

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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

Date: **12 June 2023**

PRE-TRIAL CHAMBER II

**Before: Judge Rosario Salvatore Aitala, Presiding Judge
Judge Tomoko Akane
Judge Sergio Gerardo Ugalde Godínez**

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC II
IN THE CASE OF *PROSECUTOR v. MAXIME JEOFFROY ELI MOKOM
GAWAKA***

Public

**Public redacted version of “Prosecution’s response to “Mokom Defence Further Observations on the Conduct of the Proceedings Related to the Confirmation of Charges Hearing”, 17 April 2023, ICC-01/14-01/22-192-Conf”,
ICC-01/14-01/22-196-Conf, 24 April 2023**

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

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I. INTRODUCTION

1. The Prosecution defers to Pre-Trial Chamber II's ("Chamber") discretion regarding the "Mokom Defence Further Observations on the Conduct of the Proceedings Related to the Confirmation of Charges Hearing ("Further Observations").¹ However, the Defence's additional assertions that the Prosecution has not complied with the Chamber's prior disclosure orders² ("Prior Orders") are unnecessary, unfounded, and incorrect, and the Chamber should summarily reject them.

II. CONFIDENTIALITY

2. Pursuant to regulation 23*bis*(2) of the Regulations of the Court ("RoC"), this document is filed as "Confidential" because responds do a filing of the same classification. A public redacted version will be filed as soon as practicable.

III. SUBMISSIONS

3. In pertinent part, the Further Observations advance two erroneous contentions, namely that the Prosecution has (1) generally failed to follow the Chamber's Prior Orders³; and (2) neglected these obligations specifically concerning the trial testimonies of P-1521 and P-2232, respectively.⁴

4. Notably, the Defence seeks no relief in respect of these claims,⁵ which are entirely collateral to the specific questions posed by the Chamber for which it sought the Defence's observations. The Prosecution does not consider that this transparent effort

¹ ICC-01/14-01/22-192-Conf.

² See ICC-01/14-01/22-104, para. 8, and ICC-01/14-01/22-116, paras. 13-14.

³ See ICC-01/14-01/22-192-Conf, para. 16.

⁴ See ICC-01/14-01/22-192-Conf, para. 19-22.

⁵ See ICC-01/14-01/22-192-Conf, para. 23.

to pre-condition the Chamber is appropriate, even if the allegations were founded — which they are not.

5. *First*, as noted, the Defence's assertion that the Prosecution has breached the Chamber's prior orders and has further disregarded article 67(2) is without any concrete basis. Indeed, as explained below, the examples advanced in the Observations demonstrate the opposite. The material referenced is incriminating — as the Prosecution both informally and formally has advised the Defence.

6. The testimonies of P-1521 and P-2232 do not comprise anything which would fall under article 67(2). Such a characterisation either misunderstands the nature of the case, or is otherwise presented selectively and/or out of context. The Defence omits mention that P-1521 and P-2232 were among a group of witnesses [REDACTED] witnesses, as a whole. That determination remains, and is again reiterated.

7. The contention that P-1521's testimony entails exculpatory material is contrived, and wrong.

8. [REDACTED]. [REDACTED].⁶ [REDACTED] ⁷ [REDACTED].

9. Moreover, his testimony establishes clearly that [REDACTED]⁸— which demonstrates the existence of that structure. [REDACTED]. [REDACTED].⁹ [REDACTED] ¹⁰, [REDACTED] ¹¹ [REDACTED].

⁶ [REDACTED].

⁷ [REDACTED].

⁸ [REDACTED].

⁹ [REDACTED].

¹⁰ [REDACTED].

¹¹ [REDACTED].

10. As regards P-2232's testimony, the contention that Anti-Balaka attacks were not coordinated incorrectly characterises his evidence, which has to be considered in context.

11. In fact, the reference cited in the Further Observations provides that [REDACTED].¹² P-2232 also testified that [REDACTED].¹³ P-2232 further testified [REDACTED].¹⁴

12. As concerns MOKOM's coordinating role, P-2232's testimony provides that [REDACTED]¹⁵, and significantly, he stated: [REDACTED].¹⁶ Regarding the communications of Anti-Balaka Comzones to the Coordination, the Prosecution disagrees with the Defence's claim. Rather, reports provided by Comzones to the Coordination demonstrate an organised structure, reporting lines, and a hierarchy involving MOKOM as a key leader.

13. [REDACTED]. [REDACTED].¹⁷ Similarly, MOKOM having instructed Anti-Balaka elements not to commit abuses reaffirms his hierarchical position and, considered in view of his further directive [REDACTED],¹⁸ demonstrates the authority of his position, and his investment in the group's objectives.

14. [REDACTED].¹⁹

¹² [REDACTED]

¹³ [REDACTED].

¹⁴ [REDACTED].

¹⁵ [REDACTED].

¹⁶ [REDACTED].

¹⁷ [REDACTED].

¹⁸ [REDACTED].

¹⁹ [REDACTED].

IV. CONCLUSION

15. For the above reasons, the Prosecution defers to the Chamber's discretion, but requests that the Chamber summarily reject the Defence's allegations concerning the Prosecution's compliance with the Chamber's prior orders.



Karim A. A. Khan KC, Prosecutor

Dated this 12th day of June 2023
At The Hague, The Netherlands