

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

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

Date: 12 July 2024

**ARTICLE 85 CHAMBER**

**Before:** Judge Miatta Maria Samba, Presiding Judge  
Judge Keebong Paek  
Judge Beti Hohler

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC II**

**IN THE CASE OF**

***THE PROSECUTOR v. MAXIME JEOFFROY ELI MOKOM GAWAKA***

**PUBLIC**

**Public redacted version of “Updated Registry’s Submissions on the Defence Request for Compensation under Article 85 of the Rome Statute (ICC-01/14-01/22-329-Conf)”, 13 June 2024, ICC-01/14-01/22-343-Conf-Exp**

**With public redacted annexes I-VIII**

**Source:** The Registrar

Document 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 Helen Brady

**Counsel for the Defence**

Mr Philippe Larochelle  
Ms Sheila Paylan

**Legal Representatives of Victims**

**The Office of Public Counsel for  
Victims**

**Unrepresented Victims**

**Unrepresented Applicants for  
Participation/Reparation**

**States Representatives**

**REGISTRY**

---

**Registrar**

Mr Osvaldo Zavala Giler

**Counsel Support Section**

Mr Juan A. Escudero

**Victims and Witnesses Unit**

**Detention Section**

Mr Harry Tjonk

## I. Introduction

1. The Registry submits these updated submissions further to the Article 85 Chamber's "Order instructing the Registry to re-file the Registry's Submissions", issued on 6 June 2024 ("Order to Re-File the Registry's Submissions").<sup>1</sup>
2. On 17 October 2023, Pre-Trial Chamber II ("Chamber") issued the "Order in relation to the Prosecution's 'Notice of Withdrawal of the Charges against Maxime Jeoffroy Eli Mokom Gawaka'" ("Order"), in which, *inter alia*, it terminated the proceedings against Mr Mokom and vacated the Warrant of Arrest against him, and ordered, in view of the right to liberty, Mr Mokom's immediate release from the ICC Detention Centre. In this regard, the Chamber specified that:

[I]n view of the absence of a legal title for Mr Mokom's pre-trial detention under the Statute, the Registry shall ensure that the conditions of Mr Mokom's temporary stay pending his transfer [pursuant to Rule 185 of the Rules of Procedure and Evidence] 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.<sup>2</sup>

Also in same, the Chamber instructed the Registry to consult with the host State, "to ensure that any temporary conditions of stay of Mr Mokom do not result in any deprivation of liberty or restriction of any freedoms".<sup>3</sup>

3. The Chamber reiterated thereafter, on numerous occasions following a number of reports by the Registry on, *inter alia*, the arrangements applicable to Mr Mokom pending his transfer, that Mr Mokom is a free person, for whom the Court has no

---

<sup>1</sup> Article 85 Chamber, "Order Instructing the Registry to re-file the Registry's Submissions", 6 June 2024, ICC-01/14-01/22-342. As to the Registry's Submissions, see Registry, "Registry's Submissions on the Defence Request for Compensation under Article 85 of the Rome Statute (ICC-01/14-01/22-329-Conf)", ICC-01/14-01/22-338-Conf-Exp, 27 May 2024.

<sup>2</sup> Pre-Trial Chamber II, "Order in relation to the Prosecution's 'Notice of Withdrawal of the Charges against Maxime Jeoffroy Eli Mokom Gawaka'", 17 October 2023, ICC-01/14-01/22-276, paras 9, 10 and p. 6.

<sup>3</sup> *Ibid*, para. 6.

legal title to restrict his liberty in any way, and who ought to be able to enjoy his rights as a free person.<sup>4</sup>

4. The representatives of the host State (“host State”), for their part, have maintained that the host State has no legal obligation to accept the release of any (formerly) detained person from the Court onto its territory; and that the absence of conditions/practical arrangements<sup>5</sup> applied to such persons would, in its view, result in illegal entry or stay on its territory, [REDACTED].<sup>6</sup>
5. At the same time, the Chamber has held, *inter alia*, with regard to Mr Mokom’s presence on the territory of the Netherlands, that he already entered its territory upon his transfer from Chad and remained on Dutch territory during his detention in the ICC Detention Centre and in the “Premises of the Court”<sup>7</sup> following his release.<sup>8</sup> In relation to another detained person, Trial Chamber II has similarly held

---

<sup>4</sup> Pre-Trial Chamber II, “Order regarding arrangements pending Mr Mokom’s transfer”, 21 November 2023, ICC-01/14-01/22-294-Conf-Exp. Public redacted version was filed on 11 April 2024, ICC-01/14-01/22-294.

<sup>5</sup> Conditions and Practical Arrangements/practical arrangements are used interchangeably.

<sup>6</sup> Registry”, “ADDENDUM to ‘Registry’s Report pursuant to Order ICC-01/14-01/22-294-Conf-Exp’, dated 24 November 2023, ICC-01/14-01/22-298-Conf”, 28 November 2023, ICC-01/14-01/22-301-Conf-Exp, p.7. Confidential redacted version, ICC-01/14-01/22-301-Conf-Red.

<sup>7</sup> 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, para. 19. Public redacted version of the Decision was issued on 18 January 2024, ICC-01/14-01/22-309-Red.

<sup>8</sup> The Chamber also stated that Mr Mokom “falls under the Court’s jurisdiction in as far as the procedure under rule 185 of the Rules is concerned, but he is otherwise under the jurisdiction of the Host State by virtue of the objective fact that he is present on its territory, thus enjoying certain rights under the legal system of the Netherlands”. 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, para. 19 and accompanying footnotes. Public redacted version of the Decision was issued on 18 January 2024, ICC-01/14-01/22-309-Red. See also Pre-Trial Chamber II, “Public redacted version of ‘Order regarding arrangements pending Mr Mokom’s transfer’”, 11 April 2024, para. 4 (“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 rule 185 of 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”). See also *ibid.*, para. 3.

that the Court does not possess any territory.<sup>9</sup> Equally, courts in the Netherlands, including the Council of State of the Netherlands, the highest administrative law and constitutional court in the host State, have held that the ICC does not have any territory, and that even persons detained at the ICC Detention Centre fall under Dutch human rights jurisdiction, because they are on the territory of the Netherlands.<sup>10</sup>

6. The host State requested the Registry to [REDACTED];<sup>11</sup> [REDACTED],<sup>12</sup> [REDACTED]<sup>13</sup>, [REDACTED].<sup>14</sup> [REDACTED].

