



Original: English

No. ICC-01/14-01/22

Date: 19 April 2023

Date public redacted version: 4 May 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 the “Defence Request for Interim Measures”’

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
Mr Kweku Vanderpuye

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

Ms Paolina Massidda

**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

Detention Section

**Victims Participation and Reparations
Section**

Other

PRE-TRIAL CHAMBER II of the International Criminal Court issues this ‘Decision on the ‘Defence Request for Interim Measures’.

I. PROCEDURAL HISTORY

1. On 8 March 2023, the Chamber rejected an application submitted on behalf of Maxime Jeoffroy Eli Mokom Gawaka (‘Mr Mokom’) for interim release to a number of States in Europe in the absence of a State willing to accept Mr Mokom and enforce related conditions (the ‘Interim Release Decision’).¹
2. On 27 March 2023, the Defence submitted a request for interim measures regarding Mr Mokom’s interim release (the ‘Request’).²
3. On 6 April 2023, the Prosecution responded to the Request (the ‘Response’).³
4. On 14 April 2023, the Registry reported that [REDACTED], which had requested a number of extensions of time to submit their response, and [REDACTED], which had not provided a response prior to the issuance of the Interim Release Decision, had notified their refusal to accept Mr Mokom for the purposes of interim release.⁴

II. SUBMISSIONS

5. The Defence requests Mr Mokom to be temporarily released onto premises of the Court within the Netherlands. It avers that: (i) the Chamber found in the Interim Release Decision that Mr Mokom is eligible for interim release, making his continued detention unfair and warranting that all available actions must be taken to ensure Mr Mokom’s rights are respected; (ii) the Court does have authority to order such measures in light of the similar measures taken in the cases of *The Prosecutor v. Paul Gicheru* (‘Gicheru case’), *The Prosecutor v. Mathieu Ngudjolo Chui* (‘Ngudjolo case’) and *The*

¹ Decision on interim release, ICC-01/14-01/22-173-Conf (a public redacted version was filed on the same day, [ICC-01/14-01/22-173-Red](#)).

² Defence Request for Interim Measures, ICC-01/14-01/22-181-Conf, confidential, with Annexes I and II, confidential.

³ Réponse de l’Accusation à la “Defence Request for Interim Measures” (ICC-01/14- 01/22-181-Conf), ICC-01/14-01/22-189-Conf, confidential.

⁴ Fifth Report on the Registry’s Consultations with States on the Interim Release of Mr Mokom, ICC-01/14-01/22-191-Conf, confidential (a public redacted version was filed on the same day, ICC-01/14-01/22-191-Red), with one annex, confidential.

Prosecutor v. Laurent Gbagbo and Charles Blé Goudé ('Blé Goudé case'); and (iii) the proposed measure would only be a temporary arrangement to allow the Registry and Defence additional time to consult with States Parties since efforts to identify a State to facilitate Mr Mokom's interim release remain ongoing.

6. Furthermore, the Defence requests the Chamber to order the Registry to contact all previously contacted States to advise of the Chamber's findings in the Interim Release Decision. The Defence asserts that the following change in circumstances warrants the renewal of consultations with previously contacted States as they may assist the decision-making of States: (i) the Chamber's determination that Mr Mokom is eligible for interim release and the length of his detention to date is unreasonable; (ii) the conditions under which such interim release could be affected in clear and precise terms capable of enforcement by States; and (iii) the determination that [REDACTED].

III. DETERMINATION

7. At the outset, the Chamber notes that the Response was filed on 6 April 2023, namely 10 days following the notification of the Request. The Chamber recalls that the time limit to file a response was shortened to five days in a previous order.⁵ Therefore, the Response has been filed out of time without any justification. Accordingly, the Chamber will not consider the Response.

