

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **13/07/2023**

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

THE PROSECUTOR V. MAXIME JEOFFROY ELI MOKOM GAWAKA

Public

**Public Redacted Version of Mokom Defence Observations on the Review of Detention,
ICC-01/14-01/22-232-Conf, 20 June 2023**

Source: Philippe Larochelle, Counsel for Mr. Mokom

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

The Office of the Prosecutor

Karim A. A. Khan KC
 Mame Mandiaye Niang
 Leonie von Braun

Counsel for the Defence

Philippe Larochelle

Legal Representatives of the Victims

Paolina Massidda

Legal Representatives of the Applicant

Unrepresented Victims

**Unrepresented
 (Participation/Reparation)**

Applicants

The Office of Public Counsel for Victims

**The Office of Public Counsel for the
 Defence**

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Ozvaldo Zavala Giler

Counsel Support Section

Deputy Registrar

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
 Section Other**

I. INTRODUCTION

1. Pursuant to the instruction of the Pre-Trial Chamber on 7 June 2023, the Defence for Mr Maxime Mokom (“Defence”) submits its “observations in connection with the Chamber’s review of its ruling regarding Mr Mokom’s interim release”.¹

II. LEVEL OF CONFIDENTIALITY

2. Pursuant to Regulation 23*bis*(1) of the Regulations of the Court, the Defence files these observations as confidential since they refer to confidential documents and information. A public redacted version will be filed in due course.

III. PROCEDURAL HISTORY

3. A detailed procedural history is set out in the Pre-Trial Chamber’s prior decisions on provisional release.²

4. For present purposes, the Defence notes that the first application for Mr Mokom’s provisional release was filed on 14 November 2022.³ Subsequent applications and observations followed on 15 February 2023,⁴ and 27 March 2023,⁵ seeking and proposing concrete solutions to the situation of Mr Mokom’s ongoing detention.

¹ Email from Pre-Trial Chamber II, 7 June 2023, 11:19.

² See, Pre-Trial Chamber II: Decision on interim release, ICC-01/14-01/22-173-Red, 8 March 2023 (“8 March Decision”), paras. 1-20; Pre-Trial Chamber II: Decision on the ‘Defence Request for Interim Measures, ICC-01/14-01/22-195-Conf, 19 April 2023 (“19 April Decision”), paras. 1-4; Pre-Trial Chamber II: 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”’, ICC-01/14-01/22-218-Conf, 1 June 2023 (“1 June Decision”), paras. 1-6.

³ Mr. Mokom’s Application for Interim Release pursuant to Order ICC-01/14-01/22-105, ICC-01/14-01/22-110-Conf, 14 November 2022, together with an annex, confidential and ex parte, only available to Mr Mokom and the Registry (a public redacted version of the Application was submitted on 16 November 2022, ICC-01/14-01/22-110-Red).

⁴ Mokom Defence Observations on the Interim Release Application Submitted by Duty Counsel on behalf of Mr. Mokom, ICC-01/14-01/22-162, 15 February 2023.

⁵ Defence Request for Interim Measures, ICC-01/14-01/22-181-Conf, 27 March 2023 (“27 March Request”), with confidential Annexes I and II.

5. In the 8 March Decision, the Chamber expressed its regret that, in the absence of a State willing to accept and enforce the conditions of Mr Mokom's interim release, it was not in a position to order Mr Mokom's interim release into any of the proposed States in Europe (the "Prior State Requirement").⁶ In the 19 April Decision, the Chamber explicitly rejected Mr Mokom's application for interim release onto premises of the Court within the Netherlands on the basis that it was bound by the Prior State Requirement.⁷

6. On 22 May 2023, the Defence filed a request for reconsideration of the 8 March and 19 April Decisions.⁸ Specifically, the Defence sought reconsideration of the decisions insofar as they applied the so-called Prior State Requirement, since it leads to a system of *de facto* pre-trial detention at the ICC which is irreconcilable with international standards and internationally recognised human rights.

7. On 1 June 2023, the Chamber rejected the request for reconsideration.⁹ The Chamber found that the basis for the 8 March and 19 April Decisions "has remained unchanged" and reconsideration was not warranted.¹⁰ The Chamber also reiterated that Mr Mokom's detention was 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".¹¹

8. By correspondence dated 7 June 2023, the Chamber ordered "the Prosecution, OPCV and Registry 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; and (ii) the Defence to provide any such observations by no later than 20 June 2023."

⁶ 8 March Decision, para. 60.

⁷ 19 April Decision, para. 8, citing "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 ("*Bemba Appeal Decision*").

⁸ Defence Request for Reconsideration of Decision on Interim Release ICC-01/14-01/22-173-Conf and ICC-01/14-01/22-195-Conf, ICC-01/14-01/22-203-Conf, 22 May 2023, para. 42.

⁹ 1 June Decision, p. 8.

¹⁰ 1 June Decision, paras. 16-17.

