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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

**Mokom Defence Observations on the Conduct of the Proceedings Related to the
Confirmation of Charges Hearing**

Source: Philippe Larochelle, Counsel for Mr. Mokom

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 17 May 2022, Pre-Trial Chamber II ('the Chamber') issued its 'Order seeking observations on matters related to the conduct of the confirmation proceedings' in which it instructed the Prosecution and Duty Counsel for Mr. Mokom to provide submissions on various aspects related to the confirmation proceedings.¹
2. On 25 May 2022, the Prosecution submitted its Response to the 17 May Order.²
3. On 6 June 2022, Duty Counsel for Mr. Mokom submitted his Response to the 17 May Order.³
4. On 27 June 2022, the Chamber issued its 'Order on the conduct of the confirmation of charges proceedings', in which it ordered the Prosecution to commence the disclosure of all evidence it intends to rely upon at the confirmation hearing, immediately after the notification of appointment of permanent counsel for Mr. Mokom, and to complete this disclosure within a month.⁴
5. On 7 November 2022, the Chamber issued its 'Order on disclosure and related matters', in which it instructed the Prosecution to differentiate the evidentiary items

¹ Pre-Trial Chamber II, 'Order seeking observations on matters related to the conduct of the confirmation proceedings', 17 May 2022, ICC-01/14-01/22-50, paras. 10 and 11 ('the 17 May Order').

² Office of the Prosecutor, Prosecution's Response to the "Order seeking observations on matters related to the conduct of the confirmation proceedings" (ICC-01/14-01/22-50)', 25 May 2022, ICC-01/14-01/22-54-Conf ('Prosecution's Response').

³ Mr. Mokom's Response to the 'Order seeking observations on matters related to the conduct of the confirmation proceedings' (ICC-01/14-01/22-50)', 6 June 2022, ICC-01/14-01/22-58 ('Duty Counsel's Response').

⁴ Pre-Trial Chamber II, 'Order on the conduct of the confirmation of charges proceedings', 27 June 2022, ICC-01/14-01/22-62, paras. 27 and 31 ('the 27 June Order').

disclosed in the case by indicating the page and paragraph numbers of the relevant sections of each disclosed item.⁵

6. On 11 November 2022, the Prosecution requested the Chamber's authorisation to proceed with the migration of approximately 33,000 items disclosed in the *Yekatom and Ngaïssona* case to the *Mokom* case record ('migration').⁶

7. On 30 November 2022, Pre-Trial Chamber II ('Chamber') issued its 'Second order on disclosure and related matters' in which it authorized the 'migration'.⁷

8. On 23 January 2023, permanent Counsel for Mr. Mokom was appointed.⁸

9. On 24 January 2023, the Chamber issued an Order instructing permanent Counsel for Mr. Mokom, if considered necessary for Mr. Mokom's defence, to provide observations on the conduct of the proceedings related to the confirmation of charges hearing, as addressed in the 17 May Order, the 27 June Order, 7 November Order and 11 November Order.⁹

⁵ Pre-Trial Chamber II, 'Order on disclosure and related matters', 7 November 2022, ICC-01/14-01/22-104, para. 8 ('the 7 November Order').

⁶ 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.

⁷ Pre-Trial Chamber II, 'Second order on disclosure and related matters', 30 November 2022, ICC-01/14-01/22-116, para. 9 ('the 30 November Order').

⁸ 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.

⁹ 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. 11.

Observations

10. The 17 May Order requested Duty Counsel for Mr. Mokom to provide, to the extent possible, responses to six questions posed by the Chamber, as well as observations on the Prosecution's Response.¹⁰

11. The Duty Counsel's Response provided responses to two of the six questions, namely questions (ii) and (vi), stating that, absent the appointment of permanent counsel, it was premature for him to respond to questions (i), (iii), (iv), and (v).¹¹

12. The Mokom Defence ('Defence') hereby reiterates the submissions made in the Duty Counsel's Response on the questions asked by the Chamber in the 17 May Order. As the appointment of permanent Counsel for Mr. Mokom only occurred a few days ago, it remains premature for permanent Counsel to address more substantially the matters related to Defence strategy addressed in questions (i) to (v).

