

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

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: English

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

Date: 01/08/2022

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

THE PROSECUTOR V. MAXIME JEOFFROY ELI MOKOM GAWAKA

CONFIDENTIAL

Ex parte, only available to the Registry, the Prosecution, and the Defence

Response to Prosecution Request ICC-01/14-163-Red

Source: Gregory Townsend, Duty Counsel

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

The Office of the Prosecutor
Karim A. A. Khan
Mame Mandiaye Niang
Kweku Vanderpuye

Counsel for the Defence
Gregory Townsend, Duty Counsel

Legal Representatives of the Victims

Legal Representatives of the Applicant

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

**The Office of Public Counsel for
Victims**

**The Office of Public Counsel for the
Defence**

States' Representatives

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REGISTRY

Registrar
Peter Lewis

Counsel Support Section
Pieter Vanaverbeke

Deputy Registrar

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section Other**

Introduction

1. Pursuant to Regulation 24(1) of the Regulations of the Court, Duty Counsel files this response to the *'Public Redacted Version of the "Prosecution's Request to unseal Warrant ICC-01/14-41-US-Exp and request for redactions to the Warrant"'*.¹

Relevant Procedural Background

2. On 22 July 2022, Pre-Trial Chamber II issued its *Order to the Registry to Maintain the Mandate of Duty Counsel and to the Prosecution and Duty Counsel for Submissions* stating that the Appeals Chamber had instructed it *'to issue a new decision based upon all available information, including information that came to light after the Appeals Chamber Judgment'*.²

3. On 22 July 2022, in an *ex parte* request,³ the Prosecutor requested that the Pre-Trial Chamber publish and make public the warrant for the arrest of Nouredine Adam (Prosecution Request).

4. On 28 July 2022, Duty Counsel filed submissions pursuant to Order ICC-01/14-01/22-73.⁴

5. On 28 July 2022, Pre-Trial Chamber II also published a public redacted version of the warrant for the arrest of Nouredine Adam (Warrant of Arrest).⁵

Submissions

6. The public redacted versions of the Prosecution Request and the Warrant of Arrest are highly relevant to the current situation concerning the alleged

¹ ICC-01/14-163-Red.

² ICC-01/14-01/22-73, para. 9.

³ ICC-01/14-163-US-Exp.

⁴ ICC-01/14-01/22-78.

⁵ ICC-01/14-41-Red2.

conflict of interest faced by Mr. Kaufman on account of his discrete and *former* representation (as such representation was terminated) of Nouredine Adam.

7. Duty Counsel submits that the interests of justice dictate that the Pre-Trial Chamber entertain these submissions, including as set out below, in rendering its new decision pursuant to the Judgment of the Appeals Chamber - ICC-01/14-01/22-70 (Appeals Chamber Judgment). First, the important information revealed by the filings referred to in paragraphs 3 and 5 above was not available to Duty Counsel at the time that he filed his submissions on Order ICC-01/14-01/22-73 and, as such, comprises '*information that came to light after the Appeals Chamber Judgment*'.⁶ Second, the submissions are highly pertinent to Mr. Mokom's fundamental right to counsel of his choice.⁷

8. It is worth noting that neither the Registry nor the Prosecution currently appears to view Mr. Kaufman as being a party to any proceedings concerning Nouredine Adam. First, Mr. Kaufman was not formally notified of the public redacted version of the Prosecution Request.⁸ Second, when *Reuters* news agency evidently asked about the identity of Nouredine Adam's counsel, the Court's Registry spokesperson appears to have responded that '*a lawyer had not yet been named for him*'.⁹

9. Substantively, the Warrant of Arrest for Nouredine Adam reveals that the charges levelled by the Prosecutor against Nouredine Adam are '*exclusively for his responsibility for crimes allegedly committed at the OCRB and the CEDAD*'.¹⁰ More particularly, the Single Judge found reasonable grounds to believe that Nouredine Adam:

⁶ ICC-01/14-01/22-73, para. 9.

⁷ Art. 67(1)(d), Rome Statute.

⁸ ICC 01/14-163-Red, page 2.

⁹ See [ICC unseals arrest warrant for Central African Republic war crimes suspect Adam, Reuters](#), 28 July 2022.

¹⁰ ICC-01/14-41-Red2, para. 24.

[...] is responsible for having committed directly, jointly with others and/or through others, or having ordered, solicited or induced, or of having aided, abetted or otherwise assisted in the commission of, or in any other way contributed to the commission of the following crimes committed between at least 12 April and at least 22 August 2013 in the OCRB, and between at least 22 August and at least 27 November 2013 in the CEDAD.¹¹

10. In contrast, the criminal suspicions levelled against Mr. Mokom¹² are not connected, *in any way*, to the alleged events at the OCRB or the CEDAD. In fact, the alleged crimes of Nouredine Adam relate to a totally different time period and geographical location than the allegations against Mr. Mokom.

11. Thus, the two cases do not overlap. Although, the Prosecutor hypothetically could seek to amend the charges against Mr. Mokom or Nouredine Adam, the potential for a conflict of interest cannot be predicated on future speculation.¹³ Based on the information currently available, there is nothing to suggest that the nature and scope of the allegations against Nouredine Adam would prevent Mr. Kaufman from representing Mr. Mokom. Nor is there anything to suggest that Nouredine Adam would object to Mr. Kaufman's representation of Mr. Mokom, as stated in Mr. Kaufman's sworn affidavit.¹⁴

¹¹ ICC-01/14-41-Red2, para. 19.

¹² From 5 December 2013 onwards.

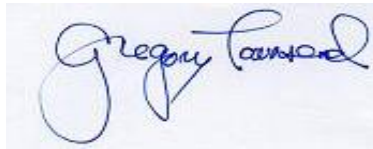
¹³ See ICC-01/05-01/13-307, para. 4 (reading 'A suspect's right to counsel of choice should prevail over the desire to address out of mere precaution scenarios which might never materialise. The inconveniences which replacement of counsel by its nature inevitably entails should not be brought about if not warranted, on the basis of pure speculation and in the absence of compelling circumstances').

¹⁴ Subsequent to the filing of Mr. Kaufman's affidavit, Mr. Kaufman represented the following to Duty Counsel via email on 29 July 2022.

On 9 July 2020 at 10:26 (The Hague Time), while negotiating terms for an interview of Nouredine Adam, Mr. Kaufman wrote to the Senior Trial Lawyer in the Office of the Prosecutor handling alleged criminal conduct by the ex-Séléka and stated as follows: 'I am currently in the process of arranging two powers of attorney and I hope to return to you and [to the STL for alleged criminal conduct by the anti-Balaka] soon. The second person in contact with me is from what the OTP deems to be the other side and both individuals agree orally so far to the joint representation for the purposes of what I will be proposing.'

Classification

12. This document is filed confidentially because Mr. Kaufman's former representation of Nouredine Adam has not been mentioned in public filings, to date.

A handwritten signature in blue ink that reads "Gregory Townsend". The signature is written in a cursive, flowing style.

Gregory Townsend,
Duty Counsel for Maxime Mokom

Los Angeles, United States of America

Monday, August 01, 2022