

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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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 Request to extend and modify current contact restrictions"", ICC-01/14-01/22-61-Conf-Exp, 22 June 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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Mr Gregory Townsend,
Duty Counsel for Mr. Mokom

I. INTRODUCTION

1. On behalf of Mr. Mokom, and subsequent to the Pre-Trial Chamber's Decision of 28 April 2022 which instructed 'the Registry to cease the *active* monitoring of all communications between Mr. Mokom [REDACTED]¹ but (at para. 5) noted that 'telephone calls [REDACTED] shall be *passively* monitored at all times in the form of recording, and the post factum review of these calls may be ordered' and that 'telephone calls with [REDACTED] may also be subject to *active monitoring at random*',² I file this response to the 'Prosecution's Request to extend and modify current contact restrictions' of 17 June 2022.³

II. PROCEDURAL HISTORY

2. On 15 June 2022, the Registry filed its second report on the implementation of the restrictions on contact.⁴ Mr. Mokom concurs with the procedural history therein, and notes that this report (at paras 6, 18) again indicates that there were 'no incidents'.

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 28 April 2022 and the Prosecution request 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.'

¹ Pre-Trial Chamber II, 'Third Decision on Contact Restrictions', 28 April 2022, ICC-01/14-01/22-45-Conf-Exp, at 6 (italics added).

² Ibid (emphasis added).

³ Office of the Prosecutor, 'Prosecution's Request to extend and modify current contact restrictions', 17 June 2022, ICC-01/14-01/22-60-Conf-Exp-Red (redacted) (Prosecution's Request).

⁴ Registry, 'Second Registry Report on the Implementation of the Restrictions on Contact Ordered by the Pre-Trial Chamber II and Request for Guidance on Non-Privileged Visits and Written Correspondence' 15 June 2022, ICC-01/14-01/22-59-Conf-Exp, para. 2 (Second Registry Report)

V. SUBMISSIONS

A. *On the reconsideration of the Pre-Trial Chamber's Decision of 28 April 2022*

5. The Prosecution's Request, without so stating, effectively seeks the reconsideration of the Pre-Trial Chamber's Decision of 28 April 2022, insofar as it seeks, based on information *previously available* (thus not 'new'),⁵ the re-imposition of *active* monitoring of calls, visits and communications between Mr. Mokom and [REDACTED], which the Pre-Trial Chamber's Decision of 28 April 2022 expressly decided against. In addition to this procedural irregularity, there are seven (7) further reasons why the Pre-Trial Chamber should deny this request for reconsideration.

(1) The Chamber already ordered recording & random monitoring

6. As noted above, at para. 1, the Pre-Trial Chamber's Decision of 28 April 2022, while expressly denying systematic active monitoring, and despite, I'd submit, their [REDACTED], imposed recording of all of Mr. Mokom's communications with [REDACTED] so that the Registry (and Chamber) could review them and, further, still imposed random active monitoring. The Second Registry Report, while, logically, not mentioning the extent of its random active monitoring, indicates no incidents. Based on the Second Registry Report reporting NO incidents (at paras 6, 18), **the existing regime of recording and random active monitoring is sufficient.**

(2) Alternatively, the Chamber should order a review of recordings

7. From 28 April to the present, per the Pre-Trial Chamber's Decision of 28 April 2022, the Registry recorded all of Mr. Mokom's communications with [REDACTED]. To the extent that any of those calls, spanning nearly two months, have not already been monitored at random, Mr. Mokom, to put the matter beyond any dispute, invites the Pre-Trial Chamber to ORDER the Registry to perform a *review all such recordings* to date and promptly report back to the Pre-Trial Chamber. The Pre-Trial Chamber

⁵ See Prosecution's Request, ICC-01/14-01/22-60-Conf-Exp-Red (redacted), fn.5 (citing the Prosecution's 'Soumissions additionnelles' of 25 March 2022 (ICC-01/14-01/22-25-AnxE)).

would then have up-to-date and concrete information on whether the [REDACTED] communications in this case are above reproach or not, and if 'random' doesn't suffice.

