

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **18 July 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 review of detention
of Mr Maxime Jeoffroy Eli Mokom Gawaka”, ICC-01/14-01/22-227-Conf,
15 June 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
Ms Leonie von Braun

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 Osvaldo Zavala Giler

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

I. INTRODUCTION

1. In accordance with the instruction of Pre-Trial Chamber II (“Chamber”) of 7 June 2023,¹ the Prosecution submits its observations on the periodic review of Mr Mokom’s detention under article 60(3) of the Rome Statute (“Statute”) and rule 118(2) of the Rules of Procedure and Evidence (“Rules”).

2. Mr Mokom’s continued detention remains necessary. There has been no change in circumstances that would require the Chamber to modify its ruling on Mr Mokom’s detention under article 58(1)(b)(i).² Further, new information of concrete threats to witnesses, the full disclosure of the identities of all the witnesses the Prosecution intends to rely upon coupled with the volatile security situation in the Central African Republic (“CAR”) increase the need for continued detention including pursuant to article 58(1)(b)(ii).

II. CONFIDENTIALITY

3. In accordance with regulation 23*bis*(1) of the Regulations of the Court (“RoC”), these Observations are filed as “Confidential” as they contain confidential information regarding Prosecution witnesses which cannot be made public and reference to a filing of the same designation. A public redacted version will be filed as soon as practicable.

III. SUBMISSIONS

4. The review under article 60(3) is more limited in scope than the assessment conducted for the purposes of the initial decision on detention under article 60(2).³ A chamber’s decision on detention will continue to stand unless it is reversed on account

¹ Pre-Trial Chamber II’s email dated 7 June 2023 at 11h19.

² ICC-01/14-01/22-173-Red, 8 March 2023 (“Interim Release Decision”), para. 53. *See also* ICC-01/14-01/22-195-Red, 19 April 2023 (“Interim Measures Decision”); ICC-01/14-01/22-218, 1 June 2023 (“Reconsideration Decision”), para. 16, confirming that “the basis for the Interim Release Decision and the Interim Measure Decision has remained unchanged”.

³ ICC-02/05-01/20-542-Red (OA10), 17 December 2021, para. 39.

of changed circumstances,⁴ that is a “change in some or all of the facts underlying a previous decision on detention, or a new fact satisfying a Chamber that a modification of its prior ruling is necessary.”⁵ Changed circumstances cannot be hypothetical or conditional, but must be demonstrated on a concrete basis.⁶ Where no changed circumstances are found to exist, “the Chamber is not required to further review the ruling on release or detention.”⁷

5. Accordingly, the evaluation is not starting from a blank slate. The Prosecution does not have to re-establish circumstances that have already been established but make submissions only as to whether there has been any change in the circumstances justifying detention, and bring to the attention of the Chamber any other relevant information relating to the question of detention or release.⁸

6. First, the Prosecution is currently not aware of any change of circumstances requiring the Chamber to modify its findings under article 58(1)(b)(i).⁹ Second, other relevant information shows that Mr Mokom’s continued detention is necessary also under article 58(1)(b)(ii).

A. Mr Mokom’s continued detention remains necessary to ensure his appearance at trial (article 58(1)(b)(i))

7. The Chamber found that a risk of flight exists in relation to Mr Mokom based on his willingness and capability to move between States and the possibility that he may receive a sentence of a number of years.¹⁰ Both factors continue to apply, and therefore Mr Mokom’s continued detention remains necessary under article 58(1)(b)(i).

⁴ ICC-02/05-01/20-542-Red (OA10), 17 December 2021, para. 39.

⁵ ICC-01/05-01/08-1019 (OA 4), paras. 47-52; ICC-01/05-01/08-1626-Red, para. 71.

⁶ ICC-01/14-01/18-643-Red, para. 16.

⁷ ICC-02/11-01/11-548-Red (OA 4), para. 40.

⁸ ICC-01/05-01/08-1019 (OA 4), paras. 2, 51.

⁹ Interim Release Decision, para. 53.

¹⁰ Interim Release Decision, para. 53. *See also* Reconsideration Decision, para. 16 confirming that “the basis for the Interim Release Decision and the Interim Measure Decision has remained unchanged”.

8. The Prosecution is not aware of any new circumstance indicating that Mr Mokom would be less likely to abscond if released. To the contrary, that likelihood has increased, since the confirmation hearing, set to take place in less than 70 days, may soon lead to the confirmation of multiple charges against him.

9. Up until his arrest on [REDACTED], Mr Mokom was part of an armed rebel group called the *Coalition des Patriotes pour le Changement* ("CPC").¹¹ Thus, he was influencing the armed and hostile activities of this group. The members of this group have a network spread across CAR and its neighbouring countries, [REDACTED], including the means and methods to assist him to abscond and remain out of reach of the ICC and CAR authorities.

