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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

Public Redacted Version of "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)", ICC-01/14-01/22-90-Conf-Exp, 20 September 2022

Source: Gregory Townsend, Duty Counsel for Mr. Mokom

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Court to:

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Introduction

1. On behalf of Mr. Mokom and pursuant to Regulation 24(1) of the Regulations of the Court (“RoC”) as well as the Pre-Trial Chamber’s instructions,¹ I file this 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)*’.² Mr. Mokom, whose communications have been: (a) monitored on a flimsy factual basis, and; (b) without incident since his transfer to ICC custody more than six months ago (and who is presumed innocent while awaiting confirmation), opposes the extension in time of the existing contact restrictions. Active monitoring should not be ‘automatic’ and ‘indefinite’ and the lack of a sufficient factual basis for them makes them seem unjustified. Should the Pre-Trial Chamber, alternatively, deem it best to extend the present restrictions, the Defence requests one fine point of harmonization for Mr. Mokom’s contact with [REDACTED].

Relevant Procedural Background

2. On 13 September 2022, the Registry filed its report on the implementation of the restrictions on contact³ and Mr. Mokom concurs with the procedural history therein.⁴

Confidentiality

3. Pursuant to Regulation 23*bis*(1) of the RoC, I file this Response under the classification of ‘confidential *Ex Parte*, only available to the Registry, the Prosecution, and the Defence’ to accord with the classification of the Pre-Trial

¹ Pre-Trial Chamber II, ‘Fourth Decision on Contact Restrictions’, 28 June 2022, ICC-01/14-01/22-63-Conf-Exp, para. 11.

² Office of the Prosecutor, ‘Prosecution’s Request to extend the contact restrictions imposed in the “Fourth Decision on Contact Restrictions” (ICC-01/14-01/22-63-Conf-Exp)’, 16 September 2022, ICC-01/14-01/22-89-Conf-Exp (Prosecution’s Request).

³ Registry, ‘Third Registry Report on the Implementation of the Restrictions on Contact Ordered by Pre-Trial Chamber II’, 13 September 2022, ICC-01/14-01/22-85-Conf-Exp (Third Registry Report).

⁴ ICC-01/14-01/22-85-Conf-Exp, para. 2.

Chamber II's decisions on Contact Restrictions and filings of the same classification, including the Third Registry Report and the Prosecution's Request.

Applicable Legal Provisions

4. 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 Pre-Trial Chamber should deny the Prosecution's Request—to extend (temporally) the contact restrictions imposed in the Fourth Decision on Contact Restrictions—because the facts simply do not justify such extension

5. The Prosecution's Request seeks an order from the Pre-Trial Chamber to extend in time the current restrictions in place in relation to Mr. Mokom's non-privileged contact list, including his direct family members⁵ and argues that the circumstances justifying the contact restrictions remain necessary to protect the Prosecution's ongoing investigation as well as the safety of prospective witnesses and victims in the case.⁶ The Pre-Trial Chamber should deny the Prosecution's Request because the facts simply do not justify such extension.

6. With respect to an extension of restrictions, insofar as that would cover in particular close family members of Mr. Mokom, I incorporate by reference the position taken as Duty Counsel in my previous submissions on contact restrictions, namely that the Pre-Trial Chamber should only impose monitoring of Mr. Mokom's communications with other persons than members of Mr. Mokom's close family.⁷

⁵ ICC-01/14-01/22-89-Conf-Exp, para. 1.

⁶ ICC-01/14-01/22-89-Conf-Exp, paras. 2 and 4.

⁷ '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,

7. In addition, as Mr. Mokom has been in detention for more than six months, and further to the Third Registry Report stating that there have been no incidents to report concerning the active monitoring of Mr Mokom's non-privileged telephone calls, visits and written correspondences,⁸ the Defence requests the cessation of contact restrictions on Mr. Mokom's close family. This also goes to show that cession of all restrictions is appropriate.

8. The Pre-Trial Chamber already found that 'contact restrictions must be necessary, proportionate to the legitimate aim pursued, and balanced against a suspect's right to private and family life. In addition, careful consideration must be given to the passage of time and severity of the measures imposed.'⁹ As Mr. Mokom's behaviour has been irreproachable for the past six months, the cessation of all restrictions, and in particular *active* monitoring of Mr. Mokom's contacts with his close family ([REDACTED]) is timely, proportionate, and reasonable.

9. Further, even though the Prosecution contends that it refers in its request to the arguments developed in its previous submissions on contact restrictions, I make the following submissions on the Prosecution's Request, which support (a) cessation of indefinite restrictions not factually justified, and; (b) cessation, in particular, of the contact restrictions on Mr. Mokom's close family.

