

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **08/02/2024**

THE APPEALS CHAMBER

Before: Judge Solomy Balungi Bossa, Presiding
Judge Piotr Hofmański
Judge Luz del Carmen Ibáñez Carranza
Judge Marc Perrin de Brichambaut
Judge Gocha Lordkipanidze

SITUATION IN THE CENTRAL AFRICAN REPUBLIC II

THE PROSECUTOR V. MAXIME JEOFFROY ELI MOKOM GAWAKA

Public

With Confidential Annexes A and B

Public Redacted Version of “Appeal against “Decision pursuant to Rule 185 of the Rules of Procedure and Evidence”, ICC-01/14-01/22-309-Conf-Exp”, ICC-01/14-01/22-318-Conf-Exp, 7 February 2024

Source: Philippe Larochelle, Counsel for Mr. Mokom

Document to be notified in accordance with regulation 31 of the *Regulations of the Court***to:****The Office of the Prosecutor**

Karim A. A. Khan KC
 Mame Mandiaye Niang
 Leonie von Braun

Counsel for the Defence

Philippe Larochelle

Legal Representatives of the Victims

Abdou Dangabo Moussa
 Marie-Edith Douzima-Lawson
 Yaré Fall
 Elisabeth Rabesandratana

Legal Representatives of the Applicant**Unrepresented Victims****Unrepresented****(Participation/Reparation)****Applicants****The Office of Public Counsel for Victims**

**The Office of Public Counsel for the
 Defence**

States Representatives**Amicus Curiae****REGISTRY****Registrar**

Ozvaldo Zavala Giler

Counsel Support Section**Victims and Witnesses Unit****Detention Section**

**Victims Participation and Reparations
 Section Other**

I. INTRODUCTION

1. When Maxime Jeoffroy Eli Mokom Gawaka was arrested pursuant to an International Criminal Court arrest warrant in March 2022, he was living in the Republic of Chad. His priority, now that the ICC Prosecutor has withdrawn the charges against him, is to find a stable situation and a location where he can safely reunite with his wife and children.

2. The question of what should be done with former suspects and accused has long plagued the international courts and tribunals. The crisis of former ICTR defendants, stateless and detained in Niger, for example, has called into question the legacy and work of that institution.¹ Unlike at the *ad hoc* Tribunals, the ICC's statutory framework places a positive obligation on the Court, pursuant to Rule 185 of the ICC Rules of Procedure and Evidence ('Rules'), to make appropriate arrangements for the transfer of certain categories of released persons to "a State which is obliged to receive him or her, to another State which agrees to receive him or her, or to a State which has requested his or her extradition with the consent of the original surrendering State". The Pre-Trial Chamber has rightly recognised that the released person cannot be transferred to a State without his or her consent, which is an aspect of the Impugned Decision which is not under appeal.²

3. The case of Mr Mokom, who had not been transferred from his State of citizenship, and who cannot safely return there, certainly presents the Court with a challenging situation. However, the Court's statutory obligations are not limited to only assisting released persons who can easily return to their country of origin. For those who cannot, a safe third State must be identified, and approached, to offer a home and to give the released person a chance of a dignified life. Mr Mokom was living in safety and dignity until the ICC put its hands on him and claimed jurisdiction over him. Mr Mokom's arrest and release by the ICC has dramatically increased his notoriety and the risks of his return to the Central African Republic ('CAR'). The

¹ See e.g. Journalists for Justice, "Rwandan detainees face prolonged wait for transfer as IRMCT dismisses request", 21 August 2023, available at <https://jfjustice.net/irmct-rejects-rwandan-detainees-transfer-plea/>; JusticeInfo.Net, "How the Eight 'Stateless' of the ICTR Live in Niger", 21 February 2023, available at <https://www.justiceinfo.net/en/112753-eight-stateless-ict-r-niger.html>; JusticeInfo.Net, "The Punishment of the Stateless ICTR 'Migrants'", 9 June 2022, available at <https://www.justiceinfo.net/en/93462-punishment-stateless-ict-r-migrants.html>. See also Cécile Lecolle, "Relocation Issues of Released and Acquitted at International Criminal Courts and Tribunals: A Defence Perspective", *Journal of International Criminal Justice*, Volume 21, Issue 1, March 2023, pages 167-184.

