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ARTICLE 85 CHAMBER

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

SITUATION IN THE CENTRAL AFRICAN REPUBLIC II

THE PROSECUTION V. MAXIME JEOFFROY ELI MOKOM GAWAKA

Public

Public Redacted Version of “Mokom Defence Response to the ‘Registry’s Submissions on the Defence Request for Compensation under Article 85 of the Rome Statute (ICC-01/14-01/22-329-Conf)”, ICC-01/14-01/22-344-Conf-Exp, 14 June 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**

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I. INTRODUCTION

1. Pursuant to the Article 85 Chamber's Order setting the schedule for further submissions on the request for compensation,¹ the Defence for Mr Mokom' ('the Defence') responds to the 'Registry's Submissions on the Defence Request for Compensation under Article 85 of the Rome Statute (ICC-01/14-01/22-329-Conf)' ('Registry Submissions').²
2. The Registry Submissions contain significant information that has never before been shared with either Mr Mokom or the Defence. Notably, the Submissions demonstrate beyond any doubt that the Registry had no legal basis to detain Mr Mokom in a hotel for 43 days following his release from prison. This detention remains unjustified, and unjustifiable. At their core, however, the Registry Submissions reveal what was always obvious, but never before declared; the ICC Registry prioritised its relationship with the Dutch authorities over the rights and freedoms of a vulnerable former suspect. Even when, in doing so, the Registry was knowingly and deliberately violating a Pre-Trial Chamber instruction to ensure that he was no longer detained.
3. The Registry Submissions also contain numerous misstatements and factual errors. Putting to one side those submissions which the Defence considers to be misleading, many other statements are offered as fact which are demonstrably wrong when compared with the record of the case which is available to the Article 85 Chamber ('Chamber'). By way of example, the Registry states that the Defence only appealed the Pre-Trial Chamber's Rule 185 decision³ on 7 February 2024 and requested suspensive effect thereof.⁴ In reality, the Defence had filed a notice of appeal on 24 January 2024 in which it requested the suspensive effect.⁵ The Appeals Chamber had therefore been seized with a request for suspensive effect 14 days prior to the termination of the Court's residual jurisdiction on 7 February 2024.⁶ As regards Mr Mokom's release from 43 days of illegal confinement, the Registry states that the public redacted version

¹ Order setting the schedule for further submissions on the request for compensation, 29 April 2024, [ICC-01/14-01/22-333](#), para. 3.

² Registry's Submissions on the Defence Request for Compensation under Article 85 of the Rome Statute (ICC-01/14-01/22-329-Conf), 27 May 2024, [ICC-01/14-01/22-338-Conf-Exp](#).

³ Decision pursuant to Rule 185 of the Rules of Procedure and Evidence, 18 January 2024, [ICC-01/14-01/22-309-Conf-Exp](#).

⁴ [ICC-01/14-01/22-338-Conf-Exp](#), para. 54.

⁵ 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. 35-37.

⁶ [ICC-01/14-01/22-338-Conf-Exp](#), para. 53.

of the 21 November Order was issued on 28 November 2023.⁷ This is wrong; the public redacted version was issued on 11 April 2024, as indicated on its cover page.⁸ The Registry states that throughout Mr Mokom's stay in the host State, he was provided with [REDACTED].⁹ This is wrong. [REDACTED].¹⁰ The Defence has attempted to correct these and other errors in the course of the response.

II. LEVEL OF CONFIDENTIALITY

4. Pursuant to Regulation 23bis(1) of the Regulations of the Court, the Defence files this response confidential *ex parte* only available to the Registry and the Defence, given that the Registry Submissions were filed confidentially *ex parte* and the response refers to confidential *ex parte* filings, documents and information. A public redacted version will be filed.

III. PROCEDURAL BACKGROUND

5. On 17 April 2024, the Defence submitted a request for compensation pursuant to Article 85 of the Rome Statute ('Request for Compensation').¹¹

6. On 27 May 2024, the Registry provided *ex parte* submissions (Registry only) on the Defence Request for Compensation under Article 85 of the Rome Statute ("Statute").¹²

7. On 30 May 2024, the Chamber ordered the Registry to file a confidential version of the Registry's Submission by 31 May 2024.¹³

8. On 31 May 2024, the Registry requested the Chamber to order the reclassification of the Registry Submissions from confidential *ex parte*, available only to the Registry, to confidential *ex parte*, available only to the Registry and the Defence.¹⁴

⁷ [ICC-01/14-01/22-338-Conf-Exp](#), para. 12.