¹¹ 1 June Decision, para. 17.

9. On 13 June 2023, the OPCV filed its observations, requesting the Chamber to rule that Mr Mokom should remain in detention since there had been no changed circumstances justifying a modification of the ruling.¹²

10. On 15 June 2023, the Registry submitted its observations confirming that it had contacted the 11 States identified by Mr Mokom in the 27 March Request. However, as at the date of filing, the Registry had “not received any indication that any of these 11 States would be in a position to accept Mr Mokom on their territory for the purpose of interim release”.¹³

11. Also on 15 June 2023, the Prosecution submitted their observations on the periodic review of Mr Mokom’s detention.¹⁴ The Prosecution stated that continued detention remains necessary, as there has been no change in circumstances requiring modification of the Chamber’s ruling, and new circumstances increase the need for continued detention, including new information of concrete threats to witnesses, full disclosure of all witness identities and the volatile security situation in the Central African Republic.¹⁵

IV. SUBMISSIONS

1. Efforts to find a host state for Mr Mokom’s provisional release

12. The efforts undertaken by the Registry in seeking to find a host state for Mr Mokom’s provisional release, are appreciated.¹⁶

13. The lack of State Party cooperation on detention issues remains a glaring hole in the cooperation regime of the Court. It is unclear from the Registrar’s submissions whether, for example, States are being **encouraged** to facilitate provisional release, and whether it is being explained that the importance of State cooperation on detention issues is as important as cooperation on matters of investigation and prosecution. States should be actively discouraged from putting in place conditions and restrictions, such as requiring a “personal

¹² OPCV: Observations on behalf of Victims on the periodic review of the ruling on detention, ICC-01/14-01/22-223, 13 June 2023 (“OPCV Observations”), paras. 2, 22.

¹³ Registry: Registry’s Observations pursuant to the Chamber’s instruction dated 7 June 2023, ICC-01/14-01/22-226-Conf, 15 June 2023 (“Registry Observations”), paras. 7, 13.

¹⁴ Office of the Prosecutor: Prosecution’s observations on the review of detention of Mr Maxime Jeoffroy Eli Mokom Gawaka, ICC-01/14-01/22-227-Conf, 15 June 2023 (“Prosecution Observations”).

¹⁵ Prosecution Observations, para. 2.

¹⁶ Registry Observations, paras. 7-13.

link” between the suspect and the country, given that such conditions are inherently discriminatory and irrelevant to the fulfillment of the conditions of release.¹⁷

14. When a complete lack of State cooperation on the issue of provisional release becomes normalised, there will be a corollary impact on the ability of the Court to perform one of its core functions. The credibility of the Court is necessarily impacted if it is unable to provisionally release any of its accused because of a lack of will on the part of States. As such, the Defence suggests that in future meetings with States Parties, selective State cooperation should be discouraged, and States should be **urged** to facilitate provisional release of suspects and accused.

15. The Defence notes that the meetings with States Parties referenced by the Registry took place on 9 and 23 May 2023, and that representatives from [REDACTED] who attended the abovementioned meetings took note of the information and assured that it would be conveyed to their relevant authorities for consideration”.¹⁸ There is no indication that any timeframe for a response was sought by the Registry. Similarly, in relation to [REDACTED], these states were only contacted by email or phone, and there is also no indication whether the Registry information was received, or whether a response was requested by a certain date.¹⁹ Given that almost a month has passed, the Defence suggests that these States Parties should be re-contacted, particularly given the urgency that accompanies the ongoing pre-trial detention of a suspect who is presumed to be innocent.

2. Mr Mokom’s detention and his appearance at trial (article 58(1)(b)(i))

16. The entirety of the Prosecution’s submissions on article 58(1)(b)(i) address an alleged high risk that Mr Mokom would abscond “if he were released to the territory of the CAR”.²⁰ In particular, because of the [REDACTED].²¹

¹⁷ Registry Observations, para. 9, referencing the observations provided by [REDACTED] in “Annex V to Registry’s “ADDENDUM to the ‘Report on the Registry’s consultations with States on the Interim Release of Mr Mokom and Request for Guidance”, 23 December 2022, ICC-01/14-01/22-127-Conf-AnxV, Annex V. Public redacted version of the document was filed on 15 February 2023, ICC-01/14-01/22-127-AnxV-Red.”

¹⁸ Registry Observations, paras. 8, 10.

¹⁹ Registry Observations, para. 11.

²⁰ Prosecution Observations, para. 10.

²¹ Prosecution Observations, para. 10.

17. The Chamber has already held that “Mr Mokom is seeking interim release to a States in Europe”.²² The Prosecutions submissions are therefore irrelevant, and should be ignored.

3. Mr Mokom’s detention and alleged obstruction and endangerment of court proceedings (article 58(1)(b)(ii))

18. The Prosecution provides no basis to warrant a change in the Chamber’s previous finding that Mr Mokom poses no risk of obstruction or endangerment. While foreshadowing that it has “new information of concrete threats to witnesses”,²³ this is not borne out.