² Pre-Trial Chamber II, "Decision pursuant to Rule 185 of the Rules of Procedure and Evidence", 18 January 2024, ICC-01/14-01/22-309-Conf-Exp ('[Impugned Decision](#)'), para. 12.

Court now has a heightened responsibility to ensure it does Mr Mokom no further harm and adequately restores him to a position of safety and dignity.

4. In Mr Mokom's case, the process of locating and approaching potential safe third States has been ongoing almost since the moment of his release. It has been Mr Mokom's overwhelming priority, as well as the priority of his Defence team and the Registry staff with whom they are engaging on a daily basis. The present appeal stems from Pre-Trial Chamber II's finding that the Court's obligation to arrange for Mr Mokom's transfer to a safe third State is time-limited, and that less than four months after his release, the Court's obligation will unilaterally and irrevocably be terminated. This finding, which has no basis in the prior practice, jurisprudence, or statutory framework of the Court, puts Mr Mokom at risk after 8 February 2024, the date where the Pre-Trial Chamber has unilaterally decided the Court's jurisdiction over Mr. Mokom will disappear. It also undermines all ongoing processes that have been put in place with potential transfer States, squanders the Court's resources invested in this process thus far, obliterates Mr Mokom's ability to [REDACTED], exposes Mr Mokom to a life of insecurity and detention, and removes his ability to reunite with his family or have any chance of a dignified life. It is, put simply, a decision which runs counter to the principles of humanity that the Court was established to protect.

5. Importantly, it is also undermined by legal errors, and by reasoning that is so unfair and unreasonable as to force the conclusion that the Pre-Trial Chamber abused its discretion. It is on this basis that the Defence files the present appeal, seeking appellate intervention to remedy these errors, and order compliance with the Court's obligations under Rule 185 of the Rules.

II. LEVEL OF CONFIDENTIALITY

6. Pursuant to Regulation 23bis(1) of the Regulations of the Court, the Defence files this request as confidential *ex parte*. It refers to confidential documents and information, and information that is *ex parte* the Registry and Defence. A public redacted version will be filed.

III. PROCEDURAL HISTORY

7. The Defence incorporates by reference the procedural history as set out in its Notice of Appeal,³ and notes that the Registry is still waiting for responses to outstanding Requests for Assistance (‘RFAs’) seeking Mr Mokom’s resettlement, from:

- (i) [REDACTED], where the RFAs were sent to the Registry for onward transmission on 25 October 2023; and
- (ii) [REDACTED], where RFAs were sent to the Registry for onward transmission on 2 November 2023.

8. In addition, Defence Witness Mr Olivier Feissona (‘P-0405’), remains detained and at extreme risk in the CAR. On 23 and 29 January 2024, Defence received two additional reports, reiterating that P-0405 is in an extremely frail state of health resulting from his conditions of detention and his torture by the Central African authorities.⁴ On 6 February 2024, the Registry [REDACTED]⁵ [REDACTED] do not fall under the ICC legal framework. [REDACTED] did not answer whether P-0405’s arrest and detention are connected to the ICC proceedings against Mr Mokom, as asked by the Pre-Trial Chamber, but did state that [REDACTED].⁶ Importantly, the Defence request of 8 December 2023, asking that the Pre-Trial Chamber summon P-0405 to appear as a witness before the Pre-Trial Chamber,⁷ remains outstanding.

IV. SUBMISSIONS

Ground 1: Whether the Pre-Trial Chamber erred in setting a period of 21 days for the Registry to obtain “definitive” responses as to States’ willingness to accept Mr Mokom onto their territory; a period which is so manifestly unworkable and unreasonable as to constitute an abuse of discretion;

9. The exercise of engaging with States, both in Africa, Europe and North America, to start the process of trying to find a transfer State for Mr Mokom, has been a priority since the

³ Notice of Appeal against “Decision pursuant to Rule 185 of the Rules of Procedure and Evidence”, ICC-01/14-01/22-309-Conf-Exp and Request for Suspensive Effect, 24 January 2024, [ICC-01/14-01/22-312-Conf-Exp](#), paras. 8-32.

