



**Original: English**

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

**Date: 5 July 2023**

**Date public redacted version: 16 August 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 review of Mr Mokom’s detention’

**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  
Ms Leonie von Braun

**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**

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**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 review of Mr Mokom’s detention’.

## **I. PROCEDURAL HISTORY**

1. On 8 March 2023, the Chamber rejected an application submitted by the Defence for Maxime Jeoffroy Eli Mokom Gawaka (the ‘Defence’ and ‘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’).<sup>1</sup>
2. On 19 April 2023, the Chamber rejected the Defence’s request for interim measures regarding his temporary release onto premises of the Court within the Netherlands, while ordering the Registry to, in consultation with the Defence, contact a number of States identified by the Defence to determine whether, in light of the findings set out in the Interim Release Decision and any additional developments identified by the Defence, any such State is willing to accept Mr Mokom for the purposes of interim release (the ‘Interim Measures Decision’).<sup>2</sup>
3. On 1 June 2023, the Chamber rejected the Defence’s request to reconsider the Interim Release Decision and the Interim Measures Decision.<sup>3</sup>
4. On 7 June 2023, the Chamber ordered: (i) the Prosecution, Office of the Public Counsel for Victims (the ‘OPCV’), and Registry to provide any observations regarding the Chamber’s review of Mr Mokom’s detention by no later than 15 June 2023; and (ii) the Defence to provide any such observations by no later than 20 June 2023.<sup>4</sup>

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

<sup>2</sup> Decision on the ‘Defence Request for Interim Measures’, ICC-01/14-01/22-195-Conf, confidential (a public redacted version was submitted on 4 May 2023, [ICC-01/14-01/22-195-Red](#)).

<sup>3</sup> [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, public.](#)

<sup>4</sup> Email from the Chamber to the Prosecution, OPCV, Registry and Defence, at 11:19.

5. On 13 June 2023, the OPCV provided its observations (the ‘OPCV Observations’),<sup>5</sup> while the Registry and Prosecution provided their observations on 15 June 2023 (the ‘Registry Observations’ and ‘Prosecution Observations’).<sup>6</sup>

6. On 20 June 2023, the Defence provided its observations (the ‘Defence Observations’).<sup>7</sup>

## II. SUBMISSIONS

7. In the OPCV Observations, it is submitted that the OPCV does not have any information establishing a change in circumstances within the meaning 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 Interim Release Decision and that, consequently, the detention of Mr Mokom should be maintained. The OPCV asserts that ensuring Mr Mokom’s appearance in court is even more crucial at present, 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.

8. In the Registry Observations, the Registry reports that, pursuant to the Interim Measures Decision, it contacted the [REDACTED] States identified by the Defence. The Registry indicates that it organised a meeting, which was attended by [REDACTED], to provide an update on the judicial developments in the case and set out the findings contained in the Interim Release Decision. According to the Registry, [REDACTED] reiterated that, should the conditions set out in its response of 22 December 2022 not be put in place, its position would not change, while further informing the Registry that it would not be able to enforce an electronic monitoring device. The Registry also specifies that the information provided during the aforementioned meeting was shared with [REDACTED]. The Registry points out that it liaised with the [REDACTED] authorities with a view to allowing for direct contact between them and the Defence, but that [REDACTED] responded that [REDACTED].

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<sup>5</sup> [Observations on behalf of Victims on the periodic review of the ruling on detention](#), ICC-01/14-01/22-223, public.

<sup>6</sup> Registry’s Observations pursuant to the Chamber’s instruction dated 7 June 2023, ICC-01/14-01/22-226-Conf, confidential (a public redacted version was submitted on 20 June 2023, [ICC-01/14-01/22-226-Red](#)); Prosecution’s observations on the review of detention of Mr Maxime Jeoffroy Eli Mokom Gawaka, ICC-01/14-01/22-227-Conf, confidential.

<sup>7</sup> Mokom Defence Observations on the Review of Detention, ICC-01/14-01/22-232-Conf, confidential.

Lastly, the Registry states that it has not received any indication that any of these [REDACTED] States would be in a position to accept Mr Mokom on their territory for the purposes of interim release.

