

Original: **English**No.: **ICC-01/14-01/22**Date: **08/12/2023****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 Confidential & Ex Parte Annexes Registry and Defence only: A, B, C, D, E, F, G, H, I,
J, K, L, N, O, P***

With Public Annexes: M, Q

With Public Redacted Annexes: I, N

Public Redacted Version of Mokom Defence Submissions pursuant to Rule 185(1)

Source: Philippe Larochelle, Counsel for Mr Mokom

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

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I. INTRODUCTION

1. Mr Mokom believes that if the ICC orders his transfer to the Central African Republic ('CAR'), he will be subjected to torture, cruel treatment, and will likely be killed, before, during or after an unfair trial. The evidence discussed in the present submission, demonstrates that this view is entirely and objectively reasonable.¹ This evidence comes from both within and outside the CAR, from experts and those with first-hand knowledge to inform their conclusions. They are all in agreement: Mr Mokom is at risk of serious harm should he be forcibly rendered to the CAR. A respected Central African expert equates his return with "suicide".²

2. In December 2020, Mr Mokom resettled in Chad, where he enjoyed quasi-refugee status. He was living in relative security when he was arrested and surrendered to the ICC on 14 March 2022, on the basis of charges that were incapable of being confirmed. Now that he is again a free man, Mr Mokom wishes to live, in security, in a safe third State with his wife and children. [REDACTED]. Under no circumstances does Mr Mokom consent to his rendition to the CAR. Moreover, for the reasons set out herein, the Defence submits that an order that Mr Mokom be rendered to the CAR against his will, would be incompatible with the ICC statutory framework.

II. LEVEL OF CONFIDENTIALITY

3. Pursuant to Regulation 23bis(1) of the Regulations of the Court ("Regulations"), the Defence files these submissions as confidential and *ex parte*, since they refer to confidential and *ex parte* information. A public redacted version will be simultaneously filed.

III. PROCEDURAL HISTORY

4. A detailed procedural history has previously been filed.³ The Defence incorporates these prior submissions, recalling only the following key milestones and additional events.

5. On 17 October 2023, following the Prosecution's notification of the withdrawal of charges against Mr Mokom, the Pre-Trial Chamber terminated the proceedings against him.⁴ The Pre-Trial Chamber ordered the Registry to make all necessary arrangements for the transfer of Mr Mokom, including by liaising with Mr Mokom and the Defence, as well as relevant States,

¹ The Defence annexes the statements of seven people (Annexes A-G), as well as [REDACTED] (Annexes H, P).

² Annex K, p.12.

³ Defence Request for Variation of Time Limit, [ICC-01/14-01/22-297-Conf-Exp](#), 24 November 2023, paras.7-29.

⁴ 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](#), 17 October 2023, (reclassified as public pursuant to the Chamber's order dated 19 October 2023) ("Order for Release"), para.10.

in particular the CAR and the Host State. Following a request by the Defence,⁵ on 27 October 2023, the Pre-Trial Chamber confirmed *inter partes* that Mr Mokom would be afforded the opportunity to be heard pursuant to Rule 185(1), before any transfer is ordered.⁶

6. On 22 November 2023, the Pre-Trial Chamber ordered Mr Mokom to “provide his views under rule 185(1) of the Rules regarding any matters in connection with his transfer to a State referred to in that provision” by 30 November 2023.⁷

7. On 23 November 2023, the Registry [REDACTED]”.⁸

8. On 28 November 2023, the Pre-Trial Chamber extended the 30 November 2023 deadline to 8 December 2023,⁹ pursuant to a Defence request for extension of time until 19 January 2024 to allow Mr Mokom sufficient time to substantiate his views with expert evidence [REDACTED].¹⁰ The Pre-Trial Chamber granted the Defence request in part, stating that it was “[REDACTED]”.¹¹ Mr Mokom’s right to be heard this context, particularly in circumstances of risk of torture, cannot reasonably be interpreted to exclude the opportunity to submit objective evidence in support of his views. The Defence submits that the Pre-Trial Chamber is thus duty bound to consider such evidence, despite limitations on the time to collect it.

IV. APPLICABLE LAW

9. Rule 185(1) of the Rules provides that, where a person is released from the custody of the Court, the Court shall, as soon as possible, make such arrangements as it considers appropriate for the transfer of the person, taking into account the views of the person, to a State which is obliged to receive him or her, to another State which agrees to receive him or her, or to a State which has requested his or her extradition with the consent of the original surrendering State. In applying Rule 185(1), regard must be had to Article 21(3) of the Rome Statute (“Statute”), which requires that “[t]he application and interpretation of law pursuant to this article must be consistent with internationally recognized human rights”.

⁵ Defence Urgent Request, [ICC-01/14-01/22-278](#), 23 October 2023 (“Defence Urgent Request”).

⁶ RE: Courtesy Copy of the Mokom Defence Urgent Request for an Extension of Pre-Trial Chamber’s II Order of 17 October 2023, 27 October 2023, at 17:47.

⁷ Order to provide views under rule 185(1) of the Rules of Procedure and Evidence, [ICC-01/14-01/22-295](#), 22 November 2023.

⁸ [REDACTED].

⁹ [ICC-01/14-01/22-302-Conf-Exp](#), Decision on ‘Defence Request for Variation of Time Limit’, 28 November 2023 (“Decision on Extension of Time”).

¹⁰ Defence Request for Variation of Time Limit, [ICC-01/14-01/22-297-Conf-Exp](#), 24 November 2023.

¹¹ [Decision on Extension of Time](#), para. 7.

10. Article 57 of the Statute sets out the functions and powers of the Pre-Trial Chamber. The Pre-Trial Chamber is specifically empowered to “provide for [...] the protection of persons who have been arrested or appeared in response to a summons” as per Article 57(3)(c) of the Statute.

