



Original: **English**

No.: **ICC-01/14-01/22**

Date: **11 November 2022**

PRE-TRIAL CHAMBER II

Before: Judge Rosario Salvatore Aitala, Presiding Judge
Judge Antoine Kesia-Mbe Mindua
Judge Tomoko Akane

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC II
IN THE CASE OF *PROSECUTOR v. MAXIME JEOFFROY ELI MOKOM
GAWAKA***

Public

**Prosecution's Submissions pursuant to the Chamber's Order on Disclosure and
Related Matters (ICC-01/14-01/22-104)**

Source: Office of the Prosecutor

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I. Introduction

1. Further to Pre-Trial Chamber II's Order on disclosure and related matters,¹ the Prosecution hereby (i) provides further clarity on the envisaged 'migration' of material which is currently part of the *Yekatom and Ngaissona* case record to the *Mokom* case record;² (ii) explains how it intends to discharge its disclosure obligations;³ and (iii) requests the Chamber's authorisation to proceed with such 'migration', and to start the formal disclosure process.

2. Migrating the items disclosed in the *Yekatom and Ngaissona* case to the *Mokom* case record would place those items at the immediate disposal of the Defence, allowing the Defence to start its preparations, even before the assignment of a permanent Counsel. The migration, however, will not constitute the Prosecution's disclosure. Rather, the Prosecution will comply with its disclosure obligations by releasing appropriate meta-data in relation to migrated items.

II. The 'migration' of items disclosed in the *Yekatom and Ngaissona* case to the *Mokom* case record

3. The Prosecution proposes to migrate the items disclosed in the *Yekatom and Ngaissona* case to the *Mokom* case record to assist the Defence with their preparation. Mr Mokom's Duty Counsel was consulted on the matter and agreed to the migration process explained below, recognising that it would assist in, and facilitate the effective preparation by the Defence.

¹ ICC-01/14-01/22-104 ("Order").

² Order, para. 5.

³ Order, para. 8.

a. Type of material⁴

4. The evidence collection in the CAR Situation currently contains approximately 140,000 items of evidentiary material (“items”). In the *Yekatom and Ngaissona* case, approximately 33,000 items were disclosed to the Defence. Upon authorisation of the Chamber, the Prosecution intends to ‘migrate’ these 33,000 disclosed items from the *Yekatom and Ngaissona* case record to the *Mokom* case record. The migration would not concern filings, trial transcripts, or other material.⁵

b. Technical procedure⁶

5. From a technical perspective, the migration would occur through NUIX, in bulk, placing all the documents at the immediate disposal of the *Mokom* Defence, in E-court.⁷ The bulk migration will avoid the more time-consuming, piece-meal transfer of groups of documents from the Prosecution’s data-base to the Defence’s. The items will be migrated with the following metadata fields: Type, Title, Date, Chain of Custody, Confidentiality Level, Basis of Confidentiality, Language, Source Identity, Pseudonyms, Related to Witness, People/Org, and Source/Attachment.

6. Upon migration, the Defence will immediately be in a position to search the migrated material effectively in E-court, both on their content (through content searches), and through the meta-data listed above. As conceived, the migration through NUIX will thus be an efficient means of providing the Defence timely with information which can be immediately used in preparation for the proceedings.

⁴ In response to the Chamber’s question regarding the kind of materials (see Order, para. 5).

⁵ However, if Trial Chamber V grants the pending access request, the *Mokom* Defence will have access to nearly the entire record of the *Yekatom and Ngaissona* proceedings.

⁶ In response to the Chamber’s question how the ‘migration’ would take place from a technical perspective (see Order, para. 5).

⁷ The items are simply ‘released’ to the Defence in E-court so that they have access to them. From E-court, they can be transferred to the Defence’s own data-base.