9. In the Prosecution Observations, it is argued that Mr Mokom's continued detention remains necessary. In the view of the Prosecution, there has been no change in circumstances requiring the Chamber to modify its findings in relation to the risk of flight. It adds that the likelihood of Mr Mokom absconding has increased, since the impending confirmation hearing may lead to the confirmation of multiple charges against him. Furthermore, the Prosecution avers that the risk that Mr Mokom would abscond if he were released to the territory of the Central African Republic (the 'CAR') remains high in view of various developments in the CAR and the region. The Prosecution further argues that Mr Mokom's continued detention is also necessary under article 58(1)(b)(ii) of the Statute as recent reports indicate that Prosecution witnesses continue to face concrete threats and challenges to their security directly linked to Mr Mokom or his supporters of the *Coalition des Patriotes pour le Changement* (the 'CPC'). The Prosecution specifically refers to incidents reported by witness [REDACTED] and witness [REDACTED]. It adds that, since the Interim Release Decision, the Prosecution has disclosed the evidence it intends to rely upon at the confirmation hearing, including all witness identities with no restriction.

10. In the Defence Observations, it is averred that, in future meetings with States Parties, selective State cooperation should be discouraged, and that the States Parties that the Registry interacted with should be contacted again. The Defence further asserts that the Prosecution's submissions regarding article 58(1)(b)(i) of the Statute are irrelevant as Mr Mokom is seeking interim release to a State in Europe. It also argues that the Prosecution provides no basis to warrant a change in the Chamber's finding that Mr Mokom poses no risk of obstruction or endangerment. According to the Defence, the Chamber has recently held that [REDACTED]. Regarding witness [REDACTED], the Defence asserts that the first two allegations made by the witness have no connection to Mr Mokom or these proceedings, while the Prosecution provides no basis for its statements that those involved in the alleged intimidation are linked to Mr Mokom. As to witness [REDACTED], the Defence submits that the alleged incident [REDACTED]. The Defence is also of the view that there is no basis for the Prosecution's speculation that Mr Mokom could contact Prosecution witnesses

following the disclosure of evidence. It adds that Mr Mokom's conduct since his arrest has been irreproachable. Lastly, the Defence contends that the OPCV's assertion regarding the impending date of the confirmation of charges hearing cannot be held against Mr Mokom as the timing of his release rests entirely with States.

### III. DETERMINATION

11. Under article 60(3) of the Statute, 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'.<sup>8</sup> In proceedings conducted pursuant to this provision, 'the onus is on the Prosecutor to demonstrate that there has been no change in the circumstances justifying detention'.<sup>9</sup>

12. Commencing with article 58(1)(b)(i) of the Statute, the Chamber will first address two arguments advanced by the OPCV and/or the Prosecution. The Prosecution's assertions regarding the situation in the CAR and the region will not be considered. Mr Mokom has been seeking interim release to a State in Europe in close proximity to the Court and not, as assumed by the Prosecution, to the CAR. The Chamber further dismisses the contention put forward by the OPCV and the Prosecution that the impending date of the confirmation of charges hearing increases the risk of flight. The Defence has requested interim release significantly in advance of the confirmation of charges hearing. Its request is dependent on the identification of a State willing to accept Mr Mokom for these purposes. For this reason, the approaching date of the hearing cannot be held against Mr Mokom in assessing the risk of flight at present.

13. Having said that, a risk of flight has been found to exist in relation to Mr Mokom. In this regard, the Chamber concluded that the fact that Mr Mokom was arrested outside the CAR signifies his willingness and capability to move between States as a result of

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<sup>8</sup> Appeals Chamber, *Prosecutor v. Jean-Pierre Bemba Gombo*, '[Judgment on the appeal of Mr Jean-Pierre Bemba Gombo against the decision of Trial Chamber III of 28 July 2010 entitled "Decision on the review of the detention of Mr Jean-Pierre Bemba Gombo pursuant to Rule 118\(2\) of the Rules of Procedure and Evidence"](#)', 19 November 2010, ICC-01/05-01/08-1019 (OA4), para. 52.

