



Original: English

No. ICC-01/14-01/22

Date: 17 May 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

IN THE CASE OF

THE PROSECUTOR v. MAXIME JOFFROY ELI MOKOM GAWAKA

Public

Order seeking observations on matters related to the conduct of the confirmation proceedings

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

The Office of the Prosecutor

Mr Karim A. A. Khan
Mr Mame Mandiaye Niang
Mr Kweku Vanderpuye

Counsel for Mr Mokom

Mr Gregory Townsend (Duty Counsel)

Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparations**

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

Mr Nigel Verrill

Detention Section

**Victims Participation and Reparations
Section**

Mr Philipp Ambach

Other

PRE-TRIAL CHAMBER II of the International Criminal Court issues this order to receive responses to certain filings and observations on various matters related to the conduct of the confirmation proceedings.

1. On 14 March 2022, Mr Maxime Jeoffroy Eli Mokom Gawaka ('Mr Mokom') was surrendered to the Court and arrived at the Detention Centre. Mr Mokom made his first appearance before the Chamber on 22 March 2022,¹ represented by Mr Nicholas Kaufman² ('Mr Kaufman'), pursuant to the Chamber's permission.³
2. On 25 March 2022, as a result of information before it related to Mr Kaufman's role in the Central African Republic situation⁴ and considering observations from Mr Kaufman, the Registry and the Prosecution,⁵ the Chamber issued the 'Order on appointment of Mr Kaufman as Counsel for Mr Mokom' (the '25 March 2022 Order'),⁶ instructing the Registry to revoke its appointment of Mr Kaufman as counsel for Mr Mokom and make the necessary arrangements, in consultation with Mr Mokom, to appoint another counsel within the shortest possible timeframe. On the same date, the Registry revoked Mr Kaufman's appointment as counsel for Mr Mokom.⁷
3. On 28 March 2022, the Chamber requested counsel of the Office of Public Counsel for the Defence (the 'OPCD') to visit Mr Mokom as soon as possible to explain

¹ See Order convening a hearing for the first appearance of Mr Mokom, 16 March 2022, ICC-01/14-01/22-21.

² On 15 March 2022, the Registry notified the Chamber of Mr Kaufman's appointment as counsel for Mr Mokom, annexing information about the appointment process; See Notification of the Appointment of Mr Nicholas Kaufman as Counsel for Mr Maxime Jeoffroy Eli Mokom Gawaka, ICC-01/14-01/22-22, and three public annexes and one confidential annex.

³ Email from the Chamber to Mr Kaufman, 18 March 2022, at 17:45. On 18 March 2022, in light of the imminence of the first appearance for which Mr Mokom required representation, and without prejudice to the Chamber's determination of the matter, the Chamber permitted Mr Kaufman to represent Mr Mokom at the first appearance.

⁴ On 17 March 2022, the Chamber ordered Mr Kaufman, the Prosecution, and the Registry to submit observations, by way of email, on any potential conflict of interest regarding the appointment of Mr Kaufman as counsel for Mr Mokom; See Email from the Chamber to the Prosecution and to the Registry, 17 March 2022, at 14:19; Email from the Chamber to Mr Kaufman, 17 March 2022, at 14:24.

⁵ Email from Mr Kaufman to the Chamber, 17 March 2022, at 23:24; Email from the Prosecution to the Chamber, 18 March 2022, at 09:41; and Email from the Registry to the Chamber, 18 March 2022, at 10:02.

⁶ ICC-01/14-01/22-26-Conf-Exp.

⁷ Letter from the Counsel Support Section to Mr Kaufman entitled 'Revocation of your appointment as counsel in the case ICC-01/14-01/22', CSS/2022/182.

to him the contents and consequences of the 25 March 2022 Order.⁸ On 29 March 2022, the Registry informed the Chamber that during a meeting held with Mr Mokom on the selection of a permanent counsel, the latter indicated that he wished to speak with Mr Kaufman before considering the choice of a new counsel.⁹

