

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 Gawaka - ICC-01/14-01/22
5 Presiding Judge Rosario Salvatore Aitala and Judge Tomoko Akane
6 Status Conference - Courtroom 3
7 Tuesday, 7 February 2023
8 (The hearing starts in open session at 9.41 a.m.)
9 THE COURT USHER: [9:41:18] All rise. The International Criminal Court is now
10 in session. Please be seated.
11 PRESIDING JUDGE AITALA: [9:41:50] Good morning, everyone.
12 Madam Court Officer, would you kindly call the case.
13 THE COURT OFFICER: [9:41:56] Good morning, Mr President, your Honour.
14 The situation in the Central African Republic II, in the case of the Prosecutor versus
15 Maxime Jeoffroy Eli Mokom Gawaka, case reference ICC-01/14-01/22.
16 And for the record, we are in open session.
17 PRESIDING JUDGE AITALA: [9:42:15] Good morning. Before we get started, I
18 need to inform that Judge Mindua for an unforeseen, urgent personal reason cannot
19 sit today; so we are proceeding with a two-judge format under Rule 140 *bis* of the
20 rules, and I presume the parties consent to this agreement.
21 So thank you very much. This is for the records.
22 And now, Mr Prosecutor, would you please introduce yourself and your colleagues.
23 MR VANDERPUYE: [9:42:53] Thank you, Mr President. Good morning to you,
24 your Honours. Good morning to everyone. Today, the Prosecution is represented
25 by Olivia Struyven, Jasmina Suljanovic and myself, Kweku Vanderpuye. Good

1 morning, again.

2 PRESIDING JUDGE AITALA: [9:43:05] Thank you.

3 Mr Larochelle, will you please do the same.

4 MR LAROCHELLE: [9:43:10] (Interpretation) Good morning, your Honours. This
5 morning, Mr Mokom is represented by Julien Maton to my left and myself, Philippe
6 Larochelle. I'm a member of the Québec bar in Canada and this is my first
7 appearance here in the court.

8 Mr Mokom is present here in the courtroom and I greet (Overlapping speakers)...

9 THE INTERPRETER: [9:43:35] Overlapping.

10 PRESIDING JUDGE AITALA: [9:43:36] (Overlapping speakers) Thank you very
11 much, Maître. We welcome you in this case. Is there any observation you want to
12 make regarding your appointment or the handover? Any handover matters with the
13 duty counsel?

14 MR LAROCHELLE: [9:43:55] Well, if I am allowed, your Honour, I would like to
15 put on the record, I would like to thank Mr Townsend and Mr Maton, who have
16 ensured a smooth transition as I was appearing two weeks ago, and I can inform the
17 Chamber that Mr Mokom was very satisfied with the way Mr Townsend had
18 assumed his functions, which were not obvious because of course he was just there on
19 a temporary basis. So he had -- always stuck between a rock and a hard place not to
20 compromise or jeopardise the rights of Mr Mokom, yet firmly and strongly represent
21 his interests.

22 So I would like to put on the record that Mr Mokom was very happy with how this
23 transition period was handled, even if, of course, not happy about the delays that it
24 entailed. But as far as his representation was handled by Mr Townsend and
25 Mr Maton, only good things he had to say about that.

1 I guess I will be invited speak further about the various topics that (Overlapping
2 speakers)

3 PRESIDING JUDGE AITALA: [9:45:04] Absolutely.

4 MR LAROCHELLE: [9:45:04] -- we will -- so for now, I will stop.

5 PRESIDING JUDGE AITALA: Absolutely. It was only about your own
6 appointment.

7 Mr Mokom, good morning. If you have any remark about this specific matter, you
8 can do so.

9 MR MOKOM: [9:45:22](Interpretation) Thank you, your Honour, I have no remarks
10 to make.

11 PRESIDING JUDGE AITALA: [9:45:27] Thank you very much.

12 All right, so I will first, for the records, recall a little bit in very short terms the
13 procedural history of this case. Today's status conference was convened pursuant to
14 the Chamber's order of 24 January 2023 to discuss matters related to the disclosure
15 process. This is filing number 138. And the most relevant developments leading to
16 this status conference are the following:

17 On 25 March 2022, the Chamber revoked the appointment of Mr Nicholas Kaufman
18 as counsel for Mr Mokom due to an impediment to representation or a conflict of
19 interest and then Mr Gregory Townsend was appointed as duty counsel to
20 Mr Mokom on 4 April 2022.

21 And, most recently, on 19 December 2022, with filing 124, the Appeals Chamber by
22 majority confirmed the decision of the Pre-Trial Chamber, the removal of
23 Mr Kaufman.

24 Mr Townsend upon instructions of the Chamber has remained in his position until
25 the appointment of the permanent counsel. And for the records, the Chamber

1 wishes to acknowledge his service gratefully, and his role was very important and he
2 discharged it very well.

3 On 23 January, Mr Philippe Larochelle was appointed as permanent counsel with
4 filing 136. And on 6 February, the appointment of Mr Townsend expired.

5 On the same day, the Chamber has formally postponed the beginning of the
6 confirmation of charges hearings to a date to determined. And later on 3 February,
7 the Chamber has decided that the confirmation of charges hearings shall commence
8 on 22 August 2023 with filing number 151.

9 It is useful for all of us, but also for the records, to recall some decisions and orders
10 concerning the process of disclosure in this case.

11 On 27 June 2022, the Chamber issued the order on the conduct of the confirmation of
12 charges proceedings adopting, among other things, the principles and the procedure
13 governing disclosure as well as the calendar of disclosure. This was filing number
14 62. On 15 September 2022, the Chamber held a status conference to discuss mainly
15 matters related to the disclosure process.

16 Then it followed with an order on 7 November 2022 on disclosure and related matters.
17 This is filing 104. And the Chamber with that order noted that the Prosecution
18 expressed the intention to migrate material -- part of the Yekatom and Ngaissona case
19 records to the record of the Mokom case and requested the Prosecution to clarify
20 certain aspects of the migration process.

21 The Chamber also instructed the Prosecution to differentiate the evidentiary items
22 disclosed in this case by indicating for each disclosed item which sections are deemed
23 to contain incriminating, exonerating and/or other information using the codes PEXO,
24 INCRIM and R77.

25 The Chamber also supplemented the order on the conduct of proceedings of 27 June

1 2022 with regard to the Prosecution's list of witnesses and instructed the Prosecution
2 to submit monthly reports on the progress of the ongoing investigations. The
3 Chamber also ordered the Prosecution to disclose all potentially exonerating material
4 in its possession to Mr Mokom not later than 11 November 2022.

5 On 30 November, the Chamber issued -- 2022, issued a single order on disclosed and
6 related matters with filing 116, where it has authorised the Prosecution to
7 immediately commence the migration process with regard to material part of the
8 Yekatom and Ngaïssona case records to the record of the Mokom case as it was
9 proposed by the Prosecution, and proceed with the formal disclosure of items of
10 evidence once Mr Mokom's permanent counsel is appointed in accordance with the
11 time limits specified in the Chamber's order of 27 June 2022.

