

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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

Date: **23/10/2023**

PRE-TRIAL CHAMBER II

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

SITUATION IN THE CENTRAL AFRICAN REPUBLIC II

THE PROSECUTOR V. MAXIME JEOFFROY ELI MOKOM GAWAKA

Public
with Public Annex A and Confidential Annex B

Defence Urgent Request

Source: Philippe Larochelle, Counsel for Mr. Mokom

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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I. SUBMISSIONS

1. In the *Order in relation to the Prosecution's 'Notice of Withdrawal of the Charges against Maxime Jeoffroy Eli Mokom Gawaka'*¹ of 17 October 2023, the Pre-Trial Chamber held the following:²

The Chamber is aware that the sudden termination of the case means that arrangements will have to be made before Mr Mokom can be transferred to a State which is obliged to receive him **or to another State**. The Registry shall immediately make all necessary arrangements for these purposes, including **by liaising with Mr Mokom and the Defence**, as well as the relevant States, in particular the **Central African Republic** and the Host State.

2. The Defence states, unequivocally, that Mr Mokom does not consent to being transferred to the Central African Republic. Any attempt to do so would amount to a forcible transfer, and would be incompatible with the requirement in Article 21(3) of the Rome Statute of the International Criminal Court ("ICC Statute") that the application and interpretation of the Court's applicable law, "must be consistent with internationally recognized human rights, and be without any adverse distinction founded on grounds such as [...] political or other opinion, national, ethnic or social origin, wealth, birth or other status."

3. The withdrawal of the charges against Mr Mokom,³ has put the Defence and Mr Mokom in unchartered territory. As expressed in the Defence email to the Pre-Trial Chamber on 17 October 2023, the Prosecution decision to withdraw the charges has taken the Defence and Mr Mokom entirely by surprise. Since learning of this decision, the Defence has been urgently liaising with the Registry, immigration lawyers, and relevant authorities, taking all reasonable and possible steps to secure a safe third state for Mr Mokom's relocation.

4. Prior to his arrest pursuant to an ICC arrest warrant, Mr Mokom was living in relative security as a refugee in Chad. The situation of complete uncertainty, stress, and fear in which he now finds himself, is due to circumstances entirely out of his control. It follows a period of 1 year and 7 months in prison, where he was detained on the basis of evidence that the

¹ ICC-01/14-01/22-276-Conf ("Order for Release").

² Order for Release, para. 10 (internal footnotes omitted).

³ ICC-01/14-01/22-276-Conf.

Prosecution now acknowledges had no prospect of securing conviction at trial.⁴ The Defence appreciates the urgency of finding a solution to this question; an urgency which is shared by Mr Mokom. For the reasons which the Defence can only partially set out below, the solution cannot be his transfer to the Central African Republic.

5. As the Pre-Trial Chamber is aware,⁵ the Defence has been informed of an *in absentia* proceeding that was apparently conducted in the Central African Republic following the close of the ICC confirmation of charges hearing. In September 2023, less than one month after the hearing on the confirmation of charges held in August 2023, a rushed *in absentia* trial appears to have suddenly taken place in Bangui. No explanation was provided for why this trial was held now, when there seems to have been **years** of inaction after the events in question. The Defence has asked the Prosecution to disclose all information in its possession about these proceedings, including how they came about. The Prosecution has now informed the Defence that it has no information to disclose.⁶

6. The outcome of this *in absentia* trial in Bangui, was that Mr. Mokom (and 22 others) were convicted after deliberations that concluded on 5 October 2023. Each of the accused appears to have been convicted of all charges, without exception. They were all sentenced to “*la peine de travaux forcés à perpétuité*”, and all their goods are to be confiscated and provided to the Central African state.⁷ The 2-page judgment document contains no mention of any evidence supporting the charges, no details of the charges themselves, or even a case number. As such, there are credible reasons to believe that this judgment is an opportunistic political attack, issued without any evidence or procedural guarantees, against someone deemed to be an opponent of the current regime.

