

Pursuant to Pre-Trial Chamber II 's instruction, dated 11-01-2023, document ICC-01/14-01/22-128-Conf is reclassified as "Public"

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: English

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

Date: 23/12/2022

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

Mr. Mokom's Response to the 'Corrected version of "Prosecution's Request for a Status Conference, 21 December 2022, ICC-01/14-01/22-126-Conf"'

Source: Gregory Townsend, Duty Counsel for Mr. Mokom

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

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Legal Representatives of the Applicant

Unrepresented Victims

Unrepresented

(Participation/Reparation)

Applicants

**The Office of Public Counsel for
Victims**

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

States' Representatives

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Counsel Support Section

Deputy Registrar

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section Other**

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Introduction

1. On behalf of Mr. Mokom and pursuant to Regulation 24(1) of the Regulations of the Court ('RoC'), I file this response to the '*Corrected version of "Prosecution's Request for a Status Conference, 21 December 2022, ICC-01/14-01/22-126-Conf"*'.¹

Confidentiality

2. Pursuant to Regulation 23bis(1) of the RoC, I file this Response confidentially as it responds to a document of the same classification. A public redacted version will be filed as soon as practicable.

Submissions

A. The Scheduling of a Status Conference on 16 January 2023 is premature

3. The Prosecution's Request seeks an order from the Pre-Trial Chamber scheduling a status conference pursuant to rule 121(2)(b) on 16 January 2023, or as soon as practicable thereafter.² The Prosecution argues that following the recent Appeals Chamber's Judgement on Mr. Mokom's legal representation, a permanent Counsel for Mr. Mokom 'will be selected and assigned shortly' and that holding status conference following the judicial recess will provide an opportunity to the Parties, including permanent Counsel for Mr. Mokom, and Participants to 'apprise and update the Chamber regarding any outstanding issues or developments potentially affecting the confirmation of charges proceedings'.³

4. While holding a status conference following the appointment of permanent Counsel for Mr. Mokom will indeed contribute to the advancement

¹ Office of the Prosecutor, '*Corrected version of "Prosecution's Request for a Status Conference, 21 December 2022, ICC-01/14-01/22-126-Conf"*', 22 December 2022, ICC-01/14-01/22-126-Conf-Corr (the '*Prosecution's Request*').

² ICC-01/14-01/22-126-Conf-Corr, para. 1.

³ *Ibid.*, para. 2.

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of the proceedings, I submit that the date set by the Prosecution in its request for the holding of the status conference, namely 16 January 2023, at this point, appears to be premature.

5. On 21 December 2022, the Pre-Trial Chamber ordered, by email, the Registry to maintain my appointment as Duty Counsel for Mr. Mokom 'until two weeks after the appointment of permanent counsel selected by Mr. Mokom so as to enable Duty Counsel to hand over all matters related to the proceedings to permanent counsel'. The Pre-Trial Chamber also ordered the Registry to submit a report to the Chamber via email describing the consultation process as to Mr. Mokom's selection of permanent Counsel as soon as the consultation process is finalised but no later than 6 January 2023. The Pre-Trial Chamber also indicated that it will separately set a time limit for the appointment of permanent Counsel.⁴

6. Based on these Instructions from the Pre-Trial Chamber, the Registry will submit a report to the Pre-Trial Chamber on the consultation process related to Mr. Mokom's selection of permanent Counsel by 6 January 2023, i.e. 10 calendar days before date upon which the Prosecution proposes the holding of a status conference. It may be that permanent Counsel will not be appointed by that date, and the Pre-Trial Chamber has not yet set any date for such appointment, if it even deems fixing such a deadline appropriate.

7. Moreover, as the Pre-Trial Chamber has already ordered a two-week transition period after the appointment of permanent Counsel during which I have been ordered to hand over all matters related to the proceedings to permanent Counsel (the 'transition period'), I respectfully submit that holding a status conference on 16 January 2023 will likely contravene the timings set in the Pre-Trial Chamber's Instructions.

⁴ Pre-Trial Chamber II communications email to the Registry and parties, 21 December 2022 at 10:08 (the 'Pre-Trial Chamber's Instructions').

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8. In this context, I submit that a status conference should be held at the earliest date, after the transition period, in order to give enough time to permanent Counsel to familiarize him or herself with the case and be able to address in a meaningful way the matters listed in the Prosecution's Request.