12 With reference to material under Rule 77, the Chamber underlined that the
13 Prosecution shall provide disclosure notes for this material by using the appropriate
14 code. It also instructed the Prosecution to provide certain clarifications in respect of
15 the court filings, transcripts and other material from the Yekatom and Ngaïssona case
16 for which it intended to request Trial Chamber V to grant access to Mr Mokom.

17 I think we haven't heard from the OTP since.

18 In view of the appointment of permanent counsel, the Chamber issued the order for
19 observations and a decision on the Prosecution's request for a status conference on 24
20 January this year with filing 138, specifying that in line with the previously
21 established time limits, which will remain, the Prosecution is to complete disclosure
22 obligations by no later than 23 February 2023; submits any request for redactions not
23 falling within standards -- categories, non-disclosure of identities of witnesses or
24 non-disclosure of entire items of evidence by no later than 13 February 2023; and
25 submits the document containing the charges, together with an annex bringing

1 a detailed explanation of the supporting material or evidence by no later than 9
2 March 2023.

3 On 2 February 2023, the Chamber issued the decision regarding the Prosecution's
4 submission on material in the Yekatom and Ngaïssona case to which access may be
5 authorised. This was filing 147.

6 The Chamber considered that any access to material forming part of the Yekatom and
7 Ngaïssona case record that may be granted by Trial Chamber V does not
8 automatically displace the Prosecutor's formal disclosure obligations in the present
9 proceedings against Mr Mokom. The Chamber, therefore, has instructed the
10 Prosecution to comply with its disclosure obligations, including the disclosure
11 deadline of 22 February -- 23 February this year. And finally, the Prosecution must
12 discharge the established disclosure obligations regarding any material from the
13 Yekatom and Ngaïssona case record to which access may be granted.

14 Now there is also a request which came in this morning. I will refer to this later on.
15 But now, as I stated previously, the Chamber has convened this status conference
16 with the permanent counsel and of course the Prosecution to discuss matters relating
17 to the disclosure process.

18 There were other matters which the Prosecution was raising in its filing request to the
19 status conference in its filing 126. This will be addressed with separate orders or
20 decisions. We are not going to discuss them now.

21 Now fundamentally, what we are here to hear from the Prosecution and the Defence
22 is where are you with the process of disclosure; so achievements in the disclosure
23 process. The Prosecution's preparation, organisation of the evidence it intends to
24 rely upon for the confirmation hearings, material to be disclosed under Rule 77 of the
25 Rules of Procedure and Evidence, and the evidence disclosed as potentially

1 exonerating.

2 The Prosecution's ongoing investigations and change -- any change or update on
3 request for non-standard redactions, identity redactions pursuant to Rule 81(4) of the
4 Rules and non-disclosure of entire items. So these are fundamentally the matters.
5 Mr Vanderpuye, you know that these are the matters, so I give the floor to you to
6 make your submissions on this.

7 MR VANDERPUYE: [9:57:10] Thank you, Mr President.

8 First, I want to thank the Court for convening the status conference, which I think is
9 important to elaborate some of the issues that we have raised concerning disclosure
10 matters.

11 Let me start with the last thing that you mentioned, which is any change regarding
12 the request for non-standard redactions. We don't have any changes at this moment;
13 so we seem to be okay in terms of any sort of request that might arise. It looks like
14 that everything will be all right.

15 In terms of the disclosure process - I believe Mr Larochelle was assigned a couple of
16 weeks ago now - and we've begun the disclosure process, we have almost completed
17 the disclosure processes that concerns the incriminating information we intend to rely
18 on for the purposes of the confirmation hearing. We have also substantially
19 completed the disclosure for Rule 77 material.

20 I do want to emphasise that we've taken to heart the Chamber's concern about the
21 scope of disclosure and the limited purpose of the confirmation process and
22 confirmation hearing, indeed, it's preliminary nature, in a way in making the
23 assessments as to what is truly material for the preparation of the defence in this case.
24 There are parts of the disclosure process concerning Rule 77 that we are still working
25 on, and I will come back to that in a moment when I give you some numbers to let

1 you know exactly where we are on it.

2 There are number of items that are associated with the witnesses that we intend to call.

3 A fair amount of that information is really not material at all to the preparation of the

4 defence, but it's -- we're talking about material that witnesses have provided during

5 the course of their interviews or which are completely irrelevant to the charges as we

6 anticipate in this case or have marginal or virtually no value.

7 For instance, we have one witness who was a journalist who provided us with

8 a number of photographs, thousands, in fact. The photographs were processed so

9 that we have the actual photographs.

10 Then we have part of the metadata for the photographs, and then yet another part of

11 the metadata for the photographs, totalling almost 10,000 items. Those are the kinds

12 of things that we have effectively excluded from disclosure because they are not of

13 any value to the confirmation hearing. And there are number of other such -- not

14 identical but similar situations and we are going through that as well and so we

15 expect that we will be able to clear that relatively soon.

16 So I'll come back to -- now, just the numbers to give you an idea of what we are

17 talking about.

18 I think in the last status conference I indicated to the Chamber that we expected to

19 rely on about 1,000 documents to support the document containing the charges. We

20 have identified about 7 -- or 800, yes, about -- yes, about 700 items. We have

21 additional items which include documents concerning telephone attributions because

22 we intend to establish certain communications through the use of call data records

23 and we have to obviously substantiate the attributions of the numbers.

24 Those documents will also be disclosed and part of the incriminating information

25 here, and they will be specifically indicated as such so that the Defence and the

1 Chamber know exactly what the documents are used for. Often time those
2 documents will contain other information and so it's important that we have this
3 designation so that the Chamber and the Defence are aware of the limited purpose for
4 which they are being used.

5 In terms of the potentially exonerating information, we are still going through those,
6 but we fundamentally have cleared that back in, I think it was November, maybe
7 earlier, I can't recall exactly the date; so we've essentially cleared those. But as and
8 when we come across them during the course of our continuous review, we will let
9 the Defence know about that.

10 So thus far we have disclosed 805 items of incriminating information that was related
11 to the warrant application back in July, I think it was. We have also now
12 additionally disclosed another 700 items and we will disclose, as I indicated, the CDR
13 records and the supporting information regarding that and that will come to about
14 another 800 items, and we've disclosed about 115 -- or items of potentially
15 exonerating information. We have also disclosed 912 items under Rule 77. All of
16 those items have been properly designated as the Chamber has directed in the order
17 regarding the classifications of Rule -- R77, Rule 77, INCRIM and PEXO. We will
18 disclose another 288 documents in the next disclosure package.

19 We have -- I can give you the breakdown of the Rule 77 documents. I don't know
20 how helpful that will be to you, but if you want, we can provide that to you.

21 We have identified a pool of, as I mentioned, documents that are related to the
22 witnesses that we are calling as well as documents that are related to witnesses that
23 we are not calling. With respect to the documents that are related to the witnesses we
24 are calling, we have identified about 1,200 items that we consider fall within the scope
25 of Rule 77 that we will also provide to the Defence. We are still going through that

1 and we expect to be able to clear that shortly.

2 And then with respect to the documents that are related to witnesses that we are not
3 calling, it's a much larger pool. We are evaluating that to determine whether or not
4 that is indeed Rule 77, or material to the preparation of the defence in this case. At
5 the moment we don't believe that that is the case, but we are reviewing that and we'll
6 make that determination I think accordingly.