(1) The misplaced implication of Mr. Mokom, his direct family members and other associates in threats to individuals

10. The Prosecution's Request contends that Mr. Mokom, his family members and other associates are implicated in threats to individuals who

paras. 7-13; 'Mr. Mokom's Response to the "Prosecution's Request to extend and modify current contact restrictions"', 22 June 2022, ICC-01/14-01/22-61-Conf-Exp, para. 13.

⁸ ICC-01/14-01/22-85-Conf-Exp, para. 6.

⁹ 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.

opposed Mr. Mokom or his interests to justify the continuance of the contact restrictions.¹⁰

11. Further to the Pre-Trial Chamber's Order of 27 June 2022, instructing the Prosecution to disclose to Mr. Mokom by 5 July 2022 the evidence underlying the Application for a Warrant of Arrest,¹¹ Mr. Mokom's defence has now been given access to two documents previously relied upon by the Prosecution to request the imposition of contact restrictions on Mr. Mokom due to Mr. Mokom's, his family members' or other associates' so-called demonstrated capacity to threaten individuals opposing Mr. Mokom or his interests. As my previous submissions on contact restrictions predate the disclosure of 5 July, I analyse here the specific references relied upon by the Prosecution in the two above-mentioned documents to establish that the two documents do not provide reasonable grounds for the imposition of contact restrictions under Regulation 101(2)(b), (c), or (f) of the RoC.

(a) CAR-OTP-2074-2643 (at 2682, l. 1309-1310).¹² The Prosecution refers to a short extract of an interview transcript that reads: '*Moi, Maxime Mokom m'avait menacé [...]*' to justify that Mr. Mokom threatened the interviewee. However, aside from the fact that the Prosecution advances no other corroborative evidence to justify the so-called threat to the interviewee, the interview transcript does not describe in any fashion the type of threat that Mr. Mokom would have provided to the interviewee. The latter does not provide any details about the threat he presumably endured, such as in relation to the type and the intensity of the threats and the interviewer does not either ask any follow-up questions on the said threat at any other point of the interview.

¹⁰ ICC-01/14-01/22-89-Conf-Exp, p. 4, para. 6.

¹¹ Pre-Trial Chamber II, 'Order on the conduct of the confirmation of charges proceedings', 27 June 2022, ICC-01/14-01/22-62, para. 26.

¹² See ICC-01/14-01/22-60-Conf-Exp-Red, para. 14, footnote 21.

(b) CAR-OTP-2082-1058 (at 1068, para. 57).¹³ The Prosecution refers to a paragraph of a witness statement stating that Mr. Mokom invited the Prosecution witness to attend Anti-Balaka meetings through his bodyguard. This paragraph (nor others) of the witness statement does not mention any information about any threats that Mr. Mokom, his family members or associates would have issued to intimidate the witness or any other individuals; it simply states that Mr. Mokom invited a person to attend a meeting via his bodyguard.

12. These two documents do not show that Mr. Mokom, his family members or other associates have directly intimidated or threatened Prosecution witnesses or other individuals. Moreover, these two documents do not demonstrate that the related incidents amount to a 'pattern of conduct' committed over several years by Mr. Mokom, as argued by the Prosecution.¹⁴

13. Further, in its Fourth Decision on Contact Restrictions, the Pre-Trial Chamber found that the alleged incidents reported by the Prosecution as allegedly implicating Mr. Mokom in relation to a number of individuals, including potential witnesses, 'do not appear to have occurred recently'.¹⁵

14. Based on my analysis of these two documents and the Pre-Trial Chamber's finding that none of the alleged incidents relied upon by the Prosecution for the imposition of contact restrictions are recent, it is evident that the Prosecution has not demonstrated that the imposition of contact restrictions on Mr. Mokom, especially restrictions on his close family, are justified as per Regulation 101(2)(b), (c), or (f) of the RoC.

¹³ See ICC-01/14-01/22-25-Conf-Exp, para. 14, footnote 26.

¹⁴ See ICC-01/14-01/22-89-Conf-Exp, p. 5, para. 6.

¹⁵ ICC-01/14-01/22-63-Conf-Exp, para. 8.

