



Original: English

No. ICC-01/14-01/22

Date: 3 November 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

IN THE CASE OF

THE PROSECUTOR v. MAXIME JEOFFROY ELI MOKOM GAWAKA

Public

Decision on requests for leave to make submissions

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

The Office of the Prosecutor

Mr Karim A. A. Khan
Mr Mame Mandiaye Niang
Ms Leonie von Braun

Counsel for Mr Mokom

Mr Philippe Larochelle

Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparations**

The Office of Public Counsel for Victims

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

Mr Xavier-Jean Keïta
Ms Marie O'Leary

States Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Osvaldo Zavala Giler

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

PRE-TRIAL CHAMBER II of the International Criminal Court issues this ‘Decision on requests for leave to make submissions’.

1. On 17 October 2023, following the Prosecution’s ‘Notice of Withdrawal of the Charges against Maxime Jeoffroy Eli Mokom Gawaka’ (‘Mr Mokom’),¹ the Chamber terminated the proceedings against Mr Mokom, thereby, *inter alia*, (i) ordering Mr Mokom’s immediate release from the ICC Detention Centre; and (ii) instructing the Registry to make all necessary arrangements to transfer Mr Mokom to a State which is obliged to receive him or to another State (the ‘17 October 2023 Order’).²

2. On 23 October 2023, the Defence requested the Chamber to declare that it will afford Mr Mokom the opportunity to be heard through written submissions and/or an oral hearing before any transfer is ordered and allow Mr Mokom time to consult with lawyers in The Netherlands to have a full understanding of his options and rights (the ‘Defence Request’).³ The Chamber subsequently indicated that it will afford Mr Mokom the opportunity to express his views in due course.⁴

3. On 1 November 2023, the Chamber received, by way of a transmission filing, the ‘Request for leave to file submissions under Rule 103’ by the International Criminal Court Bar Association (the ‘ICCBA’ and the ‘ICCBA Request’) in relation to issues raised in the Defence Request.⁵ The ICCBA asserts that, in the event that the Chamber would grant leave, it would address: (i) why the Court’s texts must be interpreted so as to permit legal advice and representation in the event that a detained person faces a risk of persecution or torture upon return or deportation following detention by the ICC; (ii) the legal consequences of the possibility of a violation of the right to counsel during proceedings that have taken place within a State Party and their impact on rule 185 of the Rules of Procedure and Evidence (the ‘Rules’) regarding the release of a person

¹ 16 October 2023, ICC-01/14-01/22-275-Conf, confidential (reclassified as public pursuant to the Chamber’s order dated 19 October 2023).

² 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-Conf, confidential (reclassified as public pursuant to the Chamber’s order dated 19 October 2023).

³ Defence Urgent Request, ICC-01/14-01/22-278, public with public annex A and confidential annex B.

⁴ Email from the Chamber to the Defence, 27 October 2023, at 17:47.

⁵ Registry Transmission of a ‘Request for leave to file submissions under Rule 103’, ICC-01/14-01/22-282, public, with public annex.

from the custody of the Court; and (iii) the relevance of the defence rights under articles 55, 63 and 67 of the Rome Statute (the ‘Statute’) where national proceedings have failed to comply with them, and the Court’s proposed return of a person will result in the serving of a sentence as a result of such proceedings.

4. On 2 November 2023, the Office of the Public Counsel for the Defence (the ‘OCPD’) filed the ‘OPCD Request for Leave to Make Submissions in relation to the Defence Urgent Request’ (the ‘OPCD Request’) pursuant to regulation 77(4)(c) of the Regulations of the Court (the ‘Regulations’).⁶ The OPCD asserts that, if granted leave, it would submit that: (i) pursuant to rule 185(1) of the Rules, a person released from the custody of the Court other than upon completion of sentence is entitled to a meaningful opportunity to be heard prior to any transfer; (ii) the Chamber must assess whether Mr Mokom’s life or freedom would be threatened in the potential receiving States; and (iii) the applicable provisions should be read in conjunction with the duty of the Chamber to ‘provide for [...] the protection of persons who have been arrested or appeared in response to a summons’ under article 57(3)(c) of the Statute.

5. The Chamber notes that rule 103(1) of the Rules confers discretion on the Chamber to invite or grant leave to an *amicus curiae* to provide observations on any issue the Chamber deems desirable for the proper interpretation of the case. As determined previously, the Chamber will permit *amicus curiae* observations only on an exceptional basis.⁷ Similarly, the wording of regulation 77(4)(c) of the Regulations provides the Chamber with the discretion to instruct or grant leave to the OPCD to appear in respect of specific issues.

6. The Chamber recalls that, pursuant to the 17 October 2023 Order, the proceedings against Mr Mokom have been terminated and that the Chamber retains a residual jurisdiction. In this regard, the Chamber, pursuant to its discretion under rule 103 of the Rules and regulation 77(4)(c) of the Regulations, considers that the submissions proposed by the ICCBA and the OCPD are not necessary for the exercise of its functions in respect of the matter under consideration.

⁶ ICC-01/14-01/22-284, public.

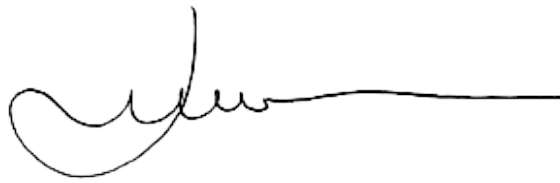
⁷ Pre-Trial Chamber II, *The Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman (‘Ali Kushayb’)*, Decision on victim applications for participation, legal representation, leave to appeal and *amicus curiae* requests, 20 May 2021, ICC-02/05-01/20-398, public, para. 71.

FOR THESE REASONS, THE CHAMBER HEREBY

REJECTS the ICCBA Request; and

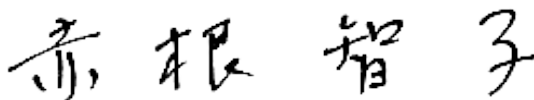
REJECTS the OPCD Request.

Done in English. A French translation will follow. The English version remains authoritative.



Judge Rosario Salvatore Aitala

Presiding



Judge Tomoko Akane



Judge Sergio Gerardo

Ugalde Godínez

Dated this Friday, 3 November 2023.

At The Hague, The Netherlands.