7 I think that about covers it in terms of the numbers that we have here.

8 In terms of the ongoing investigation, we have indicated to the Chamber I think in
9 our most recent update that we are operating in the field -- in fact as we speak, and
10 we have foreseen to conduct, I believe, it was about eight screenings and interviews in
11 March -- in February of 2023. We are still conducting those because those were
12 planned obviously well in advance of the appointment of permanent counsel.

13 We did indicate in our communication with the Chamber that we would adjust that
14 as necessary in order to ensure that the proceedings can go forward expeditiously and
15 efficiently and so we're revising that. But I would say that at this moment, we are
16 actually in the field conducting interviews and screenings that may be important to
17 the confirmation process and the charges that we bring.

18 Obviously if we are unable to conclude those investigations in a manner that is
19 conducive to the expeditious conduct of the confirmation process, then we'll have to
20 find some other way to do it and we'll adjust it accordingly.

21 But at the moment we are still hopeful that we'll be able to achieve that within the
22 disclosure deadlines that the Chamber has set. If not, with appropriate justification,
23 we'll seek the Chamber's leave if the information is germane enough and important
24 enough to put the process going forward.

25 A couple of things that I wanted to add is, I read the Chamber's decision recently and

1 that is part of the subject matter of our application that we filed yesterday evening
2 concerning the disclosure -- the application of the disclosure regime to material that
3 was -- that may be -- that access may be provided for the Mokom Defence and
4 Mr Mokom.

5 So first let me update the Chamber on the process of access which I think is important.

6 With respect to the access motion, the Chamber will recall that we filed an access
7 motion essentially on behalf of Mr Mokom back in April -- I think it was 8 April 2022.
8 That application was disposed of by Trial Chamber V in August of 2022, in part,
9 rejecting our application,

10 but also providing for us to discuss with the Defence in that case whether they had
11 objections to particular material that we had proposed Mr Mokom should gain access
12 to and that related to confidential exhibits, filings, transcripts and the like.

13 After our last status conference in September, we discussed with the Defence in the
14 Yekatom and Ngaïssona case what their position was with respect to, at the very least,
15 the transcripts and certain filings that we made related to witnesses in this case under
16 Rule 68(3) and 68(2).

17 We heard back from the Defence at the end of November and those
18 transcripts - subject to the clarification of Trial Chamber V as of a couple of days ago,
19 maybe Friday, I think it was - had been identified to the Registrar so that access could
20 be granted to the Mokom Defence. I don't know where the Registrar is in terms of
21 the actual physical access of those documents, but I know that the request has gone in
22 and that it should be happening soon, if not it hasn't happened already.

23 With respect to the filings, a similar list will go -- I don't think it has gone yet, but will
24 go to the Registrar so that those items can also be provided to the Mokom Defence.

25 So they will have access to that.

1 In terms of the exhibits that are used or confidential exhibits used in the case, those
2 will likely be the subject of our independent disclosure because they're too numerous
3 in that case to provide a list that would be effective for the Registrar to disclose. And
4 we haven't settled the issue with respect to the Defence in any event; so it will be
5 limited to the material that it's in our possession that we can disclose independently
6 of the access issue.

7 The subject matter of our filing relates to a provision in the Chamber's recent
8 order -- finding, I believe it is, which indicates that for material to which Mr Mokom
9 may be authorised and granted access that there's a disclosure obligation. But I
10 appreciate that, Mr President, your clarification of that obligation at the outset of the
11 hearing, which I think may actually answer the motion, you'll have to see if it does,
12 but I think it -- what you said earlier, that the mere fact of access does not necessarily
13 discharge the Prosecution's disclosure obligation is right and that's essentially the
14 clarification we were seeking.

15 I would add though that the access to material may have a bearing on the
16 disclosability of the same material and I think that that is something that perhaps
17 requires some clarification.

18 But aside from that, I would say that in a large part, the access issue has been taken
19 care of or will be taken care of within the next couple of days.

20 And I will add to that also that one of the reasons that we had petitioned the Chamber
21 to provide -- to authorise the migration of the information that is contained in the
22 Yekatom and Ngaïssona case was to facilitate Mr Mokom's access to material that he
23 may find has a bearing on his preparation as well. That I understand and everyone
24 acknowledges is a completely separate issue than what otherwise obtains under this
25 disclosure regime. But we proposed that in the absence of disclosure at that time

1 because counsel hadn't been appointed and there was no authorisation to otherwise
2 disclose material so that Mr Mokom and his Defence would have access to
3 information as soon as possible, irrespective of whether that material was otherwise
4 disclosable within the constraints of the disclosure regime and the E-court Protocol.
5 So with respect to that information, with the Chamber's authorisation, I think it was
6 on 30 November of last year, we began the process of migration together with the
7 Registry. I believe some 28,000 -- no, there was more, 30, 31 or 32,000 items were
8 identified to be migrated; 28,000, in particular, had a technical problem; in other
9 words, it just couldn't be done. Smaller packages had to be identified and
10 re-identified and so on and so forth. In effect, the Registry managed to migrate that
11 material last week, 28,000 items were put at the disposal of the Defence. A further
12 3,000, I believe, were also released. And so the Defence has at its disposal - separate
13 and apart from any disclosure or anything else - access to 32,624 items.
14 As I mentioned, those items, although they don't come with the metadata pertinent to
15 this case, do come with metadata which will facilitate searches that the Defence can
16 run. So for instance, if they wanted to, they could run Mr Mokom's name in the
17 documents that are there or in the metadata that is there and ascertain which
18 documents reference -- refer to Mr Mokom in their content or in their accompanying
19 metadata, which obviously improves their ability or facilitates their ability to prepare,
20 which we still think, irrespective of disclosure, is helpful to the Defence's preparation
21 for the confirmation proceeding which has now been set for 22 August.
22 So that, in a very long nutshell, is where we are standing in terms of disclosure, in
23 terms of our investigations.
24 Now you wanted to know about preparation, organisation of the evidence on which
25 we intend to rely. I think we've done that. We're very close, indeed, the DCC is

1 written, it requires some editing, it requires some review.

2 As it stands, it's about 26 pages, which I think is not bad. We're working on the
3 annexes. The first is the primary annex that the Chamber indicated is sort of an
4 analytical annex; so we're working on that. I think we can manage.

5 We do have the special issue of the CDR analysis. I don't know if the Chamber
6 recalls -- or the presiding Judge anyway recalls in the last case we had an annex
7 concerning the CDR that was in excess of 500 pages. We don't propose to do that in
8 this case, but that is to say that the CDR analysis and annexes tend to be voluminous
9 and they're necessary for the Chamber's understanding of what the evidence means
10 in terms of the substance of the charges in this case, and, in particular, to some extent,
11 the mode of liability.

12 So we would propose -- and I don't think that the order specifies a limitation in terms
13 of the annex that should be provided -- or annexes that should be provided with the
14 DCC, but we would ask the Chamber to consider allowing us to provide at least an
15 annex of that nature because it is distinct, it's not something that can be squeezed into
16 the 60-page allotment for the analytical annex that the Chamber has identified.