⁴ Annexes A and B.

⁵ [REDACTED].

⁶ [REDACTED].

⁷ Mokom Defence Submissions pursuant to Rule 185(1), 8 December 2023, [ICC-01/14-01/22-307-Conf-Exp](#), para. 54.

Defence was first informed that the charges against Mr Mokom had been withdrawn. Both Mr Mokom and the Defence have worked collaboratively and constructively to this end with various representatives of the Registry, while making direct contact with States and organisations when advised by the Registry to do so.

10. As a starting point, the process is complicated by the fact that Defence teams are prohibited from directly contacting the Division of External Operations of the Registry ('DEO'). As such, any RFAs from Defence teams must first be submitted through the Counsel Support Section ('CSS'), then sent on to the DEO, and then transmitted to States Parties. These additional levels of ICC bureaucracy all contribute to the increased time needed for States to receive a first request.

11. Significant delays are regularly encountered before responses are received to RFAs sent on behalf of Defence teams. The '*Registry Report on Cooperation*' of 26 October 2023 recorded that the average time taken for States to reply to an RFA originating from the Defence is 46 days. The Registry reported that 'cooperation with Defence teams is not easily forthcoming for a number of reasons'.⁸ These reasons are well known, and prompted the Defence to prioritise working closely with the Registry when engaging with States.

12. At no time during this process, did the Pre-Trial Chamber indicate that the clock was ticking for Mr Mokom. When he was released, he had no idea (nor could he possibly have known) that, unless a transfer State was found within less than four (4) months, all assistance from the Court would be permanently withdrawn. He also did not know that the Court's 'solution' would be to transfer Mr Mokom to the exclusive jurisdiction of the Host State, [REDACTED].⁹ The only indication of such a timeframe came on 18 January 2024, when the Pre-Trial Chamber imposed a 21-day deadline before its assistance would be terminated. Specifically, the Pre-Trial Chamber ordered the Registry to "actively interact" with all relevant States:

[...] with a view to obtaining a **definitive response as to their willingness to accept Mr Mokom**, irrespective of the question whether such States are Parties to the Statute or not, by no later than 7 February 2024 (12:00 hours)
[...]

⁸ ICC ASP, 'Report of the Court on Cooperation', [ICC-ASP/22/24](#), 26 October 2023, p. 4, para. 19.

⁹ Annex to the Transmission of a Note Verbale dated 19 January 2024 received from the Host State, [ICC-01/14-01/22-311-Conf-Anx](#).

Should no state be identified that is willing to accept Mr Mokom and to which he agrees to be transferred by the aforementioned date, **the Chamber’s residual jurisdiction in the present case will come to an end** [...].

In the event that the Chamber’s residual jurisdiction would conclude without a State having been identified that is willing to accept Mr Mokom and to which he agrees to be transferred, **Mr Mokom will fall under the exclusive jurisdiction of the Host State** [...].

13. For the reasons set out in Ground 2 below, this approach is incompatible with the plain language and meaning of Rule 185 and could not reasonably have been anticipated. Moreover, this timeframe is arbitrary and manifestly unreasonable. The charges against Mr Mokom were withdrawn on 16 October 2023, and he was ordered to be released from the Detention Centre the following day. The first days after Mr Mokom’s release were spent trying to negotiate his new surroundings, contact his family, and seek clarity on the conditions of his temporary stay in the Host State. Although the Defence’s attention immediately turned to finding a transfer State, the total period of time given by the Pre-Trial Chamber without notice to obtain a “definitive response” from a transfer State is less than four months, which is an impossibly short period of time in which to negotiate and receive “definitive” agreements from States.

