate the work of the Defence by already at
12 that stage presenting evidence as related to either modes of liability or location of
13 crimes. So what we encourage you to do, what we're instructing you to do is to do
14 this already at an earlier stage because, you know, when the DCC comes, normally
15 the time for the Defence is quite limited. So it's very challenging - and I'm -- and I'm
16 being very cautious in using "challenging" only - for the Defence, you know, to do
17 their job. So we wish that this is done before, a list with the most -- with those
18 materials which you do regard as the most important materials.

19 You know, I've been in this job for many years, and what I would do, I would have
20 clear ideas on what I consider -- what I would consider then essential to prove a case
21 and to prove what. So this is to prove this charge, or this mode or liability, or
22 the crimes allegedly committed in a certain location. So the novelty, we are asking
23 you now, is to do this at an earlier stage. You've had plenty of time, more than you
24 would normally have, due to the circumstances, so we encourage you to make wise
25 use of this time and allow us to set the further timing of the procedure in order not to

1 delay, but also to allow the Defence to meaningfully do their job when a permanent
2 counsel will be -- will be working on this case, as well as allowing the Chamber, as
3 well. Because we have to read everything, as you know.

4 And the realities then of this wealth of materials, not all of them, in my experience,
5 are that relevant and -- and the guess is also that it's not also in your eyes so relevant.
6 So our idea is, if you can already at the stage of disclosure organise the items to be
7 disclosed, this would help very much. At least organising those that you deem as
8 most important for your case. Then there will be other things where, you know,
9 you're not able, you don't want to take the responsibility of saying whether they are
10 exculpatory or -- or what else. So, again, I encourage you to do this at the coming
11 stage of disclosure.

12 Then, of course, I take for granted that this will be done also at a later stage in
13 the so-called pretrial brief or pre-confirmation brief. That's a different matter and it's
14 already quite late. We would like this to happen earlier than that, am I clear?

15 MR VANDERPUYE: [10:22:06] No, I fully understand it and it makes perfect sense.
16 What I was saying before was, because of the interrelationship of Mr Mokom's case
17 and the case against Yekatom and Ngaïssona, what is essential to our assertion of his
18 criminal responsibility for the charges that will -- that arise here, is essentially already
19 defined in the other case. So, for instance, evidence going to his position as
20 the commander of operations for the Anti-Balaka, coordinator for operations of
21 the Anti-Balaka in 2013 as the *de facto* organiser or structurer of that group, planner,
22 implementer. That's in our -- that's already in the trial brief in the Yekatom and
23 Ngaïssona case. Defence counsel is aware of it, it's footnoted, the documents are the
24 same, the witnesses are the same. So there's already a structure available to
25 the Defence which clearly outlines what is the basis of Mr Mokom's criminal liability.

1 Same thing goes for the incidents that are the subject of the arrest warrant, the same
2 thing goes for the structure of the groups of which we say he was involved in -- in
3 planning and effecting operations and attacks. The same thing goes for his position
4 and involvement in the National Coordination of Anti-Balaka, the unified
5 coordination of the Anti-Balaka which emerged in June 2021, the establishment of his
6 position in the Nairobi talks, in the Brazzaville talks. All that evidence is exactly
7 the same and all of that relates to his criminal responsibility arising in the context of
8 the arrest warrant.

9 So effectively it's already there. It's a question of migrating it or transforming it for
10 the purpose of this case. But the framework is already there for him. I take your
11 point and we'll do our best to do that.

12 There are certainly some key documents, key witnesses, key testimony in the other
13 case, of which -- which will be essential to the confirmation of charges here. But
14 we'll do our best to do that. It's a question also what the framework will be, whether
15 that should go in the form of the metadata accompanying the data or a different
16 document. But we'll work on that, Mr President, and get that done.

17 PRESIDING JUDGE AITALA: [10:24:50] Mr Prosecutor, now, the -- the annex is
18 primarily intended to allow the OTP to further specify the evidence. It's not meant
19 to be a new narrative, so. And we have already said in past decisions that in
20 the annex, the Prosecutor shall present as an annex to the DCC a detailed explanation
21 of the material or evidence supporting the points of law and fact included in the DCC.
22 Now, so we don't want a classical pre-confirmation brief as an annex.
23 Another question I have is: You mentioned this -- this structure used in the Yekatom
24 and Ngaissona case. Do you believe that this would allow you to organise
25 the material more efficiently in this case?

1 MR VANDERPUYE: [10:25:47] I think it would, to be honest, Mr President. I think
2 that the structure that was followed there allowed for the identification of the material
3 to support any given proposition, quite clearly. But as I said, the problem is it's very
4 difficult to take a statement, for -- let me just pick someone, take a statement of some
5 member of the National Coordination and say that this statement goes to
6 Mr Mokom's position in the National Coordination, when it also goes to the attack
7 carried out under the auspicious of the National Coordination. It also goes to
8 the structure of the -- of the groups which were involved in the attack. It also goes to
9 the knowledge of the participants of the -- of the National Coordination about
10 the attacks and it goes to contributions that they made, or omissions that they made,
11 or involvement that they had, or information that they had.
12 It's very difficult to say, okay, this statement goes to X issue when it goes to A to Z
13 issues. But it's easy and clear enough to say it goes to Mr Mokom's criminal
14 responsibility, for a number of reasons. And we can identify several of them. But
15 that's part of the danger of a practice that used to -- used to obtain here at the Court
16 relating what they -- to what was called the in-depth analysis charts which sometimes,
17 you know, would be 2,000 pages long and have no meaningful information because
18 everything was everything.