17 I think that's -- I think I've covered just about everything, if -- but I'm at the
18 Chamber's disposal for any questions you may have or elaboration.

19 PRESIDING JUDGE AITALA: [10:15:55] Well, thank you very much. Before I give
20 the floor to the lead counsel, since you mentioned the DCC, the document containing
21 the charges, can you give us an indication. Are you going to extend or narrow the
22 allegations against Mr Mokom as compared to the arrest warrant?

23 MR VANDERPUYE: [10:16:16] It's a very good question, a fair one.

24 PRESIDING JUDGE AITALA: [10:16:19] Thank you.

25 MR VANDERPUYE: [10:16:20] It's a bit of both. We do intend to extend it, if you

1 will, in one way -- and I can be more specific. We intend to pursue charges in
2 relation to forcible transfer and displacement in Bangui; that is charged actually
3 under the warrant but it's more narrow. And it concerns an area known as Boeing,
4 which is not Bangui per se, but it's slightly different. It's, let's say, a suburb. So in
5 that sense I would say it's extended, although the charge itself is fundamentally the
6 same.

7 It's also narrower than what the warrant charge is because the warrant, as you will
8 know, charges conduct throughout 2014 in various provinces. We are charging
9 some of those, not all of them and not all of the crimes. So in that sense, it is much
10 narrower. And that's all I can tell you at the moment.

11 I think effectively what we're charging in the provinces would be forcible
12 displacement, would be also deprivation of physical liberty, persecution and there are
13 some acts around that, but we are doing that in relation to one, two -- three provinces,
14 I believe, as opposed to I think it was five or six in the last case, and certainly fewer
15 crimes related to that.

16 So in that sense it's much more focused. The hope is that that will facilitate the
17 expeditious conduct of the proceedings as well as manage more effectively the
18 burdens on the parties and the participants and the Chamber.

19 PRESIDING JUDGE AITALA: [10:18:10] It is our hope as well. Thank you very
20 much.

21 Now, Maître Larochelle, while giving you the floor, let me also add this, regarding
22 this request for clarification from the Prosecution, of course, if you want to say
23 anything on it, you are allowed to do so, but the Chamber wishes to receive your
24 written submissions on it by Friday.

25 But of course if you want to make any observation of it, we are happy to hear it and

1 the Prosecution is here. But anyway, you are formally instructed to provide your
2 submissions on this by Friday this week. Okay. Thank you very much.

3 Now the floor is yours.

4 MR LAROCHELLE: [10:18:56] Thank you, your Honour. What we will do is, we
5 will provide written submissions by Friday. I'm just in the process of catching up
6 with a lot of things in this case, as you can imagine, and, let's discuss disclosure,
7 your Honour. The Prosecutor called it a "pool". For me at this stage, it's more like
8 an ocean of material that I'm still trying to figure out and distinguish. There are -- as
9 much as I can count, there are for the moment, 32,793 documents both migrated and
10 disclosed and out of which a mere 1,849 have been marked in a way that I can discern
11 what's their use, are they exculpatory or incriminating or are they simply falling
12 under Rule 77.

13 So I'm in lack of a fishing rod - a very good one - to be able to catch what's in that
14 ocean and use it for meaningful purpose. And as I mentioned to your Honour
15 earlier on, for example, yesterday night, we received -- I think there was a filing
16 informing you of what we have received. We have received in one of the package,
17 the one -- the Rule 77 package, 001, which contains 792 documents, out of the 792
18 documents, there are 650 call data records, which are marked as being entirely
19 relevant under Rule 77.

20 For me, I'm still trying to double guess what exactly -- it would helpful if I could have
21 a short paragraph maybe, telling me why these lists of phone numbers are -- what,
22 actually, what would be interesting is to -- I don't know want to know how the
23 sausages are made in the Prosecution office of course. But what is the intellectual
24 process that led to the decision of marking a given CDR as relevant under Rule 77?
25 A sentence will do, you understand. But we're talking of -- you know what CDRs

1 are, they are endless lists of phone numbers calling each other. If I'm just being told
2 that this endless list of phone calls is relevant under Rule 77, surely I can be given
3 a little more and know -- I mean, we don't need to have a ruling or anything on that.
4 I'm just giving your Honour an example of where I'm coming from. I will write an
5 email to Mr Kweku this afternoon and I will ask him, Can you help me see through
6 this. You know, maybe give me a better understanding of how this is organised.
7 How this came to be and how this came to be marked as Rule 77. How this came to
8 be marked as incriminating or exculpatory evidence.
9 So there's very little -- I'm at the end of this, at the receiving end of this process, of
10 course, you can imagine. I think your Honours took good decisions to make that
11 process more efficient by ordering the Prosecutor to precisely do that, but I think we
12 can go a little further in that exercise and maybe request the Prosecutor to give us
13 a hint or some indication when I have material -- I'm just taking an example here, but
14 when I have material like that to understand, especially if we are now announced
15 a special annex of CDRs that will be joined to the document containing the charges, I
16 think it would make more sense for me to be able to exploit that, to analyse that in
17 due time and early enough to be able to use it or discard it if I don't find it to have any
18 relevance or useful purpose in the case. That's one of the things that immediately
19 came to mind at this stage.
20 I will of course provide written submissions by Friday, but what we want to avoid I
21 think is precisely that, to be dumped another ocean of material and being condemned
22 to only, and, with all due respect, to search the name of "Mokom" in the ocean. I
23 don't think that that's helpful material. The Prosecutor has years of working in that
24 case, he can -- if he can organise, if he's at a stage where he has in mind a 26-pages
25 DCC, and he already knows that some charges will be narrowed -- both narrowed

1 and expanded, so I think there's a very fine understanding of the material he has and
2 what he has in store.

3 Of course I'm waiting to see what we're going to receive on the 23 February, if my
4 memory serves me right, where the remaining of these 32,000 documents should
5 normally be marked in a meaningful purpose. I will definitely revert back to the
6 Pre-Trial Chamber and tell your Honours whether there are other difficulties such as
7 the one I alluded to earlier on.

8 But I will keep the Pre-Trial Chamber informed as we swim in that ocean of
9 disclosure and try to find the material, whether what is identified -- because I cannot
10 even tell you if what is marked under these different categories is actually done so in
11 a way that I can comprehend the process or is assisting me in preparing.

12 I will keep the Trial Chamber informed as we discover and analyse this. But I'm
13 sorry that I'm not in a position to offer you more this morning. These are just some
14 shorter maybe submissions than the Prosecutor, but again I can only undertake to get
15 back to you as we have a finer understanding of what we're dealing with.

16 PRESIDING JUDGE AITALA: [10:25:19] Well, thank you very much, Mr Larochelle.
17 Now, the Chamber is acutely aware of your position and this is one of the reasons
18 why we have called this status conference. Now -- for now, we will be relying on
19 direct contacts and we hope that the Prosecution will be able to disclose meaningfully
20 evidence of material, which doesn't mean simply throwing them at the Defence, not
21 only because the counsel has just undertaken his job, but this is more generally an
22 obligation of the Prosecution.

