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

Public

Public Redacted Version of “Prosecution’s Request to extend the contact restrictions imposed in the “Fifth Decision on Contact Restrictions” (ICC-01/14-01/22-106-Conf-Exp)” (ICC-01/14-01/22-131-Conf-Exp, 19 January 2023)

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

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I. INTRODUCTION

1. The Office of the Prosecutor (“Prosecution”) requests that Pre-Trial Chamber II (“Chamber”) extends the current contact restrictions¹ imposed on Maxime Jeoffroy Eli Mokom Gawaka (“MOKOM”) in accordance with regulation 101(2) of the Regulations of the Court (“RoC”). The Prosecution also requests the Chamber to reinstate the active monitoring of MOKOM’s non-privileged communications with persons other than [REDACTED].²

2. *First*, the contact restrictions remain justified to protect prospective victims, witnesses, and the ongoing investigation. *Second*, MOKOM’s ostensible compliance for just over ten months since his transfer to the Court does not mitigate the serious risks of lifting them, particularly at this early stage of the proceedings. *Third*, the delay in proceedings resulting from the prolonged adjudication of the issue of MOKOM’s legal representation does not attenuates the clear risks, nor can it be a decisive factor favouring the reduction of the current contact restrictions.

II. CONFIDENTIALITY

3. Pursuant to regulation 23*bis*(2) of the RoC, this document is filed as “Confidential EX PARTE, only available to the Registry, Prosecution, and Defence” as it concerns decisions and filings of the same classification. The Prosecution will file a public redacted version once these decisions and filings are reclassified.

¹ ICC-01/14-01/22-106-Conf-Exp (“Fifth Decision”).

² ICC-01/14-01/22-106-Conf-Exp, para. 7.

III. SUBMISSIONS

A. The contact restrictions are necessary and proportionate

4. The current contact restrictions concerning MOKOM remain necessary to protect witnesses and victims pursuant to regulation 101(2)(c) and (f), and to protect the Prosecution's ongoing investigations pursuant to regulation 101(2)(b). The Prosecution's past filings³ and the Chamber's decisions⁴ extensively set out the relevant justifications, which remain unabated. They are incorporated by reference and briefly summarised below.

- *MOKOM has a demonstrated propensity to threaten individuals who opposed him or his interests:* MOKOM has a history of resorting to intimidation and threatening individuals who pose a risk to his and the Anti-Balaka's unlawful activities. As this Chamber is aware, MOKOM has personally and directly threatened Prosecution witnesses.⁵ He has also on numerous occasions used his family members and other associates to intimidate several Prosecution witnesses, their relatives, as well as other individuals, to impede or prevent their cooperation with the Court and/or other official authorities.⁶ MOKOM's acts were not isolated incidents, but comprise a pattern of conduct committed over several years throughout and after the time of the events charged in the Warrant of Arrest.
- *MOKOM has a motive to interfere with the Prosecution's investigation:* MOKOM faces charges carrying serious consequences for his freedom, reputation, and

³ ICC-01/14-01/22-18-Conf-Exp; ICC-01/14-159-Conf-Exp; ICC-01/14-01/22-25-Conf-Exp; ICC-01/14-01/22-60-Conf-Exp, ICC-01/14-01/22-89-Conf-Exp.

⁴ ICC-01/14-01/22-19-Conf-Exp; ICC-01/14-01/22-28-Conf-Exp; ICC-01/14-01/22-45-Conf-Exp; ICC-01/14-01/22-63-Conf-Exp, ICC-01/14-01/22-106-Conf-Exp .

⁵ ICC-01/14-159-Conf-Exp, para. 15; ICC-01/14-01/22-25-Conf-Exp, paras. 8-10; ICC-01/14-01/22-60-Conf-Exp, para. 14, ICC-01/14-01/22-89-Conf-Exp, para. 6.

⁶ ICC-01/14-159-Conf-Exp, para. 15; ICC-01/14-01/22-25-Conf-Exp, paras. 6-7, 11-13; ICC-01/14-01/22-60-Conf-Exp, para. 14, ICC-01/14-01/22-89-Conf-Exp, para. 6.

political and economic ambitions. As the case proceeds towards the confirmation of charges hearing, the risk that he may undertake action to undermine the proceedings likewise increases.⁷ Thus, reducing the contact restrictions in place in such circumstances, rather than accommodate a legitimate interest, would instead place the integrity of the proceedings at unnecessary risk.

- *MOKOM retains an active support network in CAR where the majority of Prosecution witnesses reside:* As the Anti-Balaka's former National Coordinator for Operations, a former minister, and a founding member of the *Coalition des Patriotes pour le Changement* ("CPC") - a coalition of armed rebel groups still active in CAR⁸ - MOKOM retains a strong influence over his wide range of supporters and associates.⁹ Allowing MOKOM to contact his supporters and associates by lifting the current restrictions would increase the risk of tampering with witnesses or other individuals cooperating with the Court. As a result, they may become reluctant to cooperate or to remain involved with this case.¹⁰
- *The security situation in CAR remains unstable:* The increasingly fragile political and security situation in CAR, as outlined in the Registry's 25 November 2022,¹¹

⁷ ICC-01/14-01/22-89-Conf-Exp, para. 6.