4. On 4 April 2022,¹⁰ the Chamber held a status conference with Mr Mokom, assisted by Mr Gregory Townsend as his duty counsel ('Mr Townsend' or 'Duty Counsel'),¹¹ and representatives of the Registry on the matter of Mr Mokom's legal representation.¹² During the hearing, following Mr Mokom's confirmation of his wish for the 25 March 2022 Order to be reviewed and for Mr Townsend to submit the relevant requests on his behalf, the Chamber decided that Mr Townsend would remain Mr Mokom's duty counsel pending its decision on the forthcoming requests, and if leave to appeal would be granted, continue representing him in that capacity in the proceedings before the Appeals Chamber and in the present proceedings. On 14 April 2022, the Chamber issued the 'Decision on Mr Mokom's requests for reconsideration and leave to appeal the "Order on appointment of Mr Kaufman as Counsel for Mr Mokom"',¹³ rejecting Mr Mokom's request for reconsideration of the 25 March 2022 Order,¹⁴ and partially granting his request for leave to appeal that order.¹⁵ The Chamber decided, *inter alia*, to bring two issues before the Appeals Chamber pursuant to article 82(1)(d) of the Rome Statute (the 'Statute').

⁸ Email from the Chamber to the Registry and Mr Xavier-Jean Keïta of the OPCD, 28 March 2022, at 11:34.

⁹ Email from the Registry to the Chamber, 29 March 2022, at 13:28.

¹⁰ Order convening a status conference and instructing the Registry to appoint duty counsel for Mr Maxime Jeoffroy Eli Mokom Gawaka, ICC-01/14-01/22-32-Conf-Exp, with confidential *ex parte* annex (ICC-01/14-01/22-32-Conf-Red-Exp-AnxI) containing relevant email exchanges on the matter.

¹¹ Notification of the Appointment of Mr Gregory Townsend as Duty Counsel for Mr Maxime Jeoffroy Eli Mokom Gawaka, ICC-01/14-01/22-33-Conf-Exp; with confidential *ex parte* annex (ICC-01/14-01/22-33-Conf-Exp-AnxI).

¹² The status conference took place in closed session. ICC-01/14-01/22-T-002-CONF-EXP-ENG and ICC-01/14-01/22-T-002-CONF-EXP-FRA.

¹³ Decision on Mr Mokom's requests for reconsideration and leave to appeal the 'Order on appointment of Mr Kaufman as Counsel for Mr Mokom', [ICC-01/14-01/22-43](#).

¹⁴ Request for Reconsideration of Order ICC-01/14-01/22-26-Conf-Exp, ICC-01/14-01/22-36-Conf-Exp (dated 7 April 2022, registered and notified on 8 April 2022).

¹⁵ Request Seeking Leave to Appeal Order ICC-01/14-01/22-26-Conf-Exp ICC-01/14-01/22-37-Conf-Exp (dated 7 April 2022, registered and notified on 8 April 2022).

5. Pending the resolution by the Appeals Chamber of these issues and in order to ensure Mr Mokom's effective legal representation during this period, on 22 April 2022, the Chamber instructed the Registry to ensure that Duty Counsel for Mr Mokom is provided with all the resources necessary for his current representation as duty counsel of Mr Mokom in the proceedings.¹⁶

6. During the above mentioned period, the Chamber received on 21 March 2022, the 'Prosecution's Request for an E-Court Protocol, a Redaction Protocol, and a Protocol on the Handling of Confidential Information and Contacts with Witnesses' (the 'Prosecution's Protocol Request'),¹⁷ on 31 March 2022, the 'Prosecution's Observations on the Modalities and Procedure for Evidence Disclosure' (the 'Prosecution's Observations on Evidence Disclosure'),¹⁸ and on 7 April 2022, the 'Application for recognition of the status of victims in the case of *The Prosecutor v. Maxime Jeoffrey Eli Mokom Gawaka* to victims participating in the case of *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*',¹⁹ filed by the Office of Public Counsel for Victims (the 'OPCV's Application').

A. Disclosure and Related Matters

7. With a view to ensuring that the disclosure process begins as soon as possible, particularly in light of the suspect's right to be 'informed of the evidence on which the Prosecution intends to rely' at the confirmation hearing '[w]ithin a reasonable time' before its commencement under article 61(3)(b) of the Statute, the Chamber considers it necessary to receive detailed and exhaustive observations from both parties on the questions set forth below with regard to disclosure and related matters, including the time needed to effectuate the disclosure and/or submit related requests to the Chamber.

8. The aforementioned information will enable the Chamber to: (i) establish a calendar for disclosure ensuring a transparent and expeditious disclosure process; (ii) issue any necessary 'orders regarding the disclosure of information for the purposes of the [confirmation] hearing' pursuant to article 61(3) of the Statute; and (iii) convene 'status conferences to ensure that disclosure takes place under satisfactory conditions',

¹⁶ Email from the Chamber to the Registry on 22 April 2022 at 12:28.

¹⁷ [ICC-01/14-01/22-24](#).

