

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: **English**

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

Date: **03/11/2023**

**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 Redacted Version  
with Confidential Annexes A – D***

**Defence Urgent Request for an Order Concerning the Arrest of P-0405**

**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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**Unrepresented  
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**Applicants**

**The Office of Public Counsel for Victims**

**The Office of Public Counsel for the  
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**States' Representatives**

**Amicus Curiae**

**REGISTRY**

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**Registrar**

Oswaldo Zavala Giler

**Counsel Support Section**

**Deputy Registrar**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
 Section Other**

## I. INTRODUCTION

1. During the confirmation of charges phase, the Defence for Mr Mokom ('Defence') presented the Prosecution and the Trial Chamber with a statement taken by the Defence from P-0405.<sup>1</sup> This was only one of four witness statements disclosed by the Defence in the confirmation phase. P-0405, who had previously been a Prosecution witness, was interviewed by the Defence in Bangui in [REDACTED] 2023. During subsequent interviews with the Defence in [REDACTED] 2023, he signed a statement which tended to show the innocence of the suspect, Mr Mokom, and affect the credibility of the Prosecution case.<sup>2</sup>

2. P-0405 had objectively reasonable security and safety concerns, arising out of his association with the Defence, and expressed fear for his life. As such, on [REDACTED] 2023, the Defence took a statement from P-0405 which outlined the security risks that he believed he was facing, and in which he sought protective measures from the Court.<sup>3</sup>

3. On 7 August 2023, the Defence contacted the Victim and Witness' Unit of the ICC Registry ('VWU'), providing a completed VWU form seeking protective measures for P-0405. The last correspondence between the VWU and the Defence concerning this witness, prior to his arrest, was on 5 October 2023. On this date, the Defence asked for a meeting to discuss protection referral procedures, and followed up on the materials that the Defence had sent to VWU about P-0405 and the risks he was facing.<sup>4</sup>

4. On [REDACTED] 2023, P-0405 was arrested in Bangui. [REDACTED].<sup>5</sup> Upon hearing of his arrest, and gravely concerned for his safety, the Defence contacted the Prosecution,<sup>6</sup> and the VWU.<sup>7</sup> The Defence asked the Prosecution for any information about this arrest and the circumstances in which P-0405 was being held, stressing that it had reasons to believe that P-0405 "is in grave danger and might be subject to [REDACTED] by the Central African authorities." As such, the Defence noted it would be available to meet with

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<sup>1</sup> CAR-D34-00000090-R01, disclosed on 14 July 2023.

<sup>2</sup> CAR-D34-00000090-R01.

<sup>3</sup> Annex A: Confidential statement of P-0405, [REDACTED] 2023.

<sup>4</sup> Annex B: email correspondence with VWU between June and October 2023.

<sup>5</sup> [REDACTED]

<sup>6</sup> Annex C: email correspondence with the Prosecution, 1 November 2023.

<sup>7</sup> Annex D: email correspondence with VWU, 1 November 2023.

the Prosecution and VWS, and otherwise requested an expedited response based on the urgency of the situation. At the time of filing, no substantive response has been received.

5. As regards VWU, the Defence repeated the concerns identified to the Prosecution, and asked for information about “the safeguards that VWS and the Court can put in place to assist to the release of [P-0405], including whether the Court can enter in consultations with the Central African authorities to negotiate his release.” The Defence reminded VWU of its previous request for protective measures, including the information conveyed to VWU that P-0405 “feared for his life, should he be arrested by the Central African authorities.” Finally, the Defence expressed its willingness to meet, and asked for an expedited response.

6. On 1 November 2023, VWU responded as follows:

This witness is indeed an OTP witness but not a trial witness and therefore not known to the VWS as such and before we could move forward with your referral the case was dropped.

This is not within the VWS’s mandate so I do invite you to consult with the OTP on this witness.

## II. SUBMISSIONS

7. The interaction between P-0405 and the Defence, put him at risk of arrest, and harm. As such, the Defence took all available precautions known to it: taking a statement detailing these risks, alerting VWU through completing the available forms, and making a formal request for his protection.