14. As previously submitted, the process of securing an agreement from a State is a diplomatic, and political one.¹⁰ The pace of this process is outside the control of Mr Mokom, the Defence, or even the ICC Registry. Within a State, different branches of government may need to be consulted, and confer. The position of the State may be moveable over time, given different political considerations. There may be legislative challenges to consider, and information may need to be exchanged several times between the State, and the Court. Requiring this process to be finalised within what is essentially a three-month period, finds no basis in any prior practice of the Court, and will preclude any successful outcome. It also represents a false economy, as it means that the resources invested by the Court in this process will be squandered. As such, the imposition of the 7 February 2024 deadline is so unfair and unreasonable as to force the conclusion that the Pre-Trial Chamber failed to exercise its

¹⁰ Notice of Appeal against “Decision pursuant to Rule 185 of the Rules of Procedure and Evidence”, ICC-01/14-01/22-309-Conf-Exp and Request for Suspensive Effect, 24 January 2024, [ICC-01/14-01/22-312-Conf-Exp](#), para. 3.

discretion judiciously.¹¹ This improper exercise of discretion materially affected the Impugned Decision by prematurely terminating a process before it could possibly come to a successful, or indeed any, conclusion.¹²

15. The Pre-Trial Chamber reasoned that “any other determination” other than cutting off the Court’s assistance on 7 February 2024 “would contravene basic tenets of fairness *vis-à-vis* Mr Mokom”.¹³ This is not explained further and is *prima facie* counterintuitive. It is unclear how the Court’s continued jurisdiction over this process could be considered unfair to Mr Mokom, particularly when – as a result of its withdrawal – Mr Mokom is rendered unrepresented, homeless, stateless, at immediate risk of detention, unable to work or move across any borders, and unlikely to reunite or live with his family. For the avoidance of doubt, Mr Mokom seeks and continues to require the assistance of the Court in arranging his transfer as required under Rule 185.

16. Similarly, the Pre-Trial Chamber reasoned that the procedure in Rule 185 “must be brought to a close within a reasonable time frame” and “cannot be protracted further” in the absence of compelling reasons.¹⁴ However, for the purpose of securing the agreement of a State to welcome a person onto their territory, any timeframe which is so limited as to preclude any meaningful exchange with States cannot be considered reasonable, particularly when there is no timeframe set in Rule 185 itself.

17. Reading between the lines, the Defence acknowledges that the Pre-Trial Chamber cannot be expected to assume residual jurisdiction indefinitely, or preside over a process where Mr Mokom languishes in a hotel room for a period of years, in an exceptionally designated “premises of the Court”. However, as discussed further in Ground 3 below, an alternative exists. Namely, that Mr Mokom [REDACTED], while the process of securing permanent residence in a safe third State continues. As discussed further below, the Decision also spells an end to this alternative, given that [REDACTED]. The Pre-Trial Chamber’s approach is manifestly unreasonable, and constitutes an abuse of its discretion. The 7 February 2024 deadline for the Registry to obtain “definitive responses” from States should be quashed.

¹¹ *Prosecutor v. Ntaganda*, Appeal Judgment, 30 March 2021, [ICC-01/04-02/06-2666-Red](#), para. 46.

¹² *Prosecutor v. Al Hassan*, Judgment on the appeal of Mr Al Hassan against the decision of Pre-Trial Chamber I entitled ‘Décision relative à l’exception d’irrecevabilité pour insuffisance de gravité de l’affaire soulevée par la défense’, 19 February 2020, [ICC-01/12-01/18-601-Red](#), para. 39.

¹³ [Impugned Decision](#), para. 18.

¹⁴ [Impugned Decision](#), para. 18.

Ground 2: Whether the Pre-Trial Chamber erred in law in finding that its residual jurisdiction would conclude on 8 February 2024 in the absence of arrangements for transfer being in place, despite the operation of Article 48 of the Headquarters Agreement and the language of Rule 185 of the Rules, particularly where the use of the obligatory “shall” in Rule 185 indicates an obligation of result, not an obligation of means

18. The Court’s obligation to make arrangements for the transfer of a former suspect or accused, is framed in mandatory terms. Rule 185 provides that “the Court **shall**” as soon as possible, make such arrangements for the transfer of the person.

