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PRE-TRIAL CHAMBER II

Before: Judge Rosario Salvatore Aitala, Presiding Judge
Judge Tomoko Akane
Judge Sergio Gerardo Ugalde Godínez

SITUATION IN THE CENTRAL AFRICAN REPUBLIC II

THE PROSECUTOR V. MAXIME JEOFFROY ELI MOKOM GAWAKA

Public

**Public Redacted Version of Mokom Defence Response to the 'Prosecution's
Request to extend the contact restrictions imposed in the "Sixth Decision on
Contact Restrictions"
(ICC-01/14-01/22-148-Conf-Exp)'**

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**

Karim A. A. Khan KC
 Mame Mandiaye Niang
 Leonie von Braun

Counsel for the Defence

Philippe Larochelle

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**

Oswaldo Zavala Giler

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

Introduction

1. Pursuant to Regulation 24(1) of the Regulations of the Court (“RoC”) and the Pre-Trial Chamber’s instructions,¹ the Defence of Maxime Mokom (‘Defence’) files this response to the ‘*Prosecution’s Request to extend the contact restrictions imposed in the “Sixth Decision on Contact Restrictions” (ICC-01/14-01/22-148-Conf-Exp)*’.² The Defence opposes the Prosecution Request, which fails to provide ‘concrete, specific and up-to-date information’ for the extension of the contact restrictions, as requested by the Pre-Trial Chamber in the Sixth Decision on Contact Restrictions.³

2. Should the Pre-Trial Chamber (‘the Chamber’) consider extending the contact restrictions, the Defence requests an opportunity to provide alternative requests aimed at mitigating the imposition of the contact restrictions, in particular in relation to the vetting process.

Relevant Procedural Background

3. On 30 May 2023, the Registry filed its fifth report on the implementation of the restrictions on contact.⁴ The relevant procedural history is set out therein.⁵

Confidentiality

4. Pursuant to Regulation 23bis(1) of the RoC, the Defence files this Response as ‘confidential *Ex Parte*, only available to the Registry, the Prosecution, and the Defence’ to reflect the classification of the filings referenced herein.

¹ Pre-Trial Chamber II, ‘Sixth Decision on Contact Restrictions’, 2 February 2023, ICC-01/14-01/22-148-Conf-Exp, para. 14 (‘Sixth Decision on contact restrictions’).

² Office of the Prosecutor, ‘Prosecution’s Request to extend the contact restrictions imposed in the “Sixth Decision on Contact Restrictions” (ICC-01/14-01/22-148-Conf-Exp)’, 1 June 2023, ICC-01/14-01/22-217-Conf-Exp (‘Prosecution Request’).

³ ICC-01/14-01/22-148-Conf-Exp, para. 14.

⁴ Registry, ‘Fifth Registry Report on the Implementation of the Restrictions on Contact Ordered by Pre-Trial Chamber II’, 30 May 2023, ICC-01/14-01/22-212-Conf-Exp (‘Fifth Registry Report’).

⁵ ICC-01/14-01/22-212-Conf-Exp, paras. 2-4.

Applicable Legal Provisions

5. Under Regulations 99(1)(i) and 100(1) of the RoC, every detained person shall be entitled to respectively 'communicate by letter or telephone with his or her family and other persons' and 'receive visits'.

Submissions

A. *The Prosecution does not refer to concrete, specific and up-to-date information for the extension of the contact restrictions*

The Prosecution submissions on alleged threats to witnesses:

6. The Prosecution Request fails to provide concrete, specific and up-to-date information justifying the extension of contact restrictions. The Prosecution relies on two examples of witnesses having received threats or challenges 'linked to Mr Mokom or at least persons who can be considered his supporters.'⁶ Both examples fail to provide the type of information sought by the Chamber for the extension of contact restrictions.

7. The first example provided in relation to Witness P-1521 does not indicate whether the threats encountered by the witness are recent. Moreover, the Prosecution alleges that the threats are allegedly linked to experiences with the Anti-Balaka, but does not explain how Mr. Mokom's supporters have allegedly intimidated either P-1521 or other witnesses.⁷ The second example related to Witness P-1503 states that a so-called 'person aligned with Mr Mokom through the *Coalition des Patriotes pour le Changement* ('CPC') has apparently been threatened. Again, the Prosecution does not provide any indication about the degree of proximity of this person with Mr. Mokom or any of his alleged supporters.⁸

⁶ ICC-01/14-01/22-217-Conf-Exp, para. 5.

