

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

No.: ICC-01/04-01/22  
Date: 31 January 2024

**PRE-TRIAL CHAMBER II**

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

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC II**

**IN THE CASE OF  
THE PROSECUTOR V. MAXIME JEOFFROY ELI MOKOM GAWAKA**

**Public**

**With Public Annex I**

**Public Redacted Version of "Registrar's observations on the 'Defence Request for Review of the Registrar's Decision on Legal Assistance and for a Stay of Proceedings', ICC-01/14-01/22-178-Conf-Exp, 24 March 2023",  
ICC-01/14-01/22-183-Conf, 28 March 2023**

**Source:** The Registry

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

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**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**

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**Registrar**

Mr Osvaldo Zavala Giler

**Counsel Support Section**

Mr Pieter Vanaverbeke

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

**Other**

## I. Introduction

1. On 24 March 2023, the Defence for Mr Maxime Jeoffroy Eli Mokom Gawaka (“Defence”) submitted the “Defence Request for Review of the Registrar’s Decision on Legal Assistance and for a Stay of Proceedings” (“Request”).<sup>1</sup>
2. The Registrar hereby submits his observations on the Request, as invited by Pre-Trial Chamber II (“Chamber”) in its email of 24 March 2023.<sup>2</sup>
3. The Registrar submits, on the basis of the relevant provisions and the information before him, that the additional resources provided to the Defence on 24 February 2023 (*i.e.* three Full Time Equivalents (“FTEs”)) are sufficient for the Defence to meet the workload required in the preparation for the Confirmation of Charges hearing on 22 August 2023.

## II. Applicable Law

4. The following provisions are of particular relevance to the present submission: article 67 of the Rome Statute (“Statute”), rule 21(5) of the Rules of Procedure and Evidence (“Rules”), regulations 83(4) to 85 of the RoC, regulations 130 and 132 of the Regulations of the Registry (“RoR”) and paragraphs 23, 39 to 44 and 66 to 76 of the Registry’s single policy document on the Court’s legal aid system (“Legal Aid Policy” or “LAP”).<sup>3</sup>

## III. Procedural history

5. On 6 February 2023, the Defence submitted the “Request for Additional Resources for the Defence Team of Mr. Maxime Jeoffroy Eli Mokom Gawaka” (“6

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<sup>1</sup> Mokom Defence, “Defence Request for Review of the Registrar’s Decision on Legal Assistance and for a Stay of Proceedings”, 24 March 2023, ICC-01/14-01/22-178-Conf-Exp (“Request”).

<sup>2</sup> Email from Pre-Trial Chamber II to the Registry on 24 March 2023 at 14.07.

<sup>3</sup> Registry’s single policy document on the Court’s legal aid system, [ICC-ASP/12/3](#), 4 June 2013 (“Legal Aid Policy”).

February Request”), seeking the “allocation of additional resources for the recruitment of 9 Legal Assistants (full-time)”,<sup>4</sup> or nine (09) FTEs under the Legal Aid Policy.

6. On 24 February 2023,<sup>5</sup> the Registry informed the Defence that “3 additional FTE are considered, at this stage, reasonably necessary in light of the current situation and pending further clarification (i.e. Document containing the Charges as well as any other indication as to the relevancy of the migrated documents to the Mokom case)”<sup>6</sup> (“24 February Decision”).

7. On 27 February 2023, the Defence requested reconsideration of the 24 February Decision and submitted further explanations on the need, in its view, for additional resources to review the materials migrated from the *Yekatom and Ngaissona* case to the *Mokom* case.<sup>7</sup>

8. On 20 March 2023, the Registrar maintained the 24 February Decision and informed the Defence that “Mr Mokom is, at this stage, provided with sufficient resources to prepare for the confirmation of charges proceedings and that the disclosure process (i.e. migration) does not warrant any additional resources”<sup>8</sup> (“20 March Decision”).

#### IV. Observations

1) *The Registry applies the Legal Aid Policy with due consideration for the needs of the defence*

9. Pursuant to regulation 130 of the RoR, the Registry manages the Court’s legal aid budget in accordance with the Legal Aid Policy, which determines the entitlement

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<sup>4</sup> Annex I.

<sup>5</sup> There are no formal deadlines for decisions on requests for additional resources submitted pursuant to regulation 83(3) of the RoC. The Registry strives to render such decisions at the earliest possible opportunity and within a 30-day period, considering competing priorities and its limited resources.

<sup>6</sup> Email from CSS to the Defence on 24 February 2023 at 14.42 (“24 February Decision”). See Annex I to the Request.

<sup>7</sup> Email from the Defence to CSS on 27 March 2023 at 01.55.

<sup>8</sup> Email from CSS to the Defence on 20 March 2023 at 17.30 (“20 March Decision”). See Annex I to the Request.

to resources and the standard composition of teams at different stages of the proceedings. The Legal Aid Policy determines that the standard or “core” composition of a defence team consists of one counsel, one legal assistant and one case manager throughout the proceedings, with the exception of two periods when counsel is required to act alone (*i.e.* from the start of the investigation phase until the first appearance, and from the conclusion of the closing statements and the judgment).<sup>9</sup>

10. Any resources that exceed the standard composition established by the Legal Aid Policy have to be requested pursuant to regulation 83(3) of the RoC for the Registry’s assessment, and, per the said regulation, may be granted “depending on the nature of the case.” Requests for additional resources are considered in accordance with the principles enshrined in the Legal Aid Policy, in particular the principles of objectivity and economy.<sup>10</sup> In accordance with principle of objectivity, “[t]he payment system allocates resources on the basis of the requirements of the case and not on the basis of subjective requirements.”<sup>11</sup> Furthermore, in the assessment of such requests, the Registry takes into account its obligation to allocate sufficient resources to cover all reasonably necessary costs for an effective and efficient legal representation in accordance with regulation 83(1) of the RoC, and the LAP principle of economy.<sup>12</sup>

11. The Registry, in assessing a request for additional resources, considers the objective workload of the Defence. In practice, such assessment involves a thorough analysis of the information provided by the relevant defence or victims team, stage of the proceedings, specific circumstances of the case as well as, where applicable and relevant, the use of the calculation tool.<sup>13</sup> This allows the Registrar to issue a decision with a view to facilitate an effective and efficient legal representation (principle 5 of the LAP).

