

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **2 November 2023**

PRE-TRIAL CHAMBER II

Before: Judge Rosario Salvatore Aitala, Presiding
Judge Tomoko Akane
Judge Sergio Gerardo Ugalde Godínez

SITUATION IN CENTRAL AFRICAN REPUBLIC II

THE PROSECUTOR V. MAXIME JEOFFROY ELI MOKOM GAWAKA

Public

**OPCD Request for Leave to Make Submissions in relation to the Defence
Urgent Request**

Source: Office of Public Counsel for the Defence

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

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I. INTRODUCTION

1. Following the withdrawal of all charges against Mr Mokom,¹ the Pre-Trial Chamber (PTC) terminated the proceedings and ordered his immediate release, emphasizing that “this situation is not specifically addressed in the Statute”.² A *Defence Urgent Request* identifies their surprise and well-defines the current state of affairs as “unchartered territory”.³ The Office of Public Counsel for the Defence (OPCD) shares this reaction and has identified at least one area that could be clarified by judicial intervention to safeguard the rights of Mr Mokom, as well as all other future ICC defendants facing same, or similar, issue.
2. As such, the OPCD seeks leave to make submissions on procedures that should be in place, pursuant to Rule 185(1) of the ICC Rules of Procedure and Evidence (RPE), to preserve a right of remedy of persons released from the custody of the Court.

II. RELEVANT PROCEDURAL HISTORY

3. On 10 December 2018, the PTC issued a Warrant of Arrest under seal for Mr Mokom.⁴
4. On 14 March 2022, Mr Mokom was surrendered to the Court.⁵
5. On 22 March 2022, Mr Mokom made his first appearance before the Chamber.⁶
6. The Confirmation of Charges hearing was held from 22 to 24 August 2023.⁷

¹ See *Prosecutor v. Maxime Jeoffroy Eli Mokom Gawaka*, Notice of Withdrawal of the Charges against Maxime Jeoffroy Eli Mokom Gawaka, 16 October 2023, [ICC-01/14-01/22-275](#) (the ‘Notice’).

² See *Prosecutor v. Maxime Jeoffroy Eli Mokom Gawaka*, Order in relation to the Prosecution’s ‘Notice of Withdrawal of the Charges against Maxime Jeoffroy Eli Mokom Gawaka’, 17 October 2023, [ICC-01/14-01/22-276](#).

³ See *Prosecutor v. Maxime Jeoffroy Eli Mokom Gawaka*, Defence Urgent Request, ICC-01/14-01/22-278, 23 October 2023, para. 7 (the ‘Defence Urgent Request’).

⁴ See *Prosecutor v. Maxime Jeoffroy Eli Mokom Gawaka*, Public Redacted Version of ‘Warrant of Arrest for Maxime Jeoffroy Eli Mokom Gawaka’ (ICC-01/14-01/22-2-US-Exp), 22 March 2022, [ICC-01/14-01/22-2-Red2](#).

⁵ See Transcript of Hearing, [ICC-01/14-01/22-T-001-Red-ENG](#), 22 March 2022, p. 1.

⁶ See *Prosecutor v. Maxime Jeoffroy Eli Mokom Gawaka*, Order convening a hearing for the first appearance of Mr Mokom, 16 March 2022, [ICC-01/14-01/22-21](#).

7. On 21 September 2023, *in absentia* proceedings took place at the *Cour d'appel de Bangui* against Mr Mokom and 22 other co-accused.⁸ Mr Mokom and the 22 co-accused were convicted after deliberations by the *Cour d'appel de Bangui*.⁹
8. On 16 October 2023, the Prosecution submitted its Notice of Withdrawal of the Charges against Mr Mokom notifying the Chamber of the withdrawal of all charges pursuant to Article 61(4) of the Statute.¹⁰
9. On 17 October 2023, the PTC terminated the proceedings against Mr Mokom, ordered his immediate release and instructed the Registry to make all necessary arrangements to transfer Mr Mokom 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”.¹¹
10. On 23 October 2023, the Defence for Mr Mokom filed a Defence Urgent Request expressing Mr Mokom’s objection to be transferred to the Central African Republic and asking the PTC to afford Mr Mokom an opportunity to be heard pursuant to Rule 185(1) before any transfer is ordered.¹²

III. OPCD REQUEST FOR LEAVE TO APPEAR

11. As the rights and interests of all potential ICC defendants are at stake, the OPCD seeks leave to file observations pursuant to Regulation 77(4)(c) of the Regulations of the Court (RoC).
12. Regulation 77(4)(c) mandates that “[w]hen a conflict of interest does not arise” the OPCD may “[a]pppear[], on the instruction or with the leave of the

⁷ See ICC Press Release of 24 August 2022, [ICC concludes confirmation of charges hearing in Mokom case | International Criminal Court \(icc-cpi.int\)](https://www.icc-cpi.int/ICC-concludes-confirmation-of-charges-hearing-in-Mokom-case).