V. SUBMISSIONS

A. THE PERSONAL CIRCUMSTANCES OF MR MOKOM

(i) *Relevant personal history*

11. Mr Mokom was born on 30 December 1978 in Bangui. He is married. [REDACTED]. His oldest daughter is married and lives independently with her husband and child. Mr Mokom has maintained close contact with all of them throughout his detention in The Netherlands, between March 2022 and October 2023.¹²

(ii) *Mr Mokom and the Wagner Group*

12. Since January 2018, the paramilitary organisation known as the Wagner Group (‘Wagner’) has progressively taken control of the Central African political, military and judicial apparatus, including the police.¹³ Although Wagner was originally intended to provide political support and security assistance through “Russian civilian instructors” in exchange for access to CAR mines and natural resources,¹⁴ it now controls the Presidential Guard, the Special Forces and Reconnaissance Team, the Territorial Infantry Battalions, the Support Unit, the Central African Armed Forces (‘FACA’), and Touadéra’s private militia “*les Requins*”.¹⁵ A leaked report from the EU External Action Service, dated 22 November 2021, stated that “[t]oday, most deployed FACA units are operating under command or supervision by [Wagner] mercenaries.”¹⁶

13. Touadéra’s inner circle has also been penetrated. Valery Zakharov, described as the “real boss of the Russian apparatus in Bangui”, was Touadéra’s advisor for national security until mid-

¹² Annex H, paras.1-6 (unofficial English translation).

¹³ “Architects of Terror: The Wagner Group’s Blueprint for State Capture in the Central African Republic”, *The Sentry*, June 2023 (“[The Sentry June 2023 Architects of Terror report](#)” – Pages references are the pages indicated on the report (bottom left)), pp.20-23, *see also* p.32 “Wagner has managed to infiltrate CAR’s military chain of command, as well as its political and economic systems.”

¹⁴ [The Sentry June 2023 Architects of Terror report](#), pp.7, 26.

¹⁵ [The Sentry June 2023 Architects of Terror report](#) pp.12-14, 24, 36-41; “[Central African Republic: Abuses by Russia-Linked Forces](#)”, *Human Rights Watch*, 3 May 2022, p.4: “The EU has concluded that [the Wagner] personnel are an integral part of the Russian authorities’ presence in the country, saying that as of late November 2021, “most” Central African Republic army units were “operating under [the] direct command or supervision [of] Wagner Group mercenaries.”

¹⁶ [Central African Republic: Abuses by Russia-Linked Forces](#), p.6; “[Political and Strategic Environment of CSDP Missions in the Central African Republic \(CAR\)](#)”, European External Action Service, 22 November 2021, p.5.

2021, even acting on behalf of Touadéra himself.¹⁷ He remains active in CAR diplomacy, but was replaced by two other equally influential individuals: Vitalii Viktorovitch Perfilev and Dmitry Sytii. Perfilev is “in charge of all security and defense matters and appears to be Dmitri Utkin’s [a Wagner founder] right-hand man in CAR”. He has full control of the army and “does not ask Touadéra for approval”.¹⁸ Another Wagner individual, General Oleg Polguev, has worked as an advisor to the Central African Ministry of Defence since 2020.¹⁹

14. Wagner’s infiltration in all spheres of political and military life, has prompted an unprecedented rise in crimes against Central African civilians.²⁰ Human rights organisations have documented extrajudicial and/or mass executions, arbitrary arrests, forced disappearances, arbitrary detention, torture, inhuman and degrading treatment, raids on civilian villages, rape and other grave human rights violations.²¹ These violations continue to this day, with impunity and the complicity of the Central African government.²²

15. This human rights reporting is corroborated by the evidence of those with direct knowledge. According to [REDACTED], “[t]he arrival of Wagner corresponds to an increase in threats and killings because they are the ones running the country and dictating everything to Touadéra”.²³ [REDACTED] stated that “Touadéra is a puppet in Wagner’s hands. They are Putin’s henchmen, and at the moment it is the Kremlin that is running things in Bangui [...]

¹⁷ Mathieu Olivier, “[CAR: Who are President Touadéra’s Russian guardian angels?](#)”, *The Africa Report*, 17 March 2021; [The Sentry June 2023 Architects of Terror report](#), p.21.

¹⁸ [The Sentry June 2023 Architects of Terror report](#), pp.21-22.

¹⁹ [CAR: Who are President Touadéra’s Russian guardian angels?](#).

²⁰ [The Sentry June 2023 Architects of Terror report](#), pp.5-6.

²¹ [Central African Republic 2022 Human rights report](#), *United States Department of State Bureau of Democracy, Human Rights and Labor*, p.3; [Central African Republic: Abuses by Russia-Linked Forces](#); [The Sentry June 2023 Architects of Terror report](#), p.4, see also p.11: “As early as March 2021, a UN group of experts warned the international community and Touadéra that “mass summary executions, arbitrary detentions, torture during interrogations, forced disappearances, forced displacement of the civilian population, indiscriminate targeting of civilian facilities, violations of the right to health, and increasing attacks on humanitarian actors” were being committed by the FACA and Wagner mercenaries. This was confirmed three months later by the UN Panel of Experts on CAR and by CNN and The Sentry, who published an investigation exposing mass atrocities being committed throughout the country.” *citing* United Nations Security Council, “[Final Report of the Panel of Experts on the Central African Republic Extended Pursuant to Security Council Resolution 2536 \(2020\)](#),” S/2021/569, 25 June 2021, pp.2-3; Tim Lister, Sebastian Shukla, and Clarissa Ward, “[It Was our Children They Killed](#)” CNN with The Sentry, 15 June 2021; The Sentry, “[Investigative Report by CNN With The Sentry: Wagner Group Atrocities](#),” 15 June 2021; See also “[CAR: Experts Alarmed by Government’s Use of ‘Russian Trainers’](#)”, [Close Contacts With UN Peacekeepers](#),” Press Release *OHCHR*, March 31, 2021.