19 PRESIDING JUDGE AITALA: [10:27:27] Okay. Mr Prosecutor, thank you very
20 much. Thank you very much.

21 Now I'm going to give the floor to duty counsel, Mr Townsend.

22 MR TOWNSEND: [10:27:40] Thank you, your Honour.

23 And I thank the Prosecution for their remarks.

24 Before turning to the what's going to be disclosed, I just want to briefly address
25 the when it will be disclosed.

1 As you're well aware, your Honour, I'm here as duty counsel, what I understood
2 might be a two-day job in April and I'm still here.
3 The 27 June order at paragraph 27 speaks to, quote, "... to allow for sufficient and
4 meaningful preparation of Mr Mokom once permanent counsel ... have been
5 appointed". And that would be the time when the disclosure should commence.
6 And so this Pre-Trial Chamber linked the start of disclosure to permanent
7 representation, and that's what I think everyone wants in this case, Mr Mokom,
8 the Judges, and the Prosecution.
9 We're just in the situation we're waiting for the Appeals Chamber, and so I know that
10 the Pre-Trial Chamber might be poised to uncouple that question of representation to
11 the commencement of disclosure, and I would just implore the Chamber to perhaps
12 figure out when the Appeals Chamber will render its decision and dispositively
13 decide the issue of permanent representation for Mr Mokom. And it might be,
14 whether it's a matter of days or weeks, that you need not revisit this previous holding.
15 Because I think, when you mention meaningfulness and sufficiency, I think it's hard
16 for me to make representations that will now bind the person stepping into these
17 shoes that will be representing Mr Mokom, and what's best and whether that
18 disclosure should come when he has a full team in place, or whether it will be just
19 Mr Maton, who joins me and who is quite able, but we're talking about a really large
20 volume, I think. The numbers are quite staggering.
21 And so the first point really is if it's possible to get an estimate from the Appeals
22 Chamber, that might put the Pre-Trial Chamber in a better position as to whether to
23 cross this rubric of throwing out paragraph 27 in the holding of 27 June to say we're
24 going to delink or uncouple the representation of Mr Mokom to the commencement.
25 It still may make sense.

1 If it's going to be too long, I understand, and we will perhaps be in a position to
2 receive it and start the preparations, but not being the counsel that will be zealously
3 representing Mr Mokom in the preparations, it's hard for me to say what would be
4 best in the view of that person being permanent counsel. I just want to make that
5 point clear.

6 And to the extent that the Prosecution has made representations that they're going
7 through their evidence, they're reducing documents, that's of course really well
8 received, and I appreciate the Judge's remarks as to seeking an organised disclosure.
9 A couple of remarks just in that regard.

10 The -- if I understood the Rule 77 category of 29,000 items, numbering more than
11 a hundred thousand pages, is quite voluminous. And while we're gone down
12 40 witnesses, I think we're looking at 107, plus any additional. The examples given
13 by Mr Vanderpuye is there may be not metadata associated with a witness statement.
14 And I don't think any Defence team will be troubled by that, because reading a
15 statement, it will be relevant for a multiplicity of purposes. It's the documents that
16 aren't witness statements that may not have metadata that really will tell us, okay,
17 what's the relevance of reading this hundred thousand pages of non-witness
18 statement documents? That's where having metadata will really help the counsel
19 that's standing in my shoes representing. And where we have the Defence to do its
20 preparations, to have to hold the annex on one screen, to go to a footnote, to then find
21 the ERN, to cross-reference that ERN and then look up in the text to find what
22 the relevance is, is a three-step process rather than just having the metadata
23 associated with that file when disclosed. So that's really rather important if we want
24 to have organised disclosure and smart disclosure, so to speak, so that the preparation
25 for the Defence, if someone is going to come into my shoes and represent Mr Mokom,

1 we have been talking about a January confirmation, and it would be really difficult
2 for me to say that a person that's appointed as permanent counsel would be able to
3 keep that schedule. If you just look at the number of days and hours available to
4 read that volume, even with a bigger team, it would be really difficult.

5 So rather than just rely on references being not in the DCC, but in the annex and then
6 being in the footnotes and then the ERNs, and then to have to connect that to the
7 actual document that's in another systems, it makes it more difficult. So we would
8 really prefer to have not just a category this is a Rule 77 associated, but actually some
9 indication of relevance.

10 Those are all the same points.

11 Having been in several cases, the term migration, as opposed to disclosure, also gives
12 me some pause. And I don't want the simplicity of migration to be a substitute for
13 the detailed analysis document by document as to determine whether it's relevant
14 and actually requires to be disclosed, and whether or not it's relevant for the case.

