

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: **ICC-01/14-01/22**
Date: **9 November 2022**

PRE-TRIAL CHAMBER II

Before: Judge Rosario Salvatore Aitala, Presiding Judge
Judge Antoine Kesia-Mbe Mindua
Judge Tomoko Akane

SITUATION IN THE CENTRAL AFRICAN REPUBLIC II

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

Public

**OPCV Request to submit observations on behalf of victims
on the issue of interim release**

Source: Office of Public Counsel for Victims

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

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I. INTRODUCTION

1. Counsel of the Office of Public Counsel for Victims (the “OPCV” or the “Office”), appointed to represent the collective interests of potential victims,¹ request Pre-Trial Chamber II (the “Chamber”) leave, should Mr Mokom file an application for interim release, to submit observations on behalf of victims having communicated with the Court in the case.

2. Counsel recall that rule 119(3) of the Rules of Procedure and Evidence (the “Rules”) expressly provides that the Chamber “*shall seek the views of the victims*” before “*imposing or amending any conditions restricting liberty*”. In fact, the constant practice of the Court has recognised that the issue of a possible release of a suspect or accused affects the personal interests of the victims and the latter have constantly been invited to submit observations in this regard.

II. PROCEDURAL BACKGROUND

3. On 14 March 2022, Mr Mokom was surrendered to the Court.

4. On 7 November 2022, the Chamber rendered the “Order to Mr Mokom to provide submissions on interim release” instructing the Duty Counsel to submit by 14 November 2022 any application for interim release and the Prosecution to respond by 18 November 2022 (the “Order”).²

¹ See the “Order on the conduct of the confirmation of charges proceedings” (Pre-Trial Chamber II), No. [ICC-01/14-01/22-62](#), 27 June 2022, par. 45-46.

² See the “Order to Mr Mokom to provide submissions on interim release” (Pre-Trial Chamber II), No. [ICC-01/14-01/22-105](#), 7 November 2022 (the “Order”).

III. SUBMISSIONS

5. In the Order, the Chamber invited Mr Mokom, if he wishes, to apply for interim release pursuant to article 60(2) of the Rome Statute (the “Statute”) by 14 November 2022, and the Prosecution to respond to such application by 18 November 2022.³

6. The Chamber specifically mentioned that such an application would have to include “*submissions as to whether or not any conditions restricting liberty should be imposed under rule 119 of the Rules*”.⁴ Moreover, the Chamber, acknowledging that rule 119(3) of the Rules requires “*to seek the views of [...] any relevant State*”, instructed the Duty Counsel – in the interest of the expeditiousness of the proceedings - to liaise with the Registry should Mr Mokom ask to be released in a certain State.⁵

7. Counsel note that rule 119(3) of the Rules also indicates that the Chamber “*shall seek the views of [...] victims that have communicated with the Court in [the] case*” “*before imposing or amending any conditions restricting liberty*”. Consequently, Counsel respectfully request, in the event that Mr Mokom decide to apply for interim release, to submit observations on behalf of the victims whose collective interests they represent as per appointment by the Chamber.

8. In this regard, Counsel recall that, in the practice of the Court, victims have been regularly invited to submit observations on matters related to the detention of a

³ *Idem*, p. 7.

⁴ *Idem*, para. 12.

⁵ *Idem*, para. 13.

suspect or accused.⁶ Indeed, Chambers have consistently considered that the issue of a possible release of a suspect or accused affects the personal interests of the victims.⁷

9. Counsel also underline that, depending on which State Mr Mokom will eventually ask to be released, it is important for the Chamber to hear the victims' position in the matter. In this regard, should the suspect request to be released in the

⁶ See e.g. the "Decision requesting new submissions for purposes of Article 60(3) of the Statute" (Trial Chamber I), No. [ICC-02/11-01/15-993](#), 20 July 2017, para. 3; the "Decision on the Prosecution's request for suspensive effect of her appeal under article 81(3)(c)(ii) of the Statute and directions on the conduct of the appeal proceedings" (Appeals Chamber), No. [ICC-02/11-01/15-1243 OA14](#), 18 January 2019, paras. 2, 24; the "Common Legal Representatives' Joint Response to the 'Yekatom Defence Application for Interim Release'", No. [ICC-01/14-01/18-450](#), 16 March 2020; the "Public Redacted Version of 'Common Legal Representatives' Joint Response to the 'Second Yekatom Defence Motion for Interim Release'" (ICC-01/14-01/18-616-Conf)", No. [ICC-01/14-01/18-616-Red](#), 9 September 2020; the "Victims' observations on review of the pre-trial detention of Mr Ali Muhammad Ali Abd-Al-Rahman ('ALI KUSHAYB')", No. [ICC-02/05-01/20-420](#), 11 June 2021; the "Redacted version of 'Response to the 'Requête de la Défense visant à ce que soit ordonnée la mise en liberté provisoire de Laurent Gbagbo'" (ICC-02/11-01/15-1130-Conf)", ICC-02/11-01/15-1133-Conf, 22 February 2018", No. [ICC-02/11-01/15-1133-Red](#), 19 June 2018; the "Public redacted version of 'New Submissions for the purpose of article 60(3) of the Statute pursuant to Decision ICC-02/11-01/15-993'", No. [ICC-02/11-01/15-1011-Red](#), 30 January 2018; the "Response to the 'Prosecution's Document in Support of Appeal pursuant to Article 81(3)(c)(ii) of the Statute'", No. [ICC-02/11-01/15-1246](#), 29 January 2019; the "Observations of the Common Legal Representative of victims on the periodic review of Mr. Gbagbo's detention", No. [ICC-02/11-01/11-662](#), 27 June 2014; the "Victims' Joint Response to the 'Defence Request for Conditional Release, or in the Alternative, the Restoration of Mr Ongwen's Communication Privileges'", No. [ICC-02/04-01/15-484](#), 27 June 2016.