¹⁸ [ICC-01/14-01/22-31](#).

¹⁹ [ICC-01/14-01/22-35](#) (with two public annexes).

as provided for in rule 121(2)(b) of the Rules of Procedure and Evidence (the ‘Rules’). In this regard, the Chamber emphasizes that the need to ensure that the disclosure process in the present case is streamlined, expeditious and organised, is even more apparent given that – depending on the Appeals Chamber’s determination of the two issues related to Mr Mokom’s legal representation – Mr Mokom’s legal representation may change while the disclosure process is ongoing. It is therefore vital that the disclosure process in this case is organised in such a manner so as to allow one to get acquainted with the evidence easily and expeditiously.

9. Moreover, the Chamber recalls the duties, powers and pivotal role of the Prosecution during pre-trial proceedings, as well as the mandate of the Victims and Witnesses Unit (the ‘VWU’) that ‘shall provide, in consultation with the [...] Prosecutor, protective measures’ for witnesses, victims and other persons at risk under article 43(6) of the Statute.

10. Accordingly, the Chamber wishes to receive information from the Prosecution on the following questions, by no later than 27 May 2022:

- (i) Within the category of documentary evidence, what is the overall number of written pieces of evidence the Prosecution intends to rely upon at the confirmation hearing? How many pages does this amount to? What is the original language of such evidence and/or in what language will it be made available?
- (ii) Does the Prosecution intend to rely upon other non-written pieces of documentary evidence, such as photographs, video, or audio recordings? If so, what is the total length/time span and original language of such pieces of evidence and will transcripts and/or translations be made available?
- (iii) How many and which pieces of evidence can be immediately disclosed to Mr Mokom without redactions? How many pages, or in case of video and radio recordings, what time span does this evidence amount to?
- (iv) What is the estimated overall amount of exculpatory evidence that the Prosecution will disclose to Mr Mokom as soon as practicable pursuant to article 67(2) of the Statute? How many pages, or in case of video and radio

recordings, what time span does this evidence amount to? Does the exculpatory evidence require redactions?

- (v) How many persons, if any, does the Prosecution intend to call as witnesses to testify *viva voce* at the confirmation hearing?
- (vi) How many witness statements does the Prosecution intend to provide Mr Mokom with for the purposes of the confirmation hearing, as provided in rule 76 of the Rules? Does the Prosecution intend to provide such statements in their entirety or in the form of summaries, pursuant to articles 61(5) and 68(5) of the Statute?
- (vii) What is the original language of the witness statements the Prosecution intends to rely upon at the confirmation hearing? If applicable, have those statements been translated into French, the languages that the suspect fully understands and speaks, as required in rule 76(3) of the Rules? If this had not yet been done, what is the Prosecution's estimate regarding the time needed to provide such translations?
- (viii) Does the Prosecution intend to submit requests to withhold the identity of any potential witnesses and, if so, of how many persons? How many witness statements of anonymous persons does the Prosecution intend to rely upon?
- (ix) For the purposes of requesting the withholding of the identity of a witness and related requests for redactions, have detailed and comprehensive security assessments been prepared for each witness on which the Prosecution intends to rely at the confirmation hearing and, in the negative, what is the Prosecution's estimate regarding the time needed to prepare them?
- (x) Does the Prosecution possess or control any books, documents, photographs or other tangible objects that Mr Mokom shall be permitted to inspect as material to the preparation of the Defence under rule 77 of the Rules? If so, what is the estimated overall amount of such material ?
- (xi) Are any of the Prosecution's pieces of evidence, in particular exculpatory evidence or evidence considered as material for the preparation of the defence, affected by confidentiality agreements in accordance with

articles 54(3)(e), 72 and 93 of the Statute? In the affirmative, has the Prosecution undertaken, or will the Prosecution undertake, steps to obtain the consent of the information provider(s) regarding the disclosure of such material?

