



Original: **English**

No.: **ICC-01/14-01/22**

Date: **25 January 2024**

TRIAL CHAMBER V

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 and modify current
contact restrictions”, (ICC-01/14-01/22-60-Conf-Exp, 17 June 2022)**

Source: Office of the Prosecutor

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

The Office of the Prosecutor

Mr Karim A. A. Khan QC
Mr Mame Mandiaye Niang
Mr Kweku Vanderpuye

Counsel for the Defence

Mr Philippe Larochelle

Legal Representatives of Victims

Mr Abdou Dangabo Moussa
Ms Marie-Edith Douzima-Lawson
Mr Yaré Fall
Ms Elisabeth Rabesandratana

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

States Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Osvaldo Zavala Giler

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

I. INTRODUCTION

1. The Pursuant to Pre-Trial Chamber II's ("Chamber") decision of 28 April 2022¹ and regulation 101(2) of the Regulations of the Court ("RoC"), the Office of the Prosecutor ("Prosecution") hereby requests : a) the active monitoring of calls, visits, and written communication between Maxime Jeoffroy Eli Mokom Gawaka ("MOKOM") and [REDACTED],² "[REDACTED]"; and b) the extension of the contact restrictions in place in relation to MOKOM's non-privileged contact list, including his direct family members.

2. Active monitoring of contacts between MOKOM and [REDACTED] is necessary, given [REDACTED] previous involvement with the Anti-Balaka in 2013-2014, [REDACTED] personal knowledge of potential Anti-Balaka insider witnesses who operated in ZONGO and BANGUI in that period, as well as [REDACTED] telephone contacts with some Anti-Balaka members and witnesses.

3. The circumstances justifying the active monitoring of contacts between MOKOM and his non-privileged contacts, ordered by the Chamber and currently in place, continue to be necessary to attenuate the serious risks of interference with the Prosecution's investigations and the prospective testimony of witnesses.

II. CONFIDENTIALITY

4. Pursuant to regulation 23*bis*(1) of the RoC, this document is filed as "*Ex parte*, only available to Pre-Trial Chamber II," as it contains information that, if revealed to the Defence, would undermine the Prosecution's efforts to safeguard the integrity of

¹ ICC-01/14-01/22-45-Conf-Exp.

² [REDACTED].

the proceedings and the security and safety of prospective witnesses. A confidential redacted version will be filed contemporaneously.

III. SUBMISSIONS

A. Active monitoring of calls, visits and written correspondence between MOKOM and [REDACTED] is necessary

5. On 28 April 2022, the Chamber terminated the active monitoring of all communications between MOKOM and [REDACTED], on the basis that “[i]t has not been alleged that communication between Mr Mokom [REDACTED] would raise the risks listed in regulation 175 of the Regulations of the Registry (the ‘Regulations’). Moreover, the Registry has not reported any incidents in relation to Mr Mokom’s non-privileged communications.”³

6. As is well established, the right to family life under regulation 101(2)(b) and (f) of the RoC can be subject to justifiable restrictions when there are reasonable grounds to believe that the outcome of an investigation or the protection of the rights and freedom of any person may otherwise be at risk.

7. Several factors militate in favour of the active monitoring of all communications between MOKOM and [REDACTED].

8. *First*, after the 24 March 2013 *coup d’Etat* against François BOZIZE (“BOZIZE”), MOKOM took refuge in ZONGO, the Democratic Republic of the Congo (“DRC”) with [REDACTED].⁴ While in ZONGO, [REDACTED] crossed the river to BANGUI several times to collect money on behalf of [REDACTED]. This money was then distributed amongst the Anti-Balaka in ZONGO to use for phone credit or to acquire

³ ICC-01/14-01/22-45-Conf-Exp, para. 4.

⁴ See Annex A, p. 6-7: CAR-OTP-2049-0237, at 0240-0241, paras. 25, 27-30; See Annex A, p. 11: CAR-OTP-2049-0245.

weapons, ammunition, and to finance other Anti-Balaka activities.⁵ [REDACTED] was thus [REDACTED] involved in (if not complicit) in criminal acts which are the subject of the warrant of arrest and these proceedings, more generally. There is a clear risk that [REDACTED] (an ‘interested witness’) may assist [REDACTED] in unlawful activities as relates to these proceedings. As [REDACTED] of a former DDR Minister and powerful rebel leader in the Anti-Balaka and *Coalition pour les Patriotes et le Changement* (“CPC”), [REDACTED] represents a direct extension of MOKOM’s network and influence which is capable of identifying and interfering with the Prosecution’s investigations or prospective witnesses – many of whom have been associated with the Suspect and/or the DDR program which he oversaw. Moreover, [REDACTED] may be disposed to interfere with Prosecution’s prospective witnesses and investigations not only to protect [REDACTED], but also to shield [REDACTED] from possible prosecution.

