

Reference: NV/2022/EOSS/332/JCA/rk

CONFIDENTIAL

URGENT

The Registry of the International Criminal Court (“Court”) presents its compliments to the Ministry of Foreign Affairs of the Kingdom of the Netherlands and has the honour to invite the Dutch authorities to assist the Court in the case of *The Prosecutor v. Maxime Geoffroy Eli Mokom Gawaka* (ICC-01/14-01/22), situation in the Central African Republic II.

Legal basis

The present request is based on rules 13(1) and 119 of the Rules of Procedure and Evidence (“Rules”), regulation 51 of the Regulations of the Court and the “*Order to Mr Mokom to provide submissions on interim release*” (“Order”, ICC-01/14-01/22-105), issued by Pre-Trial Chamber II (“Chamber”) on 7 November 2022. The Order is annexed to the present note verbale.

Background information

On 14 March 2022, Mr Maxime Geoffroy Eli Mokom Gawaka (“Mr Mokom”) was surrendered to the Court pursuant to an arrest warrant issued by Chamber. Mr Mokom appeared before the Chamber on 22 March 2022. He is suspected of war crimes and crimes against humanity allegedly committed in the Central African Republic between 5 December 2013 and December 2014.

The opening of the confirmation of charges hearing was initially scheduled to 31 January 2023. However due to procedural challenges indicated in the Order, the opening will be postponed to a new date which is yet to be set.

*Ministry of Foreign Affairs
Kingdom of the Netherlands*

On 7 November 2022, the Chamber issued the Order in which it ordered Mr Mokom, if he wishes to apply for interim release, to submit a substantiated application by 14 November 2022. In the same document and so as to expedite the process, the Registry was ordered “to liaise with Duty Counsel in the event Mr Mokom decides to submit an application for interim release, with a view to directly commencing consultations with the Host State and the State(s) to which Mr Mokom proposes to be released to, including the Netherlands”.

On 14 November, “*Mr Mokom’s Application for Interim Release Pursuant to Order ICC-01/14-01/22-105*” (“Application”, ICC-01/14-01/22-110-Conf) was submitted by his Duty Counsel on a confidential basis.

In his Application Mr Mokom indicated the Netherlands as one of the priority States for his interim release due

Pursuant to the Order, Mr Mokom also proposed to the Chamber a number of conditions for his interim release. Pursuant to Rule 119 and mindful of the conditions of interim release recently imposed by Pre-Trial Chamber A in the *Gicheru* case, the conditions proposed by Mr Mokom included:

- (a) the prohibition to travel beyond territorial limits set by the Pre-Trial Chamber without the explicit authorization of the Court;
- (b) the prohibition to go to certain places or associate with certain persons specified by the Pre-Trial Chamber;
- (c) to reside at a particular address as specified by the Pre-Trial Chamber for the duration of the proceedings in the Netherlands and when not present in the Netherlands for the purposes of court proceedings, unless otherwise authorised in advance by the Chamber;
- (d) to not engage in certain professional activities;
- (e) full compliance with all orders issued in the case including an order to surrender himself immediately to the relevant authorities if required by the Chamber;
- (f) appearing before the Chamber at the date, time, place, and in the manner ordered by the Chamber and remaining in attendance until excused;
- (g) the surrender to the Registrar of all passports, visas, identity documents, and any other travel documents issued to him;
- (h) reporting once a week to the law enforcement authorities of the Receiving State or the Registry, which may include the use of video conferencing technology;

(i) to provide the Registrar with all mobile and other telephone numbers and ensure that at least one of his mobile telephone numbers remains active and with sufficient credit to be reachable at any time; and

(j) to not contact directly or indirectly victims or witnesses.

Moreover, in the Application Mr Mokom undertook that:

- He would not engage in any political activities during his interim release;
- He would not make any public statements or social media post, directly or through a person, about the case;
- He would not talk to the public or the press concerning the case;
- The only contact he will seek to have will be with his family; Counsel; defence team members; the Registry; medical personnel; the Red Cross;
- He accepts that any violation of national law would result in the immediate revocation of his interim release;
- He would comply with any reasonable conditions imposed by the receiving State during the interim release including electronic monitoring, the imposition of curfews or home confinement.

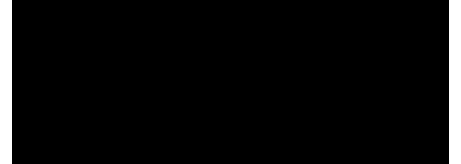
Subject of the request

Following the Order and should the Chamber grant the Application, the Registry invites the Dutch authorities to consider accepting Mr Mokom of their territory for the purpose of the interim release with the conditions listed above.

Considering the urgency of the request, the Dutch authorities are invited to provide their observations by 29 November 2022. The Registry would be grateful if the authorities could indicate in their response the level of confidentiality of their observations.

The Registry of the Court avails itself of this opportunity to renew to the Ministry of Foreign Affairs of the Kingdom of the Netherlands , the assurances of its highest consideration.

The Hague, 22 November 2022





Ministry of Foreign Affairs

Protocol and Host Nations Department
Min-BuZa.2022.13531-42

The Protocol and Host Country Affairs Department of the Ministry of Foreign Affairs of the Kingdom of the Netherlands presents its compliments to the Registry of the International Criminal Court and has the honour to refer to the Note Verbale from the Registry of the Court dated 22 November 2022 (NV/2022/EOSS/332/JCA/rk) by which the Registry invites the Dutch authorities to share its views regarding Mr Mokom's application for interim release in The Netherlands.

In accordance with article 47 paragraph 1 of the Headquarters Agreement, the host State shall facilitate the transfer of persons granted interim release into a State other than the host State. As such, the host State is under no obligation to facilitate interim release on Dutch territory. Any previous arrangements in which a person might have been granted interim release on Dutch territory would have been on a highly exceptional basis and cannot be seen as a precedent for new requests. With regard to Mr Mokom's application The Netherlands cannot accept his interim release on Dutch territory.

However, in the event Mr. Mokom should be granted interim release into another State, in accordance with article 47 paragraph 2 of the Headquarters Agreement, the host State would facilitate the re-entry into the host State of persons granted interim release and their short-term stay in the host State for any purpose related to proceedings before the Court. In such an event, the host State would like to request that the Court informs the Surveillance and Protection Programme of the National Coordinator for Security and Counterterrorism's Surveillance (NCTV/PBB) and the Custodial Institutions Agency's Transport and Support Service (DJI/DV&O), both of which fall under the auspices of the Ministry of Justice and Security, of the specific travel arrangements, namely date of departure, date of return and, if appropriate, full flight details, the medical condition and possible safety risks involved.

On the basis of the information provided in above mentioned notice the Ministry of Justice and Security will make arrangements for the transport of Mr Mokom from the Court's Detention Unit in the Hague to the point of departure.

The Protocol and Host Country Affairs Department of the Ministry of Foreign Affairs of the Kingdom of the Netherlands avails itself of this opportunity to renew to the International Criminal Court the assurances of its highest consideration.

The Hague, 28 November 2022

**The Registry of the
International Criminal Court**

The Hague