19. The use of the word “shall” indicates an obligation of result, and not an obligation of means. Meaning, the Court is under a *statutory obligation* to make arrangements for Mr Mokom’s transfer. Rule 185 was not drafted to require the Court to “engage in all reasonable efforts to make arrangements” or to “assist the released person in efforts to make arrangements”. The obligation is clear. The Court is **required** to make arrangements for transfer, reflecting that it was the Court’s acts and decisions that brought the person to The Netherlands in the first place.

20. The mandatory nature of this obligation in Rule 185 is reinforced by the language of the Headquarters Agreement with the Host State. Article 48 of the Headquarters Agreement between the ICC and The Netherlands mirrors this language, recognising the Court’s obligation to arrange for the transfer of those released from its custody, and imposing no obligation on the Host State to allow those released from ICC custody to enter or stay on its territory. [REDACTED]”.¹⁵ Of course, nothing in Article 48 of the Headquarters Agreement, the Statute, or the Rules requires the Host State to do otherwise. The obligation rests with the Court to make arrangements for his transfer. The responsibility does not revert to the released person, or the Host State, at any point.

21. Importantly, the obligation to make arrangements for transfer is not limited by time. As is consistent with an obligation of result, there is nothing in the plain language of Rule 185 which allows the Court to disregard this obligation at a certain point in time, or consider itself no longer bound to fulfil this obligation. The only temporal reference in Rule 185 is to the

¹⁵ Annex to the Transmission of a Note Verbale dated 19 January 2024 received from the Host State, [ICC-01/14-01/22-311-Conf-Anx](#).

Court making arrangements for transfer “as soon as possible”. There is nothing to suggest that at a certain point, the Court can abandon this task.

22. Moreover, the Pre-Trial Chamber’s finding that the Rule 185 obligation dissipates as of 7 February 2024, sets a precedent which would risk rendering the Rule 185 procedure meaningless. Namely, the clear statutory obligation included in Rule 185 would be watered down to an obligation on the Court to make arrangements for transfer only where the process is without obstacle, and can be completed within an arbitrary and unknown timeframe set by each individual Chamber, and not notified in advance. This is inconsistent with the plain language, meaning and purpose of Rule 185.

23. The power to arrest and incarcerate suspects, and deprive them of their liberty, family life, and freedom of movement, is an extraordinary one. The ICC’s ability to deprive people of these fundamental rights, gives rise to concomitant obligations as to their treatment. One such obligation, is arranging for their transfer if it transpires that the charges against them cannot be confirmed. In deciding to extricate itself from this obligation, and find that its jurisdiction would cease despite no arrangements for Mr Mokom’s transfer being in place, the Pre-Trial Chamber erred in law. There is no such off-ramp in the Court’s statutory framework. The obligation subsists even when the suspect cannot be simply transferred to his State of citizenship within a period of days or weeks. This error undermines the finding that jurisdiction ceases on 7 February 2024, which should be quashed on appeal.

Ground 3: Whether in closing the door to Mr Mokom’s [REDACTED] through the ending of its residual jurisdiction, the Pre-Trial Chamber abused its discretion

24. Since Mr Mokom’s release from the Detention Centre on 17 October 2023, the Defence has been engaging in discussions with [REDACTED] concerning his relocation. [REDACTED]. The first RFA was sent [REDACTED] on 7 November 2023.¹⁶ In response, [REDACTED] indicated to the Registry on 24 November 2023 that it envisaged agreeing [REDACTED].¹⁷ This was a hugely significant leap forward, and a direct result of significant efforts on the part of Mr Mokom, his Defence team and the Registry.

¹⁶ Email from the Mokom Defence to the Registry, 7 November 2023, at 20:13, with attached Defence RFA ([REDACTED]).

¹⁷ Annex III to Registry’s Report pursuant to Pre-Trial Chamber II’s Instruction of 22 November 2023, 27 November 2023, [ICC-01/14-01/22-299-Conf-Exp](#), [ICC-01/14-01/22-299-Conf-Exp-AnxIII](#); See also ICC-01/14-01/22-299-Conf-Exp, para. 12.

