

Pursuant to Pre-Trial Chamber II's instruction dated 02-05-2024, this document is reclassified as Public

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Annex I

Confidential *EX PARTE* only available to the Defence and the Registry

**Registrar's observations on the "Defence Request for Review of the Registrar's
Decision on Legal Assistance and for a Stay of Proceedings",
ICC-01/14-01/22-178-Conf-Exp, 24 March 2023**

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**Defence Team for
Mr. Maxime Jeoffroy Eli Mokom Gawaka
Case No. ICC-01/14-01/22**

Lead Counsel: Me Philippe Larochelle
Case Manager: Mr. Julien Maton

From: Me Philippe Larochelle

To: Mr. Pieter Vanaverbeke, Head of Counsel Support Section

Date: 6 February 2023

Ref: MM-2023-0001

Subject: Request for Additional Resources for the Defence Team of Mr. Maxime Jeoffroy Eli Mokom Gawaka

Dear Pieter,

I have the honour to write for the purpose of requesting the allocation of additional resources for the Defence team of Mr. Maxime Mokom, which is currently involved in preparing for the confirmation of charges hearing. On 3 February 2023, Pre-Trial Chamber II ('Chamber') scheduled the beginning of the confirmation of charges hearing in the *Mokom* case to take place on 22 August 2023.¹

In its Decision, the Chamber specified that it is 'first and foremost guided by the need to ensure Mr Mokom's right to have adequate time and facilities for the preparation of his defence', especially so because I have been appointed recently as Mr. Mokom's Counsel.²

The Chamber's decision scheduling the confirmation of charges hearing also took into account 'the wide-ranging scope of the Prosecution's allegations levelled against Mr Mokom as reflected in the Warrant of Arrest', as well as the indications by the Prosecution that it intends to disclose a voluminous amount of materials, and that the Defence may additionally expect to receive a significant quantity of materials from the *Yekatom and Ngaïssona* proceedings.³

With the confirmation hearing being only six months away (while the initial preparation delay contemplated by the Pre Trial Chamber for the confirmation hearing was 10 months), it is essential for the Defence to obtain the necessary additional resources needed for proper Defence preparation as soon as possible.

This request is submitted pursuant to Regulation 83(3) of the Regulations of the Court and Article 67(1)(b) of the Rome Statute.

¹ Pre-Trial Chamber II, 'Decision setting the date for the confirmation of charges hearing', 3 February 2023, ICC-01/14-01/22-151.

² ICC-01/14-01/22-151, para. 10.

³ *Ibidem*.

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Procedural Background

On 14 March 2022, Mr. Mokom was surrendered to the Court.⁴ On 22 March 2022, during the first appearance of Mr. Mokom, the Chamber set the date of the confirmation of charges hearing for 31 January 2023, 10 months later.⁵ On 17 May 2022, Mr. Mokom submitted its application form for legal aid⁶ to the Registry after which the indigent status was recognized to him for the purpose of legal assistance paid by the Court. On 23 January 2023, the Chamber postponed the date of the confirmation of charges hearing to a date to be determined, following the delay resulting from the litigation regarding Mr. Mokom's legal representation.⁶ On 3 February 2023, the Chamber set the beginning of the confirmation of charges hearing in the *Mokom* case to take place on 22 August 2023.⁷

Before my appointment as Counsel for Mr. Mokom in January 2023, important procedural steps affecting disclosure and related matters have also taken place in the Mokom case.

Following a request from the Prosecution, the Chamber has authorized the Prosecution to proceed with the migration of approximately 33,000 items disclosed in the *Yekatom and Ngaïssona* case to the Mokom case record ('migration').⁸

In this vein, during the week of 30 January 2023, 31,751 of such disclosed items have been migrated from the *Yekatom and Ngaïssona* case to the Mokom case record. The Mokom Defence has requested the Prosecution to indicate whether the migration of these 31,751 documents completed the migration process or whether additional items still must be migrated. No response has been received by the Mokom Defence from the Prosecution so far.

In addition, the Registry has also submitted five Assessment Reports on Victim Applications for Participation in Pre-Trial Proceedings. All of these reports are related to Group A Applicants, i.e. applicants i.e. "applicants who clearly qualify as victims".⁹

⁴ Pre-Trial Chamber II, 'Order convening a hearing for the first appearance of Mr Mokom', 16 March 2022, ICC-01/14-01/22-21, para. 4.

⁵ ICC Transcript, 22 March 2022, ICC-01/14-01/22-T-001-Red-ENG, p. 11, l. 19-21.

