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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 "Mokom Defence Observations on the 'Fourth Registry Report on the Implementation of the Restrictions on Contact Ordered by Pre-Trial Chamber II'", ICC-01/14-01/22-142-Conf-Exp, 26 January 2023

Source: Philippe Larochelle, Counsel for Mr. Mokom

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Court to:

The Office of the Prosecutor

Karim A. A. Khan KC
Mame Mandiaye Niang
Kweku Vanderpuye

Counsel for the Defence

Philippe Larochelle
Gregory Townsend

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 November 2022, Pre-Trial Chamber II (the 'Chamber') issued its Fifth Decision on Contact Restrictions in which it decided to cease the active monitoring of Mr. Mokom's non-privileged communications, and to maintain a vetting procedure for the addition of contacts subject to non-privileged communications.¹

2. In the same Decision, the Chamber ordered the Registry to submit a report on the implementation of the contact restrictions on Mr. Mokom's non-privileged communications.² On 19 January 2023, the Registry filed its Report.³ On the same day, the Chamber ordered, by e-mail, the Registry to submit a revised version of the Registry Report containing a detailed assessment on: (a) the manner in which the contact restrictions were implemented; (b) information on whether Mr. Mokom sought the addition of persons to his contact list and if so, whether any issues with regard to the vetting process have been encountered; (c) whether there are any incidents or other matters of concern to report in respect of the contact restrictions; and (d) any other relevant matter. In the same Order, the Chamber also instructed Duty Counsel for Mr. Mokom to provide Observations on the Registry Report by 26 January 2023.⁴

3. On 23 January 2023, further to the Order of 19 January 2023, the Registry filed a revised version of its Report.⁵ On the same day, permanent Counsel for

¹ Pre-Trial Chamber II, "Fifth Decision on Contact Restrictions", 7 November 2022, ICC-01/14-01/22-106-Conf-Exp, paras. 11-12 ('Fifth Decision on Contact Restrictions').

² Ibid., para. 13.

³ Registry, "Fourth Registry Report on the Implementation of the Restrictions on Contact Ordered by Pre-Trial Chamber II", 19 January 2023, ICC-01/14-01/22-132-Conf-Exp ('Registry Report').

⁴ Pre-Trial Chamber II communications email to Parties and Registry, 19 January 2023 at 16:45 ('Order of 19 January 2023').

⁵ Registry, "Addendum to the "Fourth Registry Report on the Implementation of the Restrictions on Contact Ordered by Pre-Trial Chamber II" issued on 19 January 2023, ICC-01/14-01/22-132-Conf-Exp", 23 January 2023, ICC-01/14-01/22-135-Conf-Exp ('Revised Registry Report').

Mr. Mokom was appointed,⁶ further to which the Chamber amended its Order of 19 January 2023 and instructed Counsel for Mr. Mokom to provide observations on the Registry Report by 26 January 2023.⁷

Confidentiality

4. Pursuant to Regulation 23bis(1) of the Regulations of the Court, the Defence files these Observations 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 Chamber’s decisions on Contact Restrictions, the Orders of the 19 and 23 January 2023, and filings of the same classification, including the Registry Report and the Revised Registry Report.

Observations

5. The Defence for Mr. Mokom (‘Defence’) notes that both the Registry Report and the Revised Registry Report state that the Registry has no incidents to report regarding the implementation of the contact restrictions ordered by the Chamber on Mr Mokom’s non-privileged communications.⁸ The Revised Report even states that the Registry has no concern to report or does not wish to raise any matter regarding the implementation of the contact restrictions ordered by the Chamber,⁹ which displays Mr. Mokom’s exemplary behaviour and strong willingness to comply with the Chamber’s instructions on contact restrictions.

6. The Defence also notes that based on the vetting procedure for the addition of contacts subject to non-privileged communications, the Revised Registry Report states that [REDACTED] was not added to Mr. Mokom’s non-

⁶ 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.

⁷ Pre-Trial Chamber II communications email to Parties and Registry, 23 January 2023 at 17:27 (‘Order of 23 January 2023’).

⁸ ICC-01/14-01/22-132-Conf-Exp, para. 7; ICC-01/14-01/22-135-Conf-Exp, para. 16.

⁹ ICC-01/14-01/22-135-Conf-Exp, para. 16.

privileged contact list as both the Registry and the Prosecution had concerns about the addition of [REDACTED] to his contact list.¹⁰

7. As indicated in the Revised Registry Report, Mr. Mokom was indeed notified of this decision via CCO memorandum.¹¹ However, after analysis, the short CCO memorandum does not provide any substantial explanations about the refusal to add [REDACTED] on Mr. Mokom's contact list.

8. As stated in previous Defence submissions, Mr. Mokom does not intend to communicate with individuals for whom the Prosecution's alleges that unrestricted communications could pose risks.¹² Moreover, Mr. Mokom could not foresee that the addition of [REDACTED] could constitute a matter of concerns for the Registry and the Prosecution regarding the potential negative impact that communications between him and Mr. Mokom could have on the proceedings.

9. The Defence has also analysed the documents disclosed to the Defence so far and found no reference in any documents about the [REDACTED] that Mr. Mokom sought to add to his non-privileged contact list.

10. Moreover, the Defence also notes that the Fourth Pre-Trial Chamber's Decision on Contact Restrictions held that the Registry [REDACTED].¹³ However, Mr. Mokom has informed his Defence team that, to date, [REDACTED] in relation to the addition of [REDACTED] to his contact list.

11. As the Defence does not have any other means to reach an explanation about the reasons underlying the refusal of [REDACTED] to Mr. Mokom's

¹⁰ Ibid., para. 14-15.

¹¹ Ibid., para. 15.

¹² 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, para. 8.

¹³ Pre-Trial Chamber II, "Fourth Decision on Contact Restrictions", 28 June 2022, ICC-01/14-01/22-63-Conf-Exp, para. 10.

contact list, the Defence has contacted the Registry by email requesting information about the concerns shared by the Registry and Prosecution about adding [REDACTED] to Mr. Mokom's contact list.

12. Whilst the Registry is not obligated to share confidential information underlying the reasons for its refusal to add a contact, the Defence indicates that Mr. Mokom would be grateful to receive information about the discretionary reasons invoked by the Registry and the Prosecution to deny the addition of [REDACTED] to his contact list.

13. The Registry has provided no additional information to the Defence so far and Mr. Mokom remains unaware of any reasons for the concerns of the Registry and Prosecution as to communication between him and [REDACTED].

14. Whilst the Defence remains open to finding an adequate solution to the matter through further discussions with the Registry, the Defence shares its concern to the Pre-Trial Chamber about the discretionary nature of the vetting process to add individuals to his non-privileged contact list. Following the delay as to his legal representation and the time he has already spent in purportedly preventative detention, Mr. Mokom should be entitled to more transparency from the Registry if it declines to add [REDACTED] to his non-privileged contact list, bearing in mind the importance that the addition of such contacts bear in relation to the quality of his conditions of detention.

Respectfully submitted,



Philippe Larochelle,
Counsel for Maxime Mokom

The Hague, The Netherlands
Wednesday, January 31, 2024