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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

**Mr. Mokom's Observations on the
'Registry Report on Legal Representation of Victims'**

Source: Gregory Townsend, Duty Counsel

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

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Introduction and procedural history

1. On 27 June 2022, Pre-Trial Chamber II (the ‘Chamber’) issued its ‘Order on the conduct of the confirmation of charges proceedings’ *inter alia* instructing the Registry to provide a Report on the legal representation of any victims, within one month of the appointment of permanent counsel for Mr. Mokom.¹

2. On 15 September 2022, the Chamber ordered, by e-mail, the Registry to submit its Report on legal representation by no later than 7 October 2022 and Duty Counsel or permanent counsel for Mr Mokom (if appointed prior to this date) to provide any observations on the Report by no later than 14 October 2022.²

3. On 7 October 2022, the Registry filed its Report on Legal Representation of Victims in the Case (the ‘Report’).³

4. Because, to date, Mr. Mokom is still not yet represented by permanent counsel, I file these observations on the Report, as Duty Counsel for Mr. Mokom, pursuant to the Chamber’s Order of 15 September 2022. Whilst grateful for the opportunity afforded by the Chamber to provide, on behalf of Mr. Mokom, observations on matter of legal representation of victims in the case, with respect to the information provided in the Report, I must also state at the outset that, once appointed, permanent Counsel for Mr. Mokom should likewise receive an equal opportunity to do the same, and that my observations on the matter should not bind or bar permanent counsel, once appointed, from making further observations.

¹ Pre-Trial Chamber II, ‘Order on the conduct of the confirmation of charges proceedings’, 27 June 2022, ICC-01/14-01/22-62, paras. 47-48.

² Pre-Trial Chamber II communications email to the Registry and parties, 15 September 2022 at 15:25.

³ 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 an Annex, which is referred hereinafter as the ‘Report’).

Observations

- a. **The Report's reference to an 'entitlement' of *all* participating victims in the *Yekatom and Ngaïssona* proceedings to participate in the *Mokom* proceedings based on the purported similarities between the two cases**

5. The Report states that the Registry consulted 40 victims participating in the *Yekatom and Ngaïssona* proceedings (the '40 *Yekatom and Ngaïssona* Participating Victims') and that all 40 answered that they are, or wish to be, represented by the same lawyer(s) who represents them in the *Yekatom and Ngaïssona* case.⁴

6. Participation and representation are separate notions, and the question of participation should be settled first. I point out that the choice of the 40 *Yekatom and Ngaïssona* Participating Victims to be represented by the same lawyers in the *Mokom* case does not amount to them being 'automatically' entitled to participate in the *Mokom* proceedings. Such choice simply establishes their preferred legal representation, *should* they first be admitted to participate as victims in the *Mokom* proceedings, based on the established procedure—for admission of victims to participate in the proceedings (and exclusion of others not found to constitute victims)—adopted by the Chamber.⁵

7. Indeed, whilst the Chamber ordered the Registry to *collect* 'information on legal representation' of victims in the *Mokom* case and file a report on that matter,⁶ I note that, in addition to providing information on legal representation of the 40 *Yekatom and Ngaïssona* Participating Victims, the Report refers to a part of previous Registry submissions of 25 May 2022 in which the Registry submitted that 'victim

⁴ ICC-01/14-01/22-98-Anx-Red, paras. 10, 22.

⁵ ICC-01/14-01/22-62, paras. 40-41.