<sup>9</sup> Appeals Chamber, *The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé*, '[Judgment on the appeal of Mr Laurent Gbagbo against the decision of Trial Chamber I of 8 July 2015 entitled "Ninth decision on the review of Mr Laurent Gbagbo's detention pursuant to Article 60\(3\) of the Statute"](#)', 8 September 2015, ICC-02/11-01/15-208 (OA6), para. 36.

developments affecting him.<sup>10</sup> In addition, the Chamber considered, as a secondary factor, the possibility of Mr Mokom receiving a sentence of a number of years in the event that (part of) the charges would be confirmed and he would be subsequently convicted at trial.<sup>11</sup> The Chamber has no information at its disposal that would impel the conclusion that a change in circumstances requires these findings to be modified. It follows that these considerations continue to hold true at present.

14. Furthermore, the Chamber recalls that it set out a non-exhaustive list of conditions under rule 119 of the Rules that could sufficiently mitigate the risk of flight in relation to Mr Mokom.<sup>12</sup> However, as reported by the Registry, it has no information at its disposal that any of the States Parties it recently interacted with would be in a position to accept Mr Mokom for the purposes of interim release and to enforce the necessary conditions. The Chamber must, as a result, conclude that no change in circumstances has intervened requiring these findings to be adjusted.

15. Turning to article 58(1)(b)(ii) of the Statute, the Chamber observes that it recently rejected the same arguments put forward by the Prosecution.<sup>13</sup> It sees no reason to assess these arguments anew in relation to the present matter. Therefore, the Chamber finds that there are no changed circumstances that would require it to revisit its finding that the Prosecution has failed to establish that, in relation to Mr Mokom, a risk of obstructing or endangering the investigation or the court proceedings exists.<sup>14</sup>

16. In sum, the Chamber concludes that Mr Mokom continues to constitute a risk of flight at present, and that a State that is willing to accept Mr Mokom and enforce the necessary conditions to sufficiently mitigate this risk is yet to be identified. Accordingly, the Chamber orders the continued detention of Mr Mokom.

17. As to the Defence's argument that selective State cooperation should be discouraged in future meetings with States Parties, the Chamber considers that the Registry's efforts in meeting with and contacting States Parties sufficiently demonstrate the importance attached to this matter by the Chamber and the Court. Moreover, noting that the Registry Observations do not specify whether all relevant States Parties have

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<sup>10</sup> [Interim Release Decision](#), para. 53.

<sup>11</sup> [Interim Release Decision](#), para. 53.

<sup>12</sup> [Interim Release Decision](#), para. 56.

<sup>13</sup> [REDACTED]

<sup>14</sup> [Interim Release Decision](#), para. 54.

definitively expressed their position as to their willingness to accept Mr Mokom for the purposes of interim release and to enforce the necessary conditions, the Chamber orders the Registry to continue liaising with these States Parties so as to obtain their responses. Lastly, the Chamber reiterates that the Registry shall continue assisting the Defence in a meaningful manner in contacting the States Parties identified in the Interim Release Decision.



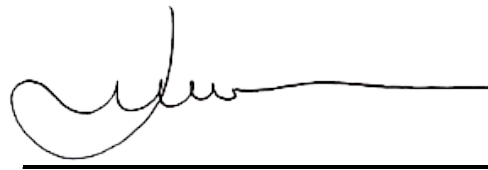
**FOR THESE REASONS, THE CHAMBER HEREBY**

**ORDERS** the continued detention of Mr Mokom;

**ORDERS** the Registry to continue: (i) liaising with the States Parties that have not definitively expressed their position as to their willingness to accept Mr Mokom for the purposes of interim release and to enforce the necessary conditions; and (ii) assisting the Defence in a meaningful manner in contacting the States Parties identified in the Interim Release Decision; and

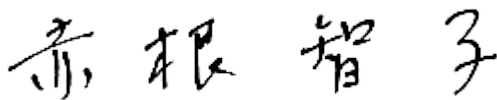
**ORDERS** the Prosecution and Defence to submit public redacted versions of ICC-01/14-01/22-227-Conf and ICC-01/14-01/22-232-Conf, respectively, by no later than 13 July 2023.

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 Wednesday, 5 July 2023.

At The Hague, The Netherlands.