²² Anselme Mbata, “Centrafrique : [L’arrestation d’Olivier Féïssona, la saga des arrestations à Bangui continue](#)”, *Corbeau News*, 30 October 2023: “[...] une série d’arrestations et d’opérations hiboux musclées menées par les éléments de la garde présidentielle à Bangui. Ces arrestations sont suivies d’interrogatoires brutaux, de tortures, et parfois même d’assassinats.”; Anselme Mbata, “[Arrestation de dizaine de personnes par les mercenaires de Wagner à Bangui](#)”, *Corbeau News*, 18 July: “Les mercenaires de Wagner, soutenus par la milice Requin, ont ainsi mené une vaste opération de contrôle des pièces d’identité et des papiers des motocyclistes dans la capitale, Bangui. [...] plusieurs dizaines de personnes ont ainsi été appréhendées.”

²³ Annex A, para.9 (unofficial English translation).

President Touadéra is not in charge of the country. As President, he just a front. It is the Russians who are running the country and they want to eliminate all those who want to prevent them from doing what they want to do.”²⁴

16. Wagner’s main objective is to annihilate those perceived as the political enemy of Touadéra, being the *Coalition des Patriotes pour le Changement* (“CPC”) rebels, and other “armed group bandits”.²⁵ This objective was publicly acknowledged by Fidèle Gouandjika, “minister special advisor to Touadéra”, in 2022.²⁶ [REDACTED] stated that, “[f]or the authorities in Bangui, if you are a political opponent, you are a rebel, a terrorist and part of the CPC.”²⁷ He added that “[t]he “*Requins*” are a militia that was trained on the job in 2018-2019 to assassinate Touadéra’s political opponents [...]. Their mission is to seek out political opponents: hunt them down, assassinate them, loot their homes, arrest them and put them in prison. They are soldiers, FACA, gendarmes/police, who are institutionalised and roam around the city, known to everyone. Wagner trained them and runs them.”²⁸ [REDACTED] agreed with this assessment, explaining that “[t]he government labels you as CPC: either to sentence you to life imprisonment or to execute you.”²⁹

17. In addition to perceived political opponents, Wagner and the FACA target the Gbaya, the Fulani, and the Muslims because of their perceived affiliation with the “three most powerful CPC armed groups – the UPC, 3R and Anti-Balaka militias faithful to Bozizé”.³⁰ The targeting of these ethnic and religious groups takes the form of indiscriminate killings of civilians.³¹ According to [REDACTED] “[t]here is a witch-hunt against all those who are Gbaya [...] Touadéra considers that if you are Gbaya, you are against him [...]”.³² [REDACTED] is also explicit that, “[a]t the moment, it’s not a good life to be a Gbaya like Mr Mokom in the CAR. As soon as you are Gbaya you are systematically hunted down. They associate Gbaya ethnicity with

²⁴ Annex C, para.6 (unofficial English translation).

²⁵ [The Sentry June 2023 Architects of Terror report](#), pp.9, 23-24.

²⁶ [The Sentry June 2023 Architects of Terror report](#), p.24: “Gouandjika declared that the Central African government was at war with mercenaries, the CPC “With our Russian partners ... it is a surgical strike. That is to say, annihilate them ... So it’s a physical elimination. Completely.... And as brutal as possible.”

²⁷ Annex B, para.13 (unofficial English translation).

²⁸ Annex B, para.12 (unofficial English translation); *See also* Annex D, paras.16-17 (unofficial English translation): “Political opponents today are constantly being threatened and kidnapped. In particular, there is the *Requins* military militia, but also a militia made up of civilians (also known as the *Requins*) with bladed weapons (baseball bats) who attack opponents. [...] Before the Wagners arrived, there was not this kind of violence, but since they have been there, the violence has increased. There are torture, threats, people are afraid. There are no more opponents in Bangui. The opponents are abroad. [...]”.

²⁹ Annex C, para.14 (unofficial English translation).

³⁰ [The Sentry June 2023 Architects of Terror report](#), p.17.

³¹ *Ibid.*

³² Annex E, para.12 (unofficial English translation).

political affiliation (Bozizé). [...] We're not talking about threats: either they kill you, or you're with them, there's no alternative."³³

18. Mr Mokom will be an obvious and prime target for Wagner: he is a political opponent of the Touadéra regime, has familial links to Bozizé, is a member of the Gbaya community, and a leader of the CPC. The individuals interviewed by the Defence are unambiguous: if Maxime Mokom returns to CAR, he will be executed.³⁴ [REDACTED] is unequivocal on the risks for Mr Mokom: "Political opponents must change sides and pledge allegiance to the government, otherwise they risk death. When the Russians came, they started poisoning opponents [...]. The CPC is in their sights because they know that it has the capacity to be a nuisance and Mokom is part of the CPC. Getting their hands on Mokom would mean that he would either be blackmailed or haggled over, or eliminated."³⁵ The case of Mr Mokom is described as being "particularly sensitive to the Central African authorities", given that "the Touadéra administration and its Russian PMC backers view Mr Mokom as inextricably linked to the government's greatest enemy: François Bozizé".³⁶ Sources who have worked in the CAR military or close to the presidency described that operations "consisted of targeting Bozizé and other political opponents, kidnapping Gbaya military officers, and organising forced disappearances of members of Bozizé's political party".³⁷

19. There is no possibility that Mr Mokom will stay under Wagner's radar. [REDACTED].³⁸ [REDACTED].³⁹ [REDACTED].⁴⁰ [REDACTED].⁴¹

(iii) Mr Mokom, the CPC and the Angola Agreement

20. In December 2020, Mr Mokom was a government minister. Mr Mokom left Bangui on 3 December 2020 for Bossangoa on an official government mission. The same day, the

³³ Annex F, paras.28, 30 (unofficial English translation).