10. Further, based on open sources,¹² the widespread regional impact of the conflict in Sudan,¹³ the continued violent clashes between armed groups including the CPC, and the *Forces Armées Centrafricaines* ("FACA")¹⁴ and the upcoming political elections

¹¹ [REDACTED].

¹² ICC-01/14-01/21-382, para. 32; ICC-01/04-02/06-271-Red, para. 36.

¹³ See http://www.fides.org/fr/news/73882-AFRIQUE_SUDAN_Les_miliciens_du_RS_F consolident_le_controle_de_la_frontiere_avec_la_Centrafrigue, last accessed on 14 June 2023; <https://corbeaunews-centrafrigue.org/les-forces-armees-soudanaises-saisissent-un-convoy-de-ravitaillement-en-provenance-de-centrafrigue/>, last accessed on 14 June 2023; <https://issafrica.org/iss-today/sudans-war-poses-grave-risks-for-chad-and-car>, last accessed on 14 June 2023; <https://corbeaunews-centrafrigue.org/transfert-de-larsenal-de-guerre-de-wagner-de-benghazi-a-bangui-vers-une-destabilisation-regionale/>, last accessed on 14 June 2023; <https://www.unicef.org/media/139946/file/CAR-Humanitarian-Flash-Update-Sudan-Crisis-Impact-09-May-2023.pdf>, last accessed on 14 June 2023. See also [REDACTED].

¹⁴ See <https://www.rfi.fr/fr/afrique/20230614-centrafrigue-informations-parcellaires-sur-les-combats-dans-la-province-de-la-haute-kotto>, last accessed on 14 June 2023; https://www.alwihdainfo.com/RCA-la-mise-de-la-CPC-au-gouvernement-pour-preserver-la-paix_a123633.html, last accessed on 14 June 2023; <https://minusca.unmissions.org/communiqu-de-presse-6>; <https://www.letemps.ch/monde/chinois-tues-centrafrigue-xi-jinping-appelle-punir-meurtriers>, last accessed on 14 June 2023; <https://www.radioguira.org/actualites/772>, last accessed on 14 June 2023; <https://www.aa.com.tr/fr/afrique/centrafrigue-offensive-des-rebelles-des-3r-contre-un-poste-avance-C3%A9-de-larm-C3%A9/2864526>, last accessed on 14 June 2023; <https://corbeaunews-centrafrigue.org/centrafrigue-forte-detonation-darmes-lourdes-a-bossemptele-la-ville-est-totalement-paralysee/>, last accessed on 14 June 2023; <https://corbeaunews-centrafrigue.org/surprise-a-bakouma-les-rebelles-de-la-cpc-reoccupent-la-ville/>, last accessed on 14 June 2023; <https://oubanguimedias.com/2023/05/16/centrafrigue-quatre-faca-tues-dans-une-embuscade-non-loin-de-benzambe/>, last accessed on 14 June 2023; <https://corbeaunews-centrafrigue.org/explosion-dun-convoy-des-hommes-de-wagner-et-des-soldats-faca-sur-une-mine-terrestre-a-mere-le-bilan-salourditi>, last accessed on 14 June 2023; <https://corbeaunews-centrafrigue.org/centrafrigue-2-soldats-faca-tues-trois-mercenaires-de-wagner-blesses-lors-dune-embuscade-dans-la-nana-mambere/>, last accessed on 14 June 2023; <https://corbeaunews-centrafrigue.org/centrafrigue-violent-affrontement-en-cours-entre-les-miliciens-azande-ani-kpi-gbe-et-les-rebelles-de-lupc-a-mboki/>, last accessed on 14 June 2023; <https://peacekeeping.un.org/fr/la-minusca-est-en-contact-avec-les-autorites-centrafricaines-pour-accompagner-la-situation>, last accessed on 14 June 2023. See also [REDACTED].

scheduled to take place on 16 July 2023 in an increasingly polarised political context¹⁵ have led to a destabilisation and deterioration of the already fragile and unpredictable security situation.¹⁶ [REDACTED]. Illustrative of this situation are cases of high-profile detainees being released from detention facilities in recent times.¹⁷ Based on all the information currently available to the Prosecution, the risk that Mr Mokom would abscond if he were released to the territory of CAR remains high.

