

Pursuant to Pre-Trial Chamber II's instruction dated 19.10.2023, this document is reclassified as Public.

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

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

Date: 16 October 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***

**Confidential**

**Notice of Withdrawal of the Charges  
against Maxime Jeoffroy Eli Mokom Gawaka**

**Source:** Office of the Prosecutor

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

**The Office of the Prosecutor**

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Mr Mame Mandiaye Niang  
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Mr Abdou Dangabo Moussa  
Ms Marie-Edith Douzima-Lawson  
Mr Yaré Fall  
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**Legal Representatives of Applicants**

**Unrepresented Victims**

**Unrepresented Applicants  
(Participation/Reparation)**

**States Representatives**

**Amicus Curiae**

**REGISTRY**

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**Registrar**

Mr Osvaldo Zavala Giler

**Counsel Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

**Other**

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## I. INTRODUCTION

1. The Prosecution hereby notifies Pre-Trial Chamber II ("Chamber") of its withdrawal of all charges against Maxime Jeoffroy Eli Mokom Gawaka ("Mr Mokom") pursuant to article 61(4) of the Rome Statute ("Statute"). Having considered the totality of the evidence, in light of changed circumstances regarding the state of the evidence, at this stage the Prosecution does not consider that there is a reasonable prospect of conviction at trial even if the charges were confirmed. For this reason, the Prosecutor exercises his prerogative under article 61(4) to withdraw all charges in this case. If, however, the Chamber considers that leave is required to withdraw the charges at this stage, the Prosecution respectfully seeks the Chamber's permission pursuant to article 61(9), to withdraw the charges against Mr Mokom. In so doing, the Prosecutor is guided by the interests of fairness and justice.

## II. CONFIDENTIALITY

2. In accordance with regulation 23(1) *bis* of the Regulations of the Court, this Notice is filed as "confidential" since it contains information which at this point should remain confidential to allow the Registry and the Prosecution to put in place necessary safeguards and processes to ensure witness protection and safety of field staff and including the Registry liaising with the authorities of the Central African Republic in relation to ongoing national proceedings against Mr Mokom.

## III. SUBMISSIONS

3. It has become clear that several critical witnesses are unavailable to testify and that ongoing investigative efforts are unlikely to result in new evidence of comparable probative value. Among the unavailable witnesses are insider witnesses who provide critical information regarding the charges against Mr Mokom. The

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Prosecution has taken all reasonable steps to secure their cooperation and/or availability.

4. The Prosecution has renewed its efforts and sought to investigate Mr Mokom's linkage to the charged crimes, to supplement its evidence. However, none of its attempts to interview additional potential witnesses who could hold information linking Mr Mokom to the charged crimes have been successful in the past weeks. It is also not anticipated that further witnesses with similar evidence will be identified or come forward in the near future.
5. In light of these changed circumstances, the Prosecution does not presently consider that there is a reasonable prospect of conviction.<sup>1</sup> Consequently, the Prosecutor withdraws the charges against Mr Mokom.
6. The procedure for withdrawing charges depends on the phase of the case. Under article 61(4), "[b]efore the [confirmation] hearing, the Prosecutor may [...] withdraw any charges." At the same time, under article 61(9) "[a]fter the commencement of the trial, the Prosecutor may, with the permission of the Trial Chamber, withdraw the charges."

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<sup>1</sup> The Prosecution applies the standard of "reasonable prospect of conviction" when assessing the strength of the evidence against accused persons in cases at trial: [Office of the Prosecutor Policy Paper on Case Selection and Prioritisation](#), 15 September 2016, para. 53. See e.g. *Situation in Darfur, Sudan*, Public Redacted Version of "Prosecution's Response to 'Order for clarification as to the Prosecutor's statements before the United Nations Security Council', 24 January 2022, ICC-02/05-253", ICC-02/05-254-Red, 27 January 2022, para. 13; *Prosecutor v. Mahamat Said Abdel Kani*, Public Redacted Version of "Pre-Confirmation Brief", ICC-01/14-01/21-155-Conf, 30 August 2021, ICC-01/14-01/21-155-Red3, 8 December 2021, fn. 733; *Prosecutor v. Francis Kirimi Muthaura and Uhuru Muigai Kenyatta*, Prosecution notification of withdrawal of the charges against Francis Kirimi Muthaura, ICC-01/09-02/11, 11 March 2013, para. 1. The standard may also be expressed as a "realistic prospect of conviction".

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7. The provisions do not squarely address withdrawing charges *during* a confirmation hearing. However, since the confirmation hearing is still ongoing,<sup>2</sup> and the charges have not yet been confirmed, the Prosecution submits that it remains the prerogative of the Prosecutor to withdraw the charges.<sup>3</sup>
8. If, however, the Chamber considers that leave is required to withdraw the charges, the Prosecution respectfully seeks the Chamber's permission pursuant to article 61(9), to withdraw the charges against Mr Mokom.
9. This notice is submitted without prejudice to a potential submission of a new application for a warrant of arrest against Mr Mokom in the event that additional collection of evidence provides a reasonable prospect of conviction.

#### IV. CONCLUSION

10. For the above reasons, the Prosecution
  - notifies the Chamber of the Prosecutor's withdrawal of all charges against Mr Mokom under article 61(4);
  - in the alternative respectfully seeks the Chamber's permission to withdraw all charges against Mr Mokom under article 61(9); and

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<sup>2</sup> As the Chamber has noted, "the time limit set by the Chamber for the final written submissions constitutes 'the date the confirmation hearing ends.'" See Chamber's email of 3 October 2023 at 11h37. See also *Prosecutor v. Francis Kirimi Muthaura and Uhuru Muigai Kenyatta*, Decision on the withdrawal of charges against Mr Muthaura, ICC-01/09-02/11-696, para. 10, p. 8. As the Appeals Chamber noted in *Lubanga* "[b]efore the confirmation hearing, the Prosecutor may [...] amend or withdraw charges without the permission of the Pre-Trial Chamber. This flexibility of the Prosecutor is more limited *after the confirmation of the charges* with respect to the amendment, addition or withdrawal of charges", *Prosecutor v. Thomas Lubanga Dyilo*, Judgment on the Prosecutor's appeal against the decision of Pre-Trial Chamber I entitled "Decision Establishing the Principles Governing Applications to Restrict Disclosure pursuant to Rule 81(2) and (4) of the Rules of Procedure and Evidence", ICC-01/04-01/06-568, 13 October 2006, para. 53 (emphasis added).

<sup>3</sup> *Prosecutor v. Francis Kirimi Muthaura and Uhuru Muigai Kenyatta*, Partial Dissenting Opinion of Judge Ozaki and Concurring Separate Opinion of Judge Eboe-Osuji on the Decision on the withdrawal of charges against Mr Muthaura, ICC-01/09-02/11-698, 9 March 2013, para. 3. In her Partially Dissenting Opinion Judge Kuinko Ozaki refers to the post-confirmation phase, but the same applies *a fortiori* during the confirmation hearing.

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- respectfully requests the Chamber to make the attendant orders withdrawing the arrest warrant against Mr Mokom.



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

Dated this 16<sup>th</sup> day of October 2023

At The Hague, The Netherlands