19. The Prosecution again references Mr Mokom’s alleged membership of the CPC. As recently as 14 June 2023, the Chamber reiterated in [REDACTED].²⁴

20. Presumably in an effort to make more “concrete” submissions, the Prosecution then submits as follows:

... Prosecution witnesses continue to face threats and challenges to their security **directly linked to Mr Mokom** or his supporters of the CPC. These threats demonstrate that supporters of Mr Mokom employ intimidating tactics against Prosecution witnesses and their relatives.²⁵

21. These are extremely serious accusations. They should not be levelled against a suspect in the absence of concrete examples which can be investigated and refuted. Reading this blanket and unnuanced statement from the Prosecution, would reasonably give rise to an expectation that the Prosecution had documented examples of threats being linked to Mr Mokom and these proceedings specifically. This is not the case.

22. It is unclear what is meant by “Mr Mokom or his supporters of the CPC”. Mr Mokom has no ownership or direction over alleged CPC supporters, and they cannot be designated as belonging to him, as the Prosecution attempts.

23. Regarding Witness P-1503, the first two of the four allegations made by the witness have no connection to Mr Mokom, or these proceedings, and are therefore irrelevant. They are also general, unreferenced and unsupported. The Prosecution claims that those involved

²² 8 March Decision, para. 54.

²³ Prosecution Observations, para. 2.

²⁴ Pre-Trial Chamber II: Seventh Decision on Contact Restrictions, ICC-01/14-01/22-225-Conf-Exp, 14 June 2023, para. 11.

²⁵ Prosecution Observations, para. 13 (emphasis added).

in alleged intimidation are “aligned with Mr Mokom through the CPC” or “a close ally of Mr Mokom”.²⁶ But no basis is provided for either statement. The CPC is a coalition of at least six groups, some of which claim membership in the tens of thousands. It cannot be reasonably asserted that membership of one of the groups which form this coalition give rise to an “alignment” with Mr Mokom or a link to these proceedings.

24. As regards Witness P-1521, the Prosecution claims that [REDACTED]. It is worth examining this allegation in more detail. In the “Investigation Report” relied on by the Prosecution, the incident is described as follows:²⁷

[REDACTED]

25. As such, the Prosecution is relying on a phone call from [REDACTED].²⁸ This link cannot credibly be made. There is no evidence of Mr Mokom being linked to any kind of witness contact, let alone intimidation. His conduct in detention has been irreproachable. There is no basis for a finding that he would interfere with the proceedings. The weakness of the Prosecution submissions, in fact, indicates the opposite.

26. Next, the Prosecution submits that since the last decision on interim release, the Prosecution has disclosed the evidence it intends to rely on at the confirmation hearing, including “all witness identities with no restriction.”²⁹ With no further substantiation or justification, the Prosecution concludes that “[i]f released, Mr Mokom **could contact** the Prosecution witnesses he has now been made aware of and/or convey information about them to his supporters unhindered.”³⁰ There is no basis for this kind of unfounded Prosecution speculation. Any suspect or accused “could” in theory contact witnesses upon release. Simply making that assertion without more, is unhelpful and prejudicial.

27. Finally, the Prosecution again refers to the [REDACTED].³¹

28. There are many things that prevent Mr Mokom from harming and intimidating witnesses. Chief among them is the fact that he has done nothing since his arrest except indicate his willingness to cooperate with the Court, comply with all orders, rules and

²⁶ Prosecution Observations, para. 14.

²⁷ CAR-OTP-00001545-000001 at 000004, para. 21.

²⁸ Prosecution Observations, para. 13.

²⁹ Prosecution Observations, para. 16.

³⁰ Prosecution Observations, para. 16 (emphasis added).

³¹ Prosecution Observations, para. 17.

regulations to which he has been made subject, and clear his name. This speculation on the part of the Prosecution is baseless, and entirely without merit.

29. Turning to the OPCV Observations, these focus on the apparent lack of changed circumstances, but note that Mr Mokom's 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."³² Mr Mokom would have preferred to have been provisionally released much earlier, and therefore well in advance of the confirmation hearing. However, the timing of his release, should it now occur, is a matter which rests entirely with the States, and cannot reasonably be held against him. Regardless, neither OPCV nor any of the parties or participants in these proceedings have any basis to allege that Mr Mokom intends to abscond, given every indication to the opposite.

30. Mr Mokom is eligible for, and entitled to, immediate provisional release with the conditions as previously imposed by the Chamber. His prolonged detention is likely to become the hallmark of the pre-trial proceedings, and of the failures of State Party cooperation with the ICC more generally.

Respectfully submitted,



Philippe Larochelle,
Counsel for Maxime Mokom

The Hague, The Netherlands
13 July 2023

³² OPCV Observations, para. 21.