

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

No.: ICC-01/14-01/22  
Date: 13 September 2024

**ARTICLE 85 CHAMBER**

**Before:** Judge Miatta Maria Samba, Presiding Judge  
Judge Keebong Paek  
Judge Beti Hohler

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC II  
IN THE CASE OF THE PROSECUTOR v. MAXIME JOFFROY ELI  
MOKOM GAWAKA**

**Public**  
**Prosecution's response to the Chamber's request for further information**

**With under seal, *ex parte*, only available to the Prosecution,  
Annex**

**Source:** Office of the Prosecutor

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

*Court to:*

**The Office of the Prosecutor**

Karim A. A. Khan KC  
Mame Mandiaye Niang  
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**Counsel for Maxime Mokom**

Philippe Larochelle

**Legal Representatives of the Victims**

**Legal Representatives of the Applicants**

**Unrepresented Victims**

**Unrepresented Applicants  
(Participation/Reparation)**

**The Office of Public Counsel for  
Victims**

**The Office of Public Counsel for the  
Defence**

**States Representatives**

**Amicus Curiae**

**REGISTRY**

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**Registrar**

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**Counsel Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Other**

**Victims Participation and Reparations  
Section**

## Introduction

1. The Prosecution files this Response to the Chamber's question about the Prosecutor's decision to withdraw the charges against Maxime Mokom. In particular, noting the Prosecution's submission that the decision to withdraw the charges was based on the unavailability of several critical witnesses and its assessment that investigative efforts to supplement this evidence had been exhausted, the Chamber instructed the Prosecution "to provide information on which witnesses became unavailable and when, as well as supporting material."<sup>1</sup>

## Classification

2. This Response is filed publicly and with an Annex classified as under seal, *ex parte* pursuant to regulation 23bis(2) of the Regulations of the Court as it includes highly sensitive information pertaining to the Prosecution's witnesses, its investigative operations as well as its internal work product and analysis.<sup>2</sup>

## Submissions

3. The Prosecutor decided to withdraw charges against Maxime Mokom because he determined that there was no longer a reasonable prospect of conviction at trial.<sup>3</sup> As stated in the withdrawal notice, the Prosecutor's decision was made "having considered the totality of the evidence, in light of changed circumstances regarding the state of the evidence". In particular, that "it ha[d] become clear that several critical witnesses [were] unavailable to testify, and that ongoing investigative efforts [were] unlikely to result in new evidence of comparable probative value. Among the unavailable witnesses are insider witnesses who provide critical information regarding the charges against Mr. Mokom."<sup>4</sup>

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<sup>1</sup> Email from the Article 85 Chamber received on 10 September 2024 at 12:08hrs. *See also* ICC-01/14-01/22-T-009, p. 72, l.2-9; p. 74, l. 19-23; p. 80, l. 2-6.

<sup>2</sup> The Chamber noted that such information "may be provided on an *ex parte* basis to the Chamber, providing the factual and legal basis chosen for this classification in accordance with regulation 23bis of the Regulations of the Court." Email from the Article 85 Chamber received on 10 September 2024 at 12:08hrs.

<sup>3</sup> The Prosecutor applies the "reasonable prospect of conviction" test as a matter of policy to exercise his discretion to decide if a prosecution should be initiated or continue. *See* OTP Policy paper on case selection and prioritisation, 15 September 2016, paras. 23, 51, 53; OTP Policy on Situation Completion, 15 June 2021, para. 35.

<sup>4</sup> Notice of Withdrawal of all the Charges against Maxime Jeffrey Eli Mokom Gawaka, 16 October 2023, ICC-01/14-01/22-275, para. 3. *See also* paras. 1, 4-5.

4. While the Office of the Prosecutor's (OTP)'s internal investigative and prosecution strategies and analysis are protected under the legal framework of the Court (including article 42(1) of the Statute and rule 81(1) of the Rules of Procedure and Evidence), the Prosecution provides this response to best assist the Chamber on the question posed to the Prosecution.

5. To this end, a report prepared by Ms. Leonie von Braun— the OTP Senior Trial Lawyer in the *Mokom* case at the relevant time—is attached in the under seal, *ex parte* Annex. This report summarises the most significant information known about the unavailability of certain witnesses in the *Mokom* case at the time of the Prosecutor's decision to withdraw the charges.



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**Karim A. A. Khan KC, Prosecutor**

Dated this 13<sup>th</sup> day of September 2024  
At The Hague, the Netherlands