7. These conditions formed the basis of the practical arrangements, which were applied to Mr Mokom. The Registry and the host State held discussions about these arrangements, during which the Registry, mindful both of the Order and the position of the host State, sought to secure the least restrictive practical arrangements.<sup>15</sup> Throughout, the Registry reiterated to the host State that, although the Court retained residual jurisdiction with regard to Mr Mokom, the Court

---

<sup>9</sup> Trial Chamber II, "Decision on *Amicus Curiae* application and on the " Requête tendant à obtenir présentations des témoins DRC-D02-P-0350, DRC-D02-P0236, DRC-D02-P0228 aux autorités néerlandaises aux fins d'asile » (articles 68 and 93(7) of the Statute », 9 June 2011, ICC-01/04-01/07-3003-tENG, para. 64.

<sup>10</sup> See 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, paras 10, 19 and accompanying footnotes, for which the Chamber cites the aforementioned finding by Trial Chamber II and Dutch case law. Public redacted version of the Decision was issued on 18 January 2024, ICC-01/14-01/22-309-Red.

<sup>11</sup> See '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, ICC-01/14-01/22-285-US-Exp", 3 November 2023, ICC-01/14-01/22-285-Conf-Exp-Corr-Red, para. 19.

<sup>12</sup> See para. 4, *supra*.

<sup>13</sup> See 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, para. 21. On 30 November 2023, confidential redacted versions were registered as ICC-01/14-01/22-280-Conf-Exp-Red and ICC-01/14-01/22-280-Conf-Exp-Red2.

<sup>14</sup> See '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, ICC-01/14-01/22-285-US-Exp", 3 November 2023, ICC-01/14-01/22-285-Conf-Exp-Corr-Red, para. 19.

<sup>15</sup> See '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, ICC-01/14-01/22-285-US-Exp", 3 November 2023, ICC-01/14-01/22-285-Conf-Exp-Corr-Red, paras 19-22.

cannot, under the Court's legal framework, impose any condition on Mr Mokom's stay in the Netherlands pending his transfer. The Registry also emphasised that, as per the Order, the Registry will not put in place any measure to prevent Mr Mokom from leaving the "Premises of the Court".<sup>16</sup>

8. Also throughout, the Registry consulted with States to which Mr Mokom agreed to be transferred<sup>17</sup> and provided him with the reasonably necessary assistance in the interim pending his transfer, including [REDACTED].<sup>18</sup>
9. In the meantime, the host State had requested Mr Mokom to abide by the practical arrangements as detailed below during his stay in the Netherlands pending his transfer. [REDACTED].
10. Since the practical arrangements were imposed by the host State, rather than by the Registry, on Mr Mokom's stay in the host State after his release and pending his transfer, the matter was considered between Mr Mokom and the host State with the Registry acting as the channel of communication conveying the views between two. Insofar as the Registry is aware, the Defence did not litigate the matter before any court in the host State.
11. The Registry found itself between a rock and a hard place: between the position, on the one hand of the Chamber and that of the host State, on the other. It is against this backdrop that the Registry provides the following information and makes its submissions. Annexes I-VII are correspondence between the Registry and the

---

<sup>16</sup> Registry, "Registry's Report pursuant to Order ICC-01/14-01/22-294-Conf-Exp", 24 November 2023, ICC-01/14-01/22-298-Conf-Exp, para. 22.

<sup>17</sup> See 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, paras 13-15, p. 12.

<sup>18</sup> See Pre-Trial Chamber II, "Order in relation to the Prosecution's 'Notice of Withdrawal of the Charges against Maxime Jeoffroy Eli Mokom Gawaka'", 17 October 2023, ICC-01/14-01/22-276, para. 6.

Defence, referred to herein, that is relevant to Mr Mokom's claim for compensation, from 17 October 2023 to 28 November 2023. Annex VIII is all other such correspondence not referred to herein. As to the Order to Re-File the Registry's Submissions, to file on the case record communications between the Registry and the host State, the Registry is not in a position to provide the emails exchanged with the host State as the host State did not give consent for their disclosure. Therefore, the Registry hereby provides the summary or extracts of said emails in the present submission or makes references to the summary or extracts already available in the case record.

## II. Procedural History and Chronology

12. To best assist the Article 85 Chamber in reaching an informed decision on the Request for Compensation, the Registry hereby provides a factual overview of the events relating to the period subject of the Request for Compensation; namely, the 43 days starting from Mr Mokom's release from the ICC Detention Centre on 17 October 2023, pursuant the Pre-Trial Chamber's Order, until the issuance on 28 November 2023 of the public redacted version of the Order concerning the relaxation of measures.<sup>19</sup>

13. On 16 October 2023, the Office of the Prosecutor ("Prosecution") submitted its "Notice of Withdrawal of the Charges against Maxime Jeoffroy Eli Mokom Gawaka".<sup>20</sup>

---

<sup>19</sup> Pre-Trial Chamber II, "Order regarding arrangements pending Mr Mokom's transfer", 21 November 2023, ICC-01/14-01/22-294-Conf-Exp. Public redacted version was filed on 11 April 2024, ICC-01/14-01/22-294.

<sup>20</sup> Prosecution, "Notice of Withdrawal of the Charges against Maxime Jeoffroy Eli Mokom Gawaka", 16 October 2023, ICC-01/14-01/22-275.

14. On 17 October 2023, the Chamber issued the Order, in which, *inter alia*, it instructed the Registry “to effectuate Mr Mokom’s immediate release from the ICC Detention Centre”; “to make all necessary arrangements to transfer Mr Mokom to a State which is obliged to receive him or to another State”; “to consult with the Host State to ensure that any temporary conditions of stay of Mr Mokom do not result in any deprivation of liberty or restriction of any freedoms” and “to provide Mr Mokom with the reasonable necessary assistance in the interim period pending his transfer to allow him to enjoy his rights as a free person”.<sup>21</sup>

15. Also on the same day, 17 October 2023, in order to execute the immediate release of Mr Mokom from the ICC Detention Centre further to the Order, the Registry proposed to the host State,<sup>22</sup> to designate specific rooms<sup>23</sup> at a local as “Premises of the Court” (“Hotel”) for Mr Mokom’s stay pending his transfer pursuant to rule 185 of the Rules; the host State agreed to do so, [REDACTED]. The host State indicated to the Registry that “[t]his cannot be interpreted as a statement that the Netherlands agrees to receive Mr Mokom as described in article 48 of the Headquarters Agreement”,<sup>24</sup> and that, following the Registry’s proposal,<sup>25</sup> it wished to apply the following practical arrangements pending further consultations between it and the Registry (“1<sup>st</sup> Practical Arrangements”):

[REDACTED].<sup>26</sup>

---

<sup>21</sup> The Chamber specified that, “[I]n view of the absence of a legal title for Mr Mokom’s pre-trial detention under the Statute, the Registry shall 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.” Pre-Trial Chamber II, “Order in relation to the Prosecution’s ‘Notice of Withdrawal of the Charges against Maxime Jeoffroy Eli Mokom Gawaka’”, 17 October 2023, ICC-01/14-01/22-276, para. 10 and p. 6.

