

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: **English**

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

Date: **14 March 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 Observations on the Registry's  
Consultations with States on the Interim Release of Mr Mokom",  
(ICC-01/14-01/22-161-Conf), 15 February 2023**

**Source:** Office of the Prosecutor

**Document 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 KC  
Mr Mame Mandiaye Niang  
Mr Kweku Vanderpuye

**Counsel for the Defence**

Mr Philippe Larochelle

**Legal Representatives of Victims**

Ms Paolina Massidda

**Legal Representatives of Applicants**

**Unrepresented Victims**

**Unrepresented Applicants  
(Participation/Reparation)**

**States Representatives**

**Amicus Curiae**

**REGISTRY**

---

**Registrar**

Mr Peter Lewis

**Counsel Support Section**

Mr Pieter Vanaverbeke

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

**Other**

## I. INTRODUCTION

1. Pursuant to Pre-Trial Chamber II's ("Chamber") 24 January 2023 Order,<sup>1</sup> the Prosecution provides its observations concerning the States' responses in the context of the Registry's consultations on MOKOM's interim release.

2. None of the State authorities consulted to date, including the Host State, is willing to accept MOKOM on their territory under any condition. As such, MOKOM must remain in ICC custody.

## II. CONFIDENTIALITY

3. Pursuant to regulation 23bis(2) of the Regulations of the Court ("RoC"), this Observation is filed as "Confidential", as the referenced Registry Reports are of the same designation. A public redacted version will be filed as soon as practicable.

## III. SUBMISSION

4. As noted, none of the State authorities with whom the Registry has consulted, including the Host State,<sup>2</sup> have confirmed their willingness to accept MOKOM on their territory if granted interim release.<sup>3</sup> Given the uniformly negative responses of all of the States consulted, MOKOM's interim release in such circumstances would be imprudent, if not impossible.

5. *First*, the conditions warranting MOKOM's continued detention under article 58(1)(b) persist. As the case proceeds towards the confirmation of charges hearing, MOKOM's incentive to flee and to obstruct the proceedings is clearly heightened. In this regard, the Prosecution incorporates by reference its previous submissions as set

---

<sup>1</sup> See ICC-01/14-01/22-138, para. 11.

<sup>2</sup> ICC-01/14-01/22-146-Conf-AnxII, (noting that, 'The host State is under no obligation to facilitate interim release on its territory [...] the host State cannot agree to designate a location in The Hague as the premises of the Court in relation to the possibility of the interim release of Mr Mokom').

<sup>3</sup> ICC-01/14-01/22-120-Conf-Red, (noting that, [REDACTED]; ICC-01/14-01/22-127, [REDACTED]; ICC-01/14-01/22-146-Conf, [REDACTED]; ICC-01/14-01/22-159-Conf, [REDACTED]). See also, email from the Registry, 14 February 2023 at 18.33.

out in paragraphs 7-25 of its 18 November 2022 response to MOKOM's request for interim release.<sup>4</sup>

6. *Second*, even assuming *arguendo* that the risk of MOKOM's flight could be mitigated by imposing one or more of the conditions in rule 119 of the Rules of Procedure and Evidence ("Rule"), the unavailability of any State willing to accept his presence on their territory, let alone to enforce any prospective condition thereof, renders the exercise pointless. As the Appeals Chamber has underscored, "for conditional release to be granted, 'a State willing to accept the person concerned as well as enforce related conditions is *necessary*'."<sup>5</sup> In these circumstances, MOKOM's unconditional release would be wholly inappropriate and imprudent; and clearly, his release with conditions is not a possibility at this stage.

---

<sup>4</sup> ICC-01/14-01/22-112-Conf.

<sup>5</sup> ICC-01/05-01/08-1626-Red, para. 48 (emphasis added).

#### IV. CONCLUSION

7. Given the categorical refusal of State authorities to accept MOKOM's release under any circumstances, the nature of the offences alleged against him, the temporal proximity of a decision by which he may be committed for trial and the heightened incentive for him to abscond or obstruct the proceedings, MOKOM must remain in detention pending trial.

A handwritten signature in black ink, appearing to be 'K.A.K.', with a horizontal line underneath it.

---

**Karim A. A. Khan KC, Prosecutor**

Dated this 14<sup>th</sup> day of March 2023  
At The Hague, The Netherlands