

Annex 10

Public

From: Pre-Trial Chamber II communications
Sent: 12 January 2023 17:45
To: Office of the Director DJSS; [REDACTED]
Cc: [REDACTED] Pre-Trial Chamber II communications; Court Management-Court Records; Associate Legal Officer-Court Officer
Subject: ICC-01/14-01/22 - Guidance and Reclassification Order - Confidential and Ex Parte, only available to the Registry

Dear Registry,

Please note that, further to the Registry's communication of 10 January 2023, the Judges of Pre-Trial Chamber II provide the guidance set out below. The Registry, as the channel of communication of the Court, may rely on this guidance in its response to the questions posed by [REDACTED] but the Registry shall not provide this guidance on behalf of the Chamber.

- Question 2 - the proceedings against Mr Mokom are currently at the pre-trial phase and, if Mr Mokom's application for interim release would be granted, such a decision would only concern this phase of the proceedings. In the event that the charges would be confirmed, it would be for the Trial Chamber to take a further decision regarding interim release.
- Question 3 – as mentioned in relation to question 2, if a decision granting Mr Mokom's application for interim release would be adopted, such a decision would concern the pre-trial phase only, and a Trial Chamber would have to take a further decision if the charges would be confirmed. Furthermore, if a decision granting interim release would be adopted, such a decision may also impose certain conditions, which may regulate the movement of Mr Mokom, including for the purposes of attending the confirmation of charges hearing and potentially other hearings if the Chamber would decide to hold such hearings. If interim release would be granted, it cannot be foreseen, at present, how often this would require Mr Mokom to travel to and from [REDACTED]. As for the length of the pre-trial phase, the confirmation of charges hearing is currently scheduled to commence on 31 January 2023, but the hearing will be postponed to a later date. After the hearing, the Chamber's decision will be issued within 60 days pursuant to regulation 53 of the Regulations of the Court, which will conclude this phase of the proceedings subject to the possibility of an appeal if any request for leave to appeal would be granted by the Chamber.
- Question 4 – these matters cannot be considered at present as they would only arise if the charges would be confirmed. In relation to the present stage of the proceedings, it is noted that, should the charges against Mr Mokom not be confirmed, there may be further litigation before the Appeals Chamber as a result of a potential request for leave to appeal such a decision. In such a case, it would no longer be the prerogative of the Chamber to decide on any matters related to Mr Mokom's interim release but for the Appeals Chamber. In the event that there is no further litigation, the decision of the Chamber not confirming the charges will be final.

Furthermore, the Judges of Pre-Trial Chamber II grant the request to reclassify annexes I-VII (currently classified as confidential, *ex parte*, Registry and Defence only) to the 'Report on the Registry's consultations with States on the Interim Release of Mr Mokom and Request for Guidance' (ICC-01/14-01/22-120-Conf-Exp) as confidential, and instruct the Registry to proceed accordingly.

Best regards,

[REDACTED] on behalf of Pre-Trial Chamber II

From: [REDACTED]
Sent: 10 January 2023 17:35
To: Pre-Trial Chamber II communications [REDACTED]
Cc: [REDACTED]
 [REDACTED] Office of the Director DJSS [REDACTED]
Subject: Request for clarification from [REDACTED] - interim release of M. Mokom

Dear Single Judge Aitala,
 Dear Judges of Pre-Trial Chamber II,

In relation to Mr. Mokom's application for interim release, the Registry would like to seek the guidance of the Chamber on a request for clarification brought forward by [REDACTED]. The Registry also seizes this opportunity to request the authorisation of the Chamber for the reclassification of certain documents.

Questions from [REDACTED]

On 23 December 2022, the Registry received by email a list of questions from the authorities of [REDACTED] regarding the potential interim release of Mr Mokom. The Registry will file the exchanges with the [REDACTED] in its next report due on 27 January 2023.

The Registry will prepare responses to questions 1, 5, 6, and 7. The Registry however is not in a position to provide detailed responses to questions 2, 3 and 4 (in italic) and thus would like to seek the Chamber's guidance.

1. What are the exact relevant legal obligations for [REDACTED]
2. *Does interim release cover all stages of the trial? Pre-trial, evidence, sentencing and appeal?*
3. *If possible as much detail as possible on: How long will the trial last? how often would he need to travel in/out [REDACTED] Will he be expected to be present at the ICC for the verdict?*
4. *What will happen to Mr Mokom should he be found not guilty and/or there is such a situation as a No Case to Answer motion for example that is granted? What would be the Court's and [REDACTED] obligations in these scenarios?*

Request for reclassification of annexes

In relation to the Chamber's order issued by email on 23 December 2022 and after having reviewed again all the communications received from the States, the Registry considers that there is no basis for maintaining the annexes to the report ICC-01/14-01/22-120-Conf-Exp as *ex parte* Registry and Defence only. The Registry therefore requests the Chamber's authorisation to reclassify the annexes as confidential.

This email can be classified as confidential.

Kind regards,

[REDACTED]