9. The Prosecution's Request states that the status conference will provide an opportunity to permanent Counsel to address matters previously deferred to permanent Counsel regarding substantive Defence positions, such as:

- the defence approach and strategy at the confirmation hearing;
- the scope and priorities of Defence investigations;
- whether the Defence anticipates advancing any ground for excluding criminal responsibility or alibi, and;
- whether the Defence will call witnesses or intends to rely on written testimony.⁵

10. Equally, bearing in mind the Pre-Trial Chamber's Instructions, especially in relation to the transition period, I respectfully submit that permanent Counsel will need more than two weeks to formulate the 'substantive defence positions' listed by the Prosecution, bearing in mind the wide scope, nature, number and complexity of such Defence positions.

11. In any event, it is already foreseeable that permanent Counsel will not be in a position to formulate such substantive Defence positions by 16 January 2023 or soon thereafter. He/she should be given more time to discuss such issues with his/her new client, Mr. Mokom, if the status conference is intended to delve into such matters.

⁵ ICC-01/14-01/22-126-Conf-Corr, paras. 15-16.

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B. The disclosure-related concerns that the Prosecution seeks to address at a Status Conference have already been adjudicated and decided by the Pre-Trial Chamber

12. The Prosecution's Request states that it wishes to raise concerns during the status conference to the Pre-Trial Chamber regarding the metadata requirements for disclosure ordered by the Pre-Trial Chamber, arguing that the requirement to identify for each 'disclosed' item the sections containing incriminating, exonerating and/or material information, and to indicate the page and paragraph numbers of the relevant sections of documents, statements, and transcripts 'places an onerous burden on the Prosecution's resources in this specific case' and entails that disclosure is 'significantly more resource intensive and burdensome' in the Mokom case than in the *Yekatom and Ngaïssona* case.⁶

13. This submission appears to hint that the Prosecution seeks a remedy to avoid having to comply with the Pre-Trial's Chamber already-issued Orders on disclosure.⁷ The Pre-Trial Chamber already held that the Prosecution must be in a position to comply with the Pre-Trial Chamber's Instructions on disclosure. The Pre-Trial Chamber held that 'the Prosecution has had ample time to organise the evidence relevant to the confirmation hearing, so as to ensure that the disclosure process is conducted in a meaningful and efficient manner.'⁸ The Pre-Trial Chamber also reminded the Prosecution that it has been collecting evidence since, at least, the date of the referral of the Central African Republic II situation, and it has been prosecuting other persons in related cases arising from the same situation before the Court. In this vein, the Pre-Trial Chamber clearly ruled that 'it expects the Prosecution to carry out its disclosure

⁶ Ibid., paras. 8-9.

⁷ See Pre-Trial Chamber II, 'Order on disclosure and related matters', 7 November 2022, ICC-01/14-01/22-104, para. 8; Pre-Trial Chamber II, 'Second order on disclosure and related matters', 30 November 2022, ICC-01/14-01/22-116, para. 14; See also 'Mr. Mokom's Response to the 'Prosecution's Submissions on Disclosure and Related Matters'', 17 November 2022, ICC-01/14-01/22-111, para. 8.

⁸ ICC-01/14-01/22-116, para. 15.

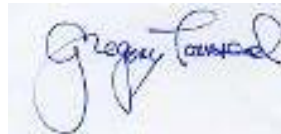
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obligations in line with the Pre-Trial Chamber's instructions'.⁹ Therefore, I submit that the disclosure-related 'concerns' that the Prosecution seeks to address during the upcoming status conference have already been adjudicated and decided by the Pre-Trial Chamber. Further debate would amount to a request for reconsideration or an appeal of the same matter. The Prosecution must therefore strictly abide by the requirements for disclosure already ordered by the Pre-Trial Chamber in the *Mokom* case.

Conclusion

14. In sum, on behalf of Mr. Mokom, I request that the Pre-Trial Chamber:
- (a) **GRANT** the Prosecution's Request for the scheduling of a Status Conference, in part;
 - (b) **REFRAIN** from scheduling a Status Conference on 16 January 2023, and;
 - (c) **ORDER** the scheduling of a Status Conference after the appointment of permanent Counsel for Mr. Mokom, and considering the transition period that the Pre-Trial Chamber ordered.

Respectfully submitted,



Gregory Townsend,
Duty Counsel

The Hague, the Netherlands

Friday, December 23, 2022

⁹ Ibid.