(3) The Chamber should review the phone attribution information

8. Key to the Prosecution's Request (at para. 9, fn.8) is its alleged attribution of phone number [REDACTED], purportedly based on 'information provided by phone provider' (with no further reference, no citation, and no time frame). The lack of redactions also seems to indicate that the Prosecution has not provided the Pre-Trial Chamber the actual information of such attribution, though serving as a key basis of its Request and despite providing numerous other (*ex parte*) references. I'd respectfully submit that the Pre-Trial Chamber, before deciding the Prosecution Request, has a duty to query unsupported, underlying assertions and insist on being provided the actual information cited, here from the 'phone provider' purportedly supporting this allegation (which cannot be voluminous), to demonstrate *which year* such phone was allegedly attributed to [REDACTED], and if that was in fact in 2014 (as alleged, at para. 9). This information may shed light on the validity of the allegations underlying the Prosecution's Request.

(4) Disclosure hasn't begun and thus no witness identities are known

9. The Prosecution's Request (at paras 3, 8) claims to seek to avoid 'interference with the Prosecution's investigations and the prospective testimony of witnesses'. Disclosure in this case, however, has not yet begun and the identity of any Prosecution witnesses are not known to the Defence, Mr. Mokom or [REDACTED]. Nor would disclosure make Ms. Mokom privy to such identities. Any sensitive disclosure will eventually come, no doubt, heavily redacted. Thus, this argument does not appear, at present, to serve as a valid basis justifying the Prosecution Request.

(5) Mr. Mokom is detained separately from other CAR detainees

10. The Prosecution's Request (at paras 12-13) refers to other CAR detainees [REDACTED] and Mr. Mokom's 'direct family.' Mr. Mokom, however, at present and

since his arrival at the ICC Detention Centre, [REDACTED]. Thus, this argument does not appear to serve as a valid basis justifying the Prosecution Request.

(6) The Chamber should avoid 'guilt by association' with family

11. The Prosecution's Request (at para. 10) argues that [REDACTED].

(7) Active monitoring interferes with [REDACTED]

12. [REDACTED]. This will impose additional burdens on the ICC Detention staff that are not necessary in the present circumstances.

B. The Prosecution Request to extend other restrictions

13. Mr. Mokom's incorporates by reference his previous position,⁶ which remains the same, namely 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'.

C. Defence Request to Harmonize Restrictions of [REDACTED] & the Registry's Request for Guidance

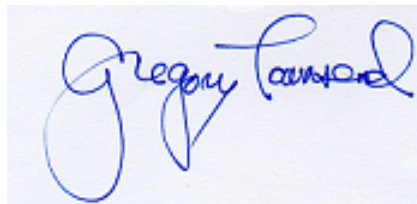
14. Mr. Mokom separately requests, further to his response of 13 April 2022, that the Pre-Trial Chamber should harmonize the restrictions imposed for [REDACTED]. Here, I again cite [REDACTED].⁷ [REDACTED]. Mr. Mokom, therefore, requests that the Pre-Trial Chamber harmonize the monitoring regimes, [REDACTED], which is namely: recording of all calls and random monitoring. This will be consistent, logical, and easier to implement for the Registry (and effectively decide the Registry's request for guidance, as contained in the Second Registry Report, at para. 21, in particular with respect to any in-person family visit that may take place in due course).

⁶ See ICC-01/14-01/22-41-Conf-Exp (Mr. Mokom's Response), 13 April 2022, at paras 7-13.

⁷ *Prosecutor v. Yekatom & Ngaißsona*, ICC-01/14-01/18-485-Red, at para. 13(iii)(b) (emphasis added).

15. In conclusion, on behalf of Mr. Mokom, I request that the Pre-Trial Chamber:
- (a) **EXTEND**, temporarily, the existing regime of recording and random monitoring of Mr. Mokom's calls, visits and written communications with [REDACTED] subject to the Pre-Trial Chamber's periodic review based on reports from the Registry;
 - (b) **ORDER**, temporarily, the (same regime of) recording and random monitoring of Mr. Mokom's calls, visits and written communications with his [REDACTED] subject to the Pre-Trial Chamber's periodic review based on reports from the Registry, and;
 - (c) **GRANT** the Prosecution's Request so as to **EXTEND** the *other* communication restrictions of the Order of 28 April 2022, but **DENY** the Prosecution's Request in all other respects.

Respectfully submitted,



Gregory Townsend,
Duty Counsel for Mr. Mokom

Date: 31 January 2024

At The Hague, Netherlands.