



**Original: English**

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

**Date: 3 February 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**

Decision setting the date for the confirmation of charges hearing

**Decision 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**

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**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 decision setting the date for the confirmation of charges hearing.

1. On 10 December 2018, the Chamber issued the Warrant of Arrest for Maxime Jeoffroy Eli Mokom Gawaka ('Mr Mokom' and 'Warrant of Arrest').<sup>1</sup>
2. On 14 March 2022, Mr Mokom was surrendered to the Court and arrived at the Detention Centre.<sup>2</sup>
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.<sup>3</sup> As a result, Mr Gregory Townsend was appointed as Duty Counsel to Mr Mokom on 4 April 2022.<sup>4</sup> The Appeals Chamber, by majority, ultimately confirmed the removal of Mr Kaufman on 19 December 2022.<sup>5</sup>
4. On 23 January 2023, Mr Philippe Larochelle ('Mr Larochelle') was appointed as permanent counsel for Mr Mokom (the 'Defence').<sup>6</sup>

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<sup>1</sup> 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](#)).

<sup>2</sup> Transcript of Hearing, 22 March 2022, ICC-01/14-01/22-T-001-CONF-ENG, confidential, p. 1 (the '22 March 2022 Transcript') (a public redacted version was issued on 29 March 2022, [ICC-01/14-01/22-T-001-Red-ENG](#)).

<sup>3</sup> 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](#)).

<sup>4</sup> 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.

<sup>5</sup> 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](#)).

<sup>6</sup> 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.

5. On 23 January 2023, the Chamber formally postponed the confirmation of charges hearing, which had been initially scheduled to commence on 31 January 2023,<sup>7</sup> until a date to be determined subsequently, and further instructed the Prosecution, Office of Public Counsel for Victims (the ‘OPCV’), and permanent counsel for the Defence to provide observations on this matter if they so wish.<sup>8</sup>

6. On 26 January 2023, the OPCV provided its observations,<sup>9</sup> submitting that, while the victims have an interest in the confirmation of charges hearing being held as soon as practicable, it is not in a position to suggest a specific date because it is not aware of important information in the record of the case and, in addition, it only received a limited number of victims’ applications from the Registry.

7. On 26 January 2023, the Prosecution provided its observations,<sup>10</sup> submitting that: (i) a date should be set after considering the issues to be addressed and/or presented during the status conference scheduled for 7 February 2023; (ii) it defers to the Chamber’s assessment of the relevant factors, including the state and availability of the parties’ resources; and (iii) noting that the currently assigned Prosecution team is also presenting its case in *the Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaiïsona* trial (the ‘*Yekatom and Ngaiïsona* proceedings’), the *least* potentially overlapping and disruptive period for conducting the confirmation of charges hearing would be during the week of 17 July 2023, while the weeks of 5 or 12 June 2023 may also be viable, although potentially more disruptive (emphasis in original).

8. On 31 January 2023, the Defence provided its observations,<sup>11</sup> submitting that: (i) the overarching desire of Mr Mokom and the Defence is for the proceedings to move swiftly following the delays experienced to date; and (ii) a confirmation of charges hearing in June 2023 will pose difficulties for sufficient Defence preparation, while a hearing during the week of 17 July 2023 is certainly preferable, and would not unduly extend Mr Mokom’s pre-trial detention, which has already been lengthy. The Defence

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<sup>7</sup> [22 March 2022 Transcript](#), p. 11.

<sup>8</sup> [Order postponing the confirmation of charges hearing](#), ICC-01/14-01/22-137, public.

<sup>9</sup> [Observations on behalf of Victims following the Order postponing the Confirmation of Charges Hearing](#) (ICC-01/14-01/22-137), ICC-01/14-01/22-139, public.

<sup>10</sup> [Prosecution’s Observations on a Proposed Date for the Commencement of the Confirmation of Charges Hearing](#), ICC-01/14-01/22-140, public.

<sup>11</sup> Mokom Defence Observations on a Proposed Date for the Confirmation of Charges Hearing, ICC-01/14-01/22-145, public.

also seeks leave to make further brief written observations after the Prosecution's submissions at the status conference on the progress of the disclosure process.

