

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 31 January 2024

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

Public Redacted Version of “Mr. Mokom’s Response to the Prosecution’s Renewed Request, Request for Reconsideration, and Further Submissions on Contact Restrictions”, ICC-01/14-01/22-41-Conf-Exp, 13 April 2022

Source: Gregory Townsend, Duty Counsel for Mr. Mokom

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

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Section**

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Mr Gregory Townsend,
Duty Counsel for Mr. Mokom

I. INTRODUCTION

1. On behalf of Mr. Mokom, and further to the Pre-Trial Chamber's instructions at the status conference of 4 April 2022 and in its Decision of 29 March 2022, which 'temporarily' imposed contact restrictions on Mr. Mokom,¹ I file this response to: (1) the Prosecution's Renewed Request for Contact Restrictions of 10 March 2022;² (2) the Prosecution's Request for Reconsideration of 16 March 2022;³ and (3) the Prosecution's Additional Submissions of 25 March 2022.⁴

II. PROCEDURAL HISTORY

2. On 13 April 2022, the Registry filed its Report on the Implementation of the Restrictions on Contact,⁵ and Mr. Mokom concurs with the procedural history therein.

III. CLASSIFICATION

3. Pursuant to regulation 23 *bis*(1) of the Regulations of the Court (RoC), I file this response under the classification of 'confidential' to accord with the classification of the Decision of 29 March 2022 and the Prosecution filings noted in paragraph 1 above.

IV. APPLICABLE LEGAL PROVISIONS

4. Under Regulation 99(1)(i) RoC, every detained person shall be entitled to "communicate by ... telephone with his or her family and other persons." (emphasis added).

¹ Pre-Trial Chamber II, "Decision temporarily imposing contact restrictions on Mr Mokom" 29 March 2022, ICC-01/14-01/22-28-Conf-Exp, at 7 (instructing counsel to submit views).

² Office of the Prosecutor, "Prosecution's Renewed Request for Contact Restrictions pursuant to Regulation 101 of the Regulations of the Court", 10 March 2022, ICC-01/14-01/22-18-Conf-Exp.

³ Office of the Prosecutor, "Requête de l'Accusation aux fins de reconsidération de la décision de la Chambre préliminaire II 'partially granting the 'Prosecution's Renewed Request for Contact Restrictions pursuant to Regulation 101 of the Regulations of the Court' (ICC-01/14-01/22-18-Conf-Exp)""", 16 March 2022, ICC-01/14-01/22-29-Conf-Exp.

⁴ Office of the Prosecutor, "Soumissions additionnelles de l'Accusation au soutien de sa requête « aux fins de reconsidération de la décision de la Chambre préliminaire II "partially granting the 'Prosecution's Renewed Request for Contact Restrictions pursuant to Regulation 101 of the Regulations of the Court' (ICC-01/14-157-Conf-Exp) », par application de l'ordre de la Chambre préliminaire II du 22 mars 2022", 25 March 2022, ICC-01/14-01/22-25-Conf-Exp.

⁵ Registry, "Registry Report on the Implementation of the Restrictions on Contact Ordered by the Pre-Trial Chamber II" 13 April 2022, ICC-01/14-01/22-39-Conf-Exp, paras 3-10.

V. SUBMISSIONS

On the issue of monitoring (of telephone calls, visits, etc.)

5. The Prosecution's Renewed Request (at para. 7(2)), at first, sought an order from the Pre-Trial Chamber—prohibiting (not 'monitoring') telephone calls—'until [Mr. Mokom's] initial appearance' but this has been overtaken by the pre-trial procedure to date. Duty Counsel also points out that the Prosecution's Renewed Request (at para. 6) argued that Mr. Mokom presents, while in detention in The Hague, a danger '*particularly* as a former Minister in charge of disarmament, demobilization reintegration and reparation ("DDRR")' (emphasis added). Here, it seems illogical that one's role in the positive tasks of *disarmament, demobilization reintegration and reparation* would heighten the alleged risk one detainee could pose.

6. Though procedurally irregular to make novel requests for relief in a motion for purportedly seeking reconsideration and in further submissions (see 29 March 2022 Decision, at paras 10-11), the Prosecution sought an order that Mr. Mokom's calls be restricted to family members, and that his calls, visits and written communications be subject of systematic (not random) active monitoring. The 29 March 2022 Decision granted such requests, but did so only provisionally (para. 15).

