



Original: English

No. ICC-01/14-01/22

Date: 24 January 2023

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 JEOFFROY ELI MOKOM GAWAKA***

Public

Order for observations and
decision on the Prosecution's request for a status conference

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 Philippe Larochelle
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**

Ms Paolina Massidda

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

States Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

PRE-TRIAL CHAMBER II of the International Criminal Court issues this Order for observations and decision on the Prosecution’s request for a status conference.

1. On 10 December 2018, the Chamber issued the Warrant of Arrest for Maxime Jeoffroy Eli Mokom Gawaka (‘Mr Mokom’).¹
2. On 14 March 2022, Mr Mokom was surrendered to the Court and arrived at the Detention Centre.
3. On 25 March 2022, the Chamber revoked the appointment of Mr Nicholas Kaufman (‘Mr Kaufman’) as counsel for Mr Mokom due to an impediment to representation or a conflict of interest.² As a result, Mr Gregory Townsend (‘Mr Townsend’) was appointed as Duty Counsel to Mr Mokom on 4 April 2022.³ The Appeals Chamber, by majority, ultimately confirmed the removal of Mr Kaufman on 19 December 2022 (the ‘19 December 2022 Judgment’).⁴
4. On 21 December 2022, the Chamber, further to the 19 December 2022 Judgment, instructed the Registry, by way of email, to: (i) maintain the appointment of Mr Townsend as Duty Counsel until two weeks after the appointment of permanent

¹ ICC-01/14-01/22-2-US-Exp, confidential, *ex parte*, available only to the Prosecution (a redacted under seal, *ex parte*, only available to the Prosecutor and the Victims and Witnesses Unit, version was issued on 31 January 2019, ICC-01/14-01/22-2-US-Exp-Red; a public redacted version was issued on 22 March 2022, [ICC-01/14-01/22-2-Red2](#)).

² Order to the Registry concerning the appointment of Mr Nicholas Kaufman as counsel for Mr Maxime Jeoffroy Eli Mokom Gawaka, 25 March 2022, ICC-01/14-01/22-26-Conf-Exp, confidential, *ex parte*, available only to the Prosecution, Mr Nicholas Kaufman, Mr Maxime Jeoffroy Eli Mokom Gawaka, and the Registry (a public redacted version was issued on 13 June 2022, [ICC-01/14-01/22-26-Red](#)) (the ‘25 March 2022 Order’).

³ Registry, 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, confidential and *ex parte*, only available to Mr Mokom and the Registry, with Annex I, confidential and *ex parte*, only available to Mr Mokom and the Registry.

⁴ Decision on legal representation further to the Appeals Chamber’s judgment of 19 July 2022, ICC-01/14-01/22-124-Conf, confidential, together with an annex containing the dissenting opinion of Judges Bossa and Ibáñez Carranza (public redacted versions of the decision and the annex were issued on the same day, ICC-01/14-01/22-124-Red and [ICC-01/14-01/22-124-Anx-Red](#)). Following an appeal by Mr Mokom, the Appeals Chamber, by majority, directed the Chamber to provide further reasons for its 25 March 2022 Order on 19 July 2022. The Chamber issued a decision setting out further reasons pursuant to the Appeals Chamber’s directions on 19 August 2022 and, in addition, *proprio motu* granted leave to appeal that decision to Mr Mokom (the ‘19 August 2022 Decision’). On 27 September 2022, the Appeals Chamber declared Mr Mokom’s appeal against the 19 August 2022 Decision inadmissible on the basis that leave to appeal was improperly granted. After the Chamber granted leave to Mr Mokom to appeal the 19 August 2022 Decision on 29 September 2022, the Appeals Chamber, by majority, confirmed the 19 August 2022 Decision, and additionally directed the Registry to liaise with Mr Mokom regarding his selection of counsel, on 19 December 2022.

counsel selected by Mr Mokom; and (ii) finalise its consultations with Mr Mokom as to his selection of permanent counsel as soon as possible but no later than 6 January 2023.⁵

5. On 21 December 2022, the Prosecution requested the Chamber to schedule a status conference on 16 January 2023, or as soon as practicable thereafter (the ‘Prosecution Request’).⁶ It submits that a status conference would: (i) allow it to more fully apprise the Chamber of its concerns regarding the metadata requirements for the disclosure of material under rule 77 of the Rules of Procedure and Evidence (the ‘Rules’); (ii) permit it to address such issues as may affect its continuing investigation, and as concerns the status of the Mokom Defence’s prospective access to the record of the *Yekatom and Ngaiissona* case; (iii) be of benefit to the expeditious disposition of a pending application submitted by the Office of Public Counsel for Victims (the ‘OPCV’); (iv) ensure that permanent counsel may address any substantive matters that have been deferred by Duty Counsel prior to the appointment of permanent counsel; and (v) provide a forum for the Chamber, along with the parties and participants, to be updated regarding the responses submitted by States in respect of Mr Mokom’s application for interim release, and to provide other information pertinent to the issue.