III. The Prosecution's compliance with its disclosure obligations⁸

7. The migration will not replace the Prosecution's disclosure. Rather, the Prosecution will comply with its disclosure obligations by releasing appropriate meta-data in relation to migrated items.⁹

8. Once the items are migrated, the Prosecution will start its formal disclosure process by labelling migrated items with the relevant disclosure-related meta-data (i.e., the 'legal classification' of the documents, the 'Disclosures' and 'Date Filed'). This formal disclosure process could start either upon the notification of the appointment of permanent counsel,¹⁰ or earlier with the Chamber's authorisation.

9. In the current case, the Prosecution intends to discharge its disclosure obligations as follows:

a. Incriminating items

10. In line with the Chamber's order, the Prosecution is in the process of identifying the items that are 'of true relevance to the charges' taking into account the fact that 'the scope of the confirmation of charges phase is limited'.¹¹

11. Currently, the Prosecution estimates that it will not disclose more than 1,000 items as INCRIM. Thus, if the Chamber authorises the migration, the Prosecution will release appropriate meta-data to indicate their incriminatory nature. In respect of these items, the Prosecution will also identify the sections (pages, paragraphs, etc.)¹² as INCRIM or PEXO ("relevant sections") pursuant to the Chamber's Order.¹³ The

⁸ In response to the Chamber's question how the 'migration' is consistent with the Prosecution's disclosure obligations (see Order, para. 5), and to provide the necessary explanation pursuant to para.8 of the Order.

⁹ For items that don't fall into the migrated pool, the Prosecution will disclose the items in the usual way.

¹⁰ See ICC-01/14-01/22-62, para.27.

¹¹ Cf. Order, para. 7.

¹² The identification will be done in the meta-data field called 'ICC-01/14-01/22 Disclosure Notes' which will list the relevant sections of the item that the Prosecution intends to rely on to substantiate the DCC.

¹³ Order, para. 8.

items concerned will constitute the List of Evidence, and will be referenced in the annex to the DCC and in the Witness Table.¹⁴

12. While the selection of INCRIM items only has to be completed one month after the assignment of permanent counsel,¹⁵ the Prosecution will provide these items, with the relevant meta-data, on an ongoing basis, so they can be analysed by the Chamber and the Defence in a focused manner, as soon as possible.¹⁶

b. Rule 77 items

13. The Prosecution is also in the process of identifying the items that may be considered material to the preparation of the Defence, but that will not be relied upon by the Prosecution to substantiate the charges at the confirmation stage. As indicated during the Status Conference, those will likely amount to approximately 29,000 items out of the 33,000 migrated items.¹⁷ The Prosecution understands that it is not required to identify the relevant sections through a separate meta-data field.¹⁸

c. Potentially exonerating items

14. In respect of potentially exonerating items, the Prosecution already disclosed the items currently identified as PEXO, with reference to the relevant sections pursuant to the Chamber's Order.¹⁹ However, the Prosecution will continue reviewing its collection, and disclose any additional PEXO items as soon as possible in accordance with its statutory obligations.

¹⁴ Order, paras. 9-10. *See also* ICC-01/14-01/22-62, paras. 32, 36.

¹⁵ ICC-01/14-01/22-62, para. 31.

¹⁶ For the 805 INCRIM items already formally disclosed, the Prosecution will provide the meta-data related to the relevant sections on an ongoing basis upon the final decision to rely on these items for the purpose of the confirmation proceedings.

¹⁷ ICC-01/14-01/22-T-004, pp. 9-10, lns. 17-12.

¹⁸ ICC-01/14-01/22-62, para. 29, as opposed to the obligation set out vis-à-vis PEXO items in para. 30.

¹⁹ Order, paras. 8, 12; ICC-01/14-01/22-62, para. 30.

IV. Request

15. In light of the above, the Prosecution considers that providing the material disclosed in the *Yekatom and Ngaïssona* case to the *Mokom* Defence through NUIX migration is an efficient and effective means to facilitate the Defence's preparations.

16. The Prosecution thus requests the Chamber's authorisation to proceed with the 'migration' of the said material and to start the formal disclosure process in the way explained above.



Karim A. A. Khan KC, Prosecutor

Dated this 11th day of November 2022

At The Hague, The Netherlands