⁸ See Defence Urgent Request, para. 5 and Annex A.

⁹ See Defence Urgent Request, para. 6 and Annex A.

¹⁰ See *Prosecutor v. Maxime Jeoffroy Eli Mokom Gawaka*, Notice of Withdrawal of the Charges against Maxime Jeoffroy Eli Mokom Gawaka, 16 October 2023, [ICC-01/14-01/22-275](https://www.icc-cpi.int/ICC-01/14-01/22-275).

¹¹ See *Prosecutor v. Maxime Jeoffroy Eli Mokom Gawaka*, Order in relation to the Prosecution’s ‘Notice of Withdrawal of the Charges against Maxime Jeoffroy Eli Mokom Gawaka’, 17 October 2023, [ICC-01/14-01/22-276](https://www.icc-cpi.int/ICC-01/14-01/22-276).

¹² See Defence Urgent Request, paras 2, 11.

Chamber, in respect of specific issues". The exercise of this provision of the mandate has been framed as leave to file *amicus curiae* observations pursuant to Rule 103(1) of the RPE which provides that "[a]t any stage of the proceedings, a Chamber may, if it considers it desirable for the proper determination of the case, invite or grant leave to [...] an organization or person to submit, in writing or orally, any observation on any issue that the Chamber deems appropriate".¹³

IV. OPCD PROPOSED SUBMISSIONS

13. If granted leave, the OPCD would submit that, pursuant to Rule 185(1), a person released from the custody of the Court other than upon completion of sentence is entitled to a meaningful opportunity to be heard as a matter of right prior to any transfer by the Court to a receiving State. The OPCD submissions would propose a systematic procedure, policy or text-based, providing for an automatic hearing in Rule 185 proceedings affording legal certainty and ensuring respect and protection of rights.
14. In support, the OPCD would submit that the right to a hearing is enshrined in the plain text of Rule 185(1), which provides that:

*where a person surrendered to the Court is released from the custody of the Court because [...] the charges have not been confirmed under article 61 [...] or any other reason, 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 original surrendering State. [Emphasis added.]*

¹³ See, e.g., Appeals Chamber, *Situation in Afghanistan*, Decision on the participation of amici curiae, the Office of Public Counsel for the Defence and the cross-border victims, [ICC-02/17-97](#), 24 October 2019, para. 50; Pre-Trial Chamber I, *Situation in the State of Palestine*, Decision on Applications for Leave to File Observations Pursuant to Rule 103 of the Rules of Procedure and Evidence, [ICC-01/18-63](#), 20 February 2020, paras 55-56.

In the present case, the OPCD would submit that, accordingly, the PTC must grant such an opportunity to Mr Mokom and assess, for example, whether Mr Mokom's life or freedom would be threatened in the potential receiving States, considering especially the principle of *non-refoulement* as provided for by Article 33 of the 1951 Refugee Convention and Article 3 of the Convention Against Torture.

15. The OPCD's overall submissions will also reference Article 21 of the Statute, which ensures that application and interpretation of the law is "**consistent with internationally recognized human rights**, and be without any adverse distinction founded on grounds such as gender as defined in article 7, paragraph 3, age, race, colour, language, religion or belief, political or other opinion, national, ethnic or social origin, wealth, birth or other status".
16. Finally, the OPCD would additionally argue that these provisions should be read in conjunction with the duty of the Pre-Trial Chamber 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. RELIEF REQUESTED

17. For the foregoing, the OPCD respectfully requests that the Pre-Trial Chamber grant it leave to file observations as outlined above, specifically an elaboration of the human and fair trial rights triggered by Rule 185 and the right to remedy of ICC defendants in its cases.



Xavier-Jean Keïta
Principal Counsel of the OPCD

Dated this, 2nd day of November 2023
at The Hague, The Netherlands