⁶ Pre-Trial Chamber II, 'Order postponing the confirmation of charges hearing', 23 January 2023, ICC-01/14-01/22-137, para. 8.

⁷ Pre-Trial Chamber II, 'Decision setting the date for the confirmation of charges hearing', 3 February 2023, ICC-01/14-01/22-151.

⁸ Pre-Trial Chamber II, 'Second order on disclosure and related matters', 30 November 2022, ICC-01/14-01/22-116, para. 9; see also Office of the Prosecutor, 'Prosecution's Submissions pursuant to the Chamber's Order on Disclosure and Related Matters (ICC-01/14-01/22-104)', 11 November 2022, ICC-01/14-01/22-109, paras. 3-4.

⁹ See the procedure adopted by Pre-Trial Chamber II in relation to the admission of victims to participate in the proceedings: 'Order on the conduct of the confirmation of charges proceedings', 27 June 2022, ICC-01/14-01/22-62, para. 40.

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The first Assessment Report relates to 70 complete applications to participate in the Case;¹⁰ the second report relates to 71 complete applications;¹¹ the third report relates to 140 complete applications;¹² the fourth report relates to 70 complete applications;¹³ and the fifth report relates to 72 complete applications.¹⁴ In total, 423 victims have thus submitted an application to participate in the proceedings so far.

Present Composition of Defence Team

In accordance with the Registry Legal Aid Policy, the Defence team of Mr. Mokom *may* presently be composed of:

- One Counsel;
- One Legal Assistant and
- One Case Manager.¹⁵

Additional Resources Requested

With the aim of efficiently representing Mr. Mokom, protecting his rights and preparing for the upcoming confirmation hearing, the following additional resources are requested:

- 9 Legal Assistants.

Justification

The allocation of additional resources is justified under the Full Time Equivalent ("FTE") system as provided in the Legal Aid Policy, where the means of one FTE warrants the recruitment of one additional Legal Assistant.¹⁶

A survey of the case workload as it stands reveals the following:

- | | |
|--|--------------|
| • 18 counts in the arrest warrant | = 0.45 FTE |
| • 181,434 pages of the Prosecution casefile as we speak, | = 6.0478 FTE |

¹⁰ Registry, 'First Registry Assessment Report on Victim Applications for Participation in Pre-Trial Proceedings', 13 September 2022, ICC-01/14-01/22-86, para. 2.

¹¹ Registry, 'Second Registry Assessment Report on Victim Applications for Participation in Pre-Trial Proceedings', 13 October 2022, ICC-01/14-01/22-101, para. 2.

¹² Registry, 'Third Registry Assessment Report on Victim Applications for Participation in Pre-Trial Proceedings', 21 November 2022, ICC-01/14-01/22-114, para. 2.

¹³ Registry, 'Fourth Registry Assessment Report on Victim Applications for Participation in Pre-Trial Proceedings', 15 December 2022, ICC-01/14-01/22-121, para. 2.

¹⁴ Registry, 'Fifth Registry Assessment Report on Victim Applications for Participation in Pre-Trial Proceedings', 20 January 2023, ICC-01/14-01/22-133, para. 2.

¹⁵ ICC-ASP/12/3, 4 June 2013, para 40.

¹⁶ ICC-ASP/12/3, 4 June 2013, para 69.

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- Around 153 hours of audio-video material = 0.51 FTE¹⁷
- 423 persons applying to be a victim participating in the proceedings = 2.115 FTE

In sum, the current circumstances amount to **9.1228 FTE** of additional resources.¹⁸

Remarks

Allow me to make additional remarks about two specific types of material provided by the Prosecution to the Defence:

First, the *Mokom* casefile consists of 2126 items of audio-visual material, amounting to this day to approximately 153 hours of footage in total, most of which migrated from the *Yekatom and Ngaïssona* case record. Even though the review of audio-video material is not included under the FTE system listed in the LAP, the workload associated with such material is significantly heavier than for a traditional item of documentary evidence. The analysis of audio-visual material requires the need to view/listen to the audio-visual items but also to identify individuals and locations depicted and prepare summaries with timestamp of key scenes specified and discuss relevant elements with the Client in order to receive instructions. Part of the audio-visual material is also in Sango, which will require the recruitment of a Sango-speaking person to analyse the material.

An adequate analysis of audio-visual items is crucial to an efficient representation of Mr. Mokom and should therefore be taken into account for the calculation of the additional resources to be granted to the Defence team, based on the above-mentioned scale of comparison included by the Defence, i.e. that the Defence considers that every hour of Audio-video material generates the workload equivalent to 100 pages of material in print.