³⁴ Annex B, para.19; Annex D, para.19; Annex E, para.17; Annex F, para.26 (unofficial English translations).

³⁵ Annex C, paras.6, 15. *See also* Annex E, paras.11, 14: "Opponents are targeted at any moment: they are hanged. There are no arrests, they are eliminated directly. [...] The *Requins* do the dirty work of the government in power, that is to eliminate people who challenge Touadéra's ideology and are not with him."; Annex F, paras.18-20: "Since the arrival of the Wagner group in the country, things have gotten worse, for example TOUADERA has increased the tracking of opponents. [...] Indeed, Wagner's arrival in the CAR was accompanied by the creation of the "*Requins*", an armed militia composed of soldiers and civilians [...] The *Requins* are financed and trained by Wagner [...] The operating mode of the *Requins* is that of the Wagner group [...] The *Requins* are stalking you outside, stalking your family. They can and do kill easily because they are protected by the power."

³⁶ Annex J, p.7.

³⁷ [The Sentry June 2023 Architects of Terror report](#), p.24.

³⁸ Annex J, p.4; Annex H, paras.14-22 (unofficial English translations).

³⁹ *Ibid.*

⁴⁰ Annex H, paras.22-28 (unofficial English translation).

⁴¹ Annex J, p.5.

Constitutional Court validated the list of candidates for the 2021 presidential elections, and rejected the candidacy of François Bozizé. Touadéra's presidential guard, together with "*les Requins*" then invaded François Bozizé's house in Bangui, and then looted and ransacked Mr Mokom's house in Bangui.⁴² A permanent post was set up at Mr Mokom's Bangui home, which remained until 30 February 2021, after the new government was formed. Mr Mokom has never received any legal or other justification from CAR government officials for raiding his house, or the theft and destruction of his personal property. He was a Minister at the time and was not linked to any opposition groups. Fearing return to Bangui and isolated from his own government, Mr Mokom joined meetings with François Bozizé and other opposition parties and movements. On 15 December 2020, an agreement to create a coalition of these opposition groups, the CPC, was signed in Kamba Kota.⁴³

21. Mr Mokom became a member of the CPC and participated in negotiations aimed at the withdrawal of Wagner troops and mercenaries from the CAR. This would have been viewed as a "betrayal" by Wagner.⁴⁴ The international community and, in particular, representatives of the Economic Community of Central African States ('ECCAS'), and the International Conference on the Great Lakes Region ('ICGLR'), sent delegations to Bossangoa broker a solution. In February 2021, Mr Mokom, François Bozizé, and others went to Chad under the auspices of the Angolan President, ECCAS, ICGLR and the President of Chad, in order to reach a path to peace.

22. The negotiations in Chad resulted in a '*feuille de route*' finalized under the aegis of the ICGLR and ECCAS, which protected the physical and moral integrity of political opponents of Touadéra, including Mr Mokom. Under the agreement, Mr Mokom and other designated political opponents understood that they could not be prosecuted or extradited. The government of Chad, represented by Minister Mama Salleh, an advisor to President Idriss Deby agreed to allow Mr Mokom and others to remain on its territory, with the support of Angola, until it was possible to have an inclusive dialogue and genuine reconciliation to facilitate their return to CAR.⁴⁵ The agreement had a five-year scope, intended to run until the end of Touadéra's mandate in 2026. Touadéra subsequently amended the constitution so that he can stay in power for seven years, despite having already served two five-year terms.⁴⁶

⁴² *Ibid.*

⁴³ Edouard Yamale, "[Centrafrique : la Déclaration des Groupes armés qui sonne le glas du régime de Bangui](#)", *Le Tsunami.net*, 17 December 2020.

⁴⁴ Annex J, p.8.

⁴⁵ See Annex G, paras.2-4; Annex H, paras.32-46 (unofficial English translations).

⁴⁶ Annex B, para.11; Annex H, para.30 (unofficial English translations).

23. The Defence [REDACTED], which to date have not been transmitted. Signatories to the Angola *feuille de route* include François Bozizé, Ali Ndarassa, Mahamat Alkatim, Abakar Sabon, and General Bobo Sembé⁴⁷, who were all sentenced to life imprisonment with hard labour, together with Mr Mokom, in the *in absentia* judgment of 5 October 2023⁴⁸.

(iv) **Mr Mokom and the ICC**

24. Despite the existence of the Angola *feuille de route*, Mr Mokom was arrested in Chad and surrendered to the ICC on 14 March 2022. The charges against him were never confirmed, and were withdrawn by the Prosecution on 16 October 2023.

25. Having heard the parties' submissions in August 2023, the Pre-Trial Chamber put in place a briefing schedule for written submissions, originally due to conclude 2 October 2023. The deadline for responses was extended *proprio motu* by the Pre-Trial Chamber until Friday, 13 October 2023. The charges were withdrawn by the Prosecution the following Monday, 16 October 2023. Mr Mokom was released from detention, and moved to a hotel room in The Hague, where he was in a situation of *de facto* detention, with his freedom of movement completely curtailed until 28 November 2023. During this period, one of the four Defence witnesses relied on during confirmation, P-0405, was arrested and tortured by the Central African authorities, or those acting on their behalf. P-0405 remains in detention where his torture continues.⁴⁹

B. MR MOKOM'S VIEWS ON POSSIBLE RELOCATION STATES

(i) **Central African Republic**

26. In normal circumstances, the CAR would be the natural destination for Mr Mokom. The CAR is Mr Mokom's place of birth and he remains, to date, a citizen of that country. The CAR authorities have recently sought his extradition. Despite these factors, Mr Mokom's submission is that he cannot be returned to his country of birth, for the following reasons.

27. Firstly, the extradition request from the CAR is invalid. Mr Mokom was arrested in, and surrendered by, Chad. As such, Rule 185(1) requires the CAR to obtain the consent of the

⁴⁷ Annex H, para 40.

