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

Date: **30 May 2022**

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 Response to the “Order seeking
observations on matters related to the conduct of the confirmation
proceedings””(ICC-01/14-01/22-54-Conf, 25 May 2022)**

Source: Office of the Prosecutor

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”) hereby provides the information requested by Pre-Trial Chamber II (“Chamber”) in its 17 May 2022 Order seeking observations on matters related to the conduct of the confirmation proceedings.¹

2. The information comprises the Prosecution’s best currently available estimations. However, these may be subject to change based on numerous variables, including [REDACTED] and the volatile and dangerous security situation in the Central African Republic (“CAR”). To the extent it would benefit the Chamber, the Prosecution is ready to attend status conferences where it can provide the Chamber with updates regarding the below-mentioned issues.

II. CONFIDENTIALITY

3. In accordance with regulation 23bis(1) of the Regulations of the Court, this filing is classified as “*confidential*” since it contains sensitive information bearing on witness protection issues. A public redacted version will be filed as soon as practicable.

III. SUBMISSIONS

4. The Prosecution provides the following information in response to the Chamber’s queries:

- (i) *Within the category of documentary evidence, what is the overall number of written pieces of evidence the Prosecution intends to rely upon at the confirmation hearing? How many pages does this amount to? What is the original language of such evidence and/or in what language will it be made available?*

5. Within the category of documentary evidence, the Prosecution intends to rely on approximately 2,000 items of evidence at the confirmation hearing (around 34,000 pages). Of those, around 1,200 items are in French, 300 items are in English, 100 items

¹ See ICC-01/14/-01/22-50, para. 10 and p.10 (i).

are in Sango, and a handful items are in other languages (mainly Fulfulde and Arabic). Around 400 items contain both French, English, and/or Sango. The items that are not originally in French or English will be made available in French.

(ii) *Does the Prosecution intend to rely upon other non-written pieces of documentary evidence, such as photographs, video, or audio recordings? If so, what is the total length/time span and original language of such pieces of evidence and will transcripts and/or translations be made available?*

6. The Prosecution intends to rely on approximately 200 photographs, and approximately 330 audio/video recordings, with a total length of over 50 hours. Of these 330 audio/video recordings, 100 recordings are in French, 10 recordings are in English, 80 recordings are in Sango, and 10 recordings are in other languages (mainly Fulfulde and Arabic). The remaining 130 recordings contain both French, English and/or Sango. Transcripts and/or translations will be made available.

(iii) *How many and which pieces of evidence can be immediately disclosed to Mr Mokom without redactions? How many pages, or in case of video and radio recordings, what time span does this evidence amount to?*

7. The Prosecution estimates that around 28,000 pieces of evidence (including around 1,900 audio/video recordings) can be disclosed immediately² to the Defence without redactions. The documents amount to approximately 135,000 pages. The audio/video recordings amount to a total length of over 150 hours.

(iv) *What is the estimated overall amount of exculpatory evidence that the Prosecution will disclose to Mr Mokom as soon as practicable pursuant to article 67(2) of the*

² The Prosecution notes that, as of this filing, the assignment of permanent Counsel to the Suspect has not yet been confirmed. Nor, has the Chamber issued a decision regarding the Prosecution's 21 March 2022 Request for an E-Court Protocol, a Redaction Protocol, and a Protocol on the Handling of Confidential Information and Contacts with Witnesses (see ICC-01/14-01/22-24). Similarly, the Prosecution's 31 March 2022 Observations on the Modalities and Procedure for Evidence Disclosure (see ICC-01/14-01/22-31) has not been disposed of.

Statute? How many pages, or in case of video and radio recordings, what time span does this evidence amount to? Does the exculpatory evidence require redactions?

8. The Prosecution is still in the process of reviewing and assessing its evidence collection for disclosure purposes specific to the MOKOM case. But, it has currently identified approximately 165 items of potentially exculpatory evidence under article 67(2), amounting to around 2,000 pages and including around 20 audio/video recordings with a total length of six and a half hours. Around 125 items in this category will require redactions.

(v) *How many persons, if any, does the Prosecution intend to call as witnesses to testify viva voce at the confirmation hearing?*

9. The Prosecution does not intend to call witnesses to testify *viva voce* at the confirmation hearing.

(vi) *How many witness statements does the Prosecution intend to provide Mr Mokom with for the purposes of the confirmation hearing, as provided in rule 76 of the Rules? Does the Prosecution intend to provide such statements in their entirety or in the form of summaries, pursuant to articles 61(5) and 68(5) of the Statute?*

10. The Prosecution may rely on around 180 witness statements and 280 transcripts of witness interviews (the latter being related to approximately 25 witnesses) for the purposes of the confirmation hearing.³ The Prosecution intends to provide them in their entirety.