25. [REDACTED].¹⁸

26. Though [REDACTED] indicated that they were not inclined to accept [REDACTED],¹⁹ Mr Mokom welcomed this temporary solution as a chance for [REDACTED], and as giving him time to negotiate his permanent relocation without the stress of the pressure of the last few months.

27. On 22 January 2024, Mr Mokom's Defence team, through the Registry, sent another RFA to [REDACTED] including a signed undertaking from Mr Mokom. The undertaking detailed his unconditional agreement with the conditions laid out [REDACTED].²⁰

28. By deciding that the Court's residual jurisdiction will conclude as of 8 February 2024, the Pre-Trial Chamber obliterated this ideal solution and the three months of diplomatic negotiations that had preceded it. That is, by foregoing the Court's jurisdiction over Mr Mokom after 8 February, the Pre-Trial Chamber has rendered both conditions impossible to fulfil.

29. Importantly, the Pre-Trial Chamber also ignored the relevant legal framework. As discussed in Ground 2 above, Rule 185 states that the Court "**shall** make such arrangements" for the transfer of the person "to another State **which agrees** to receive him". Mr Mokom had found a State willing to receive him. Instead of facilitating arrangements, the Pre-Trial Chamber permanently destroyed Mr Mokom's possibility of relocation [REDACTED], without any reasonable or legal basis for doing so.²¹ The Pre-Trial Chamber thus erred in rejecting the solution proposed [REDACTED], and this should be overturned on appeal.

Ground 4: Whether the Pre-Trial Chamber erred by unilaterally and without prior notice, transferring the jurisdiction over Mr Mokom to the Host State, without consulting with either the Host State or Mr Mokom, or receiving submissions thereon.

30. As outlined above, since his release on 17 October 2023, Mr Mokom has been proactive in trying to secure a state for his relocation, sending multiple RFAs through the Registry, and

¹⁸ Annex III to Registry's Report pursuant to Pre-Trial Chamber II's Instruction of 22 November 2023, 27 November 2023, [ICC-01/14-01/22-299-Conf-Exp](#), [ICC-01/14-01/22-299-Conf-Exp-AnxIII](#); See also ICC-01/14-01/22-299-Conf-Exp, paras. 12-13.

¹⁹ Registry's Transmission of a letter from [REDACTED], 1 December 2023, [ICC-01/14-01/22-306-Conf-Exp](#), para. 2; Annex I to Registry's Transmission of a letter from [REDACTED], [ICC-01/14-01/22-306-Conf-Exp-AnxI](#).

²⁰ Email from the Mokom Defence to the Registry, 22 January 2024, at 10:44, with attached Defence RFA ([REDACTED]).

²¹ See [Impugned Decision](#), paras. 18-21.

therefore being entirely dependent on the information provided to him by CSS. Mr Mokom was never given the opportunity to sit down with the Registry, the Host State and/or other State representatives to engage in discussions to find an effective solution which respected his fundamental rights and dignity, and which did not put the Host State in an unwanted situation. Regardless, Mr Mokom has never stopped his efforts to find a safe State willing to welcome him.

31. On 18 January 2024, without prior notice or consultation with Mr Mokom or the Host State, the Pre-Trial Chamber ruled that the “residual jurisdiction of the Chamber will conclude and the designation of Mr Mokom's place of stay will fall under the exclusive jurisdiction of the Host State.”²² Such a ruling does not arise from Rule 185, which provides only that the role of the Host State is to “facilitate the transfer”. The Host State is not foreseen in Rule 185 as a fallback for the Court to shirk a responsibility it no longer wishes to assume, by extricating itself from a situation of its own making.