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<sup>9</sup> Legal Aid Policy, paras. 39-43.

<sup>10</sup> Legal Aid Policy, para. 9. For objective criteria used in the assessment of the requests for additional resources, see Legal Aid Policy, para. 69.

<sup>11</sup> Legal Aid Policy, para. 9.

<sup>12</sup> Legal Aid Policy, para. 9.

<sup>13</sup> As to the calculation tool, see Legal Aid Policy, para. 69.

12. The Registry may either deny a request should the aforementioned assessment demonstrate that the requested resources are not reasonably necessary for an effective and efficient defence, or grant it, or grant it in part.

2) *The Registry's consideration of the Request*

13. To justify the request for 9 FTEs, the Defence relies on the following information: the number of counts, volume of materials disclosed by the Office of the Prosecutor ("Prosecution") and the number of "persons applying to be a victim participating in the proceedings".<sup>14</sup> As a result, the Defence arrives to a number of 9 FTEs.

14. The Registry submits that the calculation used by the Defence in its Request is incorrect. In particular, the Defence includes in its calculation the number of "persons applying to be a victim participating in the proceedings". The Legal Aid Policy clearly stipulates that one of the parameters used in the consideration of additional FTEs is the number of "each victim or group of victims whose application for participation in the case *is accepted by the Chamber*: 0.02 FTE (1 FTE = 50 victims)".<sup>15</sup> In the absence of any judicial decision on the status of victims in the present case, the respective number to be used in the calculation is still unknown, and as such, cannot be used in the calculation of FTEs.

15. The Registry notes that the FTE calculation tool, as laid down in the Legal Aid Policy is a guiding tool, it does not provide for an automatic entitlement of a specific number of FTE's. Other parameters may be taken into account and, per the LAP, "an excessive increase in the size of a team owing to an accumulation of FTE might make the financial burden disproportionate to the real needs may result in setting a limit on the variable additional resources".<sup>16</sup> The Registry further notes that no defence team has been granted additional resources with 9 FTEs at the Pre-Trial phase under the

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<sup>14</sup> Request, paras. 28-29.

<sup>15</sup> Legal Aid Policy, para. 69 (emphasis added).

<sup>16</sup> Legal Aid Policy, para. 73.

LAP, including where the number of counts was four times higher than in the present case, or in cases with multiple accused.

16. The Registry, in its assessment of the Request, specifically pertaining to the relevance of the migrated materials from the *Yekatom and Ngaissona* case to the *Mokom* case, relied on the Pre-Trial Chamber II's "Second order on the conduct of the confirmation of charges proceedings" ("Order").<sup>17</sup> Here, the Chamber held that "[...] the 'migrated' materials that will not be formally disclosed in the present proceedings in accordance with the Chamber's instructions will not be taken into account in any manner."<sup>18</sup> In addition, the Registry relied on the "Document containing the Charges", which further specifies and (greatly) limits the number of documents to be taken into consideration for the confirmation proceedings (*i.e.* not the 30,000+ documents as initially "migrated").

17. The Defence currently consists of the following team members: one Counsel, five Legal Assistants, two Case Managers, one Evidence Reviewer and one Professional Investigator. These positions are currently funded by the standard Pre-Trial composition allotment as per the Legal Aid Policy (*i.e.* one Counsel, one Legal Assistant and one Case manager) and the additional resources of 3 FTEs provided pursuant to the 24 February Decision. The Defence has at its disposal a considerable amount of accumulated savings [REDACTED],<sup>19</sup> which, in view of the flexibility principle,<sup>20</sup> and after being formally requested to the Registry and approved by it pursuant to article 43(1) of the Statute in conjunction with regulation 83(1) of the RoC and the relevant provisions of the LAP,<sup>21</sup> as required for the proper administration of the public funds, may be used to recruit additional team members to meet the

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<sup>17</sup> Pre-Trial Chamber II, "Second order on the conduct of the confirmation of charges proceedings", 13 February 2023, ICC-01/14-01/22-157 ("Order").

<sup>18</sup> Order, para. 33.

<sup>19</sup> The accumulated savings are due to the fact that the Defence did not utilise the resources provided for the "core team", as per the LAP, pending the resolution of the issue of legal representation of Mr Mokom before the Court.

<sup>20</sup> LAP, para. 44.

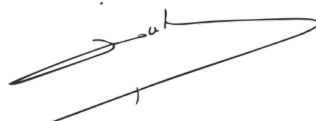
<sup>21</sup> LAP, paras. 10 and 15.

workload as required. The said savings are currently used to remunerate some team members of the Defence.

18. The Registry is of the view that the resources currently available to the Defence are sufficient to meet the workload required in the preparation for the Confirmation of Charges hearing on 22 August 2023.

## V. Conclusion

19. On the basis of the foregoing, the Defence currently receives sufficient resources under the Legal Aid Policy to cover all costs reasonably necessary for an efficient and effective defence at the current stage of the proceedings, in accordance with regulation 83(1) of the RoC.



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Marc Dubuisson, Director, Division of Judicial Services  
on behalf of  
Osvaldo Zavala Giler, Registrar

Dated this 31 January 2024

At The Hague, The Netherlands