15 There is a short cut, cut and paste, so to speak. Here you have access, I tick a box,
16 and now we can deem that migration, or it's really providing access rights to existing
17 previously disclosed data to amount to disclosure. And I think the duties are quite
18 distinct and so I would just err on the caution of whether or not there's been
19 a sufficient culling review of the data before it's migrated to really see if it's relevant
20 for this case, for Mr Mocom.

21 Why? Because every document that we don't have to read means we're ready
22 another day for that -- a day earlier for that confirmation.

23 And if you give me just a moment to confer.

24 PRESIDING JUDGE AITALA: [10:34:48] Yes, you're allowed.

25 (Counsel confer)

1 MR TOWNSEND: [10:34:52] Again, we're grateful to the Prosecution that they've
2 had the time to be able to review, reduce, streamline. Maybe we have a matter of
3 days or weeks until the Appeals Chamber come. If we could take advantage of that
4 time, it would be helpful, I think, for everyone.

5 And I don't know if we've talked about an order of disclosure, whether
6 the incriminating would come first, or the exculpatory would come first. Obviously,
7 Defence have a strong interest in the exculpatory coming, not after something else,
8 but at least -- at least with the other stuff, or at least in the first batch.

9 Other than that, I'm just hoping that we have a definitive situation in terms of
10 Mr Mokom's representation so that we can all proceed and move forward.

11 So thank you so much, your Honour, for the opportunity.

12 PRESIDING JUDGE AITALA: [10:35:49] Thank you, Mr Counsel.

13 Well, your position is of course known to the Chamber. Your points are taken.
14 There isn't any decision in the merits on what will be allowed or if migration will be
15 allowed at this stage. As I said at the beginning, we just wanted to take stock and
16 see what's the situation at this stage.

17 As far as the timing of the Appeals Chamber decision, it's not known to us, or it's not
18 practice, or would be appropriate for us to -- to ask. It will come when it will come
19 and the Chamber will of course adjust, if necessary, the timing of the entire
20 proceedings accordingly. And at this stage there's nothing we can or should do.

21 But your points are taken as general indications about the -- the kind of work
22 a defence is required to do in these situations.

23 Okay. Now we have to discuss some -- some pretrial detention matters.

24 Will you please go into private session, Mr Court Officer.

25 (Private session at 10.37 a.m.)

1 THE COURT OFFICER: [10:37:12] We're in private session, Mr President.

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6 (Open session at 10.43 a.m.)

7 THE COURT OFFICER: [10:43:57] We're back in open session, Mr President.

8 PRESIDING JUDGE AITALA: [10:43:59] Well then, thank you very much. I think
9 that, as far as I'm concerned -- ah, Mr Prosecutor.

10 MR VANDERPUYE: [10:44:04] I was detecting you were about to close the session,
11 but I just wanted to -- and I don't mean to prolong it, but there's -- I would like to talk
12 to counsel about this issue of migration, and I would like the Chamber to consider it.
13 I don't know if you want a submission on it, that may be helpful, but it's important, I
14 think, and I think it will revolutionise the way things are done around -- around here
15 in a positive way.

16 But I'd like to -- to make that representation to the Chamber, but I'll talk to
17 Mr Townsend about that beforehand.

18 PRESIDING JUDGE AITALA: [10:44:41] You're -- you're allowed to speak to
19 the counsel any time, to consult with each other.

20 MR VANDERPUYE: [10:44:46] Yes. But I would also like (Overlapping speakers)

21 PRESIDING JUDGE AITALA: [10:44:47] And whenever you have a request, you just
22 file it before the Chamber and we will --

23 MR VANDERPUYE: [10:44:50] Yeah, that's what I need to know is do you -- would
24 you prefer that we file something with the Chamber, or just discuss it? If there's an
25 agreement, present that, in order to resolve that issue, because I think it could be very,

1 very helpful.

2 PRESIDING JUDGE AITALA: [10:45:06] You start by discussing with the Defence.

3 Then, if you want to file something with the Chamber, you will do it. But then, of

4 course, you also will have to explain, you know, they say circumscribe the material.

5 And, I mean, you can explain how you intend to do this, since it is required that only

6 material truly relevant to the case, so you would have to explain that I -- I would

7 imagine. But it's your job, I leave it to you, and of course discuss with the counsel.

8 Mr Townsend, do you have any additional point on this?

9 MR TOWNSEND: [10:45:43] I look forward to that conversation. And if something

10 important arises before the Chamber, we'll apprise you. Thank you.

11 PRESIDING JUDGE AITALA: [10:45:51] Thank you very much.

12 Any other matter you wish to discuss today?

13 Mr Mokom, is there anything that you wish the Chamber to hear from you? Do you

14 want to make any point on anything? You're free to do it, if you so wish.

15 MR MOKOM: [10:46:05](Interpretation) No, Mr President, I have nothing.

16 PRESIDING JUDGE AITALA: [10:46:12] Thank you very much.

17 So, Mr Mokom, we wish you good health and I thank the parties and now I will

18 adjourn the hearing.

19 Thank you very much.

20 THE COURT USHER: [10:46:20] All rise.

21 (The hearing ends in open session at 10.46 a.m.)