

**Cour
Pénale
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**International
Criminal
Court**

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Date: 8 March 2023

PRE-TRIAL CHAMBER II

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

SITUATION IN THE CENTRAL AFRICAN REPUBLIC II

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

Public Document

**Public redacted version of
“Victims’ observations on the States’ responses regarding Mr Mokom’s interim
release”
(ICC-01/14-01/22-160-Conf)**

Source: Office of Public Counsel for Victims

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

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I. INTRODUCTION

1. Counsel of the Office of Public Counsel for Victims (the “OPCV”), appointed to represent the collective interests of potential victims,¹ hereby file their observations on the States’ responses regarding Mr Mokom’s interim release.

2. Counsel submit that, pending responses from all concerned States, and in the absence of the particulars of the conditions of Mr Mokom’s interim release, they are not in a position to present at this stage meaningful observations on the matter. They also contend that, in the absence of details about the suspect’s eventual release, any determination on his Application for interim release (the “Application”)² is premature. Therefore, Counsel request Pre-Trial Chamber II (the “Chamber”) to postpone the determination on the matter until the position of all concerned States will be known and clear conditions for an eventual interim release of Mr Mokom will be identified.

II. PROCEDURAL BACKGROUND

3. On 10 December 2018, the Chamber issued the warrant of arrest against Mr Mokom.³

4. On 14 March 2022, Mr Mokom was surrendered to the Court. Following his first appearance,⁴ the Chamber scheduled the confirmation of charges hearing to commence on 31 January 2023,⁵ later rescheduled for 22 August 2023.⁶

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, paras. 45-46.

² See the “Mr. Mokom’s Application for Interim Release pursuant to Order ICC-01/14-01/22-105”, No. ICC-01/14-01/22-110-Conf, 14 November 2022; A public redacted version was filed on 17 November 2022 as [No. ICC-01/14-01/22-110-Red](#) (the “Application”).

³ See the “Warrant of Arrest for Maxime Jeoffroy Eli Mokom Gawaka” (Pre-Trial Chamber II), ICC-01/14-01/22-2-US-Exp; public redacted version notified on 22 March 2022, No. ICC-01/14-01/22-2-Red2.

⁴ See the Transcript of the hearing held on 22 March 2022, No. ICC-01/14-01/22-T-001-CONF-ENG. A public redacted version was filed on 29 March 2022 as [No. ICC-01/14-01/22-T-001-Red-ENG](#).

⁵ See the “Order convening a hearing for the first appearance of Mr Mokom” (Pre-Trial Chamber II), [No. ICC-01/14-01/22-21](#), 16 March 2022.

⁶ See the “Decision setting the date for the confirmation of charges hearing” (Pre-Trial Chamber II), [No. ICC-01/14-01/22-151](#), 3 February 2023.

5. On 7 November 2022, the Chamber rendered the “Order to Mr Mokom to provide submissions on interim release”.⁷
6. On 14 November 2022, Mr Mokom filed an application for interim release (the “Application”).⁸
7. On 18 November 2022, the Prosecution filed its response to the Application.⁹
8. On 22 November 2022, Counsel filed their observations on the Application (the “OPCV Observations”).¹⁰
9. On 21 December 2022, the Registry submitted a report on its consultations with States on Mr Mokom’s interim release (the “First Report”),¹¹ followed by an addendum (the “Addendum Report”),¹² a second report (the “Second Report”) ¹³ and a third report (the “Third Report”).¹⁴

⁷ 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.

⁸ See the Application, *supra* note 2.

⁹ See the “Réponse de l’Accusation à ‘Mr. Mokom’s Application for Interim Release pursuant to Order ICC-01/14-01/22-105’”, No. ICC-01/14-01/22-112-Conf, 18 November 2022. A public redacted version was filed on 26 January 2023 as [No. ICC-01/14-01/22-112-Red](#).

¹⁰ See the “Victims’ Observations on ‘Mr. Mokom’s Application for Interim Release pursuant to Order ICC-01/14-01/22-105’”, No. ICC-01/14-01/22-115-Conf, 22 November 2022. A public redacted version was filed on 24 November 2022 as [No. ICC-01/14-01/22-115-Red](#) (the “OPCV Observations”). See also, the “OPCV Request to submit observations on behalf of victims on the issue of interim release”, [No. ICC-01/14-01/22-107](#), 9 November 2022; and the Email correspondence from the Chamber on 17 November 2022 at 9:42.