⁸ See ICC-01/14-01/18-1676-Conf-Anx, para. 59. In the most recent resolution on the situation in the CAR, the UN Security Council "(s)trongly condemns attacks committed by armed groups of the Coalition des patriotes pour le changement (CPC), and requests the Panel, in the course of carrying out its mandate, to consider proposing or updating further statements of cases for possible designation pursuant to paragraphs 20 to 21 of resolution 2399 (2018)." S/RES/2648 (2022), para. 8, 29 July 2022 (https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/S_RES_2648.pdf), [last accessed 18/01/2023]. See also CS/14991, 29 July 2022 ([République centrafricaine: le Conseil de sécurité proroge d'un an l'embargo sur les armes avec une dérogation pour les forces de sécurité | UN Press](#)), [last accessed 18/01/2023].

⁹ ICC-01/14-159-Conf-Exp, para. 14.

¹⁰ ICC-01/14-01/18-582, para. 11, ICC-01/14-01/18-1590-Conf-Red, para. 9. See also, ICC-01/14-01/18-112-Conf-Exp, para. 11.

¹¹ See ICC-01/14-01/18-1676-Conf, para. 7, noting, ["The political and security context in CAR continues to be shaped by (i) extreme political tensions over the Constitutional reform seen as an authoritarian drift, which are likely to remain significant with the preparation of the July 2023 local and regional elections amidst very little progress in the peace process ; (ii) the volatile security environment, characterised by unabated clashes across several parts of the country between armed groups and the FACA/Bilateral forces; (iii) a dire socio-economic and

and during the 29 July 2022 Security Council session,¹² as well as the government's imminent budgetary crisis,¹³ further diminishes the domestic authorities' capacity to protect and secure the interests of witnesses in this case, given the necessary deployment of a substantial portion of their further limited resources to stabilise the country, and increases the risk of witness interference. This fact provides an opening to those seeking to frustrate the Prosecution's ongoing investigation and the Court's proceedings.

5. Even though there have been no further known incidents reported by Prosecution witnesses since June 2019,¹⁴ the objectively justifiable risk associated with the Suspect's contacts has not diminished significantly at this stage of the proceedings. Moreover the question before the Chamber is whether the prevailing circumstances are such that, absent the contact restrictions there is a chance that the resultant conduct "could be harmful"¹⁵ or "could prejudice or otherwise affect"¹⁶ the outcome of the proceedings.¹⁷ The risks set out above clearly fulfil these criteria. Thus, lifting the contact restrictions at this early stage presents such a danger — unquestionably, and not just to the confirmation hearing, but to a potential trial and the whole of the Court's process.

6. Reducing the existing contact restrictions may further impact the conduct of the ongoing *Yekatom* and *Ngaissona* trial. As this Chamber is aware, the prospective case concerning MOKOM involves largely the same facts and circumstances as the *Yekatom*

humanitarian situation, which is exacerbated by the CAR government's alarming budgetary situation." See also ICC-01/14-01/18-1319-Red3, para. 9, citing to the Sixth Periodic Report of the Registry on the Political and Security situation in the CAR, ICC-01/14-01/18-1192-Conf, para. 8.

¹² See UN Security Council, S/RES/2648 (2022), 29 July 2022 (https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/S_RES_2648.pdf), [last accessed 18/01/2023], deciding that "the situation in the CAR continues to constitute a threat to international peace and security in the region."

¹³ See ICC-01/14-01/18-1556-Conf-Anx, paras. 19-20. See also Atlanticactu, « Centrafrique: la situation financière s'annonce "très préoccupante" », 6 May 2022 (<https://atlanticactu.com/centrafrique-la-situation-financiere-sannonce-tres-preoccupante/>), [last accessed 18/01/2023].

¹⁴ ICC-01/14-01/22-25-Conf-Exp, paras. 6-22.

¹⁵ See Regulation 101(2)(c) of the Regulations of the Court ("RoC").

¹⁶ See Regulation 101(2)(b) of the RoC.

¹⁷ *Contra* ICC-01/14-01/22-106-Conf-Exp, para. 9.

and *Ngaissona* case. Indeed, but for the timing of MOKOM's arrest the substantive elements of the case against him would have been joinable to the now ongoing trial. Given the overlapping nature of the evidence and witnesses regarding the two processes, including linkage evidence, it is clear that reducing the contact restrictions regarding MOKOM may have a deleterious effect on the existing contact restrictions regarding YEKATOM and NGAISSONA imposed by Trial Chamber V to preserve the integrity of the proceedings in that related case. It is necessarily a factor that the Chamber must take cognisance of, insofar as discharging its duty to balance the competing interest of preserving the integrity of proceedings before the Court as a whole in determining the present matter.