6. On 23 December 2022, Duty Counsel responded to the Prosecution Request,⁷ thereby submitting that the date set by the Prosecution appears to be premature in view of the Chamber’s instructions of 21 December 2022 regarding the appointment of permanent counsel, and that a status conference should be held at the earliest date after the transition period so as to enable him to hand over all matters related to the proceedings to permanent counsel. Duty Counsel adds that the disclosure-related ‘concerns’ that the Prosecution seeks to address have already been adjudicated and decided by the Chamber.

7. On 30 December 2022, the Single Judge issued a decision via email, thereby: (i) rejecting the Prosecution Request insofar as it concerns the scheduling of a status

⁵ Email from the Chamber to the Registry, 21 December 2022 at 10:08.

⁶ 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, confidential, paras 1, 18 (a public redacted version was issued on 4 January 2023, [ICC-01/14-01/22-126-Corr-Red](#)).

⁷ 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”’, 23 December 2022, ICC-01/14-01/22-128, public.

conference on 16 January 2023, considering that it remains the sole prerogative of the Chamber to evaluate if and on which date a status conference is to be held; and (ii) deferring its decision in relation to the remainder of the Prosecution Request, and notifying the parties that a decision as to the scheduling of a status conference after 16 January 2023 will be issued in due course taking into consideration the efficient conduct of the proceedings and the rights of the defence.⁸

8. On 4 January 2023, the Registry, by way of email, submitted the report describing the consultation process as to Mr Mokom's selection of permanent counsel pursuant to the Chamber's instructions.⁹

9. On 23 January 2023, Mr Philippe Larochelle was appointed as permanent counsel for Mr Mokom.¹⁰

10. On 23 January 2023, the Chamber formally postponed the confirmation of charges hearing until a date to be determined subsequently.¹¹

11. In view of these developments, the Chamber orders permanent counsel for Mr Mokom, if it is considered necessary for Mr Mokom's defence, to provide observations on:

) the 'Prosecution's Submission on its Approach to Material in the Yekatom and Ngaissona Case to which Access may be authorised',¹² by no later than 30 January 2023, whereas no further submissions by the Prosecution in respect of these matters shall be allowed;

) the conduct of the proceedings related to the confirmation of charges hearing, as addressed in the: (i) 'Order seeking observations on matters related to

⁸ Email from the Chamber to the Prosecution and Duty Counsel, 30 December 2022 at 11:34.

⁹ Email from the Registry to the Chamber, 4 January 2023 at 16:57. The Registry provided updates by email on 6 January 2023, at 11:04, 10 January 2023, at 13:24, 17 January 2023, at 14:46, and 19 January 2023, at 18:58.

¹⁰ Registry, Notification of the Appointment of Mr Philippe Larochelle as Counsel for Mr Maxime Jeoffroy Eli Mokom Gawaka, ICC-01/14-01/22-136, public, with Annexes I, II and IV, public and Annex III, confidential.

¹¹ Order postponing the confirmation of charges hearing, ICC-01/14-01/22-137, public.

¹² 9 December 2022, ICC-01/14-01/22-118, public. Duty Counsel submitted a response on behalf of Mr Mokom on 21 December 2022 (see [ICC-01/14-01/22-125](#)).

the conduct of the confirmation proceedings’;¹³ (ii) ‘Order on the conduct of the confirmation of charges proceedings’ (the ‘27 June 2022 Order’);¹⁴ (iii) ‘Order on disclosure and related matters’;¹⁵ and (iv) ‘Second order on disclosure and related matters’ (the ‘Second Disclosure Order’);¹⁶ by no later than 3 February 2023, whereas no further submissions by the Prosecution in respect of these matters shall be allowed;

J matters related to the participation of victims, in particular the: (i) 27 June 2022 Order;¹⁷ (ii) ‘OPCV’s application for recognition of the status of victims in the *Mokom* case to victims participating in the *Yekatom* and *Ngaïssona* case’;¹⁸ and (iii) ‘Registry report on legal representation of victims’,¹⁹ by no later than 8 February 2023, whereas no further submissions by the Prosecution and the OPCV in respect of these matters shall be allowed; and

J the interim release application submitted by Duty Counsel on behalf of Mr Mokom,²⁰ that is: (i) the ‘Réponse de l’Accusation à “Mr MOKOM’s

¹³ 17 May 2022, [ICC-01/14-01/22-50](#), public, para. 11. The Chamber invited Duty Counsel to provide, to the extent possible, information on the questions specified in that paragraph. Duty Counsel provided submissions on 6 June 2022, see 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), [ICC-01/14-01/22-58](#), public.

