



Original: English

No. ICC-01/14-01/22

Date: 21 November 2023

Date public redacted version: 11 April 2024

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 'Order regarding arrangements pending Mr Mokom's transfer'

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

The Office of the Prosecutor

Mr Karim 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

**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 ‘Order regarding arrangements pending Mr Mokom’s transfer’.

1. On 17 October 2023, following the withdrawal of the charges against Maxime Jeoffroy Eli Mokom Gawaka (‘Mr Mokom’) by the Prosecution,¹ the Chamber terminated the proceedings against Mr Mokom, and further, *inter alia*, instructed the Registry to ‘ensure that the conditions of Mr Mokom’s temporary stay pending his transfer do not in any way amount to a deprivation of liberty and that no restrictions are placed on his freedom of communication or his freedom of movement within the territory of the Host State’ (the ‘17 October 2023 Order’).²

2. On 14 November 2023, following a number of reports provided by the Registry on, *inter alia*, the arrangements applicable to Mr Mokom pending his transfer,³ the Registry reported as follows.⁴ [REDACTED].

3. The Chamber understands that, at present, the arrangements detailed in paragraph 26 of ICC-01/14-01/22-285-Conf-Exp-Corr remains in place. As the Chamber noted previously, ‘Mr Mokom has been subjected to a regime that appears to amount to a form of house arrest’,⁵ notwithstanding the clear terms of the 17 October 2023 Order to the contrary. Accordingly, the Chamber reiterates that the Registry shall ensure that Mr Mokom’s rights as a free person are not restricted in any

¹ Notice of Withdrawal of the Charges against Maxime Jeoffroy Eli Mokom Gawaka’, 16 October 2023, ICC-01/14-01/22-275-Conf, confidential (reclassified as public pursuant to the Chamber’s order dated 19 October 2023).

² Order in relation to the Prosecution’s ‘Notice of Withdrawal of the Charges against Maxime Jeoffroy Eli Mokom Gawaka’, ICC-01/14-01/22-276-Conf, confidential (reclassified as public pursuant to the Chamber’s order dated 19 October 2023).

³ Registry’s Report pursuant to Pre-Trial Chamber II’s Order ICC-01/14-01/22-276-Conf of 17 October 2023, 18 October 2023, ICC-01/14-01/22-277-Conf, confidential, with annex I, confidential, and annexes II-III, confidential and *ex parte*, only available to the Registry; Registry’s Report pursuant to Pre-Trial Chamber II’s Instruction of 25 October 2023, 26 October 2023, ICC-01/14-01/22-280-US-Exp, confidential and *ex parte*, only available to the Chamber, with annexes I-V confidential and *ex parte*, only available to the Registry; Addendum to the ‘Registry’s Report pursuant to Pre-Trial Chamber II’s Instruction of 25 October 2023’, ICC-01/14-01/22-280-US-Exp, 27 October 2023, ICC-01/14-01/22-281-Conf-Exp, confidential and *ex parte*, only available to the Registry, with annexes I-II, confidential and *ex parte*, only available to the Registry; Corrected version of the ‘Registry’s Report pursuant to Pre-Trial Chamber II’s Instruction of 30 October 2023 and Request for Guidance’, 2 November 2023, ICC-01/14-01/22-285-US-Exp, 3 November 2023, ICC-01/14-01/22-285-Conf-Exp-Corr, confidential and *ex parte*, only available to the Registry, with annexes I and II, confidential and *ex parte*, only available to the Registry.

⁴ Email from the Registry to the Chamber, 14 November 2023, at 11:40.

⁵ Email from the Chamber to the Registry, confidential and *ex parte*, Registry only, 30 October 2023, at 13:10.

way under the Court's legal framework in light of the fact that, following the withdrawal of the charges by the Prosecution, the Court lacks a legal title to do so. This is without prejudice to any measures that the Host State may wish to formally adopt regarding Mr Mokom under its own legal framework.

4. In specific terms, Mr Mokom shall not, under the legal framework of the Court, be: (i) required to remain in his hotel room; (ii) subject to a curfew when leaving his hotel room; (iii) required to be accompanied when leaving his hotel room; (iv) restricted to remain within, or request permission to travel outside, the municipality of The Hague; or (v) subject to any similar arrangement restricting his rights. Furthermore, the Registry shall neither stipulate that Mr Mokom is exclusively within the jurisdiction of the Court, nor shall it require Mr Mokom to carry a letter to that effect. The fact that the Court retains residual jurisdiction with regard to a person against whom the charges have not been confirmed does not exclude such a person from falling within the jurisdiction of the Host State as well. This is because, as is implicit in both article 48 of the Headquarters Agreement between the International Criminal Court and the Host State and rule 185 of the Rules of Procedure and Evidence (the 'Rules'), such a person is objectively present on the territory of the Host State pending his transfer to a State referred to in the aforementioned provisions.

5. Having said that, the Chamber considers that, in the specific circumstances of Mr Mokom, including with regard to his personal safety, it is appropriate to request Mr Mokom to: (i) physically report to the Court twice a week; (ii) carry an identification document at all times; (iii) agree, without being obliged, to remain in his hotel room from 00:00 until 06:00 hours; (iv) agree, without being obliged, to being accompanied by an ICC staff member when leaving his hotel room as long as his rights are not restricted in this manner; and (v) inform, without requesting permission, the Registry regarding any travel outside the municipality of The Hague 48 hours in advance of any such travel. The foregoing would allow Mr Mokom to receive the required support in view of his current status under the legal framework of the Court, while additionally contributing to the efficient and expeditious conduct of the procedure under rule 185 of the Rules.

FOR THESE REASONS, THE CHAMBER HEREBY

ORDERS the Registry to ensure that Mr Mokom's rights as a free person are not restricted in any way;

ORDERS the Registry to inform the Host State of the contents of the present order and to continue liaising with the Host State in respect of the practical arrangements pertaining to Mr Mokom;

ORDERS the Registry to inform Mr Mokom of the contents of the present order and to seek his consent to abide by the arrangements set out in paragraph 5 of the present order without obliging him to do so;

ORDERS the Registry to submit a report containing the information set out in the email from the Registry to the Chamber, dated 14 November 2023, at 11:40 hours, and any further developments having occurred thereafter, together with, if necessary, a confidential redacted version, by no later than 24 November 2023, as well as a public redacted version as soon as practicable;

ORDERS the Registry to either submit confidential redacted versions of ICC-01/14-01/22-280-US-Exp, ICC-01/14-01/22-281-Conf-Exp, and ICC-01/14-01/22-285-Conf-Exp-Corr, including any annexes, or to request the Chamber to reclassify these filings, including any annexes, as confidential, by no later than 30 November 2023, unless the Registry presents a reasoned request to the Chamber to maintain the current level of confidentiality of these filings and/or their annexes by the same date; and

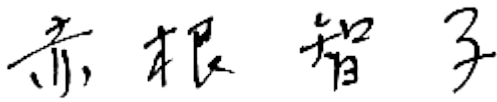
ORDERS the Registry to either submit public redacted versions of ICC-01/14-01/22-277-Conf, ICC-01/14-01/22-280-US-Exp, ICC-01/14-01/22-281-Conf-Exp, and ICC-01/14-01/22-285-Conf-Exp-Corr, including any annexes, or to request the Chamber to reclassify these filings, including any annexes, as public, as soon as practicable, unless the Registry presents a reasoned request to the Chamber to refrain from issuing public redacted versions of these filings and/or their annexes by no later than 30 November 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 Tuesday, 21 November 2023.

At The Hague, The Netherlands.