⁷ See e.g. the "Seventh decision on the review of Mr Laurent Gbagbo's detention pursuant to Article 60(3) of the Statute" (Trial Chamber I), No. [ICC-02/11-01/11-718-Red](#), 1 November 2014, paras. 67-68 ("*[t]he Chamber further notes that it has been previously considered at this Court that victims' personal interests are affected by decisions on detention*"); the "Decision on the application by victims for participation in the appeal" (Appeals Chamber), No. [ICC-02/11-01/11-491](#), 27 August 2013, para. 12 ("*the Appeals Chamber has previously held that where the underlying issue on appeal was whether the accused should be granted interim release, the issue affects a victim's personal interests*"); the Reasons for the "Decision on the Participation of Victims in the Appeal against the 'Decision on the Interim Release of Jean-Pierre Bemba Gombo and Convening Hearings with the Kingdom of Belgium, the Republic of Portugal, the Republic of France, the Federal Republic of Germany, the Italian Republic, and the Republic of South Africa'" (Appeals Chamber), No. [ICC-01/05-01/08-566](#), 20 October 2009, para. 17; the "Decision requesting observations on the 'Third Defence request for interim release'" (Pre-Trial Chamber I), No. [ICC-01/04-01/10-384](#), 19 August 2011, p. 4 ("*CONSIDERING that, pursuant to the Chamber's understanding of victims 'that have communicated with the Court' the Office of the Public Counsel for Victims ('OPCV') should also be afforded an opportunity to file observations regarding the Request for Interim Release on behalf of the unrepresented applicants in this case'*"). See also, *mutatis mutandis*, the "Judgment on the appeal of Mr Laurent Gbagbo against the decision of Trial Chamber I of 8 July 2015 entitled 'Ninth decision on the review of Mr Laurent Gbagbo's detention pursuant to Article 60(3) of the Statute'" (Appeals Chamber), No. [ICC-02/11-01/15-208](#), 8 September 2015, para. 86; the "Decision on the Participation of Victims in the Appeal against Trial Chamber I's Oral Decision of 15 July 2010 to Release Thomas Lubanga Dyilo" (Appeals Chamber), No. [ICC-01/04-01/06-2555 OA 17](#), 17 August 2010, para. 18.

Central African Republic, objective risks exist for the victims currently residing there in light of the extremely volatile security situation, and the diminished capacity of domestic authorities to provide security.⁸ However, such risks may also exist in other countries where Mr Mokom may ask to be released.

IV. CONCLUSION

10. For the foregoing reasons, should Mr Mokom decide to apply for interim release, Counsel respectfully request the Chamber leave to submit observations on behalf of the victims within the same deadline applicable to the Prosecution.

11. Should the Chamber grant the request, considering that most likely the application by Mr Mokom and relevant material will be filed on a confidential basis, for the expeditiousness of the proceedings, Counsel already respectfully request the Chamber to be granted access to all confidential documents related to said application.

12. Finally, in light of the deadlines already established, Counsel respectfully ask the Chamber to adjudicate the present request on an expeditious basis.



Dmytro Suprun



Paolina Massidda

Dated this 9th day of November 2022

At The Hague (The Netherlands)

⁸ See e.g. the “Public Redacted Version of “Request for Reconsideration regarding In-Court Protective Measures for Prosecution Witness P-1077”, ICC-01/14-01/18-1469-Conf-Red, 21 June 2022”, No. [ICC-01/14-01/18-1469-Red](#), 13 September 2022, paras. 8-10; the “Public redacted version of Decision on the Yekatom Defence Request for an Amendment of the Victim Application Procedure” (Trial Chamber V), No. [ICC-01/14-01/18-1586-Red](#), 27 September 2022.