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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 Matters Related to the Participation of Victims

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

Registrar
 Peter Lewis

Counsel Support Section**Deputy Registrar****Victims and Witnesses Unit****Detention Section****Victims Participation and Reparations
Section Other**

Introduction and Procedural History

1. On 7 April 2022, the Office of Public Counsel for Victims (OPCV) filed its ‘Application for recognition of the status of victims in the case of *The Prosecutor v. Maxime Jefffrey Eli Mokom Gawaka* to victims participating in the case of *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*’ (OPCV Application).¹
2. On 25 May 2022, the Registry filed its ‘Registry Observations pursuant to Pre-Trial Chamber II’s “Order seeking observations on matters related to the conduct of the confirmation Proceedings” (ICC-01/14-01/22-50).’²
3. On the same day, Duty Counsel filed its Response to the OPCV’s Application.³
4. On 3 June 2022, Duty Counsel for Mr. Mokom filed ‘Mr. Mokom’s Response to the Registry’s Observations on victim participation’.⁴
5. On 27 June 2022, Pre-Trial Chamber II (‘Chamber’) issued its ‘Order on the conduct of the confirmation of charges proceedings’, in which it provided principles and procedure governing victims’ participation.⁵
6. On 15 September 2022, the Chamber ordered, by e-mail, the Registry to submit a Report on the legal representation of victims by no later than 7 October

¹ OPCV, ‘Application for recognition of the status of victims in the case of *The Prosecutor v. Maxime Jefffrey Eli Mokom Gawaka* to victims participating in the case of *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*’, 7 April 2022, ICC-01/14-01/22-35.

² Registry, ‘Registry Observations pursuant to Pre-Trial Chamber II’s “Order seeking observations on matters related to the conduct of the confirmation Proceedings” (ICC-01/14-01/22-50)’, 25 May 2022, ICC-01/14-01/22-55 (‘Registry Observations’).

³ Mr. Mokom’s Response to OPCV’s Application for recognition of the status of victims in the case of *Prosecutor v. Mokom* to victims participating in the case of *Prosecutor v. Yekatom and Ngaïssona*, 25 May 2022, ICC-01/14-01/22-56 (‘Duty Counsel’s First Response’).

⁴ Mr. Mokom’s Response to the Registry’s Observations on victim participation, 3 June 2022, 3 June 2022, ICC-01/14-01/22-57 (‘Duty Counsel’s Second Response’).

⁵ Pre-Trial Chamber II, ‘Order on the conduct of the confirmation of charges proceedings’, 27 June 2022, ICC-01/14-01/22-62, paras. 38-49.

2022 and Duty Counsel for Mr. Mokom to provide any observations on the Report by no later than 14 October 2022.⁶

7. On 7 October 2022, the Registry filed its Report on Legal Representation of Victims in the Case.⁷

8. On 14 October 2022, Duty Counsel for Mr. Mokom filed its Observations on the 'Registry Report on Legal Representation of Victims'.⁸

9. On 23 January 2023, permanent Counsel for Mr. Mokom was appointed.⁹

10. On 24 January 2023, the Chamber issued an Order instructing permanent Counsel for Mr. Mokom, if considered necessary for Mr. Mokom's defence, to provide observations on matters related to the participation of victims.¹⁰

Observations

11. The OPCV Application asks that the Pre-Trial Chamber recognise victims already authorised to participate in the *Yekatom and Ngaïssona* case as also participating in the Mokom case at the pre-trial and/or trial phase. This OPCV request is based on the purported similarity of the crimes and events in the two cases.¹¹

⁶ Pre-Trial Chamber II communications email to the Registry and parties, 15 September 2022 at 15:25.

⁷ Registry, 'Registry Report on Legal Representation of Victims' with one public redacted Annex, 7 October 2022, ICC-01/14-01/22-98 and ICC-01/14-01/22-98-Anx-Red (including the Registry Report as the Annex).

⁸ Mr. Mokom's Observations on the 'Registry Report on Legal Representation of Victims', 14 October 2022, ICC-01/14-01/22-103.

⁹ Registry, "Notification of the Appointment of Mr Philippe Larochelle as Counsel for Mr Maxime Jeoffroy Eli Mokom Gawaka", 23 January 2023, ICC-01/14-01/22-136.

¹⁰ 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. 11.

¹¹ ICC-01/14-01/22-35, paras. 14-25.