8. At the time of filing, the Prosecution has not yet provided a substantive response to the Defence about any information it has concerning the arrest of its former witness P-0405. Relevantly, when Prosecution witnesses have previously [REDACTED].<sup>8</sup> As such, the Defence would be grateful to receive any assistance and information available.

9. Concerning VWU, now that P-0405 has been arrested, the VWU has responded that it could not move forward with the Defence request made on 7 August 2023, because the “case was dropped” on 16 October 2023. No indication was given by VWU when the request for protection was originally made in early August 2023, that assistance to P-0405 would not fall

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<sup>8</sup> [REDACTED].

within VWU's mandate, or that VWU's mandate was in some way limited to assistance and protection for Prosecution witnesses at trial.

10. Nor is this position consistent with the Court's statutory framework, VWU's own statements on the scope of its mandate and role, or basic principles of equality of arms and witness protection. Nothing in the Rome Statute ('Statute') limits VWU's role or mandate to a particular phase of the proceedings.<sup>9</sup> By contrast, Rule 18 of the ICC Rules of Procedure and Evidence ('Rules') identifies the responsibilities of the VWU and provides:

For the efficient and effective performance of its work, the [VWU] shall:

[...]

(c) Have administrative and technical assistance available for witnesses, victims who appear before the Court, and others who are at risk on account of testimony given by such witnesses, **during all stages of the proceedings and thereafter**, as reasonably appropriate;<sup>10</sup>

11. The ICC Regulations of the Registry ('Regulations') then set out further provisions dealing with protective measures and assistance that may be provided to witnesses, and again do not limit VWU's role to any particular procedural phase. By contrast, Regulation 83 references the development of support programs for witnesses which shall apply "at the earliest stage possible". Consistent with this, Prosecution witnesses have been afforded protective measures prior to confirmation hearings.<sup>11</sup> VWU's own manuals describe the VWU support program as being available "at any stage of the proceedings".<sup>12</sup>

12. Importantly, Rule 17(2)(b)(i) of the Rules provides that one of VWU's functions with respect to witnesses, is to advise them "where to obtain legal advice for the purpose of protecting their rights, in particular in relation to their testimony". The Defence has a reasonable basis to believe that P-0405 was arrested as a result of having given a statement to the Defence. He is therefore entitled to be advised of his right not to reveal the substance of

<sup>9</sup> See, e.g. Article 43(6) of the Rome Statute.

<sup>10</sup> Emphasis added.

<sup>11</sup> See, e.g. *Prosecutor v. Katanga*, Appeals Chamber: Judgment on the appeal of the Prosecutor against the "Decision on Evidentiary Scope of the Confirmation Hearing, Preventive Relocation and Disclosure under Article 67(2) of the Statute and Rule 77 of the Rules" of Pre-Trial Chamber I, [ICC-01/04-01/07-776](#), 26 November 2008, para. 15.

<sup>12</sup> Victim and Witness' Section, *Service Delivery Document for Calling Parties and Legal Representatives of Victims*, paras. 15, 17, 19, 27.

this testimony to the state authorities, and to ensure that he is not being tortured or otherwise ill-treated on account of his cooperation with the Defence.

13. In these circumstances, the Defence seeks an order from the Pre-Trial Chamber that VWU, drawing on the relationships it has undoubtedly built with authorities and intermediaries in the Central African Republic since 2007, and with the assistance of the Prosecution as considered appropriate, take active steps to find out information about P-0405, the circumstances of his arrest, and his current state of health and conditions, and report back to the Pre-Trial Chamber, Defence and Prosecution by no later than 10 November 2023, including on measures and safeguards that can be taken towards his protection and wellbeing.

### III. CONCLUSION AND RELIEF SOUGHT

14. On the basis of the above submissions, the Defence requests that the Pre-Trial Chamber:

**ORDER** the VWU to take the steps outlined in paragraph 13 above, and report back to the Pre-Trial Chamber, Defence and Prosecution by no later than 10 November 2023.

Respectfully submitted,



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Philippe Larochelle,  
Counsel for Maxime Mokom

The Hague, The Netherlands  
Friday, November 03, 2023