

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 13 June 2023

PRE-TRIAL CHAMBER II

Before: Judge Rosario Salvatore Aitala, Presiding Judge
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 Document

**Observations on behalf of Victims on
the periodic review of the ruling on detention**

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 files her observations on the periodic review of the ruling on detention of the suspect.

2. Counsel recalls the decisions of Pre-Trial Chamber II (the “Chamber”) supporting the detention of Mr Mokom and posits that the findings therein elicited remain valid. Accordingly, she submits that there have been no changed circumstances in the sense of article 60(3) of the Rome Statute (the “Statute”) or rule 118(2) of the Rules of Procedure and Evidence (the “Rules”) since the last decision on the suspect’s detention which could justify a modification of the current ruling.

II. PROCEDURAL BACKGROUND

3. On 10 December 2018, the Chamber issued the warrant of arrest against Mr Mokom (the “Warrant of Arrest”).²

4. On 14 March 2022, Mr Mokom was surrendered to the Court. Following his first appearance,³ the Chamber scheduled the confirmation of charges hearing to commence on 31 January 2023,⁴ later rescheduled for 22 August 2023.⁵

5. On 8 March 2023, the Chamber rejected Mr Mokom’s application for interim release (the “Application” and the “Interim Release Decision”, respectively).⁶

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

² See the “Warrant of Arrest for Maxime Jeoffroy Eli Mokom Gawaka”, No. ICC-01/14-01/22-2-US-Exp; a public redacted version was filed on 22 March 2022 as [No. ICC-01/14-01/22-2-Red2](#) (the “Warrant of Arrest”).

³ See the Transcript of hearing, No. ICC-01/14-01/22-T-001-CONF-ENG, 22 March 2022; public redacted version notified on the same day, [No. ICC-01/14-01/22-T-001-Red-ENG](#).

⁴ See the “Order convening a hearing for the first appearance of Mr Mokom”, [No. ICC-01/14-01/22-21](#), 16 March 2022.

⁵ See the “Decision setting the date for the confirmation of charges hearing”, [No. ICC-01/14-01/22-151](#), 3 February 2023.

⁶ See “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](#) and the “Decision on interim release”, [No. ICC-01/14-01/22-173-Conf](#); a public redacted version was filed on the same day as [No. ICC-01/14-01/22-173-Red](#). See also, the

6. On 19 April 2023, the Chamber rejected Mr Mokom's request for interim measures regarding his possible interim release (the "Interim Measures Decision").⁷

7. On 1 June 2023, the Chamber rejected Mr Mokom's request for reconsideration of the Interim Release Decision and the Interim Measures Decision (the "Reconsideration Decision").⁸

8. On 7 June 2023, by e-mail, the Chamber instructed, *inter alia*, the OPCV to provide observations in connection with the Chamber's review of its ruling "regarding Mr Mokom's interim release", if any, by no later than 15 June 2023.⁹

III. SUBMISSIONS

1. Applicable law

9. Article 60(3) of the Statute provides that:

"The Pre-Trial Chamber shall periodically review its ruling on the release or detention of the person, and may do so at any time on the request of the Prosecutor or the person. Upon such review, it may modify its ruling as to detention, release or conditions of release, if it is satisfied that changed circumstances so require".

10. Pursuant to rule 118(2) of the Rules:

"The Pre-Trial Chamber shall review its ruling on the release or detention of a person in accordance with article 60, paragraph 3, at least every 120 days and may do so at any time on the request of the person or the Prosecutor".

"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](#); 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").

⁷ See the "Decision on the 'Defence Request for Interim Measures'", [No. ICC-01/14-01/22-195-Conf](#); a public redacted version was filed on 4 May 2023 as [No. ICC-01/14-01/22-195-Red](#) (the "Interim Measures Decision"). See also, the "Defence Request for Interim Measures", [No. ICC-01/14-01/22-181-Conf](#), 27 March 2023; a public redacted version was filed on 28 April 2023 as [No. ICC-01/14-01/22-181-Red](#).

⁸ See the "Decision on the 'Defence Request for Reconsideration of Decisions on Interim Release ICC-01/14-01/22-173-Conf and ICC-01/14-01/22-195-Conf' and the 'Defence Request for Leave to Reply to the 'Prosecution's Response to Request for Reconsideration of Decisions on Interim Release''", [No. ICC-01/14-01/22-218](#) (the "Reconsideration Decision"). See also, the "Defence Request for Reconsideration of Decisions on Interim Release ICC-01/14-01/22-173-Conf and ICC-01/14-01/22-195-Conf", [No. ICC-01/14-01/22-203-Conf](#), 22 May 2023; a public redacted version was filed on 9 June 2023 as [No. ICC-01/14-01/22-203-Red](#).

⁹ See the Email correspondence from the Chamber on 7 June 2023 at 11:19.