The Pre-Trial Chamber may impose monitoring of Mr. Mokom's communications with other persons, but it shouldn't do so for his close family

7. To date and since his transfer to the ICC detention centre, Mr. Mokom has only [REDACTED] (Registry Report of 12 April 2022, at para. 16). He has been able to have *limited* telephone calls with [REDACTED]. As indicated by the Registry in its Report of 12 April 2022 (at para. 14), 'no incidents have been reported' during the weeks of systematic and active monitoring [REDACTED]. There is not a sufficient basis to impose the systematic monitoring of [REDACTED] and, as of the recent filing of the Registry's Report, there exists less of a basis to continue imposing any monitoring of the conversations [REDACTED]. Though finding relevant, public ICC jurisprudence on monitoring is challenging, a 16 February 2021 decision with respect to Mr. Yekatom may be relevant by analogy in that the Trial Chamber ruled that 'Mr Yekatom may

receive visits [REDACTED] **without any monitoring**.⁶ It also defies logic to put in place a regime treats differently phone calls and in-person visits with close family members. For these reasons, the Pre-Trial Chamber should not impose monitoring (random or systematic) of calls (and visits) between Mr. Mokom and [REDACTED]. The Pre-Trial Chamber should also refrain from imposing monitoring calls and visits of close family.

8. The Prosecution's Request for Reconsideration (at paras 3, 12) refers to a certain [REDACTED] and the Pre-Trial Chamber may bar them from his contact list, or instruct the Registry to inform the parties should Mr. Mokom seek to add them to his contact list. The Pre-Trial Chamber can also bar [REDACTED] (Additional Submissions, para. 17).

9. The Prosecution's Request for Reconsideration (at para 13) refers to [REDACTED]. Duty Counsel submits that Mr. Mokom has no intention to communicate with these individuals and the Pre-Trial Chamber may bar them from his contact list.

10. Mr. Mokom does wish, in due course, to add [REDACTED].

11. At this stage, Mr. Mokom has no contact [REDACTED]. Moreover, his priority is to restore and maintain his relationship with his immediate family, via telephone contact, and eventually a wider circle of family members. Notably, Mr. Mokom has not received disclosure yet from the Prosecution. When Mr. Mokom might be eligible to receive disclosure, the Prosecution will have redacted all the identifying information of all the protected witnesses (much like the heavily-redacted Prosecution's Additional Submissions). Thus, the protective measure of redaction — considering the wide scope of the Prosecution's redactions to date in this case — also represents an existing and *sufficient* balancing of interests against witness interference with the rights of the suspect, Mr. Mokom.

⁶ *Prosecutor v. Yekatom & Ngaißsona*, ICC-01/14-01/18-485-Red, at para. 13(iii)(b) (emphasis added).

12. Duty Counsel's reading of the Prosecution's Additional Submissions, with its redactions (at para. 2), refers to *alleged* threats 'made by Mokom'. These Submissions (at paras 6-13), though redacted, claim to clarify such alleged threats but at no point in those paragraphs does the name of Mr. Mokom appear. Duty Counsel presumes that the Prosecution has not redacted the name of Mr. Mokom in those paragraphs. One then can hardly understand how the Prosecution characterizes the threats as having been 'made by Mokom,' when none of the 'key' allegations appear to mention him.

13. No family member of Mr. Mokom, about whom the Prosecution has indicated a concern, appears on his contact list nor will be added to it. Duty Counsel suggests that rather than impose a broad measure, [REDACTED] (and inefficiently spending precious Court resources on excessive monitoring), it might make more sense to review the addition to his list of any adult members of his family and others on a case-by-case basis. This would allow the Pre-Trial Chamber to impose the very serious and costly measure of monitoring, temporarily, only where well-founded and proportionately, rather than in a costly, generalized, blanket ruling.

14. In conclusion, on behalf of Mr. Mokom, I request that the Pre-Trial Chamber:

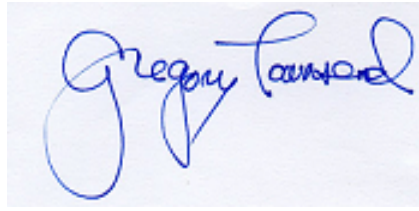
(a) **ORDER** the cessation of the temporary and provisional instruction of 29 March 2022 (at para. 16) to actively (and systematically) monitor Mr. Mokom's calls, visits and written communications with his direct family members;

(b) **ORDER** the cessation of the temporary and provisional instruction of 29 March 2022 (at para. 15) to restrict Mr. Mokom's contacts to 'direct family members' (or alternatively consider allowing Mr. Mokom to add others to his contact list at monthly intervals, or allow additions on a case-by-case basis);

(c) **ORDER**, temporarily, the random monitoring of Mr. Mokom's calls, visits and written communications with others (non-family members), subject to the Pre-Trial Chamber's periodic review based on reports from the Registry;

(d) **RULE** that the above orders dispose the issues raised in the Prosecution's Renewed Request, Request for Reconsideration, and Further Submissions.

Respectfully submitted,



Gregory Townsend,
Duty Counsel for Mr. Mokom

Date: 31 January 2024

At The Hague, Netherlands.