

Annex II

CONFIDENTIAL



Ministry of Foreign Affairs

**Protocol and Host Country Affairs Department
DPG-Min-BuZa.2023.14749-36**

The Protocol and Host Country Affairs Department of the Ministry of Foreign Affairs of the Kingdom of the Netherlands ('the Ministry') presents its compliments to the Registry of the International Criminal Court ('the Registry') and, with reference to the latter's note verbale of 23 December 2022 (NV/2022/EOSS/390/JCA/rk) in which the Registry requested that the Dutch authorities elaborate on their reasoning for rejecting the request to allow the accommodation of Mr Mokom within the Netherlands if he were granted interim release, has the honour to inform the Registry as follows.

The host State is under no obligation to facilitate interim release on its territory. No such obligation is provided for by the Rome Statute or the Headquarters Agreement. In this respect, the host State cannot agree to designate a location in The Hague as the premises of the Court in relation to the possibility of the interim release of Mr Mokom. The decision to not go beyond what is required under the Headquarters Agreement is supported by the following arguments.

First and foremost, the host State emphasises the responsibility that all States Parties bear in facilitating interim release. Allowing Mr Mokom's interim release on the territory of the host State would place a disproportionate burden on the host State within the voluntary cooperation framework. The host State wishes to prevent such an undesired precedent.

Furthermore, in previous instances in which the host State has gone beyond what was required under the Headquarters Agreement, the end result has often been an unfavourable situation for both the Court and the host State. As explained in the Ministry's note verbale of 28 November 2022 (Min-BuZa.2022.13531-42), in accordance with article 47, paragraph 1 of the Headquarters Agreement, the host State is required to facilitate the transfer of persons granted interim release into a State other than the host State. The host State therefore wishes to reiterate its position that, in the light of article 47, paragraph 1 of the Headquarters Agreement, in the event that Mr Mokom is granted interim release, the Court should make such

appropriate arrangements as soon as possible for the transfer of Mr Mokom to a State other than the host State.

Should the above information not sufficiently address the outstanding questions of the Single Judge, the host State requests that the Registry specify the additional information required.

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

The Hague, 17 January 2023

The Registry of the International Criminal Court
The Hague