

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 13 May 2024

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

**IN THE CASE OF
THE PROSECUTOR V. MAXIME JEOFFROY ELI MOKOM GAWAKA**

Public

Public redacted version of "Registry's submissions pursuant to Pre-Trial Chamber II order dated 28 November 2023", ICC-01/14-01/22-305-Conf-Exp, 1 December 2023

Source: The Registry

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

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Unrepresented victims

**Unrepresented Applicants
(Participation/Reparation)**

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**Victims Participation and Reparations
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Other

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I. Introduction

1. Following an order by way of email from the Chamber, the Registry hereby provides its submissions on the “reasons justifying its decision to finance the [Defence] expert reports” (“Order”).¹

II. Procedural history

2. On 17 October 2023, Pre-Trial Chamber II (“Chamber”) issued “Order in relation to the Prosecution’s ‘Notice of Withdrawal of the Charges against Maxime Jeoffroy Eli Mokom Gawaka’”, in which the Chamber *inter alia*, ordered the Registry to “immediately make all necessary arrangements” for Mr Mokom’s transfer to a State “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”, citing Rule 185(1) of the ICC Rules of Procedure and Evidence.²

3. On 23 October 2023, the Defence for Mr Mokom (“Defence”) filed a “Defence Urgent Request” (“23 October 2023 Urgent Request”) requesting the Chamber to “afford Mr Mokom the opportunity to be heard [...], pursuant to Rule 185(1) before any transfer is ordered [...]”.³

4. On 24 October 2023, the Defence requested the Registry to [REDACTED] (“24 October 2023 Request”).⁴

5. On 1 November 2023, the Registry denied the 24 October 2023 Request [REDACTED]:

[REDACTED]

¹ Email from Pre-Trial Chamber II to the Registry on 28 November 2023 at 16.32 [REDACTED].

² Pre-Trial Chamber II, “Order in relation to the Prosecution’s ‘Notice of Withdrawal of the Charges against Maxime Jeoffroy Eli Mokom Gawaka’”, dated 17 October 2023 and registered on 19 October 2023, ICC-01/14-01/22-276, para. 10.

³ Mokom Defence, “Defence Urgent Request”, dated 23 October 2023 and registered on 24 October 2023, ICC-01/14-01/22-278, p. 6.

⁴ Email from the Defence to Registry on 24 October 2023 at 10.53.

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6. On 27 October 2023, further to the 23 October 2023 Urgent Request, the Chamber informed the Defence by way of email that “Mr Mokom will be afforded an opportunity to express his views in due course”.⁵

7. On 22 November 2023, the Chamber instructed Mr Mokom to provide views under rule 185(1) of the Rules of Procedure and Evidence (“Rules”) “regarding any matter in connection with his transfer to a State referred to in that provision by no later than 30 November 2023” (“Rule 185(1) Instruction”).⁶ Also in same, the Chamber determine that it “does not consider it necessary to further address the [23 October 2023 Urgent] Request”.⁷

8. [REDACTED].⁸

9. On 24 November 2023, the Defence requested the Chamber to extend the time limit for its views under rule 185(1) of the Rules until 19 January 2024 on the basis, *inter alia*, that:

Publicly available material, evidence from witnesses, and expert opinions will be necessary to support any view on the part of Mr Mokom that return to the CAR would expose him to, for example, credible and unacceptable risks of torture, ill-treatment, unfair trial, harsh detention conditions and persecution.

However, the Defence is still waiting for responses to RFAs sent on its behalf by the ICC Registry to the [REDACTED]. The Defence is also waiting for responses to the requests it has sent to [REDACTED].

The Defence has also received approval from CSS on 23 November 2023 to engage and fund two experts, who are preparing reports that are directly relevant to the questions of Mr Mokom’s transfer from the Host State. [...] The Defence is also seeking the appointment of a third expert, [REDACTED] [...].⁹

⁵ Pre-Trial Chamber II, “Order to provide views under rule 185(1) of the Rules of Procedure and Evidence”, 22 November 2023, ICC-01/14-01/22-295, para. 3.

⁶ Pre-Trial Chamber II, “Order to provide views under rule 185(1) of the Rules of Procedure and Evidence”, 22 November 2023, ICC-01/14-01/22-295.