Second, 695 Call Data Records (CDRs) have been migrated/disclosed by the Prosecution in the format of Excel or Text files. Since such files are only represented by a surrogate sheet on Nuix, a one page document added to the case file actually often contains dozens of tabs with thousands of rows of data.

CDRs analysis requires intensive labour by a person specialised in such analysis. As substantial amounts of CDRs have been provided by the Defence in the recent migration, my Defence team reserves its rights to request further additional resources when it will be in a position to properly assess and evaluate in details the equivalent of FTE such CDRs analysis requires.

¹⁷ The Defence has received the equivalent of 9.2 Gigabytes of audio-video material, i.e. around 9200 Megabytes. The rule of thumb is that one minute of audio material corresponds to around 1 Megabyte (See <https://web.stanford.edu/class/cs101/bits-gigabytes.html#:~:text=Megabyte%20or%20MB&text=One%20megabyte%20is%20about%201,takes%20up%20about%201%20megabyte>). Based on that, 9.2 Gigabytes of audio-video correspond to around 9200 minutes, i.e. 153,3 hours.

The Defence also considers that every hour of Audio-video material generates the workload equivalent to 100 pages of material in print - therefore 15 300 pages in this instance.

¹⁸ The Legal Aid Policy states that one FTE is the equivalent of one Legal Assistant: ICC-ASP/12/3, 4 June 2013, para 70.

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Time Period

The aim is to have the new members of the Defence team recruited and ready to work as soon as practicable, due to the substantial amount of evidentiary material to review before the beginning of the confirmation of charges hearing on 22 August 2023. Moreover, should the charges be confirmed, the additional resources requested at this point in time will remain necessary throughout the trial phase. Therefore, in the interest of judicial economy, I suggest and ask that the additional resources requested herein be provided until the end of the trial proceedings.

Meanwhile, any change in circumstances justifying the addition or reduction of resources will be duly brought to the attention of the Registry.

Conclusion

The allocation of additional resources for the recruitment of 9 Legal Assistants (full-time) is urgent and required to allow the Defence team to represent Mr. Mokom effectively and efficiently by performing the necessary and reasonable work for the safeguard of his rights to a fair trial.

Moreover, following my appointment as permanent Counsel for Mr. Mokom on 23 January,¹⁹ the Chamber has ordered the Prosecution to complete the disclosure process regarding the material it intends to rely upon for the confirmation of charges hearing by 23 February 2023.²⁰ The Defence therefore reserves its right to request further additional resources, based on the final state of disclosure after the deadline of 23 February 2023.

In addition, based on a request made by the Prosecution in front of Trial Chamber V in the *Yekatom and Ngaïssona* case,²¹ the Mokom Defence should soon be given access to the confidential transcripts and filings of the *Yekatom and Ngaïssona* case record. Following a Decision issued by Trial Chamber V last August, this access is dependent first on agreements following consultations between the Prosecution and the Yekatom and Ngaïssona Defence teams about the confidential material in the Yekatom and Ngaïssona case record to which the Mokom Defence could be granted access.²²

These consultations are still ongoing, with no publicly available indication about their finalisation. However, should such access be granted, the Mokom Defence reserves its right to request further additional resources based on the number of pages of confidential transcripts and filings which will be made available to it and which it will need to review.

¹⁹ 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.

²⁰ Pre-Trial Chamber II, 'Order for observations and decision on the Prosecution's request for a status conference', 24 January 2023, ICC-01/14-01/22-138, para. 12.

²¹ *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, Office of the Prosecutor, 'Prosecution's Request to grant Maxime Jeoffroy Eli Mokom Gawaka access to the record of the Yekatom and Ngaïssona case', ICC-01/14-01/18-1353, para. 1.

²² *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, Trial Chamber V, 'Decision on the Prosecution Request to Grant Maxime Mokom Access to the Record of the Yekatom and Ngaïssona Case', 23 August 2022, ICC-01/14-01/18-1552, paras. 9-11.

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As mentioned, the allocation of additional resources is warranted until the end of the trial proceedings. Should you require more information concerning this request, please do not hesitate to contact me at your convenience.

Please accept, Dear Pieter, the assurance of my consideration as well as my best regards.

A handwritten signature in blue ink, appearing to be 'PL', enclosed within a faint, light blue rectangular border.

Philippe Larochelle,

Counsel for Maxime Mokom