9. *Second*, MOKOM and [REDACTED] lived for more than eight months amongst the Anti-Balaka in ZONGO.⁶ Given that MOKOM is publicly charged with coordinating the 5 December 2013 attack on BANGUI from ZONGO by, *inter alia*: a) instructing Anti-Balaka groups as the *de facto* Coordinator for Operations; b) providing material support to the Anti-Balaka in the form of money, ammunition, and weapons; and c) meeting with subordinates in the context of their planned action,⁷ with assistance from MOKOM, [REDACTED] could easily identify potential Prosecution insider witnesses concerning MOKOM’s activities in ZONGO. For example, in 2014, call data records (“CDR”) information of [REDACTED]⁸ shows that [REDACTED] was

⁵ ICC-01/14-01/22-25-Conf-Exp-AnxE, p. 47-48: CAR-OTP-2090-0561, paras. 63-66; Annex A, p. 19: CAR-OTP-2034-0463, at 0470, para. 36.

⁶ See Annex A, p. 38: CAR-OTP-2111-0336, at 0340, paras. 26-31.

⁷ ICC-01/14-01/22-2-Red2, paras. 16-17.

⁸ According to information provided by phone provider the following number is attributed to [REDACTED].

in contact with Anti-Balaka members [REDACTED] [REDACTED] met in ZONGO⁹ [REDACTED]¹⁰ [REDACTED].¹¹

10. *Third*, [REDACTED] could also serve as a vehicle to communicate unauthorised information to other family members, even if MOKOM has expressed no intention to add them to the list of non-privileged contacts.¹²

- [REDACTED] would have the ability to contact Bernard MOKOM and other family members [REDACTED] to transmit confidential information. For instance, in 2013, [REDACTED] knew about Bernard MOKOM's involvement in the events as an Anti-Balaka leader and maintained a good relationship with him. [REDACTED].¹³
- CDR information in the Prosecution's possession indicate that, [REDACTED] was most recently in contact with [REDACTED] and Anti-Balaka member [REDACTED].¹⁴ In turn, [REDACTED], [REDACTED] was allegedly involved in threatening [REDACTED]¹⁵ and [REDACTED]¹⁶ on behalf of MOKOM.

11. Considering the circumstances of this case and the risks at stake, active monitoring during the allocated calling hours, visits, and written communication between MOKOM and [REDACTED] constitute a reasonable and fair restriction of his right to family life. Importantly, these measures would also not overburden the Registry, whose capacity increased beginning 1 June 2022.¹⁷

⁹ See Annex C, p. 7, l. 5-p. 8, l. 4; ICC-01/14-01/22-25-Conf-Exp-AnxE, p. 19: CAR-OTP-2123-0618, at 0622, paras. 34-36.

¹⁰ See Annex B, p. 1: point I. According to [REDACTED], the number [REDACTED] belongs to him.

¹¹ See Annex B, p. 7: point II. According to [REDACTED], the number [REDACTED] belongs to him.

¹² ICC-01/14-01/22-41-Conf-Exp, para. 8.

¹³ See Annex C, p. 21, l. 13-24.

¹⁴ See Annex B, p. 18: point III. See ICC-01/14-01/22-25-Conf-Exp-AnxE, p. 6: CAR-OTP-2112-0021, at 0024, para. 16 for [REDACTED]'s number [REDACTED].

¹⁵ ICC-01/14-01/22-25-Conf-Exp, paras. 11-13.

¹⁶ ICC-01/14-01/22-25-Conf-Exp, paras. 6-7.

¹⁷ Email from Registry to Chamber, at 11:55, last paragraph.

B. The contact restrictions with other non-privileged contacts ordered by the Chamber and currently in place remain necessary

12. The circumstances justifying active monitoring in relation to MOKOM's non-privileged contact list, including his direct family members, persist. The Prosecution incorporates to this request the arguments it developed in its previous two filings, related to: a) the nuisance capacity of his close and extended family members, including former President BOZIZE, as well as his support network; b) threats against [REDACTED], [REDACTED], and [REDACTED]; and c) the possibility for other Central African Republic ("CAR") detainees to circumvent their own contact restrictions.¹⁸

13. Several other arguments support the idea that the contact restrictions with regard to his non-privileged contact list, including his direct family, should be extended.

14. *First*, the threats to [REDACTED] mentioned in the previous filing¹⁹ are not isolated incidents. MOKOM operated in a similar manner at the time of the events (2013-2015) by intimidating and threatening individuals who opposed him or his actions:

- In [REDACTED], MOKOM, through an Anti-Balaka intermediary, allegedly threatened to kill [REDACTED] if any Anti-Balaka was arrested [REDACTED].²⁰

¹⁸ ICC-01/14-159-Conf-Exp, paras. 12-16; ICC-01/14-01/22-25-Conf-Exp, paras. 6-22.