¹⁴ 27 June 2022, [ICC-01/14-01/22-62](#), public, paras 20-37.

¹⁵ 7 November 2022, [ICC-01/14-01/22-104](#), public, paras 5-12.

¹⁶ 30 November 2022, [ICC-01/14-01/22-116](#), public, paras 9-10, 13-16.

¹⁷ [27 June 2022 Order](#), paras 38-49. See also: Registry Observations pursuant to Pre-Trial Chamber II’s “Order seeking observations on matters related to the conduct of the confirmation Proceedings” (ICC-01/14-01/22-50), 25 May 2022, [ICC-01/14-01/22-55](#), public, paras 13-35, with annexes I and II, public, and annex III, confidential, *ex parte*, only available to the Registry (the ‘Registry’s 25 May 2022 Observations’); and Mr. Mokom’s Response to the Registry’s Observations on victim participation, 3 June 2022, [ICC-01/14-01/22-57](#), public, paras 7-8 (the ‘3 June 2022 Response’).

¹⁸ 7 April 2022, [ICC-01/14-01/22-35](#), public, with annexes A and B, public. Duty Counsel responded on 25 May 2022; see Mr. Mokom’s Response to OPCV’s Application for recognition of the status of victims in the case of Prosecutor v. Mokom to victims participating in the case of *Prosecutor v. Yekatom and Ngaïssona*, [ICC-01/14-01/22-56](#), public; see also [Registry’s 25 May 2022 Observations](#), paras 11-12; [3 June 2022 Response](#), para. 6.

¹⁹ 7 October 2022, [ICC-01/14-01/22-98](#), public, with Annex 1, confidential and *ex parte*, only available to the Registry (a public redacted version of the Annex was issued on the same day, [ICC-01/14-01/22-98-Anx-Red](#)). See also Mr. Mokom’s Observations on the ‘Registry Report on Legal Representation of Victims’, 14 October 2022, ICC-01/14-01/22-103, public.

²⁰ Mr. Mokom’s Application for Interim Release pursuant to Order ICC-01/14-01/22-105, 14 November 2022, ICC-01/14-01/22-110-Conf, confidential, with Annex 1, confidential, *ex parte*, only available to the Defence and the Registry (a public redacted version was submitted on 16 November 2022, [ICC-01/14-01/22-110-Red](#)). See also Pre-Trial Chamber II, Order to Mr Mokom to provide submissions on interim release, 7 November 2022, [ICC-01/14-01/22-105](#), public.

Application for Interim Release pursuant to Order ICC-01/14-01/22-105”;²¹ and (ii) the ‘Victims’ Observations on “Mr. Mokom’s Application for Interim Release pursuant to Order ICC-01/14-01/22-105”;²² by no later than 15 February 2023, whereas no further submissions by the Prosecution and the OPCV in respect of these matters shall be allowed. Furthermore, the Chamber orders: (i) the Prosecution to submit a public redacted version of the ‘Réponse de l’Accusation à “Mr MOKOM’s Application for Interim Release pursuant to Order ICC-01/14-01/22-105”’ by no later than 27 January 2023; (ii) the Registry to submit public redacted versions of the ‘Report on the Registry’s consultations with States on the Interim Release of Mr Mokom and Request for Guidance’ (ICC-01/14-01/22-120-Conf-Exp) and the ‘Addendum to the confidential redacted version of “Report on the Registry’s consultations with States on the Interim Release of Mr Mokom and Request for Guidance’ (ICC-01/14-01/22-127-Conf), including, where possible, the annexes to these filings, or to apply for the reclassification of any of these filings, by no later than 15 February 2023,²³ and (iii) the Prosecution and the OPCV to file any observations on the States’ responses in the context of the Registry’s consultations on this matter, by no later than 15 February 2023, whereas permanent counsel for Mr Mokom shall provide observations on these matters by no later than 24 February 2023 (public redacted versions of such filings shall be submitted as soon as practicable thereafter).