<sup>22</sup> Registry, Annex II to the “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-Exp-AnxII.

<sup>23</sup> [REDACTED]. See 1<sup>st</sup> Practical Arrangements.

<sup>24</sup> Registry, Annex III to the “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-Exp-AnxIII.

<sup>25</sup> *Supra* note 22.

<sup>26</sup> *Supra* note 24.



16. [REDACTED].<sup>27</sup> [REDACTED].

17. Also on 17 October 2023, the Registry informed the Defence that the host State ha[s] “just informed the Registry that they have agreed to the conditions and practical arrangements [i.e., 1<sup>st</sup> Practical Arrangements] pending the transfer of Mr Mokom to a third State”, and informed the Defence of the said arrangements.<sup>28</sup> The Defence did not oppose the 1<sup>st</sup> Practical Arrangements. The Registry implemented these arrangements as of that day.

18. Also that day, 17 October 2023, Mr Mokom was released from the ICC Detention Centre further to the Order and accommodated at the Hotel further to the 1<sup>st</sup> Practical Arrangements.

19. On 18 October 2023, the Defence asked the Registry to be informed in due course of the result of the [REDACTED].<sup>29</sup>

20. Further that day, 18 October 2023, the Registry provided the Conditions on Interim Release to the host State as follows, further to the latter’s request to this effect:

[REDACTED].<sup>30</sup>

---

<sup>27</sup> Annex I, Email from the Registry to the Defence, 17 October 2023, at 19:22.

<sup>28</sup> Annex I, Email from the Registry to the Defence, 19 October 2023, at 19:22.

<sup>29</sup> Annex I, Email from the Defence to the Registry, 18 October 2023, at 12:55.

<sup>30</sup> 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, para. 21. On 30 November 2023, confidential redacted versions were registered as ICC-01/14-01/22-280-Conf-Exp-Red and ICC-01/14-01/22-280-Conf-Exp-Red2. See also ICC-01/14-01/22-280-Conf-AnxIII.

21. Also that day, 18 October 2023, the Registry requested the host State to allow [REDACTED].<sup>31</sup> The host State informed the Registry, on 18 October 2023, that [REDACTED].<sup>32</sup>
22. On 20 October 2023, the Defence enquired with the Registry to be informed, [REDACTED]."<sup>33</sup>
23. On 20 October 2023, the Registry, after having enquired about the matter with the host State, informed the Defence that [REDACTED]. For the time being he therefore cannot leave the building of the hotel."<sup>34</sup>
24. Later that day, 20 October 2023, the Registry, after having further enquired about the matter with the host State, informed the Defence that [REDACTED],<sup>35</sup> [REDACTED].<sup>36</sup> Mr Mokom started to leave his hotel room accordingly.

---

<sup>31</sup> As indicated in the note verbale of the host State of 17 October 2023 (I CC-01/14-01/22-277-Conf-Exp-AnxIII), Mr Mokom was not allowed to leave his hotel room [REDACTED]. See 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, para. 20. On 30 November 2023, confidential redacted versions were registered as ICC-01/14-01/22-280-Conf-Exp-Red and ICC-01/14-01/22-280-Conf-Exp-Red2. Public redacted version was registered on 31 January 2024 as ICC-01/14-01/22-280-Red.

<sup>32</sup> 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, para. 20 (emphasis in original). On 30 November 2023, confidential redacted versions were registered as ICC-01/14-01/22-280-Conf-Exp-Red and ICC-01/14-01/22-280-Conf-Exp-Red2. Public redacted version was registered on 31 January 2024 as ICC-01/14-01/22-280-Red. See also Annex A to the Defence's "Request for Compensation under Article 85 of the Rome Statute", ICC-01/14-01/22-329-Conf-AnxA, p.6. Email received from the host State on 18 October 2023 at 12:41 states that [REDACTED].

<sup>33</sup> The Defence continued, "[REDACTED]." Annex I, Email from the Defence to the Registry on 20 October 2023, at 10:57.

<sup>34</sup> Annex I, Email from the Registry to the Defence on 20 October 2023, at 12:17.

<sup>35</sup> Annex I, Email from the Registry to the Defence, 20 October 2023, at 17:42.

<sup>36</sup> 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, para. 20. On 30 November 2023, confidential redacted versions were registered as ICC-01/14-01/22-280-Conf-Exp-Red and ICC-01/14-01/22-280-Conf-Exp-Red2. Public redacted version was registered on 31 January 2024 as ICC-01/14-01/22-280-Red. Email received from the host State on 20 October at 17:25 states that [REDACTED].

25. As the 1<sup>st</sup> Practical Arrangements were inconsistent with the Order, the host State, on 23 October 2023, following further consultations between it and the Registry, informed the Registry that:

With reference to Article 48 of the Headquarters Agreement and Rule 185 of the Rules of Procedure and Evidence the host State recalls that it is under no legal obligation to allow Mr Mokom's entry and stay in the Netherlands. As Mr Mokom has not formally entered the territory of the Netherlands nor has lawful residence in the Netherlands and remains under the jurisdiction and responsibility of the Court [REDACTED].<sup>37</sup>

26. Also on 23 October 2023, the host State informed the Registry that, pending further such consultations, the host State "will apply the following practical arrangements to Mr Mokom's stay in the host State pending his transfer to the released state" ("2<sup>nd</sup> Practical Arrangements"):

[REDACTED].<sup>38</sup>

27. On 26 October 2023, the host State informed the Registry that [REDACTED], and that the 2<sup>nd</sup> Practical Arrangements took into consideration [REDACTED].<sup>39</sup>

28. As the 2<sup>nd</sup> Practical Arrangements were inconsistent with the Order, the Registry immediately resumed consultations with the host State to secure less restrictive practical arrangements, bearing in mind the Order and the host State position on the matter. On 26 October 2023, the host State agreed to make adjustments to the

---

<sup>37</sup> Registry, Annex IV to "Registry's Report pursuant to Pre-Trial Chamber II's Instruction of 25 October 2023", 26 October 2023, ICC-01/14-01/22-280-Conf-Exp-AnxIV.