⁷ ICC-01/14-01/22-217-Conf-Exp, para. 5.

⁸ Ibidem.

8. Importantly, the Prosecution Request does not take into account the Chamber's findings in the context of interim release, where the Chamber stated that Mr. Mokom's detention is not necessary to ensure that he does not obstruct or endanger the investigation or the court proceedings, as stipulated by Article 58(1)(b) of the Statute.⁹ Relevantly, the Chamber held that 'as to the Prosecution's assertions that it has previously detailed threats issued by Mr Mokom and persons close to him against potential witnesses and that the identity of key witnesses has been disclosed to Mr Mokom, it is recalled that the Chamber has found these arguments insufficient in another context', thereby referring to previous Chamber's decisions on contact restrictions, further stating that should Mr Mokom be granted interim release, it has not been established that there exists a risk that Mr Mokom would obstruct or endanger the investigation or the court proceedings.¹⁰

9. As such, the Prosecution is essentially seeking the extension of contact restrictions based on alleged threats received by some of its witnesses, but without any indication that these incidents arise from Mr. Mokom's own behaviour, and where the Chamber has specified that Mr Mokom's detention is not necessary to ensure that he does not obstruct or endanger the investigation or the court proceedings. The Prosecution has therefore failed to provide concrete, specific and up-to-date information demonstrating that the contact restrictions imposed on Mr Mokom are necessary 'to protect witnesses, victims, and the ongoing investigation in the Central African Republic'.¹¹

10. In reality, Mr. Mokom's conduct for the past 14 months has been irreproachable. As such, the cessation of all restrictions is timely, proportionate, and reasonable.

⁹ Pre-Trial Chamber II, 'Decision on interim release', 8 March 2023, ICC-01/14-01/22-173-Conf, para. 54.

¹⁰ ICC-01/14-01/22-173-Conf, para. 54, footnote 34, referring to ICC-01/14-01/22-106-Conf-Exp, 7 November 2022, para. 9 and ICC-01/14-01/22-148-Conf-Exp, 2 February 2023, para. 9.

¹¹ ICC-01/14-01/22-217-Conf-Exp, para. 3.

11. In the alternative, should the restrictions be maintained, the Defence asks for the opportunity to make additional submissions in relation to redacted versions of the two annexes to the Prosecution's Request. These annexes were filed *ex parte* and allegedly contain additional information related to threats and challenges faced by witnesses in relation to their security.¹² The Prosecution has indicated that it will file confidential redacted versions of the annexes as soon as practicable,¹³ and once this has been done, the Defence seeks leave to make additional submissions thereon.

The Prosecution's submissions in relation to security situation in CAR and the state of the disclosure process:

12. The Prosecution relies on two press articles to support its contention that the CPC continues to display a strong military presence in Central African Republic (CAR) and is actively engaged in armed hostilities.¹⁴ The articles, dated March 2023 and May 2023, fail to substantiate the Prosecution submissions.

13. The article dated March 2023 refers to an attack conducted against Chinese citizens in CAR. The article does not identify the authors of the attack and even refers to a statement made by the CPC denying any involvement in the attack.¹⁵

14. Similarly, the article dated May 2023 does not refer to the CPC's military presence in CAR and rather indicates that the CPC recently made an urgent call for peace and unity in the country. The article also says that the CPC will dissociate itself from any individual or entity that seeks to artificially put Central African President Touadéra's opponents against each other.¹⁶

¹² ICC-01/14-01/22-217-Conf-Exp, para. 5.

¹³ ICC-01/14-01/22-217-Conf-Exp, para. 2.

¹⁴ ICC-01/14-01/22-217-Conf-Exp, para. 6.

¹⁵ See ICC-01/14-01/22-217-Conf-Exp, para. 6, footnote 7.

¹⁶ Ibidem.

