

**Cour
Pénale
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**International
Criminal
Court**

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No.: **ICC-01/14-01/18**

Date: **22 November 2023**

TRIAL CHAMBER V

Before: Judge Bertram Schmitt, Presiding Judge
Judge Péter Kovács
Judge Chang-ho Chung

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC II
IN THE CASE OF *THE PROSECUTOR v.*
*ALFRED ROMBHOT YEKATOM & PATRICE-EDOUARD NGAÏSSONA***

Public

**Public Redacted Version of the « Yekatom Defence Response to the
“Requête de l’Accusation aux fins de citation de Maxime MOKOM comme
témoin de la Chambre et de délivrance d’une citation à comparaître à cet
effet”, ICC-01/14-01/18-2186-Conf-Red », 7 November 2023, ICC-01/14-01/18-
2194-Conf**

Source: Defence for Mr. Alfred Rombhot Yekatom

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

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INTRODUCTION

1. Counsel for Mr. Alfred Rombhot Yekatom (“Defence”) hereby responds to the “Version confidentielle expurgée de la « Requête de l’Accusation aux fins de citation de Maxime MOKOM comme témoin de la Chambre et de délivrance d’une citation à comparaître à cet effet »” notified on 2 November 2023 (« Request »).¹
2. The Defence defers to the Chamber’s discretion as to the opportunity of calling Mr Mokom as a Chamber witness. However, the Defence submits that observations from the Defence of Mr Mokom are necessary on several aspects of the Request. Observations on several assertions made by the Prosecution in its Request will also be developed in the present response.

PROCEDURAL HISTORY

3. On 23 January 2023, Mr Philippe Larochelle was appointed as Counsel for Mr Maxime Mokom (“Mokom’s Counsel”).²
4. On 16 October 2023, the Prosecution filed its “Notice of Withdrawal of the Charges against Maxime Jeoffroy Eli Mokom Gawaka”.³
5. On 17 October 2023, the proceedings against Mr Mokom were terminated by Pre-Trial Chamber II.⁴
6. On 2 November 2023, the Prosecution filed a Confidential Redacted Version of its Request.⁵

¹ ICC-01/14-01/18-2186-Conf-Red.

² *Prosecutor v. Mokom*, Notification of the Appointment of Mr Philippe Larochelle as Counsel for Mr Maxime Jeoffroy Eli Mokom Gawaka, 23 January 2023, ICC-01/14-01/22-136.

³ *Prosecutor v. Mokom*, Notice of Withdrawal of the Charges against Maxime Jeoffroy Eli Mokom Gawaka, 16 November 2023, ICC-01/14-01/22-275.

⁴ *Prosecutor v. Mokom*, Order in relation to the Prosecution’s ‘Notice of Withdrawal of the Charges against Maxime Jeoffroy Eli Mokom Gawaka’, ICC-01/14-01/22-276.

⁵ ICC-01/14-01/18-2186-Conf-Red.

7. On 2 November 2023, the Chamber shortened the deadline to respond to the Prosecution's Request to 9 November 2023.⁶

SUBMISSIONS

8. The Defence will address the necessity of observations from Mokom Counsel for the adjudication of the Request (I); as well as make submissions on several mischaracterisations made in the Request (II).

I. On the necessity of observations from Mokom Counsel on the Request

9. As a preliminary remark, the Defence regrettably notes that Mr Mokom's Counsel is not copied to the Prosecution's Request. This exclusion goes against the expected courtesy between officers of justice as Mokom's Counsel, despite the termination of the proceedings against his client, still has a mandate to represent Mr Mokom before the Court. Moreover, excluding Mr Mokom's Counsel also goes against the efficiency of the proceedings and economy of justice as he could have, depending on his client instructions, provided its views on the Request and rendered moot part of it, such as the request to summon should Mr Mokom accepts to testify.

10. The Defence also notes [REDACTED].⁷ [REDACTED].

11. The Defence addresses below two specific topics on which observations from Mokom's Counsel are necessary for the adjudication of the Request.

i) On the suggestion that Mr Mokom be granted Rule 74 measures

12. In its Request, the Prosecution suggests that in light of the termination of the proceedings against Mr Mokom, he could be granted Rule 74 assurances and compelled to answer questions.⁸ However, in a 19 October 2013 press release it is indicated that "*Prosecutor Khan also recalled that his decision to withdraw the*

⁶ Email from the Chamber to the Parties dated 2 November 2023 14:34.