<sup>38</sup> Per the host State, "[a]s Mr Mokom has not formally entered the territory of the Netherlands nor has lawful residence in the Netherlands and remains under the jurisdiction and responsibility of the Court, [REDACTED]". Registry, Annex IV to the " Registry's Report pursuant to Pre-Trial Chamber II's Instruction of 25 October 2023, 26 October 2023, ICC-01/14-01/22-280-Conf-Exp-AnxIV; 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, para. 22. On 30 November 2023, confidential redacted versions were registered as ICC-01/14-01/22-280-Conf-Exp-Red and ICC-01/14-01/22-280-Conf-Exp-Red2. Public redacted version was registered on 31 January 2024 as ICC-01/14-01/22-280-Red.

<sup>39</sup> 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-Conf-Exp, para. 25. The host State further informed, *inter alia*, that [REDACTED] *Ibid.*, para. 26, and Annex IV. On 30 November 2023, confidential redacted versions were registered as ICC-01/14-01/22-280-Conf-Exp-Red and ICC-01/14-01/22-280-Conf-Exp-Red2. Public redacted version was registered on 31 January 2024 as ICC-01/14-01/22-280-Red.

2<sup>nd</sup> Practical Arrangement<sup>40</sup> and to implement the following practical arrangements [REDACTED] (“3<sup>rd</sup> Practical Arrangements”) which, it informed the Registry, would come into effect once Mr Mokom [REDACTED]:

[REDACTED].

29. On 26 October 2023 and on 27 October 2023, the Registry reported, *inter alia*, to the Chamber the host State’s requirement for Mr Mokom [REDACTED], and made the relevant logistical arrangements (“October 2023 Registry Reports”).<sup>41</sup>

30. On 27 October 2023, the Defence requested the Registry to enquire with the host State [REDACTED] (“27 October 2023 Request”).<sup>42</sup>

31. On 30 October 2023, the host State informed the Registry that, further to the 27 October 2023 Request, the host State is [REDACTED].<sup>43</sup> The Registry informed the Defence accordingly.

32. Also on 30 October 2023, the Chamber, having taken note of the October 2023 Registry Reports, observed that “Mr Mokom has been subjected to a regime that

---

<sup>40</sup> Email from the host State to the Registry on 26 October 2023 at 17:24 states that [REDACTED]. See also “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”, ICC-01/14-01/22-281-Conf-Exp, para. 17. Confidential redacted version was registered on 30 November 2023, ICC-01/14-01/22-281-Conf-Red.

<sup>41</sup> See 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, para. 26, and Annex IV. On 30 November 2023, confidential redacted versions were registered as ICC-01/14-01/22-280-Conf-Exp-Red and ICC-01/14-01/22-280-Conf-Exp-Red2. Public redacted version was registered on 31 January 2024 as ICC-01/14-01/22-280-Red. See also 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-US-Exp and Annex I and Annex II thereto.

<sup>42</sup> Annex II, Email from the Defence to the Registry on 27 October 2023, at 12:06. See also 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, ICC-01/14-01/22-285-US-Exp”, 3 November 2023, ICC-01/14-01/22-285-Conf-Exp-Corr-Red, para. 31.

<sup>43</sup> Annex II, Email from the Registry to the Defence on 30 October 2023, at 17:55. See also Registry, “Redacted version of “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, ICC-01/14-01/22-285-US-Exp”, 3 November 2023, ICC-01/14-01/22-285-Conf-Exp-Corr-Red, paras 31-33. Also see ICC-01/14-01/22-285-Conf-Exp-AnxII, p.4.

appears to amount to a form of house arrest”, “notwithstanding the clear terms the Order to the contrary”.<sup>44</sup> [REDACTED].

33. As to [REDACTED], the Chamber

[REDACTED].<sup>45</sup>

34. The Chamber instructed the Registry by email to:

i. [REDACTED]<sup>46</sup>

35. As the Chamber instructed the Registry to [REDACTED] for the 2<sup>nd</sup> and 3<sup>rd</sup> Practical Arrangements to respectively come into effect, these arrangements did not come into effect. Also, further to the Instruction, the Registry communicated to the host State that [REDACTED].<sup>47</sup> The 2<sup>nd</sup> Practical Arrangements continued to apply pending further consultations between the Registry and the host State.<sup>48</sup>

36. On 31 October 2023, the Defence requested the Registry to inform the host State that, noting in particular that no legal basis has been provided for the refusal of the 27 October 2023 Request, it reiterated the same request. In addition, the Defence requested the Registry to urge the host State to authorize Mr Mokom’s freedom of movement in the Netherlands, pending a State approval to receive him on its

---

<sup>44</sup> See also Pre-Trial Chamber II, “Public redacted version of ‘Order regarding arrangements pending Mr Mokom’s transfer’”, 21 November 2023, ICC-01/14-01/22-294-Red, para. 3.

<sup>45</sup> 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, ICC-01/14-01/22-285-US-Exp”, 3 November 2023, ICC-01/14-01/22-285-Conf-Exp-Corr-Red, para. 1 and accompanying footnote; Email from the Chamber to the Registry dated 30 October 2023, at 13:10.

<sup>46</sup> 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, ICC-01/14-01/22-285-US-Exp”, 3 November 2023, ICC-01/14-01/22-285-Conf-Exp-Corr-Red, para. 1 and accompanying footnote; Email from the Chamber to the Registry dated 30 October 2023, at 13:10.

<sup>47</sup> 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, ICC-01/14-01/22-285-US-Exp”, 3 November 2023, ICC-01/14-01/22-285-Conf-Exp-Corr-Red, para. 26 and, ICC-01/14-01/22-285-Conf-Exp-AnxI.

<sup>48</sup> 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, ICC-01/14-01/22-285-US-Exp”, 3 November 2023, ICC-01/14-01/22-285-Conf-Exp-Corr-Red, para. 27. Absent clarity on which practical arrangements would be applicable in the absence of [REDACTED], the Registry facilitated the application of the 2<sup>nd</sup> Practical Arrangements.

territory. The Defence further indicated that if the Registry is unwilling to do so, “to be informed of the legal basis of these restrictions, in order for the Defence to be able to litigate the issue [REDACTED]”.<sup>49</sup> The Registry shared the said email with the host State on 31 October 2023, requesting its consideration of the matter.

37. On 1 November 2023, the host State informed the Registry further [REDACTED].<sup>50</sup> The Registry informed the Defence of [REDACTED].

