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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

THE PROSECUTOR V. MAXIME JEOFFROY ELI MOKOM GAWAKA

PUBLIC

**Mokom Defence Observations on a Proposed Date for the Confirmation of
Charges Hearing**

Source: Philippe Larochelle, Counsel for Mr. Mokom

Document to be notified in accordance with regulation 31 of the *Regulations of the****Court to:*****The Office of the Prosecutor**

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(Participation/Reparation)****The Office of Public Counsel for
Victims****The Office of Public Counsel for the
Defence****States' Representatives****Amicus Curiae****REGISTRY**

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Section Other**

Introduction and Procedural History

1. On 10 December 2018, Pre-Trial Chamber II ('Chamber') issued a Warrant of Arrest for Mr. Mokom.¹
2. On 14 March 2022, Mr. Mokom was surrendered to the Court.²
3. On 22 March 2022, during the first appearance of Mr. Mokom, the Chamber set the date of the confirmation of charges hearing for 31 January 2023.³
4. On 23 January 2023, the Chamber postponed the date of the confirmation of charges hearing to a date to be determined, following the delay resulting from the litigation regarding Mr. Mokom's legal representation.⁴
5. On the same day, the Chamber ordered the Prosecution and the Office of Public Counsel for Victims ('OPCV') to provide by 26 January 2023 observations concerning a proposed date for the confirmation of charges hearing. The Chamber requested the Mokom Defence ('Defence') to provide similar observations by 31 January 2023.⁵
6. On 26 January 2023, the OPCV and the Prosecution submitted their respective observations on a proposed date for the confirmation of charges hearing.⁶

¹ See Pre-Trial Chamber II, 'Public Redacted Version of 'Warrant of Arrest for Maxime Jeoffroy Eli Mokom Gawaka' (ICC-01/14-01/22-2-US-Exp)', 22 March 2022, ICC-01/14-01/22-2-Red2.

² Pre-Trial Chamber II, 'Order convening a hearing for the first appearance of Mr Mokom', 16 March 2022, ICC-01/14-01/22-21, para. 4.

³ ICC Transcript, 22 March 2022, ICC-01/14-01/22-T-001-Red-ENG, p. 11, l. 19-21.

⁴ Pre-Trial Chamber II, 'Order postponing the confirmation of charges hearing', 23 January 2023, ICC-01/14-01/22-137, para. 8.

⁵ Ibid., para. 9.

⁶ Office of Public Counsel for Victims, 'Observations on behalf of Victims following the Order postponing the Confirmation of Charges Hearing (ICC-01/14-01/22-137)', 26 January 2023, ICC-01/14-01/22-139; Office of the Prosecutor, 'Prosecution's Observations on a Proposed Date for the Commencement of the Confirmation of Charges Hearing', 26 January 2023, ICC-01/14-01/22-140.

Observations

7. The OPCV submits it is not in a position to suggest a date for the commencement of the confirmation of charges hearing.⁷ The Prosecution has asked the Chamber to take cognizance of the issues to be presented during the upcoming status conference scheduled for 7 February 2023.⁸ However, it proposes three tentative dates, namely the weeks of 5 or 12 June 2023, or the week of 17 July 2023.⁹

8. The overarching desire of Mr. Mokom and the Defence is for the proceedings to move swiftly following the delays experienced to date. However, based on the Defence's available human resources to review the evidentiary material in the case, a confirmation of charges hearing in June 2023 will pose difficulties for sufficient Defence preparation.

9. This submission is made against the backdrop of the Prosecution being expected to migrate approximately 33,000 evidentiary items currently part of the *Yekatom and Ngaiissona* case record to the *Mokom* case record ('migrated material').¹⁰ The Defence may also be given access to other materials from *Yekatom and Ngaiissona* that do not form part of this migration.¹¹

10. The Prosecution is required to complete its outstanding disclosure of the material it intends to rely upon for the confirmation of charges hearing by no later than 23 February 2023.¹² If this deadline is met, this would give the Defence only three and a half months to review this disclosure, should the confirmation hearing

⁷ ICC-01/14-01/22-139, para. 6.

⁸ ICC-01/14-01/22-140, para. 2.

⁹ *Ibid.*, para. 3.

¹⁰ Pre-Trial Chamber II, 'Second order on disclosure and related matters', 30 November 2022, ICC-01/14-01/22-116, para. 9. See also Office of the Prosecutor, 'Prosecution's Submissions pursuant to the Chamber's Order on Disclosure and Related Matters (ICC-01/14-01/22-104)', ICC-01/14-01/22-109, para. 4.

¹¹ ICC-01/14-01/22-109, para. 4.