⁸ Public redacted version of 'Order regarding arrangements pending Mr Mokom's transfer', 11 April 2024, [ICC-01/14-01/22-294-Red](#).

⁹ [ICC-01/14-01/22-338-Conf-Exp](#), para. 8.

¹⁰ See, [ICC-01/14-01/22-338-Conf-Exp](#), para. 51.

¹¹ Request for Compensation under Article 85 of the Rome Statute, 17 April 2024, [ICC-01/14-01/22-329-Conf](#).

¹² [ICC-01/14-01/22-338-Conf-Exp](#).

¹³ Order setting the schedule for filing a confidential version of ICC-01/14-01/22-338-Conf-Exp, 30 May 2024, [ICC-01/14-01/22-339](#), para. 3.

¹⁴ Request for Reclassification, 31 May 2024, [ICC-01/14-01/22-340](#), para. 3.

9. On the same day, the Chamber ordered the reclassification of the Registry Submissions into confidential, *ex parte*, only available to the Registry and the Defence, and the Defence was notified of the filing.¹⁵

10. On 6 June 2024, the Chamber ordered the Registry to refile its Submissions, with further references indicated in the Order, by 13 June 2024.¹⁶

11. On 13 June 2024, the Registry refiled the Registry Submissions.¹⁷

IV. SUBMISSIONS

(i) *The role and duties of the Registry*

12. Before turning to the failures of the Registry in this case, it is important to set out the statutory framework under which the Registry is empowered to act in this kind of situation. Under Article 43 of the Statute, the Registry is “responsible for the non-judicial aspects of the administration and servicing of the Court” under the direction of the Registrar, who “shall exercise his or her functions under the President of the Court”. Rule 13 of the Rules of Procedure and Evidence (“Rules”) then indicates that the Registrar “shall serve as the channel of communication of the Court”.

13. Rule 20 of the Rules enumerates the responsibilities of the Registrar relating to the rights of the defence, including, at Rule 20(1)b, the obligation to provide “support, assistance and information to all defence counsel appearing before the Court”.

14. Regulation 9 of the ICC Regulations of the Registry, in a section containing provisions related to all stages of the proceedings, imposes a duty on the Registrar to “inform the Chamber as soon as he or she becomes aware of a case that in his or her opinion does not comply with the provisions of the Regulations of the Court or with an order or deadline set by the Court”.

15. The signature of a headquarters agreement between the Court and the Netherlands is contemplated at Article 3(2) of the Statute. The Headquarters Agreement, (“Agreement”), entered into force on 1 March 2008. Following its Article 2, the Agreement “regulates matters relating to or arising out of the establishment and the proper functioning of the Court in the

¹⁵ Order for reclassification of ICC-01/14-01/22-338-Conf-Exp, 31 May 2024, [ICC-01/14-01/22-341](#), para. 5.

¹⁶ Order instructing the Registry to re-file the Registry’s Submissions, 6 June 2024, [ICC-01/14-01/22-342](#).

¹⁷ 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](#).

host State. It shall, inter alia, provide for the long-term stability and independence of the Court and facilitate its smooth and efficient functioning, including, in particular, its needs with regards to all persons required by the Court to be present at its seat [...]”.

16. After his release without conviction, Mr Mokom’s situation fell under Article 48 of the Agreement, an article that mirrors Rule 185 of the Rules, and which places the burden on the Court to, “as soon as possible, make such arrangements as it considers appropriate for the transfer of the person, taking into account the views of the person, 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”.

17. After Mr Mokom was released on 17 October 2023, he was no longer a suspect or an accused, he became one of those “Other persons required to be present at the seat of the Court”, a situation contemplated by Article 29 of the Agreement. Mr Mokom was required to be present at the seat of the Court while the Court, through the Registry, was deploying its best efforts to make the necessary arrangements for the transfer of Mr Mokom.