38. On 3 November 2023, the Registry reported to the Chamber pursuant to the Instruction that, *inter alia*, it is not aware of any legal basis [REDACTED]. The Registry noted, in this regard, that it understood that, from the host State’s perspective, [REDACTED] (and practical arrangements) ensure that Mr Mokom is not considered as entering its territory or as lawfully residing therein and thus remains, in the view of the host State, under the jurisdiction and responsibility of the Court following his release.<sup>51</sup>

---

<sup>49</sup> Annex II, Email from the Defence to the Registry, 31 October 2023, at 12:17.

<sup>50</sup> Also that day, 1 November 2023, the host State indicated to the Registry that it would not be possible to share [REDACTED] with the Court on such short notice and without being informed of the specific purpose for this request. 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, ICC-01/14-01/22-285-US-Exp”, 3 November 2023, ICC-01/14-01/22-285-Conf-Exp-Corr-Red, para. 30. As to having informed the Defence [REDACTED], see 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, ICC-01/14-01/22-285-US-Exp”, 3 November 2023, ICC-01/14-01/22-285-Conf-Exp-Corr-Red, para.30.

<sup>51</sup> 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, ICC-01/14-01/22-285-US-Exp”, 3 November 2023, ICC-01/14-01/22-285-Conf-Exp-Corr, para. 24.

39. On 6 and 13 November 2023, [REDACTED]<sup>52</sup> following which, on 14 November 2023, the host State conveyed to the Registry the following practical arrangements the host State could agree to implement (“4<sup>th</sup> Practical Arrangements”):<sup>53</sup>

- [REDACTED].<sup>54</sup>

40. The Registry reported, *inter alia*, the 4<sup>th</sup> Practical Arrangements to the Chamber, by way of email that day, 14 November 2023.<sup>55</sup>

41. On 17 November 2023, the Defence informed the Registry, by email, that Mr Mokom had been limited to the hotel premises for a month and that the current situation [REDACTED]. The Defence enquired whether the host State authorities would agree to allow Mr Mokom to conduct a number of activities outside the hotel premises, with immediate effect (“Requested Activities”).<sup>56</sup> The Registry informed the Chamber that the Requested Activities are in line with the 4<sup>th</sup> Practical Arrangements.<sup>57</sup>

42. On 21 November 2023, the Chamber issued the “Order regarding arrangements pending Mokom’s transfer” (“Order Regarding Arrangements”) in which, *inter alia*, it understood that, at that time, the 2<sup>nd</sup> Practical Arrangements remain in place

---

<sup>52</sup> Email from the Registry to the Chamber, 14 November 2023, at 11:40. See Registry, “Registry’s Report pursuant to Order ICC-01/14-01/22-294-Conf-Exp”, ICC-01/14-01/22-298-Conf-Exp, 24 November 2024, para. 9 as well as Annex I ICC-01/14-01/22-298-Conf-Exp-AnxI. Confidential redacted version was registered on the same day as ICC-01/14-01/22-298-Conf-Red. On 29 November 2023, confidential redacted version of Annex I was registered as ICC-01/14-01/22-298-Conf-AnxI-Red.

<sup>53</sup> Referred to as “Host State’s Revised Practical Arrangements” in Registry, “Registry’s Report pursuant to Order ICC-01/14-01/22-294-Conf-Exp”, ICC-01/14-01/22-298-Conf-Exp, 24 November 2024, para. 9 as well as Annex I ICC-01/14-01/22-298-Conf-Exp-AnxI. Confidential redacted version was registered on the same day as ICC-01/14-01/22-298-Conf-Red. On 29 November 2023, confidential redacted version of Annex I was registered as ICC-01/14-01/22-298-Conf-AnxI-Red.

<sup>54</sup> Registry, Annex I to the “Registry’s Report pursuant to Order ICC-01/14-01/22-294-Conf-Exp”, 24 November 2023, ICC-01/14-01/22-298-Conf-Exp-AnxI. Emphasis in original.

<sup>55</sup> Registry, “Registry’s Report pursuant to Order ICC-01/14-01/22-294-Conf-Exp”, 24 November 2023, ICC-01/14-01/22-298-Conf-Exp, para. 9.

<sup>56</sup> Annex III, Email from the Defence to the Registry on 20 November 2023, at 10:54. As to the Requested Activities: [REDACTED]. Registry, “Registry’s Report pursuant to Order ICC-01/14-01/22-294-Conf-Exp”, 24 November 2023, ICC-01/14-01/22-298-Conf-Exp, para. 10.

<sup>57</sup> Registry, “Registry’s Report pursuant to Order ICC-01/14-01/22-294-Conf-Exp”, 24 November 2023, ICC-01/14-01/22-298-Conf-Exp, para. 12.

reiterated in this regard, that “the Registry shall ensure that Mr Mokom’s rights as a free person are not restricted in any way under the Court’s legal framework”, noting that this “is without prejudice to any measures that the host State may wish to formally adopt regarding Mr Mokom under its own legal framework”.<sup>58</sup>

43. Further in same, the Chamber considered that, just as Mr Mokom’s rights as a free person were not to be restricted under the Court’s legal framework, it is appropriate, “in the specific circumstances of Mr Mokom, including with regard to his personal safety, [...] 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 members 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” (“Practical Arrangements in the Order”).<sup>59</sup>

44. Furthermore, in the Order Regarding Arrangements, the Chamber ordered the Registry to, *inter alia*, to inform the host State of its contents and to continue liaising with the host State in respect of the practical arrangements pertaining to Mr

---

<sup>58</sup> Pre-Trial Chamber II, “Public redacted version of ‘Order regarding arrangements pending Mr Mokom’s transfer’”, 11 April 2024, para. 3. See also *ibid.*, para. 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, 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”).

<sup>59</sup> Pre-Trial Chamber II, “Order regarding arrangements pending Mr Mokom’s transfer”, 21 November 2023, ICC-01/14-01/22-294-Conf-Exp; reclassified as “Confidential *ex parte*, only available to the Registry and the Defence” pursuant to an instruction of Pre-Trial Chamber II dated 11 December 2023.



Mokom; to inform Mr Mokom of the contents of the said Order (the Order was originally classified as confidential, *ex parte* only available to the Registry) and to seek his consent to abide by the Practical Arrangements in the Order without obliging him to do so.<sup>60</sup>

45. Between 21-23 November 2023, the Registry liaised with the Defence and the host State further to the Order Regarding Arrangements. The Registry sought for Mr Mokom to sign a consent form, to demonstrate his consent to abide by the Practical Arrangements in the Order<sup>61</sup>, without obliging him to do so (“Consent Form”).<sup>62</sup> [REDACTED].<sup>63</sup>

46. In the meantime, on 22 November 2023, [REDACTED].

47. On 22 November 2023, Mr Mokom signed the Consent Form, supplemented by a statement (“Supplementary Statement”) which the Defence requested the Registry to transmit to the host State;<sup>64</sup> the Registry transmitted these documents accordingly.