¹² Pre-Trial Chamber II, 'Order for observations and decision on the Prosecution's request for a status conference', 24 January 2023, ICC-01/14-01/22-138, para. 12.

be scheduled in June 2023. For these reasons, a hearing during the week of 17 July 2023 is certainly preferable, and would not unduly extend Mr Mokom's pre-trial detention, which has already been lengthy.

11. However, the Defence notes that the 7 February 2023 status conference will primarily serve to address matters related to the disclosure process, including its progress.¹³ Given the impact of disclosure on the timing of the confirmation hearing, and the number of questions which remain pending, the Defence seeks leave to make further brief written observations on a proposed date, after the Prosecution's submissions at the status conference on the progress of the disclosure process.

12. Importantly, the Prosecution has yet to implement the Chamber's instructions regarding the disclosure of material for the entirety of the migrated material. As such, brief further Defence observations could then take into account the exact state of the disclosure process, and the Prosecution's submissions on the matter during the status conference, in particular, whether the Prosecution will only be able to fulfil its disclosure obligations towards 23 February 2023, i.e. around the end of the one-month period granted by the Chamber for the completion of the disclosure process following the appointment of permanent Counsel for Mr. Mokom.¹⁴

13. The Defence is particularly mindful of the Prosecution's previous submissions about the burdensome nature of its disclosure obligations in relation to the material to be migrated from the *Yekatom and Ngaïssona* case record and to be disclosed under Rule 77 of the Rules of Procedure and Evidence ('the Rules'). The Prosecution cited a purported 'shift in the disclosure paradigm' in the *Mokom* case, 'which requires the Prosecution to reorganise its disclosable material, including by adding, modifying, and populating metadata fields, which were not considered necessary or otherwise

¹³ ICC-01/14-01/22-138, para. 13.

¹⁴ *Ibid.*, para. 12.

required by the Chamber in the *Yekatom and Ngaïssona* proceedings'.¹⁵ As stated by the Prosecution, the Rule 77 material to be migrated in the Mokom case 'comprises by far the bulk of potentially disclosable material in this case', i.e. 29,000 items out of the 33,000 to be migrated items.¹⁶

14. Based on the challenge that the implementation of the Chamber's instructions regarding Rule 77 disclosure seems to pose to the Prosecution, the Defence is concerned about the timing of this disclosure, as well as about the capacity of the Prosecution to provide by 23 February 2023 precise indications of the specific page and paragraph numbers of the relevant sections of each Rule 77 item, as ordered by the Chamber.¹⁷

15. In the same vein, the resolution of the question of access by the *Mokom* Defence to materials in the *Yekatom and Ngaïssona* case record is still pending. Consultations between the Prosecution and the *Yekatom and Ngaïssona* Defence teams about *Mokom* Defence access to this material are ongoing.¹⁸ The Defence has still not been granted any access to this material and has not received any information from the Prosecution about the timing of this access.

16. As previously suggested by the Defence, the Prosecution could be invited by the Chamber to provide an update about the state of its consultations with the *Yekatom and Ngaïssona* Defence teams during the status conference scheduled for 7

¹⁵ Office of the Prosecutor, 'Corrected version of "Prosecution's Request for a Status Conference, 21 December 2022, ICC-01/14-01/22-126-Conf"', 22 December 2022, ICC-01/14-01/22-126-Conf-Corr, paras. 7-9.

¹⁶ *Ibid.*, para. 8; See also ICC-01/14-01/22-109, para 13.

¹⁷ See Pre-Trial Chamber II, 'Order on disclosure and related matters', 7 November 2022, ICC-01/14-01/22-104, para. 8; 'Second order on disclosure and related matters', 30 November 2022, ICC-01/14-01/22-116, paras. 13-16; ICC-01/14-01/22-138, para. 13.

¹⁸ See *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, Trial Chamber V, 'Decision on the Prosecution Request to Grant Maxime Mokom Access to the Record of the *Yekatom and Ngaïssona* Case', 23 August 2022, ICC-01/14-01/18-1552, paras. 9-11.

February 2023.¹⁹ As such, further brief written submissions would also allow the Defence to address any update provided by the Prosecution on this question, as well as the current state of Defence access to materials placed on the *Yekatom* and *Ngaïssona* case record by the close of the 7 February status conference.

Respectfully submitted,



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Counsel for Maxime Mokom

The Hague, The Netherlands
Tuesday, January 31, 2023

¹⁹ Mokom Defence Observations on the 'Prosecution's Submission on its Approach to Material in the Yekatom and Ngaïssona Case to which Access may be authorised', 30 January 2023, ICC-01/14-01/22-144, para. 13.