15. These two articles do not demonstrate that the CPC has a strong military presence in Central African Republic and is actively engaged in armed hostilities, as alleged by the Prosecution, and do not support the Prosecution submission that there exists ‘an objective risk of witness interference should contact restrictions be further lifted’.¹⁷

16. Moreover, the Prosecution Request refers to previous submissions on contact restrictions dated March 2022 (ICC-01/14-159-Conf-Exp) to demonstrate that Mr. Mokom allegedly continues to be supported by the CPC. The Prosecution Request also relies upon a press article dated January 2022 referred to in the same March 2022 submissions.¹⁸ The Defence refers to its previous submissions on contact restrictions made in September 2022, where it explained that paragraph 14 of Prosecution filing ICC-01/14-159-Conf-Exp and the sources referred to therein do not establish that Mr. Mokom has influence over supporters or members of the CPC.¹⁹

17. In addition, the Prosecution arguments related to the overall security situation in CAR and the potential threats that Prosecution witnesses could receive following the disclosure of evidence that the Prosecution intends to rely upon at the confirmation hearing do not constitute additional grounds justifying the extension of contact restrictions.²⁰ These arguments do not indicate any material threats against Prosecution witnesses, and as such do not constitute concrete, specific and up-to-date information’ for the extension of the contact restrictions, as requested by the Chamber. Rather, they are pure speculation.

¹⁷ ICC-01/14-01/22-217-Conf-Exp, para. 6.

¹⁸ ICC-01/14-01/22-217-Conf-Exp, para. 6, footnote 9.

¹⁹ See Mr. Mokom’s Response to the ‘Prosecution’s Request to extend the contact restrictions imposed in the “Fourth Decision on Contact Restrictions” (ICC-01/14-01/22-63-Conf-Exp)’, 20 September 2022, ICC-01/14-01/22-90-Conf-Exp, paras. 18-21.

²⁰ ICC-01/14-01/22-217-Conf-Exp, paras. 6-7.

B. The vetting process must be amended

The decision on Mr Mokom's contact list of non-privileged contacts should rest with the Chamber:

18. The Prosecution Request refers to the fact that Mr Mokom sought to add an individual to his list of non-privileged contacts 'where concerns on the part of the Registry and the Prosecution arose'.²¹ In its Fifth Report, the Registry indicated that it did not add this individual, [Redacted], to Mr Mokom's list of non-privileged contacts [Redacted].²² The Fifth Registry Report indeed lists the information provided by the Defence about [Redacted].

19. As stated by the Registry, Mr Mokom has made a second request to add [Redacted] to his contact list,²³ following the Chamber's Order of 2 February 2023 which added mandatory consultation with Mr Mokom as part of the vetting process.²⁴

20. Even though the Fifth Registry Report indicates that the information provided by the Defence did not change the Registry's position in relation to [Redacted],²⁵ the Defence and Mr Mokom are at loss as to the reasons justifying the potential exclusion [Redacted] from Mr Mokom's list of non-privileged contacts. In particular, as stated by the Defence to the Registry during the consultation process, [Redacted].²⁶

21. As previously submitted by the Defence, Mr Mokom has no intention of communicating with individuals for whom the Prosecution alleges that

²¹ ICC-01/14-01/22-217-Conf-Exp, para. 4.

²² ICC-01/14-01/22-212-Conf-Exp, para. 8.

²³ ICC-01/14-01/22-212-Conf-Exp-Anx-Red2, para. 1.

²⁴ ICC-01/14-01/22-148-Conf-Exp, para. 13.

²⁵ ICC-01/14-01/22-212-Conf-Exp, para. 10.

²⁶ ICC-01/14-01/22-212-Conf-Exp-Anx-Red2, para. 8.

communications could pose risks.²⁷ However, [Redacted] has never been included among these individuals, and Mr Mokom has no reason to believe that communication could be in any way problematic.