11. The main aspect of the periodic review of a ruling on detention is the analysis of any new information *vis-à-vis* its impact on the findings underpinning the detention of a suspect. The Appeals Chamber has held in this regard that *“in ‘carrying out a periodic review of a ruling on detention under article 60 (3) of the Statute [a Chamber] must satisfy itself that the conditions under article 58 (1) of the Statute, as required by article 60 (2) of the Statute, continue to be met’. This inquiry by the Chamber carrying out the review is not dependent only upon the new information provided by the parties, but is a review of the current circumstances as a whole which underpin detention. It is the Chamber’s obligation to look at those circumstances and be satisfied that continued detention is necessary”*.¹⁰

12. The Chamber has adjudicated the nuances of a ruling pursuant to article 60(3) of the Statute, emphasising that *“[a]s noted in the jurisprudence of this Court, a Chamber must periodically review its ruling on the detention of a suspect, but may only modify its previous ruling if there has been a change in some or all of the facts underlying its previous decision. Furthermore, the discovery of a new fact must be such that it is capable of satisfying the Chamber that an order for detention is no longer necessary”*.¹¹

13. In carrying out a period review of a previous decision on detention under article 60(3) of the Statute to verify whether circumstances changed, a Chamber:

“must ‘revert to the ruling on detention to determine whether there has been a change in the circumstances underpinning the ruling and whether there are any new circumstances that have a bearing on the conditions under article 58 (1) of the Statute’. The term ‘changed circumstances’ has been defined as ‘a change in some or all of the facts underlying a previous decision on detention, or a new fact satisfying a Chamber that a modification of its prior ruling is necessary’. What is crucial is that the Chamber is satisfied, at the time of the review decision, that grounds remain to detain. In this regard, a Chamber cannot simply refer to findings in prior decisions without being satisfied that the evidence or information underpinning those decisions still supports the findings made at the time of the review”.¹²

14. The evaluation of “changed circumstances” within the meaning of article 60(3) of the Statute merely entails an analysis of any changed aspect of the facts underlined

¹⁰ See the “Judgment on the appeal of Mr Laurent Gbagbo against the decision of Trial Chamber I of 10 March 2017 entitled ‘Decision on Mr Gbagbo’s Detention’” (Appeals Chamber), [No. ICC-02/11-01/15-992-Red](#) OA10, 19 July 2017, para. 38 (the “Gbagbo Detention Judgment”).

¹¹ See the “Decision on the review of detention”, [No. ICC-02/05-01/20-338](#), 12 April 2021, para. 17; confirmed by the Appeals Chamber, [No. ICC-02/05-01/20-415](#) OA7, 2 June 2021.

¹² See the Gbagbo Detention Judgment, *supra* note 10, para. 39.

in the previous decision(s) on detention – not a *de novo* assessment.¹³ In this regard, it could be that a new circumstance is of such relevance that a modification of a previous ruling is imperative.¹⁴

15. Noteworthy, the Appeals Chamber has recently found that

“1. The passage of time alone does not per se lead to the conclusion that circumstances have changed in favour of interim release in the context of a review under article 60(3) of the Statute. [...]

2. Article 60(3) of the Statute requires the relevant chamber to determine whether it “is satisfied” that there are changed circumstances. It does not give either party an exclusive right to procure information demonstrating whether such circumstances exist.

*3. In a review of detention under article 60(3) of the Statute, the onus is on the Prosecution to demonstrate that there has been no change in the circumstances justifying detention. Nevertheless, where there exists a decision in favour of detention under article 60(2) of the Statute, and where the Prosecution submits that there has been no change in circumstances in a review pursuant to article 60(3) of the Statute, it is apparent that the Defence will have a particular interest in providing information to the chamber so that the chamber will have all necessary information to arrive at a fully informed decision”.*¹⁵

16. Therefore, a chamber is not required to pronounce anew its ruling on detention at this stage.¹⁶ Lacking any information of a changed circumstance, a decision on detention shall be maintained.

¹³ See the “Judgment on the appeal of Mr Laurent Gbagbo against the decision of Pre-Trial Chamber I of 11 July 2013 entitled ‘Third decision on the review of Laurent Gbagbo's detention pursuant to article 60(3) of the Rome Statute’” (Appeals Chamber), [No. ICC-02/11-01/11-548-Red](#) OA4, 29 October 2013, para. 1.

¹⁴ See the “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’” (Appeals Chamber), [No. ICC-01/05-01/08-631-Red](#) OA2, 8 December 2009, para. 60.

¹⁵ See the “Judgment on the appeal of Mr Mahamat Said Abdel Kani against the decision of Trial Chamber VI entitled ‘First review of the detention of Mr Mahamat Said Abdel Kani’” (Appeals Chamber), [No. ICC-01/14-01/21-460](#) OA4, paras. 1-3.

¹⁶ See the “Judgment on the appeal of Mr Jean-Pierre Bemba Gombo against the decision of Trial Chamber III of 6 January 2012 entitled ‘Decision on the defence's 28 December 2011 ‘Requête de Mise en liberté provisoire de M. Jean-Pierre Bemba’” (Appeals Chamber), [No. ICC-01/05-01/08-2151-Red](#) OA10, 5 March 2012, paras. 1, 31.