18. Under Article 29 of the Agreement, persons whose presence is required at the seat of the Court are accorded the privileges, immunities and facilities provided at Article 27 of the Agreement, and, following Article 29(2), with a document certifying that their presence is required at the seat of the Court, and for how long. Article 29(5) of the Agreement prohibits the host State to subject the persons whose presence is required at the seat of the Court to any measures which may affect their presence before the Court. Article 55 of the Agreement creates a mechanism for the settlement of differences on the interpretation of the Agreement between the Court and the host State.

19. The Registry is not only the operational arm of the Court, it is its eyes, ears and mouth. In the fulfilment of its functions, it must acquire information, share it with the relevant stakeholders, Judges, Defence counsels and representatives of the host State, and, based on that information, take the necessary steps, within its powers, to realise the Court’s mission, which may include, for example, releasing someone from custody upon receiving an order of a Chamber or Pre-Trial Chamber to that effect.

20. The Pre-Trial Chamber order of 17 October 2023¹⁸ suffered no ambiguities: Mr Mokom was a free man and entitled to his liberty.

21. A careful review of the steps taken by the Registry after it received the Pre-Trial Chamber's order reveals not only a reckless disregard for the implementation of this order, but also a profound misunderstanding of the Registry's mission. As detailed below, the actions of the Registry indicates that it gave more weight to the host State's arbitrary refusal to allow or facilitate the release of Mr Mokom than to the order of the Pre-Trial Chamber to release him without conditions.

22. The Registry then failed to inform the Pre-Trial Chamber that it was not able to implement the release of Mr Mokom, in violation of Regulation 9 of the ICC Regulations of the Registry. The Registry also failed to keep the Defence duly informed of the difficulties encountered in implementing the 17 October Order of the Pre-Trial Chamber, contrary to Rule 20 of the Rules.

23. By failing to inform the Pre-Trial Chamber and the Defence of the actual status of the implementation of the 17 October Order, the Registry deprived the Defence of the opportunity to litigate the issue, for example by formally seeking the cooperation of the host State through a motion, rather than through behind-the-scene discussions. In other words, the Registry failed to provide the Pre-Trial Chamber and the Defence with the information necessary to take the right course of action to deal with Mr Mokom's situation. Moreover, by failing to address the refusal of the host State to honour the Agreement, for example by having recourse to the resolution of difference mechanisms set forth in Article 55 of the Agreement, the Registry abdicated his responsibilities, and weakened the Court's position *vis-à-vis* the authorities of the host State.

24. In the end, the Registry, by its failure to assert and secure a viable status for Mr Mokom in the host State under the relevant provisions of the Agreement, deprived the Court of the possibility of making arrangements for the transfer of Mr Mokom, and is therefore directly responsible for the current predicament into which Mr Mokom finds himself.

25. Ultimately, the failure to seek and obtain the necessary guarantees to allow Mr Mokom to remain in the Netherlands meant he was required to leave the country, and to seek asylum in a

¹⁸ 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 ('the 17 October Order')

state where he has no status, no resources, and remain physically separated from his wife and children, with no immediate prospects of being reunited with them.

(ii) *The Registry failed to secure the least restrictive practical arrangements with the host State*

26. The Registry submits that it sought to secure the **least restrictive practical arrangements** to be applied to Mr Mokom during his temporary stay in the host State.¹⁹ This is not borne out by the facts.

27. Firstly, it is conspicuous that the Registry failed to comply with the Pre-Trial Chamber's instructions. Following Mr Mokom's release from the ICC Detention Centre, the Pre-Trial Chamber instructed the Registry to ensure that Mr Mokom's conditions of stay did not **in any way** amount to a deprivation of liberty and that **no restrictions** were placed on his freedom of movement or his freedom of communication within the territory of the host State.²⁰

28. The Registry's lack of compliance with this instruction was exposed by the Pre-Trial Chamber in its email to the Registry on 30 October 2023 ('30 October email') and in its 21 November Order, in which it restated the terms of the 17 October Order and found that, since his release, Mr Mokom had instead been subjected to a regime that appeared to amount to a form of house arrest.²¹

29. Importantly, the Registry has now explained that the conditions which formed the basis of the consultations with the host State were conditions previously applied to [REDACTED].²² With this as the starting point, the Registry was never going to be in a position to comply with the Pre-Trial Chamber's instructions given that it was working from [REDACTED], which necessarily requires limitations being placed on specific rights and liberties. Mr Mokom, by contrast, was a free man.