32. Prior to this decision, the Pre-Trial Chamber did not seek the views of the Host State. Rather, it presented this new reality as a *fait accompli*, that Mr Mokom would instead fall within the sole jurisdiction of the Dutch authorities. [REDACTED]:²³

“[REDACTED]”.²⁴

33. On 26 January 2024, in accordance with the Impugned Decision,²⁵ a meeting occurred between the Registry and the Host State during which the latter relayed that [REDACTED].²⁶

34. The Pre-Trial Chamber’s ruling, which obliges the Host State to assume jurisdiction over Mr Mokom without having agreed to it, is not legally provided by the Court’s core legal texts or jurisprudence, and puts Mr Mokom in a situation that jeopardises his rights and fundamental freedoms. Mr Mokom's life will be prejudiced, once again, as he has not been given sufficient time and opportunity to successfully consult with States.

²² [Impugned Decision](#), p. 11.

²³ Annex to the Transmission of a Note Verbale dated 19 January 2024 received from the Host State, [ICC-01/14-01/22-311-Conf-Anx](#).

²⁴ Annex to the Transmission of a Note Verbale dated 19 January 2024 received from the Host State, [ICC-01/14-01/22-311-Conf-Anx](#), p. 2.

²⁵ [Impugned Decision](#), p. 11.

²⁶ Registry’s Report on Communications with the Host State pursuant to Order ICC-01/14-01/22-309-Conf, [ICC-01/14-01/22-313-Conf](#), para. 9.

35. The Host State clearly stated that “[REDACTED]”.²⁷ The Pre-Trial Chamber’s failure to provide sufficient notice, and the *de facto* halt to consultations with the States, deny Mr Mokom the opportunity to find “other safe or viable options” rather than asylum. By depriving the Host State and Mr Mokom of the opportunity to, at least, present their views before ordering the transfer of jurisdiction over Mr Mokom to the Host State, the Pre-Trial Chamber erred in law.

36. Moreover, the Pre-Trial Chamber's ruling will have consequences, not just for Mr Mokom, but for all future suspects/accused before the ICC. Left unchanged, this ruling would set a dangerous precedent for the ICC. [REDACTED] [...]”.²⁸ By departing from the rules and practice, and rendering a decision not only unexpected and unfair, but also inapposite to the Host State, the Pre-Trial Chamber erred in law.

V. CONCLUSION

37. There is no-one who wants this process to move more quickly than Mr Mokom or his Defence team, who are themselves assisting him on minimal resources and paying for immigration lawyers and asylum advice out of their own pockets. On 8 February 2024, Mr Mokom will be ejected from the hotel room in which he has been staying since his release from detention, with no place to live and nowhere to go. Mr Mokom has been separated from his family now for two years, on the basis of allegations that were never capable of supporting a conviction, and could not even support the confirmation of charges. Mr Mokom’s life has been irreparably degraded by his dealings with the ICC, and yet he is working constructively with the institution that removed him from his family, to find a way to return to them. In the Impugned Decision, through the setting of the arbitrary 7 February 2024 deadline, the Pre-Trial Chamber has decided that the Court is entitled to wash its hands of the obstacles it has created for Mr Mokom. This is not only inconsistent with the plain language of Rule 185 of the Rules, but is entirely incompatible with the basic tenets of justice and human rights which underpin the purpose of the Court.

38. On this basis, the Defence requests that the Appeals Chamber:

²⁷ Annex to the Transmission of a Note Verbale dated 19 January 2024 received from the Host State, [ICC-01/14-01/22-311-Conf-Anx](#), p. 2.

²⁸ Registry’s Report on Communications with the Host State pursuant to Order ICC-01/14-01/22-309-Conf, [ICC-01/14-01/22-313-Conf](#), para. 10.

QUASH the Pre-Trial Chamber's finding that its residual jurisdiction ends as of 7 February 2024; and

ORDER the Pre-Trial Chamber to continue to facilitate the Court's assistance to Mr Mokom, the Defence, the Registry, and States, to fulfil its obligations under Rule 185 of the Rules, including through consideration of [REDACTED], and to address other outstanding matters including, but not limited to, the transmission of RFAs to the CAR regarding the judgment issued against Mr Mokom, and the adjudication of outstanding Defence requests concerning the safety of Mr Olivier Feissona.

Respectfully submitted,



Philippe Larochelle,
Counsel for Maxime Mokom

The Hague, The Netherlands
Thursday, February 08, 2024