22. The Registry Fifth Report states that the information provided by the Prosecution forms the basis of the Registry's position not to include [Redacted] on Mr Mokom's non privileged contact list.²⁸ Even though the Defence does not have access to this information, the Defence submits that the vetting process conducted by the Registry must also consider the overall context of the Chamber's findings on Mr. Mokom's contact restrictions, including that 'the longer restrictions last, the more the necessity and proportionality for such restrictions must be scrutinised', and that in such context the Prosecution must provide concrete, specific and up-to-date information for the extension of the contact restrictions.²⁹

23. The vetting process conducted by the Registry must therefore be performed with the Chamber's findings in mind. If the Registry consults the Prosecution and uses the out-of-date information provided to determine that [Redacted] should be excluded from Mr. Mokom's contact list, the Registry's vetting process is inaccurate and may lead to the erroneous exclusion of someone from Mr Mokom's contact list.

24. As such, and in relation to the Registry's request 'whether it is the Registry which should make the determination to exclude a potential contact',³⁰ the Defence submits that the Chamber is the appropriate ultimate decision-maker in relation to Mr Mokom's contact list, and should be informed of the results of the mandatory consultation between the Defence and the Registry.

²⁷ Mr. Mokom's Response to the Prosecution's Renewed Request, Request for Reconsideration, and Further Submissions on Contact Restrictions, 13 April 2022, ICC-01/14-01/22-41-Conf-Exp, paras. 8-9.

²⁸ ICC-01/14-01/22-212-Conf-Exp, para. 10.

²⁹ ICC-01/14-01/22-148-Conf-Exp, paras. 11 and 14.

³⁰ ICC-01/14-01/22-212-Conf-Exp, para. 12.

The imposition of deadlines for the conduct of the vetting process:

25. The second request submitted by the Defence to add [Redacted] to Mr Mokom's contact list was submitted on 14 February 2023, and not on 23 February 2023, as indicated in the Fifth Registry Report.³¹ Almost four months later, the position is still unclear. Mr Mokom has spent more than 14 months in detention in The Hague, and the support of friends and family members is vital to his wellbeing in the context of his prolonged pre-trial detention.

26. Mr. Mokom has also sought to add another individual to his contact list, who is still apparently being vetted. Contrary to the Prosecution assertion, the request to add this person was not submitted on 23 May 2023,³² but on 19 April 2023. Even though the Defence has recently been consulted by the Registry as part of the vetting process, this process has already taken a month and a half.

27. The Pre-Trial Chamber has held 'that contact restrictions must be necessary, proportionate to the legitimate aim pursued, and balanced against a suspect's right to private and family life'.³³ The duration of the vetting process performed by the Registry is excessive and has a detrimental impact on Mr Mokom's family life. The Defence therefore requests that the Chamber impose a deadline of one month for the vetting process, running from the Defence's initial request addressed to the Detention Center.

The active monitoring of the two individuals subject to the vetting process:

28. As previously stated, the addition of the two above-mentioned individuals to Mr Mokom's list of non-privileged contacts contributes to Mr Mokom's quality of life at the Detention Center, as he seeks to receive support

³¹ ICC-01/14-01/22-212-Conf-Exp-Anx-Red2, para. 1.

³² ICC-01/14-01/22-217-Conf-Exp, para. 4.

³³ Pre-Trial Chamber II, 'Public Redacted Version of Decision Pursuant to Regulation 101 of the Regulations of the Court', 16 February 2021, ICC-01/14-01/18-413-Red2, para. 78.

from more friends and family members during his pre-trial detention. Should it facilitate the process, Mr Mokom would not oppose that his communication with these two people be subject to active monitoring. Mr Mokom's sole motivation for communicating with these two people is to draw on their support and add to his quality of life during detention. Should the active monitoring be the last resort to enable him to do so, Mr Mokom is inclined to subject their conversations to such active monitoring.

Conclusion

29. In conclusion, the Defence requests that the Pre-Trial Chamber:

DENY the Prosecution Request; or in the alternative:

ORDER the Prosecution to provide confidential redacted versions of the two annexes to the Prosecution Request and allow the Defence to make additional submissions thereon;

VARY the vetting process to vest the decision with the Chamber, with the vetting process to be completed within one month from the Defence request to the Detention Centre; and, if considered necessary

ORDER the active monitoring of Mr Mokom's communications with the two individuals currently subject to the vetting process.

Respectfully submitted,



Philippe Larochelle,
Counsel for Maxime Mokom

The Hague, The Netherlands
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