⁴⁸ Annex Q.

⁴⁹ Annex I, P-0405's Statement of 7 December 2023, Responses 6-9, pp.1-2; Report of 3 December 2023, p.1; Report of 28 November 2023, pp.1-2; Defence Urgent Request for an Order Concerning the Arrest of P-0405, [ICC-01/14-01/22-287-Conf](#), 3 November 2023 (Public Redacted Version filed the same day); Defence Submissions Further to the "Registry's Report pursuant to the 'Decision on 'Defence Urgent Request for an Order Concerning the Arrest of P-0405'", [ICC-01/14-01/22-304-Conf](#), 29 November 2023 (PRV filed on 1 December 2023).

surrendering State, Chad, before any transfer under Rule 185(1) can be effected. Secondly, Mr Mokom's transfer is prohibited under the Angola *feuille de route*, an international agreement brokered by international actors, pursuant to which Mr Mokom is entitled to remain on Chadian territory, with the financial support of the government of Angola. Thirdly, Mr Mokom's view is that return to the CAR would mean being subjected to an unfair trial, cruel treatment and torture in the short-term, and the likelihood of death.

28. **Subject to an Unfair Trial:** A wealth of publicly available material casts doubt on the independence and impartiality of the Central African judicial system, and points to its weaponisation against political opponents, real or perceived. Freedom House described the work of the courts in Bangui as "inefficient" and "frequently hampered by corruption",⁵⁰ explaining the lack of due process in criminal matters, and the lack of an independent judiciary. In 2022, for example, the Constitutional Court of CAR faced active political interference.⁵¹ Again in 2023, the Chief Justice of the Constitutional Court, Justice Daniele Darlan, attempted to block Touadéra's constitutional referendum abolishing term limits, following which she was dismissed from the Court.⁵² FIDH has reported on the lack of resources and capacity of the ordinary judicial system in the CAR.⁵³ The trials before the Criminal Court exhibit "disregard for the fundamental rights of the defence"⁵⁴ and criminal proceedings are "heavily influenced by political alliances".⁵⁵ Amnesty International shares these concerns,⁵⁶ about which it has been consistently vocal since 2019.⁵⁷ Amnesty interviewed a number of UN workers, lawyers and former judges of the judiciary in the CAR, who described widespread structural and procedural shortcomings.⁵⁸

29. Mr Mokom's 2-page "judgment"⁵⁹ sentencing an entire list of political opponents to life imprisonment with hard labour, after a trial *in absentia*, reflects the political interference reported by international human rights observers. The Central African authorities and prosecutors knew

⁵⁰ [Freedom in the world 2023: Central African Republic](#), *Freedom House*.

⁵¹ [Freedom in the world 2023: Central African Republic](#), *Freedom House*; [Amnesty International Report 2022/23: the state of the world's human rights](#), *Amnesty International*, 27 March 2023, p.118.

⁵² Annex J, pp.6-7, [REDACTED].

⁵³ [What prospects for justice in the Central African Republic? Complementarity between national and international mechanisms: status and challenges](#), *FIDH*, 31 October 2022, ("FIDH 2022 Report") p.12; citing CAR, Loi n°10.002 portant Code de procédure pénale (Law No. 10.002 establishing the Code of Criminal Procedure), 6 January 2010, Article 220.

⁵⁴ [FIDH 2022 Report](#), p.16, *see also* p.13.

⁵⁵ [FIDH 2022 Report](#), p.15.

⁵⁶ [Central African Republic: "On trial, these warlords lowered their eyes"](#), *Amnesty International*, 2020, p.34.

⁵⁷ [Human rights in Africa: Review of 2019](#), *Amnesty International*, 8 April 2020, p.118: "there are some serious concerns over due process and fairness of [CAR Ordinary Court] proceedings."

⁵⁸ [Central African Republic: "On trial, these warlords lowered their eyes"](#), *Amnesty International*, 2020, p.35.

⁵⁹ Annex Q.

Mr Mokom's precise location, and how to contact his Defence Counsel, but instead decided to try and sentence him *in absentia*. Neither Mr Mokom, nor his Counsel, have ever been notified about the case or judgment. Like Mr Mokom, [REDACTED].⁶⁰ [REDACTED].⁶¹ The failure to ensure that the accused were notified or represented, or afforded any of the protections of *in absentia* defendants, leads to the inevitable conclusion that this was a politically motivated attack, rather than a judicial process. This is reinforced by media reports that Touadéra appears to be offering Mahamat al-Khatim, one of the 20 defendants, amnesty in exchange for laying down his weapons and joining the Disarmament Demobilization Reintegration program.⁶²

30. The judgment itself lacks any substantive reasoning which would facilitate an appeal: each of the 20 defendants received exactly the same sentence, without nuance, reasoning, or mitigation of any kind. Requests from Mr Mokom's Defence Counsel for any indication of the charges, evidence relied on, or reasoning for this oppressive sentence have, unsurprisingly, gone unanswered.⁶³ Instead, the CAR authorities have conditioned any cooperation or information on the Defence first designating a local lawyer in Bangui. A request to the Pre-Trial Chamber for an order for cooperation to circumvent this arbitrary condition remains pending.⁶⁴ With this as the backdrop, no reasonable conclusion can be reached that Mr Mokom would be afforded a re-trial, much less a fair re-trial, upon his return to Bangui.

31. This conclusion is reinforced by the horrific torture and cruel treatment of a Defence witness. In October 2023, P-0405 was arrested, arbitrarily detained, and tortured by Wagner, in circumstances which are already known to the Pre-Trial Chamber.⁶⁵ P-0405's torturers made a direct link between his treatment and his perceived role in the ICC dropping the charges against Mr Mokom.⁶⁶ Relevantly, P-0405 was forced to falsely confess to plotting to overthrow Touadéra, and implicate Mr Mokom in this plan.⁶⁷ Similarly, Blaise Mbomou, [REDACTED], was also detained at the Research and Investigation Section and tortured by Wagner and "*les*

⁶⁰ Annex G, para.8 (unofficial English translation).