15. The fact that the security situation in Central African Republic remains fragile¹⁶ does not constitute an additional ground justifying that contact restrictions should be imposed on Mr. Mokom, and in particular for his limited contact with his close family. I recall for the Pre-Trial Chamber that Mr. Mokom's contact list does not contain any family members about whom the Prosecution has indicated a concern and that Mr. Mokom will not add any such contacts to his list.¹⁷

(2) No evidence adduced from public testimony in the *Yekatom and Ngaïssona* case should constitute a basis for the establishment of contact restrictions on Mr. Mokom

16. The Prosecution's Request contends that Mr. Mokom has a motive to interfere with the Prosecution's investigation because he is 'undoubtedly aware of the mounting evidence adduced in the *Yekatom and Ngaïssona* case through public testimony concerning his involvement in which he is implicated'.¹⁸

17. Such contention is speculative. Moreover, the Prosecution's Request on contact restrictions appears to seek to cite allegations and refer indiscriminately to testimony of its witnesses in another, separate case, which should not constitute a valid basis for the imposition of contact restrictions in this case. No judgement has been rendered by Trial Chamber V in the *Yekatom and Ngaïssona* case. The Prosecution has no indication about the weight that will be given, if any, to such testimonies by Trial Chamber V. Evidence as to Mr. Mokom is wholly untested by his defence, nor properly before this Pre-Trial Chamber. The Prosecution's Request also does not refer to any specific transcript references to the so-called 'mounting evidence' adduced against Mr. Mokom in the *Yekatom and Ngaïssona* case. Mr. Mokom is presumed innocent and no charges have been confirmed against him. The Prosecution contention about

¹⁶ ICC-01/14-01/22-89-Conf-Exp, p. 6, para. 6.

¹⁷ See ICC-01/14-01/22-41-Conf-Exp, para. 10.

¹⁸ ICC-01/14-01/22-89-Conf-Exp, para. 6.

‘mounting evidence’ in another case does not constitute a valid factual basis justifying the imposition of any contact restrictions on Mr. Mokom.

(3) The Prosecution does not establish that Mr. Mokom has influence over a ‘wide range’ of supporters and associates

18. The Prosecution’s Request does not cite any references that demonstrate that Mr. Mokom has influence over a ‘wide range’ of supporters and associates, as a former minister and due to his involvement in the Anti-Balaka movement and the *Coalition des Patriotes pour le Changement* (CPC).¹⁹ The Prosecution’s Request cites paragraph 14 of a previous Prosecution filing on contact restrictions (ICC-01/14-159-Conf-Exp) to allege that Mr. Mokom has ‘a *wide range* of supporters and associates at his disposal’.²⁰ However, the three sources relied upon by the Prosecution in the footnotes (to paragraph 14 of filing ICC-01/14-159-Conf-Exp) fail to demonstrate that Mr. Mokom has a ‘wide range’ of supporters and associates.

19. Notably, paragraph 14 of Prosecution filing (ICC-01/14-159-Conf-Exp) first refers to a press article of the Central African Press Agency dated 3 March 2019 which simply states the list of the ministers appointed in the CAR government at the time.²¹ The press article mentions that Mr. Mokom had been appointed minister in charge of disarmament, demobilization reintegration and reparation. It does not mention any information about the influence that Mr. Mokom might allegedly have over supporters or associates, as a result of his appointment as minister. This press article does not demonstrate or even mention that Mr. Mokom has any influence over any supporters or associates,

¹⁹ See ICC-01/14-01/22-89-Conf-Exp, para. 6, p. 5.

²⁰ ICC-01/14-01/22-89-Conf-Exp, para. 6, footnote 10 (citing, by the Prosecution, to ICC-01/14-159-Conf-Exp, para. 14).

²¹ See ‘Requête de l’Accusation aux fins de reconsidération de la décision de la Chambre préliminaire II « partially granting the ‘Prosecution’s Renewed Request for Contact Restrictions pursuant to Regulation 101 of the Regulations of the Court’ » (ICC-01/14-157-Conf-Exp)’, 16 March 2022, ICC-01/14-159-Conf-Exp, para. 14, footnote. 16.

including from the Anti-Balaka movement, and only refers to the appointment of Mr. Mokom as minister.

20. This same paragraph 14 of Prosecution filing (ICC-01/14-159-Conf-Exp) also cites another press article dated January 2022 which says that a CPC armed group was led by Mr. Mokom at the Chadian border.²² However, in addition to this article being very short, it neither provides any reliable sources to support its claim that CPC armed groups were led by Mr. Mokom at the Chadian border, nor that Mr. Mokom had or has influence over members, supporters or associates of the CPC in general, even less so a 'wide range'. Thus, this article does not demonstrate that Mr. Mokom is in any position to use a so-called 'wide range' of CPC supporters or associate to interfere with the Prosecution's investigations or the safety of prospective witnesses and victims in the case.

21. The third 'source' relied upon by the Prosecution (in the same para. 14 of filing ICC-01/14-159-Conf-Exp) is a Wikipedia webpage about the CPC. Once again, the webpage does not indicate that Mr. Mokom has influence over members or supporters of the CPC and simply lists the different groups composing the CPC. In addition, the Wikipedia webpage does not constitute a reliable source of information as it bears no author, like any other anonymously-authored Wikipedia webpage. The Wikipedia webpage also does not bear a specific date either, but only states the day and time of the last modification to the article, which, at the time of writing, was 3 October 2021, hence almost a year ago. The Wikipedia webpage does not, therefore, either constitute a convincing source to demonstrate that Mr. Mokom possesses a 'wide range' of CPC supporters and associates' upon whom he can rely to interfere with the Prosecution's investigations or the safety of prospective witnesses and victims in the case.