23 What the Chamber has also done is taken this fully into account where we have set
24 the hearings for 22 August, despite of course we were anxious to go faster because
25 these proceedings have gone longer than we would expect and longer than we

1 usually -- they usually do in this Pre-Trial Chamber. Anyway the time limits are
2 quite strict and I think they give a comfortable time to the Defence and, again,
3 without any formal instructions, again the Prosecution will have to be as cooperative
4 as possible and help the Prosecution because, you know, like in the example that was
5 given, just simply throwing numbers like this is not really meaningful, is it? And so
6 yes, of course you'll be allowed to speak, but this is in general what we would like to
7 see.

8 As far as the request for clarification, of course, Mr Larochelle, it is perfectly
9 understood. It came as a surprise to us as well; so you take your time until Friday to
10 make your submissions. On the DCC, the Prosecution is not bound now to tell us
11 exactly what they are going to do. They say there is a time limit. We understand
12 that there will be certain changes back and forth as compared to the arrest warrants
13 and we hope, especially, that the instructions of the Chamber will be taken very
14 seriously as far as quality of the documents is concerned.

15 Mr Prosecutor, do you want to say anything?

16 MR VANDERPUYE: [10:28:07] Yes, just briefly, Mr President. And I can
17 understand the confusion, if you want to put it that way, concerning the disclosure
18 process, particularly coming in new as Mr Larochelle has.

19 But I wanted to just draw a very important distinction, which is that the migrated
20 documents - the 32,000 documents, for example - as I think I mentioned in the last
21 status conference, that constitutes what was disclosed in the context of the trial, which
22 is substantively distinct, I think quite clearly, from the limited scope of the
23 confirmation of charges proceedings and process.

24 So what we've done is try to put at the disposal of Defence counsel pretty much
25 everything that's in the trial. But that doesn't mean -- you know, does it translate

1 into material that is Rule 77 -- for Rule 77 purposes in this limited proceeding in this
2 scope, which is why I said at the outset we've taken the Chamber's direction to
3 disclose the material that is most germane and relevant to the proceedings as such as
4 opposed to another proceeding or another phase of the case down the road.

5 So I wanted to draw that important distinction because I think it makes a big
6 difference.

7 With respect to the pool of documents we're dealing with in this case that we've
8 considered are Rule 77, potentially exonerating or INCRIM, and we're talking about
9 somewhere in the neighbourhood of 3,000-and-some-odd documents. Not 30,000,
10 which is what we consider is more specifically geared and targeted towards the
11 limited scope of these proceedings.

12 That said, there's still access, if you will, or migrated documents the Defence can fish
13 around in and they can see whatever they can see out of those documents. But in
14 terms of our assessment of that evidence, in terms of its materiality to this process, it
15 is far, far much limited. So that I think is an important distinction.

16 With respect to the CDR, for example, we have identified the CDR that we will rely
17 on. These are going to be CDR containing Mr Mokom's number, his close contacts
18 and things of that nature. The CDR that may be relevant that we consider are Rule
19 77, which Mr Larochelle was just referring to, will concern contacts between other
20 people within the Anti-Balaka structure, within the Anti-Balaka command or even
21 within provinces that are not going to be the subject of the charges, which may be of
22 interest to the Defence, but certainly are not being relied on us and are not germane to
23 the issues in this case. So that's the important distinction there that I just wanted to
24 make. But I'll -- we'll talk, we'll discuss as we always have and we'll sort it out.

25 PRESIDING JUDGE AITALA: [10:31:10] Mr Prosecutor, I have another question.

1 Would reference to migrated materials in Rule 77 materials, you said -- I quote, you
2 said:
3 Metadata pertinent to this case and metadata that will facilitate searches.
4 What does it mean exactly?
5 And how does this comply with your disclosure obligations?
6 Can you please explain.

7 MR VANDERPUYE: [10:31:44] Yes, Mr President. There's a distinction between
8 the migrated material and disclosed material in this case. The migrated material is
9 simply -- and it's not quite access, but it's simply, I would describe it as a copy of the
10 information that we've disclosed in the Yekatom and Ngaïssona case, which is then
11 put into the case record here or rather an access.
12 What that means is, the information that explains its relevance and things like that in
13 the metadata in the Yekatom and Ngaïssona case is not transported to this case in
14 whole. There are parts of it that are.
15 So for example, in the Yekatom and Ngaïssona case, a migrated document will have
16 a disclosure timing value, a disclosure date, which it will not have in the Mokom case
17 because it hasn't been -- it hasn't been disclosed, there's no disclosure timing value.
18 So that metadata isn't there.
19 So Mr Larochelle couldn't say, I need to look up the disclosure date of this document
20 from the migrated material because it isn't there.
21 What he could do though, is he could look to see in the migrated material, does this
22 material mention Mr Mokom. Is it a document which has his name in it. Is it
23 a document that has his title in it. It is a document concerning the Anti-Balaka. Is it
24 a document dated, you know, in the relevant period between 2012 and 2014. All
25 those things he can still do.

1 What he can't do is to know whether or not for the Mokom case, it is something that
2 we're relying on, something that we consider to be Rule 77. So it's available to him
3 and he can conduct limited searches as I think I mentioned before. I'm not sure I've
4 named all of the criteria but there are several: Date, title, description, timing and
5 content, which is a substantial amount of information that he can use to structure
6 searches and to identify what he may consider to be helpful to his defence, but we
7 haven't otherwise made that determination. With respect to disclosed material, that
8 is material that we have determined that we consider to be material to the preparation
9 of his defence and we'll disclose those. And that's what I'm referring to when I say
10 the total amount of that material so far as we've identified is around 3,000-some-odd
11 documents, although he's got a fishing pool, if you will, of 30,000, that if he wants to
12 check out, he can check out. But -- and it will also include obviously the ones that
13 we are otherwise disclosing. So if we do the same types of searches, if he does the
14 same types of searches, he'll come up with roughly the same documents that we've
15 already identified as well.

16 It's just to have something at his disposal so he's not just sitting around waiting for us
17 to get around to give him the disclosure; that was the point of it. I hope that helps a
18 little. I can try again if you have a further question on it.

19 PRESIDING JUDGE AITALA: [10:35:14] Mr Laroche, do you want to say
20 anything?

21 MR LAROCHELLE: [10:35:16] Just briefly, your Honour. First, I'm conscious of the
22 limited process of the confirmation hearing, yet not all charges get confirmed. Some
23 cases even get completely thrown out. My first case here was Mbarushimana who
24 got none of his charges confirmed. So there's important work to be done, even if
25 it's -- it's not a rubber-stamping exercise, and we are certainly entitled to look into the

1 material and undermine as much as we can and fight. And I understand even from
2 my limited understanding that even from the Yekatom and Ngaïssona, many of the
3 charges were actually not confirmed by the Pre-Trial Chamber. So I don't want to
4 limit myself or to restrict the rights that Mr Mokom has to fight with all the means at
5 his disposal and that includes all the material that is currently being, as we speak,
6 generated in the Ngaïssona and Yekatom case.

7 And, again, I think the decisions that were taken are going in the right direction to
8 allow us to use that material in a meaningful way.