⁶¹ *Ibid.*, paras.10-12 (unofficial English translation).

⁶² Soukaina Sghir, "[Central African Delegation in Chad for Negotiations on Rebel Leader Mahamat al-Khatim's Return](#)", *WeAfrica24*, 2 December 2023; Fiacre REB, "[Le chef rebelle Mahamat Al Khatim, le nouveau chouchou de Touadéra](#)" *Corbeau News*, 3 December 2023.

⁶³ Defence Request for Variation of Time Limit, Annex A, [ICC-01/14-01/22-297-Conf-Exp](#).

⁶⁴ Defence Motion for a Request for Cooperation to the Central African Republic, [ICC-01/14-01/22-291-Conf](#), 10 November 2023 (PRV filed on 22 November 2023).

⁶⁵ Defence Urgent Request for an Order Concerning the Arrest of P-0405, [ICC-01/14-01/22-287-Conf](#), 3 November 2023 (PRV filed the same day); Defence Submissions Further to the "Registry's Report pursuant to the 'Decision on 'Defence Urgent Request for an Order Concerning the Arrest of P-0405'", [ICC-01/14-01/22-304-Conf](#), 29 November 2023 (PRV filed on 1 December 2023).

⁶⁶ Annex I, P-0405's Statement of 7 December 2023, Responses 10 and 11, p.2; Report of 3 December 2023, p.1.

⁶⁷ Annex I, Report of 28 November 2023, p.2.

Requins” to obtain a confession [REDACTED].⁶⁸ The Central African authorities appear to be belatedly collecting false evidence to support the conviction which has already been handed down.

32. [REDACTED].⁶⁹ This view is shared by [REDACTED].⁷⁰ Similarly, [REDACTED] stated that “[j]ustice in CAR is notoriously corrupt. Judges are in the pay of power and issue judgments on command. Given his ethnicity and his links with BOZIZE, it is simply impossible that Maxime MOKOM could be judged fairly if he ever returned to the CAR.”⁷¹

33. **Cruel Treatment, Torture or Death:** The “employment of torture, by both FACA and Wagner Group is widespread.”⁷² The latest UNSG report recounts the crimes committed by public authorities in the CAR, including arbitrary detention, incidents of cruel treatment and torture within prisons and other detention facilities. Acts of torture have been documented, particularly in prisons and other places of detention.⁷³ According to UN-OHCHR, the majority of violations committed in the CAR in 2022 were carried out by State forces or their collaborators, encompassing illegal arrests and detention, ill-treatment and torture.⁷⁴ Members of national defence and security forces were implicated in sexual and gender based violence.⁷⁵ These patterns are corroborated by MINUSCA, which reported that in 2022, violations related to detention, including arbitrary detention and inhuman conditions, violations of physical and mental integrity were carried out predominately by state agents.⁷⁶

34. As noted above, witnesses are unanimous that Mr Mokom’s past activities, including his engagement with Wagner, his previous role in the CPC, his Gbaya ethnicity, and his familial links to Bozizé, mean he would be killed on return to the CAR. [REDACTED], explaining that “[REDACTED], but he tried to trap Mr Mokom and accused him of plotting a *coup d’état*, even though that was not the case.”⁷⁷ He concluded that “[i]f Mr Mokom returns to the country, he

⁶⁸ [Le mystère N’guendet s’épaissit et ne cesse d’inquiéter le clan Touadéra](#), *Corbeaunews-centrafrique*, 29 October 2023.

⁶⁹ Annex O, p.3.

⁷⁰ Annex J, p.8.

⁷¹ Annex F, para.25 (unofficial English translation).

⁷² Annex J, p.7.

⁷³ UNSC, [Rapport du Secrétaire général, S/2022/762](#), 13 October 2023, para.63.

⁷⁴ [Central African Republic: Atrocities must end, says Volker Türk](#), *OHCHR*, 31 March 2023.

⁷⁵ UNSC, [Report of the Secretary-General](#), 22 June 2023, para.24.

⁷⁶ [Human rights quarterly brief on the central african republic](#), *MINUSCA*, 30 December 2022, p.2.

⁷⁷ Annex E, para.16 (unofficial English translation).

will be killed, even in detention. He must not be allowed to return to Bangui, or he will be killed.”⁷⁸

35. [REDACTED] also stated that “[i]f Mokom arrives in Bangui, he won't be able to stay alive for a week. He will be killed. They will organise an escape, pretend that he has fled, but he will be eliminated.”⁷⁹ Similarly, [REDACTED] explained that “[i]f Maxime returns to CAR, Touadéra will put him in prison and kill him. Even if he is in detention, they will torture him, poison him and kill him. He cannot be in detention in Bangui.”⁸⁰ This is again corroborated by [REDACTED], who confirmed that “Mr. Mokom is in danger if he returns to the CAR, especially if a judgment has been rendered against him. He risks death in the CAR. The best way for Touadéra to sleep well is for Mr. Mokom to physically disappear. If he was in prison, he would be poisoned. If he were free, the authorities would stage a scene and say that he was the victim of a robbery/incident, while he would be murdered by the *Requins*.”⁸¹

36. [REDACTED]:⁸²

[REDACTED].

37. [REDACTED].⁸³ [REDACTED].⁸⁴ [REDACTED].⁸⁵

38. **Substandard Conditions of Detention:** Conditions of detention in the CAR fail to comply with the minimum standard rules for the treatment of detainees.⁸⁶ Prisons are overcrowded, and detention facilities do not meet international standards.⁸⁷ At Ngaragba prison, for example, the occupancy rate exceeded 230% in February 2022. This predicament results from extended periods of pre-trial detention due to the flawed and flailing judicial system.⁸⁸ P-0405's recent treatment indicates that Mr Mokom could face worse conditions than those detained in

⁷⁸ *Ibid.*, para.17 (unofficial English translation).