⁶ ICC-01/14-01/22-62, paras. 47-48, page 24; see also ICC-01/14-01/22-98-Anx-Red, para. 1.

applications admitted at pre-trial and/or trial stage in the *Yekatom and Ngaïssona* case are subject to admission in the present case' (the '25 May submissions').⁷

8. The Report's reference to this part of the 25 May submissions, Duty Counsel submits, exceeds the scope of the Chamber's order, namely that the Registry collect information on legal representation and, therefore, should be disregarded. Moreover, this part of the 25 May submissions also supported the position held by the Office of Public Counsel for Victims ('OPCV') according to which the status of victims in the *Mokom* case should be attributed to victims participating in the *Yekatom and Ngaïssona* case.⁸ Registry submissions on the admission of participating victims in the *Yekatom and Ngaïssona* case in the *Mokom* case, Duty Counsel submits, goes beyond the matter of legal representation of victims. In this regard, I refer to my previous submissions in relation to the admission-of-victims process in the *Mokom* case of the victims admitted to participate in *Yekatom and Ngaïssona* proceedings and recall that, as a matter of law and principle, there should not be any 'automatic' transfer of victims between two cases, even if they bear similarities. That is because such automatic transfer contravenes the requirement of Article 68(3) of the Statute, according to which it is the Court's assessment of individual applicants' personal interests' being affected in the case in question that may justify their admission as victims in a case.⁹

⁷ ICC-01/14-01/22-98-Anx-Red, para. 11, footnote 17 (referring to '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, para. 11).

⁸ ICC-01/14-01/22-55, para. 11.

⁹ Mr. Mokom's Response to the Registry's Observations on victim participation, 3 June 2022, ICC-01/14-01/22-57, para. 6; *see also* 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, para. 5.

b. The Report's reference to the possibility that applicants not admitted as victims in the *Yekatom and Ngaïssona* proceedings may participate in the *Mokom* proceedings based on the different scopes of the two cases

9. The Report states that all six Common Legal Representatives of victims participating in the *Yekatom and Ngaïssona* case have indicated to the Registry their interest in representing victims in the *Mokom* case.¹⁰

10. In this vein, the Report refers to correspondence between the *Yekatom and Ngaïssona* Legal Representatives of Victims and the Registry, in which the five counsel representing the Victims of Other Crimes group in the *Yekatom and Ngaïssona* case ('the five Legal Representatives of Victims') have stated their willingness to replicate in the *Mokom* case the legal representation scheme and composition in place in the *Yekatom and Ngaïssona* case, including based on counsel engagement with [...] 'potential New Applicants'.¹¹ The Report states that such 'potential New Applicants' are considered by the five Legal Representatives of Victims to include in particular those persons 'whose applications for participation were rejected in the *Yekatom and Ngaïssona* case, who, in view of the different scope of the case, could be accepted as participating victims in the *Mokom* case.'¹²

11. Whilst the scope of the Chamber's order was limited to legal representation of victims in the *Mokom* case, the Chamber should take cognizance of the contradictory approaches listed in the Report in relation to the admission of victims in the case, under which, on one hand, the 'distinctive' features between the *Mokom* and *Yekatom and Ngaïssona* cases flagged up by the five Legal Representatives of Victims would purportedly justify the admission of rejected applicants in the *Yekatom and Ngaïssona* proceedings and, on the other hand, the OPCV and the Registry's above-mentioned position that the cases are so 'similar' that there should be an automatic transfer of

¹⁰ ICC-01/14-01/22-98-Anx-Red, para. 28, p. 12.

¹¹ ICC-01/14-01/22-98-Anx-Red, para. 28, p. 13.

¹² ICC-01/14-01/22-98-Anx-Red, para. 28, footnote 44.

victims between both cases. This underscores the statutory requirement for the Chamber's assessment of individual victims' personal interests.

12. Irrespective of the counsel representing purported victims in the *Mokom* case, any prospective applicants, be they victims participating in the *Yekatom and Ngaïssona* proceedings or persons not participating in any proceedings, must apply and go through the 'A-B-C Approach' for the admission of victims in the *Mokom* case, as adopted by the Chamber.¹³

Respectfully submitted,



Gregory Townsend,
Duty Counsel

The Hague, The Netherlands
Friday, October 14, 2022

¹³ ICC-01/14-01/22-62, paras 40-41.