⁷ [REDACTED].

⁸ ICC-01/14-01/18-2186-Conf-Red, para. 6.

charges against Mr Mokom was without prejudice to the Office's authority to request a new arrest warrant if more evidence becomes available [...].⁹ Should Mr Mokom be assured that his responses “[w]ill not be used either directly or indirectly against [him] in any subsequent prosecution by the Court”, the Prosecutor’s statement, regarding the possibility of Mr Mokom to be arrested a second time, is incompatible with him being granted Rule 74 assurances and compelled to testify in the present proceedings as suggested by the Prosecution. The Defence notes that such dichotomy between the Prosecution’s public positions and its confidential submissions, should Mr Mokom effectively be granted those measures to testify, will erode the public confidence with the Court.

13. The Defence further submits that the Chamber would be assisted by observations of Mokom’s Counsel on this matter, especially in light of Mr Mokom’s *in absentia* sentence to life of forced labour in CAR.¹⁰ Clarity on this subject is paramount as, should the Chamber call Mr Mokom as one of its witness, it will impact the Defence’s examination.

ii) *On the issues with the expected testimony of Mr Mokom on his family*

14. The Defence notes that the Prosecution indicates that Mr Mokom “*pourra fournir des informations sur le rôle de son père Bernard MOKOM (ancien préfet de GAMBOULA sous le Président BOZIZE) avant et après l’attaque de BANGUI du 5 décembre 2013, et sur celui de son frère Rocco MOKOM comme ComZone de BERBERATI*”.¹¹

15. While Mr Rocco Mokom is deceased, to the Defence’s knowledge Mr Bernard Mokom is still alive. The Defence wishes to bring to the Chamber’s attention

⁹ Press Release, “[Prosecutor withdraws charges against Maxime Mokom in the situation in the Central African Republic](#)”, 19 October 2023.

¹⁰ Radio Ndeke Luka article dated 19 octobre 2023 “[Centrafrique : la CPI retire toutes les charges à l’encontre de Maxime Mokom](#)” : Lors de la dernière session criminelle, la Cour d’appel de Bangui avait condamné par contumace Maxime Mokom et 23 co-accusés, dont François Bozizé, aux travaux forcés à perpétuité.

¹¹ ICC-01/14-01/18-2186-Conf-Red, para. 12.

the potential issues arising from Mr Maxime Mokom being asked to testify on his own father. Indeed, Mr Bernard Mokom is mentioned numerous times by the Prosecution in its Trial Brief and is described as an individual who would have been implicated with various groups during the conflict.¹² It is apparent through the Trial Brief that Mr Bernard Mokom could be charged for his actions.¹³

16. In such circumstances, the Defence is of the view that should Mr Mokom be asked to testify on his father, this could lead to legal issues as regard to Rule 75(1) of the Rules of Procedure and Evidence which states that “[a] witness appearing before the Court, who is a spouse, child or parent of an accused person, shall not be required by a Chamber to make any statement that might tend to incriminate that accused person”.

17. In the Ongwen case, Trial Chamber IX, indicated that this provision aims “to avoid putting a person, who is presumed to have a close personal relationship with an accused, under undue emotional and moral stress of being forced to provide evidence incriminating the accused. The provision aims to protect the integrity of this relationship by avoiding situations where the witness has to choose between telling the truth and protecting his or her relationship with the accused”.¹⁴ It also ruled that “wording of Rule 75(1) of the Rules refers to ‘an accused person’, which indicates that the accused does not necessarily have to be the accused in the case in which the witness is testifying”.¹⁵

¹² The Defence counted 54 individual references to Mr Bernard MOKOM in the Prosecution’s Trial Brief, ICC-01/14-01/18-723-Conf.

¹³ See as an example ICC-01/14-01/18-723-Conf, para. 219 : “NGAISSONA, MOKOM, Bernard MOKOM and other members of BOZIZE’s inner circle mobilised, organised and instrumentalised the Anti-Balaka, whom they knew were motivated to exact deadly vengeance on Muslims for Seleka atrocities; and who violently targeted the Muslim civilian population in western CAR — including through the Charged Crimes, 600 pursuant to the group’s organisational Criminal Policy and Common Purpose”.