⁷⁹ Annex D, para.19 (unofficial English translation).

⁸⁰ Annex B, para.19 (unofficial English translation).

⁸¹ Annex F, para.26 (unofficial English translation).

⁸² Annex L.

⁸³ Annex K, p.13 (unofficial English translation).

⁸⁴ Annex J, p.8.

⁸⁵ Annex H, para.52.

⁸⁶ [Human rights Quarterly Brief on the Central African Republic](#), MINUSCA, 28 July 2023, p.3.

⁸⁷ [Information pack for British nationals arrested or detained in Central African Republic](#), UK Government, 21 June 2022; [Country Reports on Human Rights Practices for 2010](#), United States Department of State, 8 April 2011: “Prison conditions were extremely harsh and, in some cases, life threatening”.

⁸⁸ Yao Agbetse, [Human rights situation in the Central African Republic: Report of the Independent Expert on the situation of human rights in the Central African Republic](#), Human Rights Council, A/HRC/51/59, 22 August 2022, para.80.

designated prisons, being illegally held in an unofficial location, sleeping on a floor in restraints and deprived of food and medical care.⁸⁹

39. **Persecution on the basis of race:** The UNHCR Handbook provides that race “has to be understood in its widest sense to include all kinds of ethnic groups that are referred to as ‘races’ in common usage”.⁹⁰ The Handbook specifies that “[d]iscrimination for reasons of race has found world-wide condemnation as one of the most striking violations of human rights.”⁹¹ The UNHCR recognises that there may be situations where, due to particular circumstances affecting the group, belonging to a certain racial group will in itself be sufficient ground to fear persecution.⁹²

40. Mr Mokom is Gbaya. As set out above, the Gbaya ethnic group is particularly targeted as being associated with Bozizé, and therefore an opponent of the Touadéra government.⁹³ Witnesses describe members of the Gbaya group as currently being “systematically hunted down”, and that “[w]e are not talking about threats: either they kill you, or you are with them, there is no alternative.”⁹⁴ Mr Mokom is a prominent member of the Gbaya community, and directly related to the cited source of the persecution of this ethnic group, François Bozizé.

41. **Persecution on the basis of political opinion.** This form of persecution implies that the individual holds an opinion that either has been expressed or has come to the notice of the authorities. Measures frequently take the form of sanctions for alleged criminal acts against the ruling power.⁹⁵ Charging an individual with an offence may, depending upon the circumstances, serve as a guise for punishing them for their political beliefs or the expression thereof. Additionally, there could be grounds to believe that a person with political affiliations might face excessive or arbitrary punishment for the purported offence. Such excessive or arbitrary punishment will amount to persecution.⁹⁶ The UNHCR also considers that “the mere fact of refusing to avail himself of the protection of his Government, or a refusal to return, may disclose the [individual]’s true state of mind and give rise to fear of persecution.”⁹⁷ Mr Mokom fears persecution due to political opinions, which are known by the authorities. The *in absentia*

⁸⁹ Annex I, P-0405’s Statement of 7 December 2023, Responses 16 and 17, p. 3, Report of 28 November 2023, p. 2.

⁹⁰ Office of the United Nations High Commissioner for Refugees, [Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees](#), Re-issued in February 2019, para.68.

⁹¹ *Id.*

⁹² *Id.*, para.70.

⁹³ Annex E, para.12.

⁹⁴ Annex F, paras.28, 30.

⁹⁵ *Id.*, para.81.

⁹⁶ *Id.*, para.85.

⁹⁷ *Id.*, para.83.

judgment accuses him of high treason, demonstrating the political aspect of Touadéra's pursuit against him.

42. The above circumstances, taken together, leave no doubt that Mr Mokom is a protected person under the Geneva Convention of 28 July 1951 ('Refugee Convention'). Under Article 1(A)(2) of the Refugee Convention and the Protocol signed in New York on 31 January 1967, a refugee is any person who "owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country". As such, Mr Mokom benefits from the right to *non-refoulement* under Article 33 of the Refugee Convention as well as Article 3 of the Convention against Torture, now a long-standing *jus cogens* and *erga omnes* rule under customary international law, which binds the Pre-Trial Chamber, and more generally, this Court.

43. The *Katanga* Trial Chamber previously examined the question of *non-refoulement*, in the context of detained witnesses, and concluded that: "as an international organisation with a legal personality, the Court cannot disregard the customary rule of *non-refoulement*. However, since it does not possess any territory, it is unable to implement the principle within its ordinary meaning, and hence is unlikely to maintain long-term jurisdiction over persons who are at risk of persecution or torture if they return to their country of origin. In the Chamber's view, only a State which possesses territory is actually able to apply the *non-refoulement* rule."⁹⁸

44. This reasoning does not clear the way for Mr Mokom's return to the CAR. *Non-refoulement* is an obligation owed to an individual "not to return" them. It does not give rise to obligation on the ICC to ensure that Mr Mokom can remain within the (non-existent) territory of the ICC. While asylum undoubtedly requires a territory in which the individual may stay, the principle of *non-refoulement* may be upheld simply by not "sending back". It cannot be the case that the Court has the authority to send people to any state in the world, without a commensurate ability to first assess and decide if the person will be safe in that state, or whether they face an immediate mortal danger. The two must necessarily go hand in hand. To this end, the obligation in Rule 185(1) to consult with the person in question, must mean something. This requirement cannot be considered satisfied where a Pre-Trial Chamber goes through the motions of consulting

⁹⁸ *Prosecutor v. Katanga and Ngudjolo Chui*, [ICC-01/04-01/07-3003-t-ENG](#), Decision on an Amicus Curiae application and on the 'Requête tendant à obtenir présentations des témoins DRC-D02-P-0350, DRC-D02-P-0236, DRC-D02-P-0228 aux autorités néerlandaises aux fins d'asile' (Arts. 68 and 93(7) of the Statute)", 9 June 2011, para.64.

with the person, who provides irrefutable evidence that he will be tortured and/or killed if returned, and this is then ignored. Nor would this be consistent with Article 21(3) of the Statute, which requires that Rule 185 be interpreted in a manner “consistent with internationally recognized human rights”, or Article 57(3)(c) which anticipates that the Pre-Trial Chamber will act “for the protection of persons who have been arrested or appeared in response to a summons”.