---

<sup>60</sup> *Idem*, p. 5.

<sup>61</sup> See Annex IV to the present filing. See also Registry, Annex VII to the “Registry’s Report pursuant to Order ICC-01/14-01/22-294-Conf-Exp” 24 November 2023, ICC-01/14-01/22-298-Conf-Exp-AnxVII.

<sup>62</sup> Registry, “Registry’s Report pursuant to Order ICC-01/14-01/22-294-Conf-Exp” 24 November 2023, ICC-01/14-01/22-298-Conf-Exp, paras. 14-23. Confidential redacted version was registered on the same day as ICC-01/14-01/22-298-Conf-Red.

<sup>63</sup> See Annex V to the present filing. See also Registry, “Registry’s Report pursuant to Order ICC-01/14-01/22-294-Conf-Exp” 24 November 2023, ICC-01/14-01/22-298-Conf-Exp, paras. 14-20. Confidential redacted version was registered on the same day as ICC-01/14-01/22-298-Conf-Red. See also ICC-01/14-01/22-298-Conf-Exp-AnxIV.

<sup>64</sup> Annex VI, Email from the Defence to the Registry on 22 November 2023, at 23:10. See also Registry, “Registry’s Report pursuant to Order ICC-01/14-01/22-294-Conf-Exp” 24 November 2023, ICC-01/14-01/22-298-Conf-Exp, para. 21 [REDACTED]. Confidential redacted version was registered on the same day as ICC-01/14-01/22-298-Conf-Red. The Registry corrects the date of Mr Mokom having signed the Consent Form, supplemented by the Supplementary Statement, from 23 November 2023 in the Registry’s Submissions, to 22 November 2023 in the present filing.

48. On 23 November 2023, the host State informed the Registry that [REDACTED].<sup>65</sup>

49. On 24 November 2024, the Defence was informed of the host 4<sup>th</sup> Practical Arrangements, by way of a Registry report.<sup>66</sup>

50. On 28 November 2023, the host State informed the Registry that it had agreed to the “proposed conditions”<sup>67</sup> which the Registry assumed refers to the Practical Arrangements in the Order.

51. On that day of 28 November 2023, the Registry informed the Defence that:

In light of the Chamber’s decision and the [P]ractical [A]rrangements [in the Order] agreed to by both the host State and Mr Mokom [Consent Form and Supplementary Statement], please note that the Registry is implementing the following measures, effective immediately:

- [REDACTED]<sup>68</sup>

52. As of 28 November 2023, Mr Mokom started to leave the Hotel [REDACTED].

53. On 18 January 2024, the Chamber issued the “Decision pursuant to Rule 185 of the Rules of Procedure and Evidence” (“Decision”) in which it decided, *inter alia*, that, “[s]hould no State be identified that is willing to accept Mr Mokom and to which he agrees to be transferred by [7 February 2024], the Chamber’s residual jurisdiction in [that] case will come to an end”.<sup>69</sup> Relatedly, the Chamber

---

<sup>65</sup> This is the information provided by the host State during a meeting of 23 November 2023 between the Registry and the host State. No official minutes were kept for said meeting. Therefore, the Registry has provided a summary of the discussion held in said meeting in the “Registry’s Report pursuant to Order ICC-01/14-01/22-294-Conf-Exp” 24 November 2023, ICC-01/14-01/22-298-Conf-Exp, para. 22. Confidential redacted version was registered on the same day as ICC-01/14-01/22-298-Conf-Red.

<sup>66</sup> Registry, “Registry’s Report pursuant to Order ICC-01/14-01/22-294-Conf-Exp”, 24 November 2023, ICC-01/14-01/22-298-Conf-Exp.

<sup>67</sup> Registry, “ADDENDUM to “Registry’s Report pursuant to Order ICC-01/14-01/22-294-Conf-Exp”, dated 24 November 2023, ICC-01/14-01/22-298-Conf”, 28 November 2023, ICC-01/14-01/22-301-Conf-Exp, para. 4. Confidential redacted version was registered on the same day, ICC-01/14-01/22-301-Conf-Red.

<sup>68</sup> Annex VII, Email from the Registry to the Defence on 28 November 2023, at 18:04.

<sup>69</sup> 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, paras 19-20. referring to Pre-Trial Chamber II, “Order regarding arrangements pending Mr Mokom’s transfer”, 21 November 2023, ICC-01/14-01/22- 294-

continued, the arrangements for Mr Mokom's stay in the territory of the host State which "are currently in place shall remain applicable until and including 7 February 2024, without prejudice to the Chamber's power to amend the arrangements of the [D]ecision".<sup>70</sup> Thus, the Chamber concluded, "as of 8 February 2024, without any further order by the Chamber to the contrary, as set out in the [D]ecision, the residual jurisdiction of the Chamber will conclude and the designation of Mr Mokom's place of stay as 'premises of the Court' will end, thus entailing that Mr Mokom will fall under the exclusive jurisdiction of the Host State."<sup>71</sup>

54. On 7 February 2024, the Defence appealed the Decision and requested suspensive effect thereof.<sup>72</sup>

55. On 8 February 2024, the Registry, pursuant to the Decision, terminated the designation of the Hotel as "Premises of the Court".

56. On the same day, 8 February 2024, the Appeals Chamber issued the "Decision on the request for suspensive effect and order concerning submissions on admissibility".<sup>73</sup>

---

Conf-Exp, confidential and *ex parte*, only available to the Registry and the Defence, as modified by way of the Chamber's email to the Registry of 15 December 2023, at 15:43. Public redacted version of the Decision was issued on 18 January 2024, ICC-01/14-01/22-309-Red.

<sup>70</sup> 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, para. 20.

<sup>71</sup> 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, p. 11. Public redacted version of the Decision was issued on 18 January 2024, ICC-01/14-01/22-309-Red.

<sup>72</sup> Defence, "Appeal against "Decision pursuant to Rule 185 of the Rules of Procedure and Evidence", ICC-01/14-01/22-309-Conf-Exp", 7 February 2024, ICC-01/14-01/22-318-Conf-Exp. Public redacted version was registered on 8 February 2024, ICC-01/14-01/22-318-Red.