¹¹ See the “Report on the Registry’s consultations with States on the Interim Release of Mr Mokom and Request for Guidance”, No. ICC-01/14-01/22-120-Conf-Red, 21 December 2022 (the “First Report”).

¹² See the “ADDENDUM To the confidential redacted version of “Report on the Registry’s consultations with States on the Interim Release of Mr Mokom and Request for Guidance”, 21 December 2022, ICC-01/14-01/22-120-Conf-Red”, No. ICC-01/14-01/22-127-Conf, 23 December 2022 (the “Addendum Report”).

¹³ See the “Second Report on the Registry’s Consultations with States on the Interim Release of Mr Mokom”, No. ICC-01/14-01/22-146-Conf, 1 February 2023 (the “Second Report”).

¹⁴ See the “Third Report on the Registry’s Consultations with States on the Interim Release of Mr Mokom”, No. ICC-01/14-01/22-159-Conf, 13 February 2023 (the “Third Report”).

10. On 24 January 2023, the Chamber ordered, *inter alia*, the Prosecution and the OPCV to file any observations on the States' responses in the context of the Registry's consultations on interim release by no later than 15 February 2023.¹⁵

11. On 30 January 2023, the Registry submitted a report on the assessment of the indigence of Mr Mokom's and related matters (the "Assessment Report on Indigence").¹⁶

III. CLASSIFICATION

12. Pursuant to regulation 23bis(2) of the Regulations of the Court, the present submissions are filed confidential following the classification chosen by the Registry and the Defence. A public redacted version will be filed in due course.

IV. SUBMISSIONS

1. The concerned States' responses are yet to be obtained

13. Counsel note that the Registry indicates in its reports that, out of the [REDACTED] States suggested by the Defence for the purpose of Mr Mokom's interim release, [REDACTED] have already communicated that they would not accept the suspect on their territory, whilst [REDACTED] have not yet provided a response.¹⁷

14. In particular, the Netherlands and [REDACTED] have discussed at length with the Registry about the possibility of having Mr Mokom on their territory. After having duly considered the specificities of an eventual interim release and pondered their legal obligations deriving from their [REDACTED] with the Court,¹⁸ both States

¹⁵ See the "Order for observations and decision on the Prosecution's request for a status conference" (Pre-Trial Chamber II), [No. ICC-01/14-01/22-138](#), 24 January 2023.

¹⁶ See the "Second Confidential redacted version of the 'Report of the Registry on the Assessment on the Indigent Status of Mr Mokom in Relation to the Possibility of Interim Release and Related Matters', 27 January 2023, ICC-0114-0122-143-US-Exp", No. ICC-01/14-01/22-143-Conf-Red, 30 January 2023 (the "Assessment Report on Indigence").

¹⁷ See the Assessment Report on Indigence, *supra* note 16, para. 17; the Second Report, *supra* note 13, paras. 12-13; the Third Report, *supra* note 14, paras. 13-14.

¹⁸ [REDACTED].

indicated that they are unwilling to implement an eventual request in this regard.¹⁹ The Dutch authorities pointed out the infeasibility of the Chamber's enquiry regarding a designation of a location in The Hague if Mr Mokom is released, remarking in particular that:

"[...] in previous instances in which the host State has gone beyond what was required under the Headquarters Agreement, the end result has often been an unfavourable situation for both the Court and the host State. As explained in the Ministry's note verbale of 28 November 2022 (Min-BuZa.2022.13531-42), in accordance with article 47, paragraph 1 of the Headquarters Agreement, the host State is required to facilitate the transfer of persons granted interim release into a State other than the host State. The host State therefore wishes to reiterate its position that, in the light of article 47, paragraph 1 of the Headquarters Agreement, in the event that Mr Mokom is granted interim release, the Court should make such appropriate arrangements as soon as possible for the transfer of Mr Mokom to a State other than the host State".²⁰

15. The refusal of [REDACTED] and [REDACTED], as well as the absence of a response from [REDACTED] are also noteworthy.²¹ Counsel recall that the Defence suggested [REDACTED] and [REDACTED] as preferable countries for Mr Mokom's interim release for [REDACTED]²² – followed by [REDACTED] – in the "order of priority", being [REDACTED] countries.²³ This ultimately means that from the top five States suggested by the Defence, four would not accept Mr Mokom on their territory whilst the position of [REDACTED] remains yet unknown.