45. The Defence has asked that the present submissions be notified to the relevant Central African authorities. In the event that, despite the above submissions, the Pre-Trial Chamber is inclined to order the forced rendition of Mr Mokom to the CAR, the Defence asks that it first invites the Central African authorities to appear before the Pre-Trial Chamber in an oral hearing to respond to the Defence submissions and answer any questions the Pre-Trial Chamber may have concerning the information contained herein.

(ii) Alternatives to the Central African Republic

[REDACTED]

46. Mr Mokom never chose to come to The Netherlands. He was arrested and brought to The Netherlands against his will. He has no desire to settle in The Netherlands, where neither he or his family members speak the language, nor have any connection to the culture.

47. By contrast, Mr Mokom has family residing in both [REDACTED]. Mr Mokom would willingly be re-settled in either of these two countries. [REDACTED].⁹⁹ Similarly, he would also willingly be resettled [REDACTED], and is waiting for responses. The Defence is pursuing all informal avenues available in these States, and has also written to the Assembly of States Parties President, asking her to issue an urgent call to these States [REDACTED] in the context of the 2023 ASP in New York.¹⁰⁰

48. [REDACTED] would undoubtedly be aided by a formal recognition that he is a protected person under the Refugee Convention. This Pre-Trial Chamber is therefore requested, on the basis of the evidence set out above, to declare that Mr Mokom is a refugee, and a protected person within the meaning of the Refugee Convention. Although the Court cannot offer permanent shelter or relocation, its determination and clarification that Mr Mokom is a protected person will

⁹⁹ Annex P.

¹⁰⁰ Annex N.

facilitate the identification of a State(s) which are obliged or agree to receive him, and will provide a more effective and likely path to his resettlement in a safe third State.

49. When considering Mr Mokom's circumstances, it is no surprise that a permanent resettlement cannot be arranged overnight. However, [REDACTED]. Mr Mokom does not have an adversary in this case. The evidence presented in this filing is uncontested. In extradition matters, when a State seeks to have an individual extradited from another State, the claiming State appears in Court, presents evidence, answers questions and puts forward arguments in support of the extradition. Importantly, no such efforts have been made by the CAR authorities, [REDACTED].

50. Mr Mokom is fully aware of the challenges and difficulties faced by the Court in organising his transfer to a safe third State. However, these challenges should not become a pretext for taking unnecessary risks regarding his wellbeing and physical safety. Importantly, a temporary solution has been presented. [REDACTED], and allows the Pre-Trial Chamber ample time to properly assess the risks in sending Mr Mokom back to the CAR. [REDACTED]. Mr Mokom therefore asks the Pre-Trial Chamber to order the Registrar to seek [REDACTED].

The Netherlands

51. In the event that the Pre-Trial Chamber decides to give a positive answer in response to [REDACTED], and is (i) minded to send Mr Mokom to the CAR, and (ii) not inclined to allow Mr Mokom [REDACTED].

52. [REDACTED].

Republic of Chad

53. Mr Mokom was arrested in Chad. He fled to this country in December 2020, and enjoyed quasi-refugee status under the terms of the Angola *feuille de route*, discussed above. On this basis, if this Pre-Trial Chamber is (i) minded to send Mr Mokom to the CAR, (ii) [REDACTED], and (iii) if Mr Mokom is prevented for any reason [REDACTED], including through his re-arrest and forced transfer as a detainee back to the CAR, he respectfully requests that the Pre-Trial Chamber return him instead to Chad, the country in which his interaction with the ICC began. It is his view that his chances of survival are greater in Chad than they are in the CAR.

VI. CONCLUSION

54. Since the withdrawal of the charges against him on 16 October 2023, Mr Mokom has been placed in a situation of unimaginable stress, fearing that he will be returned to the CAR where he will face life imprisonment with hard labour at best, or torture and/or death at worst. [REDACTED].¹⁰¹ As such, and on the basis of the above submissions, the Defence requests that the Pre-Trial Chamber:

SUMMON P-0405 to appear as a witness before the Pre Trial Chamber;

DECLARE that Mr Mokom cannot be returned to the CAR;

DECLARE that Mr Mokom is a protected person facing persecution in the CAR under the Geneva Convention Relating to the Status of Refugees of 28 July 1951;

INFORM [REDACTED] that Mr Mokom is facing persecution, torture and/or death should he be returned to CAR;

SEEK cooperation [REDACTED];

SEEK [REDACTED]; and

ORDER the Registry to [REDACTED].

In the alternative, should the Pre-Trial Chamber determine that Mr Mokom's should be transferred to the CAR, the Pre-Trial Chamber is requested to:

ORDER the Central African authorities to appear and respond to the present submissions and answer questions from the Pre-Trial Chamber and the Defence;

STAY any order for Mr Mokom's removal to the CAR, including any request for the Host State's cooperation in executing such order, until the time frames for seeking leave to appeal have been exhausted; and

STAY any order for removal to the CAR, and any ancillary orders to the Host State to execute this removal, until the Committee Against Torture ('CAT') has had the opportunity to issue interim measures and assess Mr Mokom's risk of torture should removal be executed by the Host State.

¹⁰¹ Annex H, para.53.

Respectfully submitted,



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The Hague, The Netherlands,
Friday, December 08, 2023