<sup>73</sup> Appeals Chamber, "Decision on the request for suspensive effect and order concerning submissions on admissibility, 8 February 2024, ICC-01/14-01/22-320.

57. On 9 February 2024, the Defence informed the Registry that [REDACTED].<sup>74</sup>

58. On 17 April 2024, the Defence submitted the Request for Compensation.<sup>75</sup>

59. On 23 April 2024, the Presidency constituted an Article 85 Chamber and referred the Request to it for consideration.<sup>76</sup>

60. On 30 April 2024, the Article 85 Chamber ordered the Registry to submit its observations on the Request by 27 May 2024.<sup>77</sup>

61. On 27 May 2024, the Registry filed "Registry's Submissions on the Defence Request for Compensation under Article 85 of the Rome Statute (ICC-01/14-01/22-329-Conf)", as confidential *ex parte* only available to the Registry ("Registry Submissions").<sup>78</sup> Confidential redacted version of the Registry Submissions was filed on 31 May 2024.

62. On 31 May 2024, the Article 85 Chamber ordered the Registry to reclassify the Registry Submissions, available only to the Registry, to available only to the Registry and Mr Mokom.<sup>79</sup> The Registry Submissions were reclassified accordingly.

---

<sup>74</sup> Email from the Defence to the Registry on 9 February 2024 at 16:33.

<sup>75</sup> Defence for Mr Mokom, "Request for Compensation under Article 85 of the Rome Statute", 17 April 2024, ICC-01/14-01/22-329-Conf.

<sup>76</sup> Presidency, "Decision constituting an Article 85 Chamber and referring the 'Request for Compensation under Article 85 of the Rome Statute' dated 17 April 2024 (ICC-01/14-01/22-329-Conf)", 23 April 2023, ICC-01/14-01/22-330.

<sup>77</sup> Article 85 Chamber, "Order setting the schedule for further submissions on the request for compensation", 29 April 2023, ICC-01/14-01/22-333.

<sup>78</sup> Registry, "Registry's Submissions on the Defence Request for Compensation under Article 85 of the Rome Statute (ICC-01/14-01/22-329-Conf)", ICC-01/14-01/22-338-Conf-Exp, 27 May 2024. Confidential redacted version was filed on 31 May 2024, ICC-01/14-01/22-338-Conf-Red.

<sup>79</sup> Article 85 Chamber, "Order for reclassification of ICC-01/14-01/22-338-Conf-Exp", 31 May 2024, ICC-01/14-01/22-341.

63. On 6 June 2024, the Article 85 Chamber ordered the Registry to file an updated version of the Registry's Submissions,

in which the document is edited to include exact references to every document's location in the court record if not already provided. In the event that the document referred to is not already available on the record, the document shall be annexed to the updated filing and the footnote should reflect the relevant location of the document in the attached annex. The Chamber further instructs the Registry to attach as an annex any further correspondence between the Registry and counsel for Mr Mokom [all correspondence between the Registry and counsel for Mr Mokom, that is relevant to Mr Mokom's claim for compensation, from 17 October 2023 to 28 November 2023], that was not provided in the Registry's Submissions, to the extent such correspondence exists.<sup>80</sup>

### III. Classification

64. In accordance with regulation 23 bis(2) of the Regulations of the Court ("RoC"), the present observations and its annexes are classified confidential *parte* Registry and Defence only because they refer to information with the same level of classification. Also in accordance with regulation 23bis(2) of the RoC, the annexes hereto are classified as confidential *ex parte* Registry and Defence only because they concern communication between these two entities.

### IV. Submissions

#### IV.1 Scope of the Registry submissions

65. The Registry, dealing with non-judicial aspects of the Court's proceedings in accordance with article 43(1) of the Rome Statute ("Statute"), will not address the legal issues raised in the Request for Compensation relating to the application of article 85(1) and (3) of the Statute and rule 173 of the Rules. In particular, the

---

<sup>80</sup> The Article 85 Chamber, "[h]aving reviewed the Registry's Submissions, [...] notes that there are references in the 'Procedural history and chronology' section to communications between the Registry and the Dutch authorities and the Registry and Mr Mokom's legal team. In some instances, records of these communications in the form of, inter alia, emails or other written correspondence, minutes of meetings, internal records or memorandums of oral conversions, are not available on the record. The Chamber also notes that there are times at which the Registry has made reference to a document but has failed to indicate exactly where in the record the document can be located". By way of example, the Article 85 Chamber refers to footnote 32 of the Registry's Submissions, "which cites to a report in which the Registry has summarised a communication. The Chamber instead asks the Registry to provide the exact location of that communication in the record (e.g. ICC-01/14-01/22-277-Conf-Exp-AnxIII) in its citations".

Registry makes no submission on the “unlawfulness of the arrest and detention” under article 85(1) of the Statute, or on whether there are “exceptional circumstances”, whether there has been a “miscarriage of justice” or whether the threshold of “grave and manifest” pursuant to article 85(3) of the Statute has been reached. This notwithstanding, the Registry notes that there appears to be some unclarity as to whether the Request for Compensation is based on article 85(1) or (3) of the Statute. Therefore, prior judicial determination by the Chamber on these crucial legal aspects would be required.

66. Turning next to the specifics of the Request for Compensation, the Defence requests the appointment of an expert “to assess the psychological harm inflicted on Mr. Mokom as a result of the wrongful conduct of the Prosecutor and Registrar”.<sup>81</sup> The Registry notes that this request is inherently linked to crucial legal aspects of the Request for Compensation, as outlined above, for which the Chamber’s determination is first required. Therefore, the Registry will not make submissions on this matter in the present submissions. Should the Chamber decide to appoint an expert, the Registry will be in a position to make further submissions on the type of expert, if required.

As regards the request “for joinder to the request of compensation for Mr Mokom’s wife and children”,<sup>82</sup> the Registry notes that no prior submission has been received in relation to Mr Mokom’s wife and children, and therefore the use of the terminology “joinder” in the context of this Request for Compensation appears inapposite. In essence, the present request amounts to a request for inclusion of Mr Mokom’s wife and children alleged harm in the Request for Compensation, on the grounds of the “prejudice collectively suffered by Mr Mokom’s family”. As such, the Registry considers that this submission also relates to judicial aspects of the Request for Compensation, specifically to the threshold of “grave and manifest

---

<sup>81</sup> Defence, Request for Compensation, p. 22.

<sup>82</sup> Defence, Request for Compensation, paras 62 and 63.

miscarriage of justice” under article 85(3) of the Statute, which would require prior determination by the Chamber.