(vii) *What is the original language of the witness statements the Prosecution intends to rely upon at the confirmation hearing? If applicable, have those statements been translated into French, the languages that the suspect fully understands and speaks,*

³ The Prosecution is reviewing these statements to assess whether the confirmation process can proceed with substantially fewer witnesses.

as required in rule 76(3) of the Rules? If this had not yet been done, what is the Prosecution's estimate regarding the time needed to provide such translations?

11. Of the 460 witness statements/transcripts the Prosecution intends to rely on, approximately 340 are in French, and 120 are in English. All English statements/transcripts are also available in French.

(viii) Does the Prosecution intend to submit requests to withhold the identity of any potential witnesses and, if so, of how many persons? How many witness statements of anonymous persons does the Prosecution intend to rely upon?

12. Currently, and barring any significant deterioration of the security situation on the ground, and/or that would arise from MOKOM's conduct, [REDACTED]. [REDACTED].

(ix) For the purposes of requesting the withholding of the identity of a witness and related requests for redactions, have detailed and comprehensive security assessments been prepared for each witness on which the Prosecution intends to rely at the confirmation hearing and, in the negative, what is the Prosecution's estimate regarding the time needed to prepare them?

13. Proper security assessments have been prepared for all the witnesses the Prosecution intends to rely on, [REDACTED]. [REDACTED].

(x) Does the Prosecution possess or control any books, documents, photographs or other tangible objects that Mr Mokom shall be permitted to inspect as material to the preparation of the Defence under rule 77 of the Rules? If so, what is the estimated overall amount of such material?

14. The Prosecution intends to disclose over 7,100 items (32,000 pages) under rule 77. Around 500 items in this category will require redactions. The items will also be available for inspection should the Defence so require.

(xi) *Are any of the Prosecution's pieces of evidence, in particular exculpatory evidence or evidence considered as material for the preparation of the defence, affected by confidentiality agreements in accordance with articles 54(3)(e), 72 and 93 of the Statute? In the affirmative, has the Prosecution undertaken, or will the Prosecution undertake, steps to obtain the consent of the information provider(s) regarding the disclosure of such material?*

15. At present, the Prosecution has not identified potentially exculpatory evidence or evidence material to the preparation of the defence affected by articles 54(3)(e), 72, or 93.

(xii) *Does the Prosecution intend to request protective measures for witnesses, victims or other persons at risk prior to disclosure of the names of the witnesses and/or of certain documents, pursuant to rules 87 and 88 of the Rules? Has the Prosecution held consultation with the VWU regarding protective measures for witnesses, victims or other persons at risk? How many witnesses have been referred to the VWU for protection purposes, including relocation? How many witnesses does the Prosecution intend to refer to the VWU for protection purposes, including relocation, before the confirmation hearing? What is the Prosecutor's estimate regarding the time needed for such measures to be put in place?*

16. Of the witnesses the Prosecution intends to rely on, [REDACTED]. The Prosecution is not in a position to estimate the amount of time it will take the VWU to put in place adequate security measures. As the Chamber is aware, the security situation in CAR will necessarily affect the timing and decision-making with regard to these potential witness protection efforts.

(xiii) *Does the Prosecution intend to submit requests in relation to unique investigative opportunities under article 56 of the Statute? What could be the impact of such requests on the disclosure process and the commencement of the confirmation hearing?*

17. The Prosecution does not presently intend to submit requests under article 56. However, the Prosecution may submit requests depending on how the security situation evolves and depending on the witnesses' changing personal circumstances. In such circumstances, the Prosecution will promptly inform the Chamber.

(xiv) *Is the Prosecution continuing the investigation regarding Mr Mokom? What could be the impact of an ongoing investigation on the disclosure process, the protection of witnesses and the commencement of the confirmation hearing?*

18. [REDACTED].

19. [REDACTED].⁴ [REDACTED].

(xv) *Does the Prosecution intend to enlarge or reduce the factual scope of the charges brought against Mr Mokom as compared to those currently set out in the Warrant of Arrest?*

20. [REDACTED],⁵ [REDACTED].

⁴ ICC-01/14-01/22-49-US-Exp.

⁵ ICC-01/14-01/18-403-Red-Corr.

(xvi) *Bearing in mind the scheduled date for the confirmation hearing, when does the Prosecution anticipate it will be able to complete disclosure?*

21. The Prosecution aims to be in a position to complete the disclosure of the evidence currently in its possession by 22 July 2022. [REDACTED]. The Prosecution expects to be in a position to provide the Chamber with more information by 22 July 2022, or at a duly scheduled Status Conference⁶ after this date.



Karim A. A. Khan QC, Prosecutor

Dated this 30th day of May 2022
At The Hague, The Netherlands

⁶ See rule 121(2)(b).