9 I think we have to keep in mind also that the case of Mr Mokom is different. The
10 case of Mr Mokom, most of the time he is not even present at the areas or the
11 locations where the allegations are said to be happening. So searching for
12 Mr Mokom's name in those circumstances has a very limited use or will be of very
13 limited use for preparing in knowing whether these allegations should pass the test of
14 being confirmed.

15 And coming back -- I'm glad we heard Mr Kweku talking about these CDRs. We
16 already know something now. They concern people talking within the Anti-Balaka
17 organisation. Thank you. If we could have names now of these people and
18 a better -- and, again, there was a whole intellectual process that led to the -- I would
19 imagine that it's not fishing, as we are content to do, that there is a rational process
20 that led to the inclusion of 650 CDRs within materials that are meant to be relevant
21 under Rule 77. Who's talking? Who is exchanging on these phone numbers? And
22 why was it? You, Defence, you should look at that, it may be relevant. But
23 that's -- when -- at first look, your Honour, it is dizzying to some extent because you
24 just -- you don't know who is it, you don't know why. We are a bit blindfolded with
25 regard to that material and that only applies to the CDRs I've been mentioning. I

1 undertake to -- I mean, we don't need to have a status conference every week. We
2 can -- we are adults and we are professional. I will send emails to complement what
3 I'm saying today to make sure that we have a meaningful access to the material that is
4 provided and we will complement that with observations this Friday.

5 But this is just a quick reaction on what we're told this morning by the Prosecutor,
6 your Honour. I thank you for your attention.

7 PRESIDING JUDGE AITALA: [10:38:40] Well, thank you.

8 Now here, the problem is, Mr Prosecutor, you know, what you're saying, you say that
9 the Defence would have to look at every individual item -- 30,000 items to make
10 a search or? I mean, this is really ...

11 MR VANDERPUYE: [10:38:58] Sorry, it's my fault. No, that's not what I mean.

12 What I mean is, there are, for the Defence in this case, multiple sources of information.

13 The first is material that has been migrated. That's one.

14 The second will be material to which Trial Chamber V provides access. That's two.

15 The third will be information which we, the Prosecutor, have identified for this
16 purpose, for this confirmation process, is disclosable. And I say that with emphasis
17 in a capital "D". Migrated material is not disclosed within the paradigm of the

18 Court's procedural framework. Access material is not disclosed within the paradigm
19 of the Court's procedural framework.

20 For the purposes of disclosure in this case, the Prosecution makes an evaluation of the
21 material in its possession and control and determines what it considers or believes to
22 be material to the preparation of the defence in light of the charges that are brought,
23 the circumstances of the case -- facts and circumstances, and, of course, the scope of
24 the procedure and proceedings, which is fundamentally distinct and distinguishable
25 from the proceedings in the Yekatom and Ngaïssona case because that case is in an

1 advanced process of trial, which this case isn't.
2 What we've done is we've said, effectively to the Defence: You can look into what's
3 gone on in the Yekatom and Ngaïssona case because it's a related case, but that
4 doesn't translate into all of the material in that case is necessarily relevant or material
5 to their preparation in this case per our evaluation. They may feel differently about
6 it, but our view of it is, it's not necessary for the purposes of the confirmation process
7 and the scope of the confirmation process, which is effectively preliminary unlike
8 a trial.

9 Mr Larochelle, he is entitled to have his views on it, but fundamentally what
10 determines whether material is disclosable is in the judgment of the Prosecution in
11 light of the circumstances of the case, and as may be brought to the attention of the
12 Prosecution otherwise by the Defence or even by the Chamber.

13 So with a fundamental distinction between what he has access to and what we
14 consider is disclosable, which we're disclosing, which in this case I've indicated is
15 probably around 3,000-and-some-odd documents, maybe four.

16 What he has access to and what he can look at, if he wants, is a cabinet full of
17 documents and there's 30,000 of them. So that's the fundamental distinction between
18 the two. In terms of how we evaluate the process and what we use and what criteria
19 we use to determine whether something is material or not, that obviously is not
20 a disclosable issue; that's an internal issue. It is done in good faith as the Chamber
21 knows and it is done persistently throughout the life of the case, but that's a totally
22 separate issue. What the Statute requires is the disclosure of the documents, not the
23 manner in which the Prosecution came to make that decision.

24 In any event, Mr Larochelle has at his disposal also the arrest warrant in this case,
25 which details the facts and circumstances that are relevant from which he can make

1 those assessments as well as I believe is the warrant application. So he can make the
2 assessment to determine this is relevant, for example, the CDRs because the
3 Prosecution has alleged in the application for warrant that Mr Mokom was in contact
4 with a number of people; that a number of people were in contact with each other;
5 that a number of people were in contact with the National Coordination of which
6 Mr Mokom was a member.

7 So there's information already at their disposal for them to determine why the
8 Prosecution has deemed certain information relevant or material or not, and that
9 takes the form of the warrant as well as the ancillary documents surrounding it, and,
10 furthermore, maybe some confusion arises because the disclosure is preceding the
11 DCC itself. So you won't realise why is this relevant, why is the Prosecution relying
12 on it, why is it material, until he actually sees the DCC.

13 If after he sees the DCC he concludes, "I want this information or I want that
14 information or this may be material or other", then I think that it's a fair point at that
15 point to address it. But otherwise it's premature and it's not necessary at this stage.

16 PRESIDING JUDGE AITALA: [10:44:13] Well, here, there are two problems. First
17 is that if you're saying that there are 30,000 items, and now the Defence to make
18 sure it's not missing anything, would have simply to glance at titles and taking, let's
19 say one minute per document, this will take months to do, 30,000. It will take
20 months.

21 So we need to do things in a way that realistically the Defence can do its job. And
22 one minute per 30,000 would probably be four or five months' full-time, wouldn't it?
23 And secondly, I mean, why migrated materials are different from Rule 77 in your
24 view? Can you explain this because this is not clear to the Chamber.

25 MR VANDERPUYE: [10:45:02] I can give you a very stark example, which may

1 disappoint you.

2 I mentioned before that we had a witness, for example, who had provided 8,000
3 photographs of various locations in the Central African Republic. Those 8,000
4 photographs came with almost twice the number of metadata items: date, time,
5 place, type of camera, type of aperture, lighting conditions and so on. Each one of
6 those documents is a discrete document. So you can imagine -- 8,000 photographs,
7 4,000 metadata items, other 4,000 metadata items regarding those photographs.

8 We consider of the 8,000 photographs and associated metadata items, 300 of them are
9 relevant for the confirmation process. All of those items will be migrated. So the
10 300 that we've already identified as is material to the preparation of the Defence in
11 this case, plus the other 7,700 documents and the associated metadata, more than
12 10,000 items, for instance, that aren't material to the preparation of the Defence, that's
13 a good example of why there's a difference between the migrated documents and the
14 Rule 77 documents, for example, in this case.

15 And we have a number of documents. So I will give you another example. We
16 have a video, and a video that is disclosed in the Yekatom and Ngaïssona case
17 concerning the acts and conduct of say Mr Yekatom or one of Mr Yekatom's elements
18 in some field somewhere for which Mr Mokom is not being charged at all. We
19 would say while he has -- he has access to that information through migration, it's
20 clearly not relevant to the charges as we may have conceived them in this case.