¹⁹ ICC-01/14-01/22-25-Conf-Exp, paras. 6-22.

²⁰ [REDACTED].

- In 2015, MOKOM allegedly personally threatened [REDACTED].²¹
- In December 2017, the United States Department of the Treasury's Office of Foreign Assets Control (OFAC) sanctioned MOKOM for his and his Anti-Balaka's violent behaviour which threatened the peace, security, and stability of the CAR, *inter alia*, for: a) planning, together with another, a failed *coup d'Etat* in 2015 against CAR President Catherine SAMBA-PANZA; b) intimidating, together with another group, the voters in the 13 December 2015 constitutional referendum in the town of Kaga Bandoro; and c) possibly planning to disrupt in 2016, with another group, the arrival of the flight of CAR President Faustin-Archange TOUADERA, in anticipation of a possible *coup d'Etat* attempt.²²

15. *Second*, many members of MOKOM's close family were and/or are Anti-Balaka members. These include:

- his father Bernard MOKOM (an Anti-Balaka member close to Patrice Edouard NGAISSONA),²³
- his brother Télé-Sport MOKOM (Anti-Balaka in BOUAR),²⁴
- his brother Rochael MOKOM *alias* 'Colonel Rocco' (Anti-Balaka, deceased in May 2014)²⁵, and
- his brother Sylvain BEOROFEI (Anti-Balaka ComZone).²⁶

16. Their interests thus align with the Suspect, augmenting the risks attendant to their potential contact with him, whether direct or indirect.

²¹ See Annex A, p. 78: CAR-OTP-2074-2643, at 2682, l. 1309-1310 [N.B. only the relevant page is appended]. ("Moi, Maxime MOKOM m'avait menacé [REDACTED]»)

²² U.S. Department of the Treasury, Press releases, "Treasury Sanctions Two Central African Republic Militia Commanders", 12 April 2017, (<https://home.treasury.gov/news/press-release/sm0041>, last accessed 16/06/2022)

²³ ICC-01/14-159-Conf-Exp, paras. 12-13.

²⁴ ICC-01/14-01/22-25-Conf-Exp, para. 16.

²⁵ See Annex A, p. 92-93: CAR-OTP-2093-0225, at 0238-0239, paras. 93, 99-101.

²⁶ For their family link see Annex A, p. 127: CAR-OTP-2072-1690, at 1711, l. 707-716; For his involvement in the Anti-Balaka see Final report of the Panel of Experts on the Central African, S/2015/936, p. 9 (https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_2015_936.pdf, last accessed on 15/06/2022).

17. *Third*, the fragile political and security situation in CAR, as outlined in the Registry's 26 November 2021 report,²⁷ and in the 22 February 2022 Security Council session,²⁸ as well as the government's imminent budgetary crisis,²⁹ 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. These circumstances demonstrate that the restrictions in place remain necessary and proportionate, and militate against any mitigation of the current restrictions.

18. *Finally*, the absence of any security incidents since MOKOM's arrest or breach of current contact restrictions³⁰ does not mean that the risks thereof are in any way diminished. Given his leadership roles in the Anti-Balaka and in the *Coalition des Patriotes pour le Changement* ("CPC") — which continues to maintain a dangerous military presence in the country³¹ — MOKOM can still exercise his substantial influence in the CAR through his network of supporters. This is where majority of Prosecution's prospective witnesses reside and where its investigation remains ongoing. The risks are clear.

IV. RELIEF SOUGHT

19. For the above reasons, the Prosecution requests: a) the active monitoring of calls, visits, and written communication between MOKOM [REDACTED]; and b) the

²⁷ See 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.

²⁸ Security Council, CS/14799, 22 February 2022 (<https://www.un.org/press/fr/2022/cs14799.doc.htm>, last accessed 16/06/2022) (« en dépit de la déclaration du cessez-le-feu unilatéral en octobre 2021, la situation sécuritaire demeure préoccupante. En effet, dans certaines parties du territoire, des opérations militaires sont en cours contre des groupes armés, membres de la Coalition des patriotes pour le changement, qui lancent des représailles contre les forces de sécurité nationale et les populations. »).

²⁹ Atlanticactu, « Centrafrique: la situation financière s'annonce "très préoccupante" », 6 May 2022 (<https://atlanticactu.com/centrafrique-la-situation-financiere-sannonce-tres-preoccupante/>, last accessed 16/06/2022).

³⁰ ICC-01/14-01/22-59-Conf-Exp, paras. 6, 18.

³¹ See above, footnote 29; ICC-01/14-159-Conf-Exp, para. 14.

extension of the other contact restrictions decided by the Chamber regarding MOKOM's non-privileged contact list, including his direct family members.



Karim A. A. Khan QC, Prosecutor

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