B. MOKOM's ostensible compliance with the Chamber's order does not remove the need for restrictions

7. MOKOM's purported compliance with the conditions of his detention does not mitigate any of the above-mentioned risks. Nor does it require terminating the active monitoring of non-privileged communications with persons other than [REDACTED].¹⁸ The fact that no personal misconduct has been identified since the imposition of restrictions does not bear much weight, given the fact that the restrictions themselves removed in large measure the *possibility* for MOKOM's misconduct.¹⁹ His compliance with the contact restrictions should be the norm, and the fact that restrictions have been *effective* does not necessarily lead to the conclusion that the need to continue such measures has diminished or disappeared.

8. Even if *arguendo* MOKOM's behaviour has accorded with the terms and conditions of his detention, this does not alter the prevailing security situation in CAR, the vulnerability of witnesses and victims, or his substantial influence in the CAR

¹⁸ *Contra* ICC-01/14-01/22-106-Conf-Exp, para. 10.

¹⁹ ICC-01/04-02/06-1817-Red, para. 73.

through his supporters including direct family members and his network of associates in CPC.

C. Delay in pre-trial proceedings is not a decisive factor

9. The Chamber should order the resumption of active monitoring of MOKOM's non-privileged communications with persons other than [REDACTED], irrespective of the delay in the progression of the pre-trial proceedings.

10. In its Fifth Decision, the Chamber found, *inter alia*, that the active monitoring of MOKOM's non-privileged communications was no longer justified due to the delay in the proceedings. *First*, to the extent that it considered this factor dispositive — notwithstanding the Suspect's contribution to the protracted litigation of the matter — the issue of MOKOM's legal representation has been adjudicated.²⁰ The disclosure process as set out in the 27 June 2022 Order is expected to commence within a reasonable time,²¹ upon the Suspect's selection of qualified and non-conflicted Counsel.

11. If the contact restrictions are lifted on the basis of delays in proceedings arising from the litigation of issues in which MOKOM has actively engaged in, this would provide a way of avoiding reasonable and necessary restrictions in detention. Here, this is a particular peril, as the Prosecution has already provided MOKOM with access to evidence relevant to the prospective confirmation hearing, as well as that disclosed in the *Yekatom* and *Ngaissona* case, which is of course ongoing. Moreover, it will soon

²⁰ ICC-01/14-01/22-124-Conf.

²¹ ICC-01/14-01/22-62, paras. 27, noting [“In order to allow for sufficient and meaningful preparation of Mr Mokom once permanent counsel will have been appointed, the Chamber finds it appropriate to order the Prosecution to commence the disclosure of all evidence it intends to rely upon at the confirmation hearing, including the totality of the witness statements, immediately after the notification of appointment of permanent counsel for Mr Mokom”].

identify with particularity the evidence it intends to rely upon at the confirmation hearing and other sensitive information through formal disclosure.

12. *Second*, the delay in proceedings, does not warrant lifting the active monitoring of his non-privileged communications.²² While the passage of time is a factor that could become more significant as more time elapses, the Appeals Chamber has also held that this does not mean *per se* that the risks in question no longer exist and/or that restrictions have become disproportionate.²³ Lifting the contact restrictions would inevitably heighten the risk to prospective witnesses in this case, especially given the Chamber's order requiring that the Prosecution disclose all evidence it intends to rely upon at the confirmation hearing immediately after the notification of permanent counsel for MOKOM. Secondly, as noted above, it may reasonably impact the ongoing trial proceedings in the *Yekatom* and *Ngaissona* case.

13. Thus, the contact restrictions in particular, active monitoring of his non-privileged communications, are necessary and proportional to ensure a fair trial and protect the integrity of the proceedings.

D. The contact restrictions are not unduly broad or burdensome

14. The contact restrictions are not unduly burdensome to MOKOM. They also strike an appropriate balance with the Suspect's rights to family life and privacy and the necessity to protect witnesses and victims and the interests of the Court in preserving and protecting the integrity of the proceedings as well its statutory obligations under article 68. In light of these circumstances and the substantial risks to potential witnesses noted above, the requested contact restrictions are fully proportionate to their intended aims.

²² *Contra* ICC-01/14-01/22-106-Conf-Exp, para. 8.

²³ ICC-01/04-02/06-1817-Red, para. 72, noting ["In this regard, the passage of time is but *one factor that may influence* either finding" (emphasis added)].

IV. RELIEF SOUGHT

15. For the above reasons, the Prosecution requests the extension of the current restrictions and the reinstatement of the active monitoring of MOKOM's non-privileged communications with persons other than [REDACTED].



Karim A. A. Khan KC, Prosecutor

Dated this 25th January 2024
At The Hague, The Netherlands