21 That means the metadata -- that means the video is out, the transcription is out, the
22 translation is out, the draft translation is out, although he has -- all that stuff is
23 migrated and he can look at it if he wants to, our determination is that it has
24 absolutely nothing to do with the preparation of this case. He can make an
25 independent determination, but our evaluation is clearly not. And this is how we

1 arrive at a more distinct number -- a more constrained number than the 30,000 that
2 are in the trial case.

3 I hope that's better.

4 PRESIDING JUDGE AITALA: [10:48:01] Mr Larochelle.

5 MR LAROCHELLE: [10:48:02] I'm sorry, your Honour, I feel I'm more
6 confused after the answer of the Prosecutor than before. The 300 documents, I'm not
7 sure if they are migrated, if they are relevant for the Defence, or if they are going to be
8 used for the confirmation hearing. I'm sorry, I really tried really hard to follow what
9 was explained by Mr Kweku. I'm not clear at all about what is the difference now
10 between something that is migrated and something that is relevant for the Defence.
11 What I understand is that we're back at square 1 where migrated material can be
12 relevant for the Defence sometimes; it can be used for the confirmation hearings
13 sometimes; or, it can be completely irrelevant at other times.

14 That's what I gather so far, and, again, I'm not sure, are the 8,000 photographs part of
15 the migrated material or not? I'm not sure about that. Is the metadata? So that
16 would be reassuring that out of these 32,000 documents, there are 8,000 pictures of
17 which only 300 are deemed relevant by the Prosecutor. That -- I would take that
18 with a great relief, your Honour.

19 But I have to be perfectly honest that I'm not sure I'm making complete sense of what
20 the Prosecutor has offered in his answer about this material, I'm sorry.

21 MS STRUYVEN: [10:49:24] Thank you, your Honour, I think I'm going to give it a
22 try. And I'll maybe start at the very very beginning. We have identified 800 items
23 as incriminating evidence. Those are in essence and those have been disclosed to
24 you, if all went well, there may be a handful of additional ones, but that is a pool that
25 we intend to rely on for the purposes of the confirmation hearing. These 800 items,

1 they have been identified as incriminating and they're going to be the only ones that
2 are identified as incriminating materials.

3 Then we have about 30,000 other items that we're not going to rely on for the
4 purposes of the confirmation hearing. So you will not find any paragraph reference
5 to any of those other 30,000 items; that will be in the annex. Meaning, the
6 800-incriminating items are the only ones that are going to form the basis of the
7 confirmation hearing annex, let's call it that. Now in the group of the 30,000 other
8 documents, we're basically trying to see which ones we are believing are truly
9 relevant to the preparation of the defence and which are documents that are just
10 relevant to the case generally speaking.

11 Now in that distinction, so you have the pool of 30,000 documents - and, taking into
12 account the instruction of the Judge, which reminded us that we really have to
13 identify what is truly relevant to the preparation of a defence, and taking into account
14 that indeed the Defence cannot review 30,000 documents - we are in the process of
15 identifying within that pool of 30,000 documents, which ones are truly relevant to the
16 Defence.

17 Now in that pool of 30,000 documents, we have identified let's say 3,000 documents
18 that we believe are indeed truly relevant to the preparation of a defence, and the
19 reason that we believe they are truly relevant to the preparation of a defence is mainly
20 because they are actually linked to the witnesses we're going to rely on for the
21 purposes of the confirmation hearing.

22 But again, in the example that my colleague gave of the witness who gives us 8,000
23 photographs, although we intend to rely on that witness for the preparation of
24 the -- for the purposes of the confirmation hearing, we went through the 8,000
25 documents -- or 8,000 photographs and we selected let's say 300 of those 8,000

1 photographs and we said, Okay, the 300 are the ones that we think you need to get in
2 terms of preparation for your defence, but the 7,000 -- 700 others are going to be
3 a waste of your time. So those will not be disclosed as Rule 77. Those will be,
4 however, part of the pool of the 30,000 that, if ever you have nothing else to do, let's
5 say on a Sunday afternoon, you can go and look at them. But in essence we don't
6 believe that you need to even look at them for the purposes of the preparation of a
7 defence.

8 So that is what we're trying to do. We're trying to limit that pool of 30,000
9 documents to those that we believe you should truly look at in preparation of the
10 confirmation hearing and, hopefully, that pool is going to be limited to let's say 3,000
11 items and those 3,000 items are mainly going to be documents that, for example, the
12 witnesses that we rely on gave us. But we're not relying on that document, but it
13 comes from a witness that we're relying on. So then we say, Okay, if we're relying
14 on witness X, and we rely on that witness for the purpose of the confirmation hearing,
15 and that witness gives us 200 documents that we don't believe are really truly
16 relevant to the confirmation hearing, but they come from a witness that is relevant to
17 the confirmation hearing, then that would be a pool that we identify as being relevant
18 to the preparation of a defence and therefore Rule 77.

19 Maybe that last part was a bit confusing, but I don't know if that's may be less
20 confusing.

21 PRESIDING JUDGE AITALA: [10:53:26] Thank you very much. Anything else,
22 Mr Larochelle?

23 MR LAROCHELLE: [10:53:29] Just two short things, your Honour. I'm hearing
24 different thresholds that I don't know whether I should worry about. There's the
25 material that is truly relevant to the Defence on the one hand and then there's the

1 material that is just relevant to the case. There was earlier on also irrelevant material.
2 I just want to be sure that we confine ourselves in those distinctions. And I just want
3 to finish by this, that yes, we're looking at the confirmation hearing but that's just
4 a mid-step. I'm not assuming that there will not be a trial after that. So I don't
5 think you can perform that exercise with just the confirmation hearing in mind. I
6 think it's important already now to be aware of that because the Prosecutor has been
7 at this for years, we are -- we will be to some extent catching up all the way to trial.
8 So I think we cannot use the fact that we are preparing for the confirmation hearing to
9 not do it in a meaningful manner and not making sure that all of the material is
10 properly analysed and its exact usefulness properly conveyed to us. That's
11 just -- that's -- ultimately, that's what I want and that's what we should be all aware of.
12 And I'm definitely hoping that we will not have any issues or problems on March 1st,
13 to the confirmation hearing, but then eventually. Because we will only have a few
14 months after that confirmation hearing to finalise the preparation for the trial itself. I
15 mean, we will not have -- I don't assume or I don't think at all that the Prosecutor will
16 now go back to these 32,000 documents and a couple of thousands of pictures and
17 God knows what and have a new -- have an assessment anew now in terms of
18 determining whether it is relevant for the trial, whether this incriminating, whether
19 this is exculpatory because now we've passed the confirmation hearing and there's a
20 new step coming on.

21 I just want all of us to be aware of that and make sure that we do this once, but we do
22 it properly, your Honour.

23 PRESIDING JUDGE AITALA: [10:55:42] Well, Mr Larochelle, now the scope of the
24 confirmation of charges stage is limited. This is in the Statute and only evidence
25 relevant to the charges has to be disclosed. Now what you're saying is your view,

1 but the Chamber has not decided at all whether there will be a trial; so this goes
2 beyond the duties of the Pre-Trial Chamber. But of course, more generally, if you
3 have any point to raise, you can of course at any stage address the Chamber, and, if
4 necessary, we will convene another status conference or we will respond in writing.