⁷ Pre-Trial Chamber II, “Order to provide views under rule 185(1) of the Rules of Procedure and Evidence”, 22 November 2023, ICC-01/14-01/22-295, para. 3.

⁸ [REDACTED].

⁹ *Ibid.*

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10. On 28 November 2023, the Chamber issued the “Decision on ‘Defence Request for Variation of Time Limit’” (“28 November 2023 Decision”).¹⁰ In the 28 November 2023 Decision, the Chamber ruled that [REDACTED].¹¹

III. Applicable Law

11. The following provisions are of particular relevance to the present submissions: rule 20(2) and 185(1) of the Rules and regulation 83(1) of the RoC.

IV. Submissions

12. On 6 November 2023, the Defence enquired with the Registry as to the modalities of appointing experts [REDACTED].¹² On 7 November 2023, the CSS provided the relevant information regarding the appointment of experts (i.e. available funds, documentation required and applicable procedure).¹³

13. On 10, 14 and 22 November 2023, the Defence requested the appointment of three different experts for the purpose of its Rule 185(1) submissions; [REDACTED]. The Defence provided the following details for the appointment of experts:

[REDACTED]

14. On 23 November 2023, the CSS informed the Defence [REDACTED].¹⁴

15. On the same day, 23 November 2023, the Defence requested the Registry’s reconsideration of its decision [REDACTED].¹⁵

¹⁰ Pre-Trial Chamber II, “Decision on ‘Defence Request for Variation of Time Limit’”, 28 November 2023, ICC-01/14-01/22-302-Conf-Exp (“28 November 2023 Decision”).

¹¹ 28 November 2023 Decision, [REDACTED].

¹² [REDACTED].

¹³ [REDACTED].

¹⁴ [REDACTED].

¹⁵ [REDACTED].

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16. On 1 December 2023, the CSS informed the Defence that “following the [28 November 2023 Decision], [REDACTED] the CSS “cannot entertain [the] request for reconsideration”.¹⁶

17. As to the reasons justifying the Registry’s decision [REDACTED], the Registry, in addition to the foregoing, refers to rule 20(2) of the Rules, which provides that “[t]he Registrar shall carry out the functions stipulated in sub-rule 1, including the financial administration of the Registry, in such a manner as to ensure the professional independence of defence counsel.” In line with this obligation, the Registry cannot interfere with the strategy of a Defence team (i.e. choice of expert, scope of expertise required, etc.) and has no involvement in the decision as to the specific use of resources, which is the Counsel’s principal prerogative. The Registry merely checks whether there exists a legal basis for the use of legal aid funds.

18. Furthermore, regulation 83(1) of the RoC stipulates that “[l]egal assistance paid by the Court shall cover all costs reasonably necessary as determined by the Registrar for an effective and efficient defence”. Pursuant to this provision, the Registrar enjoys a relatively wide margin of discretion in relation to the management of the legal aid system.¹⁷

¹⁶ [REDACTED].

¹⁷ Trial Chamber VII, “Decision on the Defence Application for Judicial Review of the Decision of the Registrar on the Allocation of Resources during the Trial Phase”, 21 May 2015, ICC-01/05-01/13-955, para. 33; Pre-Trial Chamber I, “Decision on the Defence Request for Review of the Registrar’s Decision on Legal Aid”, 24 August 2015, ICC-01/11-01/11-613, para. 25; Trial Chamber VI, “Reasons for Review of Registrar’s Decision on Defence Resources”, 29 October 2014, ICC-01/04-02/06-389, para. 28. Appeals Chamber, “Decision on Mr Ngudjolo’s request for review of the Registrar’s decision regarding the level of remuneration during the appeal phase and reimbursement of fees”, 11 February 2014, ICC-01/04-02/12-159, para. 22 and fn. 40.

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19. The Registry, on the basis of the foregoing, has authorised the Defence to use the available resources for two expert reports as above.



Marc Dubuisson, Director, Division of Judicial Services
on behalf of
Osvaldo Zavala Giler, Registrar

Dated this 13 May 2024

At The Hague, The Netherlands