¹⁴ *Prosecutor v. Ongwen*, Decision on Defence Request for Protective and Special Measures and Rule 75 Assurances, 5 July 2018, ICC-02/04-01/15-1301-Red, para. 52.

¹⁵ *Ibid*, para. 53.

18. While Mr Bernard Mokom is not an accused or a suspect before the Court, but could be in the future, the Defence submits issues arising from this provision ought to be taken into account when assessing the opportunity to bring Mr Maxime Mokom as a Chamber witness. Indeed, should Rule 75(1) of the Rules apply in the present instance, the scope of Mr Maxime Mokom's testimony would be greatly affected given the Prosecution's case theory.

19. In light of the impact of this question on a potential testimony from Mr Maxime Mokom, as well as on his fundamental rights, the Defence submits that the Chamber should invite Mokom's Counsel to submit its observations on the issue.

II. On the mischaracterisation by the Prosecution in its Request

i) Mischaracterisation of previous Defence's submissions

20. The Prosecution, in its Request, alleges that the Defence previously indicated in its submissions that *"les informations que MOKOM est à même de fournir sont 'highly relevant', et 'from a central figure of the Prosecution's case in these proceedings' [...]"*.¹⁶ This is however a misquotation from the actual Defence's response which was *"from a central figure in the Prosecution's case theory in these proceedings"*.¹⁷ The omission of the word "theory" in the Prosecution's quotation is deeply regrettable as it is key to understand that the Defence's submissions related to how the Prosecution is itself viewing the place of Mr Mokom in this case, with him being cited over a hundred times in the Prosecution's Trial Brief.¹⁸ It does not result from this that the Defence shares the position of the Prosecution on this specific point.

¹⁶ ICC-01/14-01/18-2186-Conf-Red, para. 10, fn. 14.

¹⁷ ICC-01/14-01/18-2150, para. 10.

¹⁸ ICC-01/14-01/18-2150, para. 6.

ii) Mischaracterisations of the evidence regarding connections between Messrs Mokom and Yekatom in Zongo

21. The Prosecution claims that the testimony of Mr Mokom is necessary for the manifestation of the truth as he could be examined on the connection between the Anti-Balaka and Mr. Yekatom and his contact with Mr. Yekatom in Zongo and until 5 December 2013.¹⁹

22. The Defence highlights that the Prosecution's assertion that Mr Mokom will be able to testify on this subject is entirely speculative as (i) it didn't question Mr Mokom to know its position on this issue, and (ii) the Prosecution's case regarding contacts between Messrs Mokom and Yekatom in Zongo collapsed during its presentation of evidence.

23. Indeed, the Defence recalls that :

- P-2232 testified that he never saw Mr Mokom and Mr Yekatom discussing together in Zongo,²⁰ despite [REDACTED];²¹
- [REDACTED] testified that he never saw Mr Yekatom in Zongo,²² and that Mr Mokom didn't talk with Mr Yekatom in Zongo²³ nor did they communicate afterwards.²⁴ This is despite [REDACTED];²⁵
- P-0888 testified that Mr Yekatom was not present in the meetings held by Mr Mokom in ZONGO, which led the latter to accuse Mr. YEKATOM of treason.²⁶ P-0888 also mentioned that Mr Mokom was partly responsible for the imprisonment of Mr Yekatom in Zongo.²⁷

¹⁹ ICC-01/14-01/18-2186-Conf-Red, para. 11.

²⁰ P-2232 : [REDACTED].

²¹ P-2232 : [REDACTED].

²² [REDACTED].

²³ [REDACTED].

²⁴ [REDACTED].

²⁵ [REDACTED].

²⁶ P-0888 : ICC-01/14-01/18-T-121-FRA ET, page 30, lns 8-22.

²⁷ P-0888 : ICC-01/14-01/18-T-120-CONF-FRA ET, page 23, lns 4-10.