9. At the outset, the Chamber considers that it is not necessary to await the status conference of 7 February 2023 before issuing the present decision. The date for the confirmation of charges hearing is not dependent on the matters to be presented at the status conference to such a degree that it would have to be set after the status conference. The Chamber has previously provided the relevant instructions relating to the conduct of the confirmation of charges hearing, including in respect of the Prosecution's disclosure obligations, and the Prosecution has had additional time to discharge its obligations on account of the delays arising from the litigation regarding Mr Mokom's legal representation. Moreover, the Chamber will not take the Prosecution's involvement in the *Yekatom and Ngaïssona* proceedings into account. It remains the Prosecution's responsibility to ensure that its internal organisation allows it to honour its obligations in the different types of proceedings that it itself initiated in conformity with the principles of fairness and expeditiousness.<sup>12</sup>

10. The Chamber is first and foremost guided by the need to ensure Mr Mokom's right to have adequate time and facilities for the preparation of his defence under article 67(1)(b) of the Rome Statute and rule 121(1) of the Rules of Procedure and Evidence. This is especially so in light of the fact that Mr Larochelle has been appointed recently and, not having represented Mr Mokom since his transfer to the Court, will require sufficient time to be able to effectively assist Mr Mokom. In this regard, the Chamber has also taken into account the wide-ranging scope of the Prosecution's allegations levelled against Mr Mokom as reflected in the Warrant of Arrest, which concern alleged war crimes and crimes against humanity committed in multiple locations in the Central African Republic during an extended period of time. Furthermore, the Prosecution has indicated that it intends to disclose a voluminous

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<sup>12</sup> See also Pre-Trial Chamber II, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona, Decision on the 'Prosecution's Request to Postpone the Confirmation Hearing and all Related Disclosure Deadlines'*, 15 May 2019, ICC-01/14-01/18-199, public, para. 32.

amount of materials,<sup>13</sup> and that the Defence may additionally receive a significant quantity of materials from the *Yekatom and Ngaissona* proceedings.<sup>14</sup>

11. While mindful of the Defence's wish to proceed as swiftly as possible and Mr Mokom's ongoing detention, the Chamber considers that, in the exceptional circumstances of the present proceedings, commencing the confirmation of charges hearing on 22 August 2023 strikes an appropriate balance between the fair administration of justice and the need to ensure expeditiousness. The Chamber will issue a scheduling order, including directions regarding the conduct of the confirmation of charges hearing, in due course. Finally, considering that the Defence will have additional time to prepare for the purposes of the confirmation of charges hearing, the Chamber does not consider it necessary to receive further written submissions.

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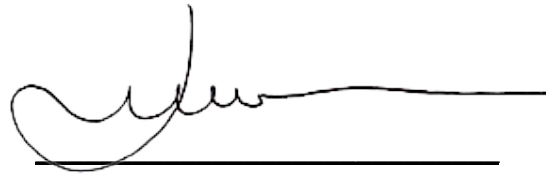
<sup>13</sup> [Prosecution's Submissions pursuant to the Chamber's Order on Disclosure and Related Matters \(ICC-01/14-01/22-104\)](#), 11 November 2022, ICC-01/14-01/22-109, public.

<sup>14</sup> Prosecution's Submission on its Approach to Material in the *Yekatom* and *Ngaissona* Case to which Access may be authorised, 9 December 2022, ICC-01/14-01/22-118, public.

**FOR THESE REASONS, THE CHAMBER HEREBY**

**DECIDES** that the confirmation of charges hearing shall commence on 22 August 2023.

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

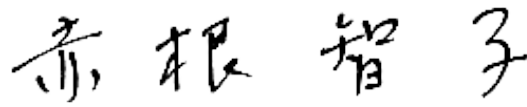


**Judge Rosario Salvatore Aitala**

**Presiding**



**Judge Antoine Kesia-Mbe Mindua**



**Judge Tomoko Akane**

Dated this Friday, 3 February 2023

At The Hague, The Netherlands