5 A last question I had for the Prosecution, for your colleague, because she's been
6 clearer than you, but you mentioned items you truly consider relevant. Are you
7 going to provide disclosure notes for these items?

8 MS STRUYVEN: [10:56:51] And -- and I can actually specify. So in accordance with
9 our obligations we have gone through typically all documents that are the result of
10 a search and seizure at Mr Mokom's house. We've gone through all the documents
11 that are from Mokom under the Statute -- under Rule 77, we're obliged to look at the
12 documents that are from Mokom, so signed by Mokom. We've gone through the
13 documents that are from the Anti-Balaka, but then have Mokom specifically
14 mentioned. We've gone through the photographs that show Mokom. We've gone
15 through the videos that also mention Mokom and we've gone through the Facebook
16 accounts from Mokom. So that is the pool of the -- typically the documents that
17 belong to the accused in the largest sense. And then, indeed, we've gone through the
18 documents that are from the witnesses that we intend to rely on.

19 For that entire pool we have provided notes, which identify either the specific page or,
20 for example, for the items that are related to the witnesses we intend to rely on, we've
21 specified that in the disclosure note.

22 So in that case we don't have a specific page, but we just have said something literally
23 saying, This document relates to a witness the Prosecution intends to rely on during
24 the confirmation process or something like it. So then it's clear to the Defence that
25 that is the reason why we're disclosing this particular document.

1 So we have provided those notes.

2 The CDRs are actually the only exception to that rule because of course CDRs are only
3 one page. It's an Excel sheet. And so for the CDRs, the idea was that we're not
4 relying on the CDRs that are disclosed as Rule 77. We are only relying on the -- for
5 now, four CDRs that are disclosed as incriminating. There may be a few others that
6 are going to be disclosed as incriminating. But the idea for the CDRs that are
7 disclosed as Rule 77, again was more like if the Defence wants to, for example, put
8 those CDRs in their own analytical tool and run searches with an expert - as you
9 know that's sometimes what the Defence does, they use the CRDs as raw material and
10 they put them into an analytical tool to run other searches - so then at least they have
11 them as Rule 77.

12 But we don't intend to rely on the CDRs that were disclosed as Rule 77. We only
13 intend to rely on the CDRs that were disclosed as incriminating.

14 PRESIDING JUDGE AITALA: [10:59:11] So if I understand correctly, the answer to
15 my question is yes? Okay.

16 MS STRUYVEN: [10:59:17] Yes.

17 PRESIDING JUDGE AITALA: [10:59:19] Mr Larochelle, because we have to -- now,
18 if we manage to -- we have to close at 11. I'm asking the interpreters just to take
19 a few more minutes, we may wrap up, unless it's needed to have another session.
20 Please.

21 MR LAROCHELLE: [10:59:31] I'm sorry, your Honour, but after hearing what the
22 Prosecutor has said. So, do I understand that we have received the totality of the
23 CDR collection of the Prosecutor in this case? Which would be normally the fact,
24 because if these 650 CDRs that we have received last night - we should do our own
25 research, our own analysis and our own work on it to see whether they are relevant or

1 not - I would assume that they correspond to the entirety of the CDR collection of the
2 Prosecutor.

3 A yes or a no will do, your Honour.

4 PRESIDING JUDGE AITALA: [11:00:05] Madam Prosecutor.

5 MS STRUYVEN: [11:00:06] The answer to that is no, because as you know there's
6 also in any typical collection there will be duplicates, there will be all sorts of CDRs
7 that are relevant, not relevant, extra CDRs. However, all the other CDRs, so the
8 third category you have the incriminating CDRs; that's the first category, that's the
9 one that we're going to rely on.

10 Then you have the Rule 77 CDRs; that's the ones that we believe if you want to use for
11 the preparation of your defence, you're welcome to do so.

12 And then you will have the third category, which are migrated CDRs, which are there,
13 even -- even additional CDRs that if you want to -- you know, you want to play with,
14 so to speak, you can do that, but we don't believe you should or it's necessary to do
15 so.

16 PRESIDING JUDGE AITALA: [11:00:51] Well, anyway, the end of the disclosure
17 process is set on 23 February, so there's still a few days to go.

18 Now is there any other point you want to raise? Starting with the Prosecution, any
19 of you. Anything else?

20 MR VANDERPUYE: [11:01:12] No, Mr President. I don't believe so. There was an
21 issue that was raised at the last status conference in private session by Defence
22 counsel, but aside from that issue, as I understood it related to the suspect himself, I
23 don't think there's anything we need to deal with today.

24 PRESIDING JUDGE AITALA: [11:01:35] Do you want to speak about that issue or
25 not? I mean I don't understand.

1 MR VANDERPUYE: [11:01:39] No. I don't want to (overlapping speakers)

2 PRESIDING JUDGE AITALA: [11:01:41] Okay, all right.

3 MR VANDERPUYE: [11:01:41] (Overlapping speakers) I don't know whether or not
4 (inaudible)

5 PRESIDING JUDGE AITALA: [11:01:43] Mr Larochelle.

6 MR LAROCHELLE: [11:01:44] Just briefly, your Honour, the issue of provisional
7 release, which I just want to put on the record that we will file submissions at a later
8 date, but we find it a bit disappointing to see the lack of cooperation from the States
9 that were invited to provide their observations in that matter.
10 We are wondering whether it's normal that Mr Mokom is in a way held hostage by
11 the fact that State Parties refuse to cooperate with the Court in matters of provisional
12 release. But we will make written observations on that matter as there's a time frame,
13 which I think is somewhere in February.

14 PRESIDING JUDGE AITALA: [11:02:26] 15 February.

15 MR LAROCHELLE: [11:02:27] Yes, so we will relay that in our observations at that
16 date (Overlapping speakers)

17 PRESIDING JUDGE AITALA: [11:02:30] We're looking forward to read your
18 observations. I mean, I cannot comment on the States. I mean, you know the
19 Chamber has done what we believe is our duty and we started a procedure, and I
20 mean if you read our decisions, our views are clearly stated there and we triggered
21 the procedure. But we look forward to reading your observation on interim release.
22 So if there's nothing else, then I would adjourn the hearing. I want to thank the
23 interpreters, the technicians, and of course the parties for being here.

24 Mr Mokom, any -- if you have anything else you that want to say since you're before
25 the Chamber, you're allowed to do so.

- 1 MR MOKOM: [11:03:23](Interpretation) Your Honour, I've got nothing further to
2 add. *Merci*.
- 3 PRESIDING JUDGE AITALA: [11:03:33] *Merci -- merci beaucoup*.
- 4 So well then (Previous translation continues) ...
- 5 MR MOKOM: [11:03:34](Interpretation) Thank you so much.
- 6 PRESIDING JUDGE AITALA: [11:03:34] -- then that's it. I thank everyone and I
7 adjourn the hearing. Thank you very much.
- 8 THE COURT USHER: [11:03:49] All rise.
- 9 (The hearing ends in open session at 11.03 a.m.)