13. The Defence can confirm the need to conduct investigations addressed in question (ii), as already indicated by Duty Counsel.¹² However, the Defence is not in a position yet to determine the scope and priorities of these investigations.

14. Bearing in mind that the 'migration' of more than 30,000 items from the *Yekatom and Ngaïssona* case to the *Mokom* case record ('the migrated items') has been

¹⁰ ICC-01/14-01/22-50, para. 11. The six questions read as follows: (i) Does Mr Mokom anticipate invoking any ground for excluding criminal responsibility and/or alibi? (ii) Does Mr Mokom anticipate the need to conduct investigations before the confirmation hearing? (iii) Does Mr Mokom anticipate presenting evidence at the confirmation hearing? In the affirmative, what is the prospective overall amount and types of evidence that Mr Mokom intends to rely upon? (iv) Does Mr Mokom anticipate calling witnesses to testify at the confirmation hearing? (v) Does Mr Mokom intend to rely on written testimonial evidence at the confirmation hearing? In the affirmative, in what format does Mr Mokom intend to provide such evidence? (vi) Does Mr Mokom possess or control any books, documents, photographs or other tangible objects that the Prosecution shall be permitted to inspect as material intended for use by Mr Mokom as evidence under rule 78 of the Rules?

¹¹ ICC-01/14-01/22-58, para. 3.

¹² Ibidem, para. 4.

carried out in the week of 30 January 2023, the Defence is not in a position to assess the relevance of this material at the present stage.

15. Moreover, this migration does not replace the Prosecution's disclosure obligations¹³ and the Prosecution has yet to indicate the relevant sections of each of these migrated items, as specifically ordered by the Chamber.¹⁴

16. As the Prosecution is required to comply with its outstanding disclosure obligations within one (1) month of the notification of the appointment of permanent counsel for Mr. Mokom,¹⁵ the provision of the relevant sections of each disclosed item may take place on or around 23 February 2023, i.e. in approximately three weeks. Without this information, the Defence is not in a position to provide further responses to the 17 May Order.

17. Mindful of the delays already experienced, the Mokom Defence reiterates its willingness to act diligently in its assessment of the evidentiary material, and undertakes to provide further information related to the six questions as soon as practicable. Bearing in mind the quantity of evidentiary material migrated and the outstanding, relevant information to be disclosed for each of these items, the Defence anticipates being able to provide this information in April 2023.

18. In relation to provision of the Defence's observations on the Prosecution's Response, as requested in the 17 May Order,¹⁶ the Defence notes that the 7 February 2023 status conference will address disclosure and related matters discussed in the Prosecution's Response.¹⁷ Given the fact that the Prosecution's Response was

¹³ ICC-01/14-01/22-116, para. 9; see also ICC-01/14-01/22-109, para. 7.

¹⁴ Pre-Trial Chamber II, 'Order on disclosure and related matters', 7 November 2022, ICC-01/14-01/22-104, para. 8; 'Second order on disclosure and related matters', 30 November 2022, ICC-01/14-01/22-116, paras. 13-16; ICC-01/14-01/22-138, para. 13.

¹⁵ ICC-01/14-01/22-138, para. 12; ICC-01/14-01/22-62, para. 31.

¹⁶ ICC-01/14-01/22-50, para. 11.

¹⁷ See ICC-01/14-01/22-138, para. 13.

provided more than eight (8) months ago and as the Prosecution will provide updated information during the status conference on the matters developed in the Prosecution's Response, it is logical that further Defence observations on these matters be provided after receipt of the update provided by the Prosecution during the 7 February status conference.

Respectfully submitted,



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Counsel for Maxime Mokom

The Hague, The Netherlands
Friday, February 03, 2023