- P-0884 also testified that he and Mr Mokom never talked about Mr Yekatom, and that to his knowledge Messrs Yekatom and Mokom didn't get along as Mr Mokom was responsible for Mr Yekatom's arrest by giving information to the Congolese authorities.²⁸

24. Those testimonies are far from the Prosecution's theory, presented in its Document Containing the Charges and Trial Brief, to the effect that P-2232 would corroborate that Messrs Yekatom and Mokom met regularly while in Zongo.²⁹

25. It is also recalled that the Prosecution also expected P-1339 to testify on the fact that Mr Yekatom would have secured weapons and ammunitions from Mr Mokom in Zongo.³⁰ P-1339's overall evidence collapsed entirely during his testimony due to his numerous irreconcilable inconsistencies. However, it should be noted that even if those inconsistencies were cast aside, P-1339 did not even confirm the link between Messrs Yekatom and Mokom as regards to the provision of weapons.³¹

26. The Prosecution's last-minute effort for Mr Mokom to testify on those issues appears to be nothing else than a desperate attempt to save its failed theory.

iii) Mischaracterisation of the release of Mr Mokom as a "new circumstance"

27. The Prosecution alleges in its Request that the release of Mr Mokom and the termination of the proceedings against him constitute a new circumstance.³² However, the Defence notes the peculiar situation that arises from the fact that both the creation and the timing of this "new circumstance" rested within the discretionary power of the Prosecution.

²⁸ P-0884 : ICC-01/14-01/18-T-055-CONF-FRA ET, page 83 at 15:57:48.

²⁹ See ICC-01/14-01/18-282-Conf-AnxB1, para. 44, fn 92; ICC-01/14-01/18-723-Conf, para. 86, fn. 204.

³⁰ ICC-01/14-01/18-723-Conf, para. 88 : "From there, YEKATOM secured weapons and ammunition for his Group, including from MOKOM in ZONGO on which he trained them."

³¹ P-1339 : [REDACTED].

³² ICC-01/14-01/18-2186-Conf-Red, para. 2.

28. The Defence further notes that Pre-Trial Chamber II found that the reasons provided by the Prosecution, while it exercised its discretionary power to drop the charges against Mr Mokom, are “*limited and lack additional information in support*”.³³ This lack of transparency regarding the decision to terminate the proceedings against Mr Mokom further the fact this decision was discretionary and subject to no accountability regarding its unraveling.
29. The ability of a party to characterize an event as a “new circumstance”, while being at the same time the “creator” of this event should be carefully assessed, as it could be described as self-serving.
30. The Defence respectfully requests the Chamber to consider the above fact when determining whether or not the termination of the proceedings against Mr Mokom constitutes a new circumstance warranting his testimony at such a late stage in the proceedings.

CONCLUSION

31. While the Defence defers to the Chamber’s discretion as regards to the merits of calling Mr Mokom as one of its witness, it is nevertheless submitted that Mokom’s Counsel should be invited to provide observations on the Request. Moreover, the Defence respectfully requests its above observations be taken into consideration when assessing the merits of the Prosecution’s Request.

CONFIDENTIALITY

32. The present response is filed on a confidential basis corresponding to the classification of the Request. A public redacted version will be filed in due course.

³³ *Prosecutor v. Mokom*, Order in relation to the Prosecution’s ‘Notice of Withdrawal of the Charges against Maxime Jeoffroy Eli Mokom Gawaka’, ICC-01/14-01/22-276, para. 8.

33. The Defence however submits that the substance of the Request, including the fact that it relates to Mr Mokom, is of particular public interest in light of his status as a former ICC detainee and of the public statements made by the Prosecution. As Mr Mokom is an high profile individual in CAR, as a former minister and due to its almost two years of pre-trial detention, the information that the Prosecution seeks his testimony in the current proceedings should be made public, irrespective of the Chamber's decision on the merits of the Request.

RELIEF SOUGHT

34. In light of the above, the Defence defers to the Chamber's discretion on the merits of the Request and respectfully requests Trial Chamber V to:

INVITE Mokom's Counsel to provide its observations on the Request;

ORDER the Parties to file Public Redacted Version of their submissions with the identity of Mr Mokom available to the Public.

RESPECTFULLY SUBMITTED ON THIS 22nd DAY OF NOVEMBRE 2023



Me Mylène Dimitri
Lead Counsel for Mr. Yekatom

The Hague, the Netherlands