8. In respect of the request to temporarily release Mr Mokom onto premises of the Court within the Netherlands, the Chamber notes that the Defence relies on the incorrect assertion that the Chamber found that all requirements for the interim release of Mr Mokom have been satisfied and that he, therefore, is eligible for interim release. The Chamber in fact rejected Mr Mokom's application for interim release in the absence of a State willing to accept him. The requirement to find a State prior to ordering interim release arises from the Court's dependence on State cooperation to ensure that the risk(s) that warranted the arrest under article 58(1)(b) of the Rome

⁵ [Second order on the conduct of proceedings](#), 13 February 2023, ICC-01/14-01/22-157, public, para. 18(i).

Statute (the ‘Statute’) is properly mitigated. Absent such a State, interim release cannot be ordered.⁶

9. Moreover, the Chamber recalls that, in the *Gicheru* case, the person’s stay in the Netherlands was temporary in the context of his interim release to Kenya. In addition, the *Ngudjolo* and *Blé Goudé* cases relate to stays in the Netherlands following acquittals and, as such, these measures were applied in a legal framework distinct from interim release. Accordingly, the Chamber considers that these precedents do not support the Defence’s argument that interim measures are available in the present proceedings.

10. For these reasons, the Chamber dismisses the request for the temporary release of Mr Mokom onto premises of the Court within the Netherlands. This finding is without prejudice to any future determination that may be made under article 60(3) of the Statute, in particular if a State indicates its willingness to receive Mr Mokom for the purposes of interim release.

11. In this respect, the Chamber observes the Defence’s steps to contact [REDACTED] States, which the Defence has identified as being potentially realistic and credible candidates to cooperate with the Court, and the Presidency of the Assembly of States Parties. The Chamber recalls that, in the Interim Release Decision, it found that there remains a risk of flight in relation to Mr Mokom, identified a non-exhaustive list of conditions which would have to be enforced by the State accepting Mr Mokom to mitigate this risk, and noted that [REDACTED]. The Chamber considers that the continued consultations with certain States, on the basis of these findings, may facilitate the identification of a State willing to accept Mr Mokom for the purposes of interim release. The Registry is, in view of its responsibilities under the Statute, uniquely placed to assist the Defence in this regard. However, the Chamber neither considers it necessary to renew consultations with all States identified previously, seeing as the Defence indicates that it has identified [REDACTED] States as potentially realistic and credible candidates, nor to extend the consultations to [REDACTED], in light of the fact that the Defence’s initial request for the interim release was limited to countries in Europe so as to ensure swift access to the Court. Consequently, the

⁶ See Appeals Chamber, *The Prosecutor v. Jean-Pierre Bemba Gombo*, [Judgment on the appeal of the Prosecutor against Pre-Trial Chamber II’s “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”](#), 2 December 2009, ICC-01/05-01/08-631-Red, public, paras 105-107.

Chamber grants the Request insofar as it orders the Registry to, in consultation with the Defence, contact any of the States identified in the Request (excluding [REDACTED]) to determine whether, in light of the aforementioned findings and any additional developments identified by the Defence, any such State is willing to accept Mr Mokom for the purposes of interim release.

12. Finally, the Chamber notes that the Request and the Response were filed confidentially and that no public redacted versions have been filed to date. Therefore, the Chamber orders the Defence and Prosecution to file public redacted versions of the Request and Response, respectively, by 28 April 2023.

FOR THESE REASONS, THE CHAMBER HEREBY

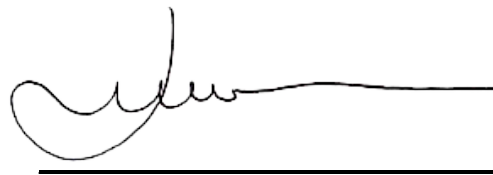
GRANTS the Request in part;

ORDERS the Registry to, in consultation with the Defence, contact any of the States identified in the Request (excluding [REDACTED]), and to report to the Chamber in the event that any such State accepts Mr Mokom for the purposes of interim release;

REJECTS the remainder of the Request; and

ORDERS the Defence and Prosecution to file public redacted versions of ICC-01/14-01/22-181-Conf and ICC-01/14-01/22-189-Conf, respectively, by no later than 28 April 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 Thursday, 4 May 2023.

At The Hague, The Netherlands.