



Original: English

**No. ICC-01/14-01/22
Date: 10 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

Public Redacted Version of ‘Decision on “Defence Urgent Request for an Order Concerning the Arrest of P-0405”’

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**

States Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Osvaldo Zavala Giler

Counsel Support Section

Victims and Witnesses Unit

Mr Nigel Verrill

Detention Section

**Victims Participation and Reparations
Section**

Other

PRE-TRIAL CHAMBER II of the International Criminal Court issues this ‘Decision on “Defence Urgent Request for an Order Concerning the Arrest of P-0405”’.

1. On 17 October 2023, following the Prosecution’s ‘Notice of Withdrawal of the Charges against Maxime Jeoffroy Eli Mokom Gawaka’ (‘Mr Mokom’) dated 16 October 2023,¹ the Chamber terminated the proceedings against Mr Mokom.²
2. On 3 November 2023, the Defence submitted the ‘Defence Urgent Request for an Order Concerning the Arrest of P-0405’ (the ‘Request’).³ According to the Defence, P-0405, who was initially a Prosecution witness and subsequently provided a statement to the Defence, indicated that he expressed fear for his life arising out of his association with the Defence. The Defence specifies that it sought protective measures for P-0405 from the Victims and Witnesses Unit (the ‘VWU’) in August 2023. The Defence adds that, following P-0405’s arrest in Bangui on [REDACTED], it has reason to believe that P-0405 was arrested as a result of having given a statement to the Defence and that P-0405 is in grave danger. Furthermore, the Defence indicates that, after liaising with the Prosecution and the VWU, the VWU responded as follows on 1 November 2023: ‘This witness is indeed an OTP witness but not a trial witness and therefore not known to the [VWU] as such and before we could move forward with your referral the case was dropped. This is not within the [VWU’s] mandate [...]’. The Defence avers that the VWU did not indicate so when protective measures were requested in August 2023 and, in addition, that the VWU’s position is not consistent with the Court’s statutory framework, the VWU’s own statements on the scope of its mandate and role, or basic principles of equality of arms and witness protection. As a result, the Defence requests the Chamber to order the VWU, with the assistance of the Prosecution as considered appropriate, to find out information about P-0405 by no later than 10 November 2023.

¹ 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 ICC-01/14-01/22-287-Conf, together with Annexes A-D, confidential (a public redacted version was submitted on the same day, ICC-01/14-01/22-287-Red).

3. On 8 November 2023, following an order by the Chamber,⁴ the Prosecution⁵ and the VWU⁶ provided observations on the Request. The Prosecution avers that: (i) [REDACTED]; (ii) the Court's responsibility to protect victims and witnesses under article 68(1) of the Rome Statute (the 'Statute') does not expire at the end of the proceedings; and (iii) the VWU should assess the matter submitted by the Defence in a timely manner. The VWU asserts that: (i) [REDACTED]; (ii) [REDACTED]; (iii) [REDACTED] and (iv) [REDACTED].

4. The Chamber, irrespective of any issues regarding the Defence's standing to raise the matter under consideration at this stage, notes article 43(6) of the Statute, which stipulates, in the relevant part, that the VWU 'shall provide, in consultation with the Office of the Prosecutor, protective measures and security arrangements [...] for witnesses [...]', as well as rules 16 to 18 of the Rules of Procedure and Evidence (the 'Rules'). These provisions do not limit the functions of the VWU to a particular stage of the proceedings before the Court. In addition, under rule 18(b) of the Rules, the VWU shall 'act impartially when cooperating with all parties'. On this basis, the VWU continues to bear responsibility in respect of issues regarding the security of witnesses having interacted with the Defence, notwithstanding the withdrawal of the charges against Mr Mokom by the Prosecution. This is especially so in view of the fact that the Defence requested protective measures for P-0405 prior to the Prosecution's withdrawal of the charges. Whether or not [REDACTED] is immaterial in this regard. Any issues arising from [REDACTED] should have been settled by the VWU in a timely manner and cannot be raised subsequently to negate its responsibilities.

5. Accordingly, the VWU shall forthwith take measures to acquire information on P-0405. In doing so, the VWU shall pay due regard to the pressing nature of the information regarding P-0405 contained in the Request. As to [REDACTED], the Chamber is of the view that it is for the VWU to, in keeping with its responsibilities,

⁴ Email from the Chamber to the Registry and Prosecution, 6 November 2023, at 14:15.

⁵ Prosecution's Response to Defence Urgent Request for an Order regarding P-0405, ICC-01/14-01/22-288-Conf, confidential (a public redacted version was submitted on the same day, ICC-01/14-01/22-288-Red).

⁶ Registry's Observations on the "Defence Urgent Request for an Order Concerning the Arrest of P-0405" (ICC-01/14-01/22-287-Conf), ICC-01/14-01/22-289-Conf-Exp, confidential and *ex parte*, only available to the Registry (a confidential redacted version, *ex parte*, only available to the Registry and Defence, ICC-01/14-01/22-289-Conf-Exp-Red, a confidential redacted version, ICC-01/14-01/22-289-Conf-Red, and a public redacted version, ICC-01/14-01/22-289-Red, were submitted on 9 November 2023).

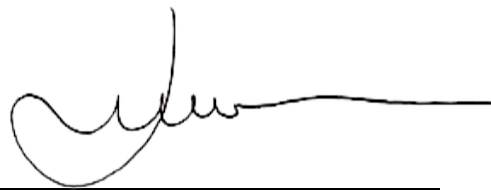
devise the appropriate strategy for its execution of the present order. The VWU shall report to the Chamber, if necessary by way of a confidential and *ex parte* filing with a confidential redacted version, by no later than 17 November 2023.

FOR THESE REASONS, THE CHAMBER HEREBY

ORDERS the VWU to forthwith take measures to acquire information on P-0405; and

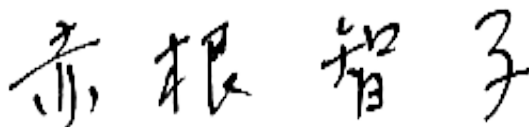
ORDERS the VWU to report to the Chamber by no later than 17 November 2023.

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, 10 November 2023.

At The Hague, The Netherlands.