12. The Registry Observations support the OPCV Application regarding the automatic admission in the Mokom case of victims whose applications were admitted at pre-trial and/or trial stage in the *Yekatom and Ngaïssona* case.¹²

13. The Mokom Defence ('Defence') reiterates the submissions made in the Duty Counsel's First and Second Responses, that an automatic transfer of victims from the *Yekatom and Ngaïssona* proceedings to the Mokom case conflicts with the requirement in Article 68(3) of the Statute that victims demonstrate that their personal interests have been affected in the Mokom case.¹³

14. The proposed automatic transfer of victims between cases would be prejudicial to the rights of the accused and a fair and impartial trial, as it would amount to having victims being admitted in the Mokom case based on previous determinations made by Pre-Trial and Trial Chambers in the *Yekatom and Ngaïssona* proceedings without receiving submissions from Mr. Mokom's Defence as to whether the applications meet the criteria for admission.

15. Moreover, the logistical argument advanced by OPCV according to which an automatic transfer of victims 'would avoid the Chamber (and the Registry) the burden of reassessing applications for the same event(s) and crime(s), thereby contributing to the efficiency of the proceedings'¹⁴ cannot be reconciled with the Appeals Chamber's finding 'that any decision on the most appropriate system for the processing of victims' applications must *always* be case-specific, based on objective information and the result of a proper balancing of all of the interests at stake', thereby highlighting that 'such decision cannot be prejudicial to the accused, or inconsistent with his or her rights.'¹⁵

¹² ICC-01/14-01/22-55, paras. 11-12.

¹³ ICC-01/14-01/22-56, paras. 5-7; ICC-01/14-01/22-57, para. 6.

¹⁴ ICC-01/14-01/22-35, paras. 27.

¹⁵ Appeals Chamber, *The Prosecutor V. Mahamat Said Abdel Kani*, "Judgment on the appeal of Mr Mahamat Said Abdel Kani against the decision of Pre-Trial Chamber II of 16 April 2021 entitled

16. An automatic transfer of victims between two cases is not ‘case-specific, based on objective information’, but rather speculative, and is in breach of the Appeals Chamber’s requirements about the most appropriate system for the processing of victims’ applications.

17. As noted by Duty Counsel for Mr. Mokom, any persons applying for participating in the proceedings must go through the ‘A-B-C’ approach for the admission of victims in the Mokom case, as adopted by the Chamber.¹⁶

18. In this context, the Registry has already submitted five assessment reports on victim applications for participation in the Mokom pre-trial proceedings, amounting to 423 Group A victims applications submitted in the proceedings so far.¹⁷ It would therefore also be illogical to change the ongoing procedure for admission of participating victims, particularly given that the Appeals Chamber has endorsed the ‘A-B-C’ approach, highlighting that it preserves ‘*judicial oversight of the entire process with the relevant chamber being involved in the screening and processing of victims’ applications*’.¹⁸

19. Victims’ applications submitted in the Mokom case should accordingly be assessed by Pre-Trial Chamber II pursuant to the established A-B-C approach, thereby ensuring its judicial control over the entirety of the admission process, and preserving the rights of the accused in this process.

‘Decision establishing the principles applicable to victims’ applications for participation’’, 14 September 2021, ICC-01/14-01/21-171, para. 65.

¹⁶ ICC-01/14-01/22-103, para. 12; ICC-01/14-01/22-62, paras. 40-41.

¹⁷ Registry, ‘First Registry Assessment Report on Victim Applications for Participation in Pre-Trial Proceedings’, 13 September 2022, ICC-01/14-01/22-86, para. 2; ‘Second Registry Assessment Report on Victim Applications for Participation in Pre-Trial Proceedings’, 13 October 2022, ICC-01/14-01/22-101; ‘Third Registry Assessment Report on Victim Applications for Participation in Pre-Trial Proceedings’, 21 November 2022, ICC-01/14-01/22-114, para. 2; ‘Fourth Registry Assessment Report on Victim Applications for Participation in Pre-Trial Proceedings’, 15 December 2022, ICC-01/14-01/22-121, para. 2; Registry, ‘Fifth Registry Assessment Report on Victim Applications for Participation in Pre-Trial Proceedings’, 20 January 2023, ICC-01/14-01/22-133, para. 2.

¹⁸ ICC-01/14-01/21-171, para. 71.

Respectfully submitted,



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The Hague, The Netherlands
Wednesday, February 08, 2023