2. The Previous findings by the Chamber in the matter justifies the continued detention of the suspect

17. In the present case, the Warrant of Arrest was issued based on, *inter alia*, the following findings: 1) the overall supporting evidence sufficient to establish reasonable grounds to believe that Mr Mokom bears individual criminal responsibility (article 58(1)(a) of the Statute);¹⁷ 2) the fact that the detention of Mr Mokom appears necessary to ensure that he (i) appears before the Chamber; (ii) does not obstruct or endanger the Prosecutor's ongoing investigation; and (iii) is prevented from committing related crimes within the jurisdiction of the Court arising from the same circumstances described in the Warrant of Arrest (article 58(1)(b) of the Statute).¹⁸ In this regard, the Chamber noted, *inter alia*, that in 2017 Mr Mokom "*publicly threatened with a resumption of violence in the CAR*" and was reported to "*lead his own Anti-Balaka wing*".¹⁹

18. Subsequently, the Interim Release Decision undertook a *de novo* assessment of the conditions of article 58(1) of the Statute and found that: i) "*there continue to be reasonable grounds to believe that Mr Mokom is responsible for war crimes and crimes against humanity allegedly committed in the Central African Republic*" (article 58(1)(a) of the Statute);²⁰ and ii) a risk of flight exists in relation to Mr Mokom (article 58(1)(b)(i) of the Statute).²¹ As for the conditions set forth in article 58(1)(b)(ii) and (iii) of the Statute, the Chamber concluded that "*it has not been established that there is a risk that Mr Mokom, should he be granted interim release, would obstruct or endanger the investigation or the court proceedings and/or commit related crimes within the jurisdiction of the Court*".²² In any event, the Chamber had already endorsed that the conditions listed in said provision are alternative;²³ thus the fulfilment of either of them suffices for the purpose of detention.

¹⁷ See the Warrant of Arrest, *supra* note 2, para. 19.

¹⁸ *Idem*, para. 20.

¹⁹ *Ibid.*

²⁰ See the Interim Release Decision, *supra* note 6, para. 51.

²¹ *Idem*, para. 53.

²² *Idem*, para. 54.

²³ *Idem*, para. 52. See also the "Third Decision on Bosco Ntaganda's Interim Release" (Pre-Trial Chamber II), [No. ICC-01/04-02/06-335](https://www.icc-cpi.org/recorded-statements/1235), 17 July 2014, para. 25.

Therefore, the Chamber found that *“the detention of Mr Mokom is required so as to ensure his appearance in these proceedings”*.²⁴ It further identified a list of conditions pursuant to rule 119 of the Rules to be imposed if one of the Defence’s proposed States would accept the suspect on their territory.²⁵ However, the Chamber rejected the Application for interim release.

19. Furthermore, in the Interim Measures Decision, the Chamber reinforced that the requirements for interim release were not met, given the proposed States’ refusal to accept Mr Mokom on their territory.²⁶ As a result, the Chamber granted the Defence’s request insofar as consultation with further States is sought for the purpose of interim release.²⁷

20. Finally, in the Reconsideration Decision, the Chamber clearly stated that *“the basis for the Interim Release Decision and the Interim Measures Decision has remained unchanged. The Defence does not bring forward any argument to the contrary”*.²⁸ It further reiterated that *“Mr Mokom’s pre-trial detention is justified because he constitutes a risk of flight and, at present, no State is willing to accept him and to enforce the requisite conditions to mitigate this risk”*.²⁹

3. There is no changed circumstances which could justify a modification of the current ruling on detention

21. Counsel notes that there is no information available to her which would suggest that the above circumstances as described by the Chamber in several ruling in the matter have changed. Consequently, she submits that the detention of Mr Mokom should be maintained as the conditions set out in article 58(1)(a) and (b)(i) of the Statute continue to be met and there has been no significant development which would justify a modification of the current ruling on detention. Ensuring Mr Mokom’s

²⁴ See the Interim Release Decision, *supra* note 6, para. 55.

²⁵ *Idem*, para. 56. See also para. 59, noting the absence of a State willing to accept Mr Mokom on its territory if interim release was granted.

²⁶ See the Interim Measures Decision, *supra* note 7, para. 8.

²⁷ *Idem*, para. 11.

²⁸ See the Reconsideration Decision, *supra* note 8, para. 16.

²⁹ *Idem*, para. 17.

appearance in court is even more crucial at this moment, as the confirmation of charges hearing is scheduled to commence in just over two months – a further element that makes the suspect more likely to abscond.

IV. CONCLUSION

22. For the foregoing reasons, Counsel respectfully requests the Chamber to rule that Mr Mokom should remain in detention.

A handwritten signature in black ink, reading "Paolina Massidda", with a horizontal line underneath the name.

Paolina Massidda
Principal Counsel

Dated this 13th day of June 2023

At The Hague, The Netherlands