²² See ICC-01/14-159-Conf-Exp, para. 14, footnote. 17.

22. The Prosecution's Request also cites one paragraph of UN Security Council (UNSC) Resolution S/RES/2648 (2022), and a UN press article on the adoption of that same Resolution to seek to demonstrate that the CPC still possesses active armed groups in CAR.²³ However, neither the UNSC Resolution nor the UN press article mention Mr. Mokom's name or the fact that any of the active armed groups of the CPC form part of his network of supporters and associates, or have any affiliation to Mr. Mokom.

23. None of the above-mentioned documents even begin to prove that Mr. Mokom has influence over a 'wide range' of associates and supporters which might in turn, allow Mr. Mokom 'to reach, intimidate, or harm witnesses and victims, their families or other individuals cooperating with the Court'.²⁴ The above-mentioned documents do not therefore constitute a sufficient basis for this Pre-Trial Chamber for the imposition of any contact restrictions.

(4) The fact that Yekatom and Ngaïssona [REDACTED] does not constitute a basis for the establishment of contact restrictions on Mr. Mokom

24. The Prosecution's Request contends that Yekatom and Ngaïssona's [REDACTED] imposed by Pre-Trial Chamber II and Trial Chamber V constitutes a ground for the imposition of contact restrictions on Mr. Mokom.²⁵

25. I reiterate my previous submission in which I stated that Mr. Mokom [REDACTED].²⁶ Moreover, the fact that Yekatom and Ngaïssona [REDACTED]. The Pre-Trial Chamber has not cited Yekatom and Ngaïssona's [REDACTED].

26. There should not be any guilt by association of Mr. Mokom with Yekatom and Ngaïssona and [REDACTED]. Such line of argument by the

²³ ICC-01/14-01/22-89-Conf-Exp, para. 6, at footnote 9.

²⁴ See ICC-01/14-01/22-89-Conf-Exp, p. 5, para. 6.

²⁵ ICC-01/14-01/22-89-Conf-Exp, para. 6. See in particular footnote 5.

²⁶ ICC-01/14-01/22-61-Conf-Exp, para. 10.

Prosecution is speculative and does not constitute a reasonable ground for the imposition of any contact restrictions.

27. In sum, the factual basis for the entirety of the restrictions on Mr. Mokom's communications is flimsy and speculative. Chambers are meant to scrutinize and regularly review the basis for the extension in time of such restrictions on fundamental freedoms, and not merely extend them 'automatically' and 'indefinitely'. Here, after six months of monitoring without incident, and considering the lack of justification, the Pre-Trial Chamber should DENY the extension sought.

28. In the alternative, should the Pre-Trial Chamber deem the facts on which the Prosecution's Request still justify today the extension of the same, current restrictions, the Defence requests one fine point of harmonization for Mr. Mokom's contact with [REDACTED].

B. Defence request to harmonize contact restrictions imposed in the Fourth Decision on Contact Restrictions [REDACTED]

29. On behalf of Mr. Mokom, I respectfully request the Pre-Trial Chamber to harmonize those contact restrictions [REDACTED].

30. [REDACTED].

31. [REDACTED].

32. [REDACTED]

33. [REDACTED].

34. The Prosecution has not made any allegations on contact restrictions with respect to [REDACTED]. Based on the Third Registry Report, there have been no incidents to report concerning the active monitoring of Mr. Mokom's non-privileged telephone calls, visits and written correspondences,²⁷ therefore including calls with [REDACTED].

35. While I note the allegations made in the Prosecution's Request against [REDACTED],²⁸ I recall my previous submissions where I stated that while one might assume that [REDACTED].²⁹ [REDACTED].

36. [REDACTED].

37. [REDACTED], I therefore request that the Pre-Trial Chamber harmonizes the monitoring regimes, and imposes the regime presently applied to [REDACTED].

38. In conclusion, on behalf of Mr. Mokom, I request that the Pre-Trial Chamber:

(a) **DENY** the Prosecution's Request;

(b) In the alternative, **VARY** the 28 June 2022 Decision to include [REDACTED], subject to the Pre-Trial Chamber's periodic review based on reports from the Registry.

Respectfully submitted,



Gregory Townsend,

²⁷ ICC-01/14-01/22-85-Conf-Exp, para. 6.

²⁸ ICC-01/14-01/22-89-Conf-Exp, para. 9.

²⁹ See ICC-01/14-01/22-41-Conf-Exp, para. 10.

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Wednesday, January 31, 2024