16. With regard to some European countries within the [REDACTED] listed in the Application,²⁴ Counsel note that they have also expressed their inability to implement a decision on Mr Mokom's eventual interim release. The reasons vary from lack of national legal basis,²⁵ [REDACTED],²⁶ or simply incapacity.²⁷

¹⁹ See the First Report *supra* note 11 and the Addendum Reports, *supra* note 12.

²⁰ See Annex II to the Second Report, *supra* note 13.

²¹ See the Second Report, *supra* note 13, paras. 12-13; and the Third Report, *supra* note 14, paras. 13-14.

²² See the Application, *supra* note 2, paras. 19-20.

²³ *Idem*, paras. 17-24.

²⁴ [REDACTED]. See the Application, *supra* note 2, para. 26.

²⁵ [REDACTED]. See Annex I to the Addendum Report, *supra* note 12.

²⁶ [REDACTED]. See Annexes II and VI to the Addendum Report, *supra* note 12.

²⁷ See *e.g.*, [REDACTED]. See Annexes V and VI to the First Report, *supra* note 11.

17. Consequently, pending responses from all concerned States, Counsel are not in a position to present at this stage meaningful observations on the matter, and any determination on the Application is premature.

2. The particulars of the conditions of interim release are yet to be set

18. Counsel reiterate their previous submissions that the relevant legal criteria under article 58(1) of the Rome Statute continue to be met, that Mr Mokom's interim release would endanger victims, and that his release, even with conditions, entails a high risk that he may abscond, obstruct or endanger the Court's proceedings.²⁸ In any case, apart from the fact that no State has indicated its willingness to accept Mr Mokom on its territory to date,²⁹ the particulars of the conditions of the suspect's release are also yet to be set.

19. In fact, there have been a number of vagueness and dubiety regarding the specificities of an eventual order for Mr Mokom's interim release and what obligation that would entail to the receiving State.³⁰ Counsel note that this aspect has naturally been a matter of concern for some States consulted. It was the case, for instance, of [REDACTED], which has thoroughly considered the Defence's proposed conditions and has concluded the following:

[REDACTED].³¹

20. Counsel posit that the proposed conditions of Mr Mokom's interim release are too general and the justification put forward by the Defence is insufficient so as to enable the concerned States to take a positive decision to have the suspect on their territory. For example, in the *Yekatom & Ngaïssona* Case, [REDACTED] considered the following factors which led it to deny the request:

²⁸ See the OPCV Observations, *supra* note 10, paras. 23-43.

²⁹ Information available to OPCV to date, noting that communications between [REDACTED] and the Registry have been filed *ex parte*. See the Second Report, *supra* note 13.

³⁰ See, for instance, the Assessment Report on Indigence, *supra* note 16, paras. 18-20.

³¹ See Annex V to the Addendum Report, *supra* note 12.

[REDACTED].³²

21. In the present case, the Defence has clearly indicated that the sole link Mr Mokom has with [REDACTED] is the [REDACTED]³³ – this also being the case for [REDACTED].³⁴

22. Similarly, [REDACTED] has analysed its national law against the Defence's proposed conditions to conclude that no legal conditions are deemed to exist to receive Mr Mokom into its territory should the Chamber rule favourably on the Application.³⁵

23. Accordingly, pending the setting of the details of the conditions of Mr Mokom's interim release, Counsel are not in a position to present at this stage meaningful observations on the matter, and in the absence of said details any determination on the Application is premature.

³² [REDACTED].

³³ See the First Report, *supra* note 11, para. 12.

³⁴ See the Application, *supra* note 2, paras. 21-22.

³⁵ See Annex IV to the Addendum Report, *supra* note 12.

V. CONCLUSION

24. For the foregoing reasons, Counsel respectfully request the Chamber to:

- **POSTPONE** the determination on Mr Mokom's interim release pending responses from all concerned States and setting the particulars of the conditions of interim release; and
- **ALLOW** victims to make additional submissions once consultations with the States have been completed and the particulars of the conditions of interim release have been set.



Dmytro Suprun



Paolina Massidda

Dated this 8th day of March 2023
At The Hague, The Netherlands