

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 6 June 2022

PRE-TRIAL CHAMBER II

Before: Judge Rosario Salvatore Aitala, Presiding
Judge Antoine Kesia-Mbe Mindua
Judge Tomoko Akane

SITUATION IN THE CENTRAL AFRICAN REPUBLIC II

THE PROSECUTOR v. MAXIME JEOFFROY ELI MOKOM GAWAKA

Public

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)

Source: Gregory Townsend, Duty Counsel for Mr. Mokom

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

The Office of the Prosecutor

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Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

**The Office of Public Counsel for
Victims**

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

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Peter Lewis

Counsel Support Section

Mr Pieter Vanaverbeke

Victims and Witnesses Unit

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Detention Section

I. INTRODUCTION

1. Pursuant to the Pre-Trial Chamber's Order of 17 May 2022,¹ in which it *invited* Duty Counsel to provide by 7 June 2022, *to the extent possible* at this stage, observations: [1] in response to six questions that it posed, and [2] on the information provided by the Prosecution,² Duty Counsel for Mr Mokom files this response.

II. SUBMISSIONS

2. On 31 March 2022, the Prosecution, in its Observations on Evidence Disclosure,³ stated that disclosure could start as soon as 'a permanent Counsel [is] appointed'. The Prosecution, in its Response filed 25 May 2022,⁴ reiterated this point. To date, permanent counsel is not yet appointed. Mr Mokom concurs that the appointment of *permanent* counsel for Mr. Mokom is necessary for meaningful, effective, and efficient preparations for the confirmation.

3. Mr Mokom, while understanding the best intentions of the Pre-Trial Chamber in its Order of 17 May 2022 to advance the proceedings, absent the appointment of permanent counsel (and pending a decision of the Appeals Chamber on a fundamental matter that is ripe for adjudication), respectfully submits, as a matter of principle, that it is premature for him to address the substance of the information provided on 25 May 2022 by the Prosecution or respond to questions (i), (iii), (iv), and (v).⁵ The language of the Order of 17 May notably indicated that any provision of responses by Mr. Mokom was 'to the extent possible'. It is, indeed, not yet possible,

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) (Order of 17 May), para. 11, page 11.

² See ICC-01/14-01/22-54 (25 May 2022).

³ ICC-01/14-01/22-31, at para. 9 (emphasis added).

⁴ ICC-01/14-01/22-54-Conf, at fn2.

⁵ These four questions (of the six posed) read as follows: (i) Does Mr Mokom anticipate invoking any ground for excluding criminal responsibility and/or alibi? (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?

absent permanent counsel and prior to the Prosecution's disclosure, to indicate the defence approach and strategy at the confirmation hearing.

(ii) *Does Mr Mokom anticipate the need to conduct investigations before the confirmation hearing?*

4. Duty Counsel can respond in the affirmative to this question posed by the Pre-Trial Chamber in its Order of 17 May, including as a matter of due diligence. Permanent counsel, following the Prosecution's disclosure, will be best placed to decide the scope and priorities of such defence investigations, taking into consideration the resources available and budget under the Court's legal aid policy.

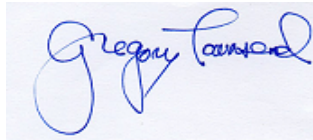
(vi) *Does Mr Mokom possess or control any books, documents, photographs or other tangible objects that the Prosecution shall be permitted to inspect as material intended for use by Mr Mokom as evidence under rule 78 of the Rules?*

5. Duty Counsel can respond in the negative to this question posed by the Pre-Trial Chamber in its Order of 17 May. Simply put, Mr. Mokom was transferred to the Court's detention centre with the clothes on his back, and thus he does not presently possess or control any items falling under rule 78.

6. With respect to the Prosecution's Response of 25 May 2022,⁶ at this stage, Duty Counsel observes that the information provided by the Prosecution is helpful to understand in general the scope of the anticipated disclosure. Duty Counsel observes that the volume of files to be disclosed is *very substantial* (and likely to increase). Thus, settling the issue of the appointment of permanent counsel – consistent with Mr. Mokom's right under Article 67(1)(b) to 'have adequate time and facilities for the preparation of the defence and to communicate freely with counsel of the accused's choosing' – remains imperative to ensure that he, as a matter of fairness, has sufficient time, in proportion to the substantial volume of files, in advance to enable the adequate preparation of the defence.

⁶ ICC-01/14-01/22-54-Conf.

Respectfully submitted,



Gregory Townsend,
Duty Counsel for Mr. Mokom

Date: 6 June 2022
At The Hague, Netherlands.