7. For this, and other reasons, the Defence has a reasonable basis to believe that Mr Mokom is at risk of torture, inhumane treatment, and arbitrary detention should he be arrested and forcibly returned, against his will, to the Central African Republic. The Defence is seizing the UN Committee Against Torture seeking urgent and provisional measures, namely, staying Mr Mokom’s forced removal to the Central African Republic pending an assessment of the conditions to which he would be subjected. The Defence also intends to seek equivalent relief

⁴ ICC-01/14-01/22-275, para. 1.

⁵ Email from Pre-Trial Chamber dated 23 October 2023 at 16:59.

⁶ Email from Defence dated 17 October 2023 at 16:48 and response from the Prosecution dated 18 October 2023 at 09:31.

⁷ Judgment, Annex A.

before the United Nations Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment, and the United Nations Working Group on Arbitrary Detention, also seeking urgent and provisional measures.

8. The Defence has already filed a formal request for cooperation to the Central African authorities about these *in absentia* proceedings, to seek to find the kind of information that would be relevant to any decision by the ICC concerning Mr Mokom's transfer.⁸ For example, what were the charges? Were Mr Mokom's interests as an absent accused protected through representation by counsel? What is the evidence? Why was an *in absentia* trial held, when the Central African prosecution authorities were well aware that Mr Mokom was detained in The Hague? Was there any attempt to notify Mr Mokom or any counsel assigned to represent him, or the charges? Is there a right of appeal? Is this a final judgement coming from the *cour d'appel*? Can there be a re-trial in person? Would Mr Mokom be liable for the death penalty? Or only life imprisonment with hard labour?

9. It is only with this, and other information that the Defence is currently compiling, that it will be in a position to substantiate its submissions concerning why any transfer to the Central African Republic would not be consistent with the requirements of Article 21 of the ICC Statute, and would be entirely incompatible with the fundamental principles of humanity that the Court was established to safeguard and protect. Submissions from Mr Mokom's perspective are therefore essential to ensure the Pre-Trial Chamber is satisfied that Mr Mokom's fundamental rights will be respected before any transfer is affected. Notably, any involvement of The Netherlands in any transfer of Mr Mokom would need to comply with the Headquarters Agreement, which must be interpreted without prejudice to relevant rules of international law.⁹

10. In these circumstances, the Defence requests a declaration from the Pre-Trial Chamber that it will afford Mr Mokom the right to make submissions before any transfer is ordered, in compliance with the requirement in Rule 185(1) of the ICC Rules of Procedure and Evidence that the transferring Chamber "tak[e] into account the views of the person", through the filing of written submissions, and/or an oral hearing. The Defence also request that the Pre-Trial Chamber grant Mr Mokom the time necessary to consult with lawyers in The Netherlands to have a full picture of his options and rights. Mr Mokom must be afforded the opportunity to

⁸ The request for cooperation was transmitted to the Minister of Justice of the Central African Republic on 20 October 2023, see Annex B.

⁹ ICC-ASP/1/3, Basic principles governing a headquarters agreement to be negotiated between the Court and the host country,

assess all of his options regarding the country he will be transferred to, including the right to seek asylum in The Netherlands should there be no other no safe or viable options.

11. The current situation is entirely and deeply regrettable. The Defence is working as quickly as possible to try to find a solution to the situation of stress, anxiety and utter uncertainty being faced by Mr Mokom. In the interim, and as an urgent measure, it asks that the Pre-Trial Chamber

DECLARE that it will afford Mr Mokom the opportunity to be heard through written submissions and/or an oral hearing, pursuant to Rule 185(1) before any transfer is ordered, and allow Mr Mokom time to consult with lawyers in The Netherlands to have a full understanding of his options and rights.

Respectfully submitted,



Philippe Larochelle,
Counsel for Maxime Mokom

The Hague, The Netherlands
Monday, October 23, 2023