#### IV.2 Moral damage

67. The Registry notes that an assessment of the request for moral damages is substantively dependent on the Chamber’s prior determination on the merits of the Request for Compensation. For this reason, the Registry will not make any general submissions on this aspect of the Request for Compensation. This notwithstanding, the Registry makes specific observations below with regard to claimed moral damages in relation to the alleged harm suffered by Mr Mokom and his family members due to the alleged cancellation of the planned family visit.

68. On 5 October 2023, further to a request from Mr Mokom for a [REDACTED] family visit<sup>83</sup> for his wife and [REDACTED] children (“Family Visit”) to the ICC Detention Center, the Registry informed Mr Mokom that the Family visit would take place at the Court’s Detention Centre, from [REDACTED] 2023.<sup>84</sup>

69. On 19 October 2023,<sup>85</sup> following Mr Mokom’s release from the Court’s Detention Centre, the Registry informed the Defence after the latter had followed on the matter<sup>86</sup>, that:

[U]nder the ICC Detention Centre Policy for family visits, only [REDACTED] detained persons in the custody of the ICC are eligible to benefit from a [REDACTED] family visit [i.e., a family visit [REDACTED] by the Court]. Following his release [pursuant to the Order], the circumstances qualifying Mr Mokom as an [REDACTED] detained person for the a [REDACTED] family visit have changed with his release. Mr Mokom’s temporary stay in the Hague to facilitate his transfer to another State does not constitute detention under ICC jurisdiction. Therefore, the [REDACTED] family visit for Mr Mokom with his wife and [REDACTED] children at the ICC Detention Centre originally intended to take place from [REDACTED] 2023 is cancelled as Mr

---

<sup>84</sup> Email from the Detention Section to the Defence for Mr Mokom, 12 October 2023 at 14:01.

<sup>85</sup> Defence, “Request for Compensation under Article 85 of the Rome Statute”, 17 April 2024, ICC-01/14-01/22-329-Conf-AnxG.

<sup>86</sup> Email from the Defence to the Registry on 19 October, at 09:14.

Mokom is no longer considered a detained person under the custody of the ICC.<sup>87</sup>

70. The allegation of violation of right to Mr Mokom's visit is not legally founded.

#### IV.3 Mr Mokom's access to health care

71. The Registry facilitated Mr Mokom's access to health care when it was informed of the need for such access, including on 19 October 2023, [REDACTED], who discussed matters with Counsel for Mr Mokom; on 28 November 2023, when Mr Mokom, together with his Counsel [REDACTED].

#### IV.4 Appointment of counsel

72. The Defence submits that "from 25 March 2022 until 23 January 2023, [...], Mr. Mokom did not have appropriate legal counsel to oversee the sufficiency of the evidence underpinning the still unconfirmed charges against him."<sup>88</sup> In this regard, the Registry observes that following Pre-Trial Chamber II's Order, on 1 April 2022, "in consultation with Mr Mokom",<sup>89</sup> Mr Gregory Townsend, counsel registered on the List of Counsel, was appointed as duty counsel "for the purpose of assisting Mr Mokom on the matter of his legal representation only."<sup>90</sup> As instructed by the Chamber in the same Order, the Registry "subject to confidentiality considerations, [granted] duty counsel access to the record of the case."<sup>91</sup>

---

<sup>87</sup> Email from the Registry to the Defence on 19 October 2023, at 12:30.

<sup>88</sup> Mokom Defence, "Request for Compensation under Article 85 of the Rome Statute" 17 April 2024, ICC-01/14-01/22-329-Conf, para. 33.

<sup>89</sup> Pre-Trial Chamber II, "Order convening a status conference and instructing the Registry to appoint duty counsel for Mr Maxime Jeoffroy Eli Mokom Gawaka", 1 April 2022, ICC-01/14-01/22-32-Conf-Exp ("Order"), para. 11.

<sup>90</sup> Registry, "Notification of the Appointment of Mr Gregory Townsend as Duty Counsel for Mr Maxime Jeoffroy Eli Mokom Gawaka", 4 April 2022, ICC-01/14-01/22-33, para. 6. See also Pre-Trial Chamber II, "Order postponing the confirmation of charges hearing", 23-01-2023, ICC-01/14-01/22-137, para. 4.

<sup>91</sup> Pre-Trial Chamber II, "Order convening a status conference and instructing the Registry to appoint duty counsel for Mr Maxime Jeoffroy Eli Mokom Gawaka", 1 April 2022, ICC-01/14-01/22-32-Conf-Exp ("Order"), para. 11.



73. Following the status conference on 4 April 2022, the appointment of Mr Townsend was extended pending the litigation regarding Mr Mokom's legal representation and the appointment of a permanent counsel.<sup>92</sup>

74. Following Mr Mokom's wish to interview potential permanent counsel, Mr Larochelle's appointment as such was formalised on 23 January 2023,<sup>93</sup> while Mr Townsend's appointment as duty counsel ended on 6 February 2023, in accordance with the Chamber's instructions.<sup>94</sup> When instructed to appoint a duty counsel and subsequently, a permanent counsel, the Registry acted swiftly. Finally, one Legal Assistant, who was appointed by Mr Kaufman, was retained by Mr Townsend and Mr Larochelle, respectively and at this time, remains part of the Defence.

---


<sup>92</sup> Transcript of 4 April 2022, ICC-01/14-01/22-T-002-Red-ENG CT, p. 18, lines 4-7 and 17-20.

<sup>93</sup> Registry, "Notification of the Appointment of Mr Philippe Larochelle as Counsel for Mr Maxime Jeoffroy Eli Mokom Gawaka", 23 January 2023, ICC-01/14-01/22-136.

<sup>94</sup> Pre-Trial Chamber II, "Order postponing the confirmation of charges hearing", 23-01-2023, ICC-01/14-01/22-137, para. 5.

## V. Conclusion

75. In light of the foregoing, should the Chamber consider that the Request for Compensation qualifies as a compensation claim in the meaning of article 85, the Registry stands ready to make further submissions as required concerning the alleged damages. In the meantime, the Registry reiterates that it did not take any measure to restrict Mr Mokom's liberties, but acted as a channel of communication between the Defence and the host State, as detailed above. Finally, the Registry recalls that, insofar as it is aware, the Defence did not litigate the matter before any court in the host State.



---

p.p. Marc Dubuisson, Director, Division of Judicial Services,  
on behalf of  
Osvaldo Zavala Giler, Registrar

Dated this 12<sup>th</sup> day of July 2024

At The Hague, the Netherlands