12. In addition, in view of the appointment of Mr Larochelle, the Chamber specifies that, in line with the previously established time limits, the Prosecution shall: (i) complete its outstanding disclosure obligations regarding the material it intends to rely upon for the confirmation of charges hearing (together with a complete and detailed table of its witnesses in relation to whom material(s) has/have been disclosed), material falling under rule 77 of the Rules, and any remaining potentially exonerating material, by no later than 23 February 2023 (i.e. within one month of the notification of the appointment of permanent counsel); (ii) submit any requests for redactions not falling into the standard categories, non-disclosure of witnesses’ identities or non-disclosure

²¹ 18 November 2022, ICC-01/14-01/22-112-Conf, confidential.

²² 22 November 2022, ICC-01/14-01/22-115-Conf, confidential (a public redacted version was submitted on 24 November 2022, [ICC-01/14-01/22-115-Red](#)).

²³ The Registry shall, where necessary, consult with the relevant States for these purposes. Furthermore, the Registry shall also submit a public redacted version, or apply for the reclassification, of its forthcoming report, including any annexes, to be submitted on this matter.

of entire items of evidence by no later than 13 February 2023 (i.e. no later than 10 days before the final deadline for disclosure); and (iii) submit the Document Containing the Charges (the ‘DCC’) - which shall be limited to the factual basis on which the Prosecution seeks to have Mr Mokom committed to trial and the applicable legal characterisations, together with an annex containing a detailed explanation of the material or evidence supporting the points of law and fact included in the DCC - by no later than 9 March 2023 (i.e. within two weeks of the completion of the disclosure process).²⁴

13. Lastly, turning to the deferred aspect of the Prosecution Request, the Chamber considers it appropriate to convene a status conference on 7 February 2023 in the presence of the Prosecution and permanent counsel for Mr Mokom. The status conference shall primarily serve to address matters related to the disclosure process in this case, namely: (i) the progress achieved in the disclosure process; (ii) the Prosecution’s preparation and organisation of the evidence it intends to rely upon for the confirmation hearing, the material to be disclosed under rule 77 of the Rules, and the evidence disclosed as potentially exonerating; (iii) the Prosecution’s ongoing investigations; and (iv) any change or update on requests for non-standard redactions, identity redactions pursuant to rule 81(4) of the Rules and non-disclosure of entire items. Furthermore, the Prosecution and permanent counsel for Mr Mokom may raise other matters relevant to the conduct of the proceedings. At the same time, the Chamber emphasises that, whereas the Prosecution may acquaint the Chamber with any issues regarding its implementation of the Chamber’s instructions regarding the disclosure of material falling under rule 77 of the Rules,²⁵ the relevant instructions, as such, are final,²⁶ considering that no remedy has been requested in respect of these instructions.

²⁴ [27 June 2022 Order](#), paras 27-37.

²⁵ [Prosecution Request](#), paras 7-11.

²⁶ [Second Disclosure Order](#), paras 13-16.

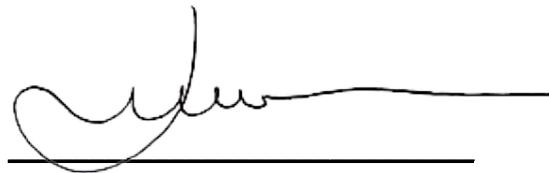
FOR THESE REASONS, THE CHAMBER HEREBY

ORDERS permanent counsel, if it is considered necessary for Mr Mokom's defence, to submit the observations set out at paragraph 11 of the present order;

ORDERS the Prosecution, the Registry and the OPCV to comply with the relevant instructions set out at paragraph 11 of the present order; and

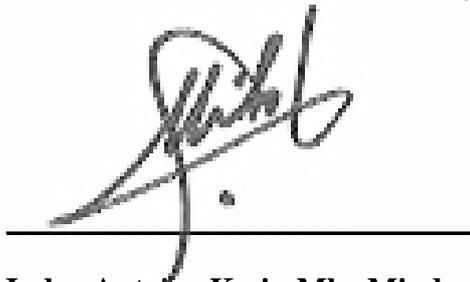
CONVENES a status conference on 7 February 2023 in the presence of the Prosecution and permanent counsel for Mr Mokom.

Done in English. A French translation will follow. The English version remains authoritative.

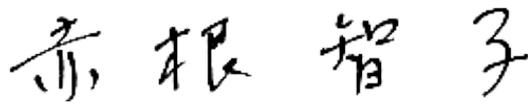


Judge Rosario Salvatore Aitala

Presiding



Judge Antoine Kesia-Mbe Mindua



Judge Tomoko Akane

Dated this Tuesday, 24 January 2023

At The Hague, The Netherlands