- (xii) Does the Prosecution intend to request protective measures for witnesses, victims or other persons at risk prior to disclosure of the names of the witnesses and/or of certain documents, pursuant to rules 87 and 88 of the Rules? Has the Prosecution held consultation with the VWU regarding protective measures for witnesses, victims or other persons at risk? How many witnesses have been referred to the VWU for protection purposes, including relocation? How many witnesses does the Prosecution intend to refer to the VWU for protection purposes, including relocation, before the confirmation hearing? What is the Prosecutor's estimate regarding the time needed for such measures to be put in place?
- (xiii) Does the Prosecution intend to submit requests in relation to unique investigative opportunities under article 56 of the Statute? What could be the impact of such requests on the disclosure process and the commencement of the confirmation hearing?
- (xiv) Is the Prosecution continuing the investigation regarding Mr Mokom? What could be the impact of an ongoing investigation on the disclosure process, the protection of witnesses and the commencement of the confirmation hearing?
- (xv) Does the Prosecution intend to enlarge or reduce the factual scope of the charges brought against Mr Mokom as compared to those currently set out in the Warrant of Arrest?²⁰
- (xvi) Bearing in mind the scheduled date for the confirmation hearing, when does the Prosecution anticipate it will be able to complete disclosure?

11. The Chamber is aware that Mr Mokom's position as to whether to object to the charges, challenge the Prosecution's evidence and, in particular, present evidence

²⁰ Warrant of Arrest for Maxime Jeoffroy Eli Mokom Gawaka, 10 December 2018, ICC-01/14-01/22-2-US-Exp (with public redacted version, [ICC-01/14-01/22-2-Red2](#)).

pursuant to article 61(6) of the Statute will depend, to a large extent, on the disclosure of evidence by the Prosecution and the provision of the document containing the charges. The Chamber is also aware of the ongoing issues concerning Mr Mokom's legal representation. Nonetheless, the Chamber considers it a matter of fairness of the proceedings to invite Duty Counsel to provide, to the extent possible at this stage, (i) observations on the information to be submitted by the Prosecution in accordance with this decision; and (ii) information on the following questions:²¹

- (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?

12. Duty Counsel shall file any observations on the information to be submitted by the Prosecution and on the above questions by no later than 7 June 2022. Furthermore, the Chamber instructs Duty Counsel to file a response to the Prosecution's Protocol Request and Observations on Evidence Disclosure by no later than 23 May 2022. In his responses, he may make suggestions as to how the processes may be organised in such a manner so as to facilitate an easy handover in the event of a change of counsel, and

²¹ If required, Mr Mokom may file some of this information *ex parte*.

how, from a defence perspective, disclosure ought to be organised to ensure that any new defence team members are in a position to become acquainted with the disclosed materials in an expeditious manner. In addition, the Registry is instructed to provide observations on the Prosecution's Protocol Request by no later than 23 May 2022.

B. Participation of victims

13. The Prosecution, Duty Counsel and the Registry are instructed to submit a response and observations, if they so wish, to the OPCV's Application by no later than 25 May 2022. In addition, the Registry is instructed to file observations in relation to victims' applications for participation in the present case by no later than 25 May 2022, including on (i) the admission process for applicants seeking to participate in the proceedings;²² (ii) application forms for participation; (iii) applicants' proof of identity documents; (iv) and legal representation in the present proceedings. Responses to the Registry's observations in relation to victims' applications for participation, if any, shall be filed by no later than 3 June 2022.

FOR THESE REASONS, THE CHAMBER HEREBY


INSTRUCTS

- (i) the Prosecution to provide the Chamber with the information specified at paragraph 10 of this order, by no later than 27 May 2022;
- (ii) Duty Counsel to provide the Chamber with observations on the information to be submitted by the Prosecution and the questions specified at paragraph 11 of this order, by no later than 7 June 2022.
- (iii) Duty Counsel to provide a response to the Prosecution's Protocol Request and Observations on Evidence Disclosure, if any, by no later than 23 May 2022;
- (iv) the Registry to provide observations on the Prosecution's Protocol Request by no later than 23 May 2022;

²² See Judgment on the appeal of Mr Mahamat Said Abdel Kani against the decision of Pre-Trial Chamber II of 16 April 2021 entitled "Decision establishing the principles applicable to victims' applications for participation", 14 September 2021, [ICC-01/14-01/21-171](#), paras 68-80.

- (v) the Prosecution, Duty Counsel and the Registry to submit a response and observations, if any, to the OPCV's Application by no later than 25 May 2022;
- (vi) the Registry to file observations in relation to victims' applications for participation in the present case as specified in paragraph 13 of this order, by no later than 25 May 2022; and
- (vii) the Prosecution and Duty Counsel to file a response to the Registry's observations in relation to victims' applications for participation, if any, by no later than 3 June 2022.

Done in both English and French, the English version being authoritative.



Judge Rosario Salvatore Aitala

Presiding



Judge Antoine Kesia-Mbe Mindua



Judge Tomoko Akane

Dated this Tuesday, 17 May 2022

At The Hague, The Netherlands