11. Finally, the circumstances have not changed concerning the identification of a State willing to accept Mr Mokom and to enforce the required conditions for the purpose interim release.¹⁸

B. Mr Mokom's detention is necessary to ensure that he does not obstruct or endanger court proceedings (article 58(1)(b)(ii))

12. The Chamber found that it has not been established that there is a risk that Mr Mokom, if released, would obstruct or endanger the investigation or the court proceedings under article 58(1)(b)(ii). The Chamber noted that the relevant factors

¹⁵ See <https://www.globalr2p.org/countries/central-african-republic/>, last accessed on 14 June 2023; <https://corbeaunews-centrafrique.org/centrafrique-entre-semblant-de-democratie-et-regne-de-la-terreur-quelles-perspectives-pour-le-peuple-centrafricain/>, last accessed on 14 June 2023; <https://corbeaunews-centrafrique.org/centrafrique-entre-semblant-de-democratie-et-regne-de-la-terreur-quelles-perspectives-pour-le-peuple-centrafricain/>, last accessed on 14 June 2023; <https://corbeaunews-centrafrique.org/les-marches-sont-suspendues-en-centrafrique-sauf-pour-certains-evenements-privileges/>, last accessed on 14 June 2023; <https://www.hrw.org/news/2023/04/04/central-african-republic-closing-civic-space>, last accessed on 14 June 2023; <https://www.rfi.fr/fr/afrique/20230503-centrafrique-le-parti-d-opposition-brdc-veut-boycotter-les-prochaines-%C3%A9lections-municipales>; <https://www.rfi.fr/fr/afrique/20230309-centrafrique-op%C3%A9ration-de-police-coup-de-poing-dans-un-h%C3%B4tel-de-bangui>, last accessed on 14 June 2023; <https://www.consilium.europa.eu/en/press/press-releases/2023/02/25/wagner-group-council-adds-11-individuals-and-7-entities-to-eu-sanctions-lists/>, last accessed on 14 June 2023; <https://corbeaunews-centrafrique.org/la-desinformation-et-la-manipulation-atteignent-de-nouveaux-sommets-avec-wagner/>, last accessed on 14 June 2023; <https://www.aa.com.tr/fr/afrique/centrafrique-dissolution-de-cinq-groupes-arm%C3%A9s/2885383>, last accessed on 14 June 2023; <https://letsunami.net/centrafrique-la-coalition-des-patriotes-pour-le-changement-dement-la-dissolution-de-cinq-groupes-armes/>, last accessed on 14 June 2023; https://www.lemonde.fr/afrique/article/2023/02/20/les-etats-unis-engagent-une-strategie-pour-evincer-d-afrique-les-mercenaires-du-groupe-wagner_6162583_3212.html, last accessed on 14 June 2023. See also [REDACTED].

¹⁶ See for instance <https://www.crisisgroup.org/africa/central-africa/central-african-republic/dix-ans-apres-le-coup-detat-la-republique>, last accessed on 14 June 2023.

¹⁷ See Amnesty International, <https://www.amnesty.nl/content/uploads/2021/12/One-step-forward-two-steps-backwards-CAR-briefing-Final.pdf?x33994>, last accessed 15 June 2023.

¹⁸ See ICC-01/14-01/22-226-Conf, 15 June 2023.

invoked by the Prosecution date back to 2017 and 2018.¹⁹ The Prosecution submits that new information shows that Mr Mokom's continued detention is necessary also under article 58(1)(b)(ii).

13. [REDACTED]. Recent reports indicate that Prosecution witnesses continue to face concrete threats and challenges to their security directly linked to Mr Mokom or his supporters of the CPC.²⁰ [REDACTED].

14. Witness [REDACTED] reported four incidents:²¹

- (i) [REDACTED];
- (ii) [REDACTED];
- (iii) [REDACTED];
- (iv) [REDACTED].

15. Witness [REDACTED] has informed the Prosecution of several threatening experiences linked to the Anti-Balaka including:²²

- (i) [REDACTED];
- (ii) [REDACTED].

16. Further, since the Decision of Interim Release was issued, the Prosecution has disclosed the evidence it intends to rely upon at the confirmation hearing, including all witness identities with no restriction.²³ If released, Mr Mokom could contact the Prosecution witnesses he has now been made aware of and/or convey information about them to his supporters unhindered.

¹⁹ Interim Release Decision, para. 54.

²⁰ See [REDACTED]; [REDACTED].

²¹ See [REDACTED].

²² See [REDACTED].

²³ ICC-01/14-01/21-318 OA3, 19 May 2022, paras. 75-76.

17. As discussed above,²⁴ the deterioration of the security situation in CAR further limits the capacity of CAR law enforcement agencies and [REDACTED]. Their protection however is of paramount concern. Given the current security situation and the limited capacity [REDACTED], there would be little to prevent Mr Mokom (or others on his behalf) from harming or intimidating witnesses.

IV. CONCLUSION

18. For the above reasons, Mr Mokom's continued detention remains necessary under article 58(1)(b)(i) and (ii).



Karim A. A. Khan KC, Prosecutor

Dated this 18th day of July 2023

At The Hague, The Netherlands

²⁴ See above para.10.