¹⁹ [ICC-01/14-01/22-338-Conf-Exp](#), para. 7.

²⁰ [ICC-01/14-01/22-276](#), para. 10.

²¹ [ICC-01/14-01/22-338-Conf-Exp](#), paras. 32-34 and 42-44; Order regarding arrangements pending Mr Mokom's transfer, 21 November 2023, [ICC-01/14-01/22-294-Conf-Exp](#), para. 3.

²² [ICC-01/14-01/22-338-Conf-Exp](#), paras. 6-7 (emphasis added).

30. This explanation from the Registry, being now shared for the first time with the Defence, sheds light on the Pre-Trial Chamber's concerns in its 30 October email. While the Defence can only see a redacted version of the email, the Pre-Trial Chamber stated the following:²³

[REDACTED]

31. Not only did the Registry fail to apply the least restrictive practical arrangements for Mr Mokom's conditions of stay, but it applied conditions mirrored to what was applicable for [REDACTED]. This constitutes a grave lack of compliance with the 17 October Order of the Pre-Trial Chamber, and directly contributed to the harm for which Mr Mokom is now seeking relief. The Registry Submissions confirms that, as the Defence underlined, Mr Mokom's release conditions were tantamount to constructive detention, were manifestly illegal, and warrant compensation under Article 85(1) of the Statute.²⁴

(iii) *The Registry failed to act as proper channel of communication*

a. The Registry failed to adequately communicate between the host State and the Defence

32. The Registry did not act as a channel of communication ensuring the full implementation of the 17 October Order through communicating all views **between the host State and the Defence during the consultations**.²⁵ Its failings in this regard led to confusion and the protracted deprivation of Mr Mokom's rights, for which compensation is now being properly sought.

33. The Registry stated that:²⁶

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.

[...]

²³ 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-01/14-01/22-258-US-Exp" 3 November 2023, ICC-01/14-01/22-285-Conf-Exp-Corr, 30 November 2023, [ICC-01/14-01/22-285-Conf-Exp-Corr-Red](#), para. 1, footnote 1 (emphasis added).

²⁴ [ICC-01/14-01/22-329-Conf](#), para. 54.

²⁵ [ICC-01/14-01/22-338-Conf-Exp](#), paras. 10 and 72.

²⁶ *Id.*

[...] 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 [...]

34. The Registry’s Submissions lists four sets of practical arrangements to which the host State had apparently agreed.²⁷ Over the course of the consultations, the Registry only informed the Defence about the 1st Practical Arrangements which were put in place on the day of Mr Mokom’s release from the ICC Detention Centre. The 1st Practical arrangements required Mr Mokom to remain confined in the hotel.²⁸

35. The Registry failed to tell the Defence any information relating to the 2nd, 3rd or 4th Practical Arrangements at the time that these were agreed with the host State, despite the fact that they would have meant the gradual relaxations of Mr Mokom’s conditions of stay.²⁹ The Registry’s Submission that the matter of the Practical Arrangements “**was considered between Mr Mokom and the host State, with the Registry acting as the channel of communication conveying views between the two**” is therefore entirely misleading.³⁰

36. In reality, it was only after the 21 November Order that the Defence was informed about the gradual relaxations of the conditions of stay through the notification of redacted versions of Registry Reports.³¹ The Registry’s Submissions do not provide any justification for the Registry’s failure to inform the Defence about the gradual relaxations of the conditions at the time that the host State agreed to them.

37. Importantly, the Registry’s failure to inform the Defence in time about the gradual relaxations further impacted the Defence’s ability to litigate the matter at an earlier stage. The Registry’s submission that, “insofar as the Registry is aware, the Defence did not litigate the matter before any court in the host State”, is an unfair statement and a mischaracterisation of

²⁷ [ICC-01/14-01/22-338-Conf-Exp](#), paras. 15, 26, 28 and 39.

²⁸ [ICC-01/14-01/22-338-Conf-Exp](#), paras. 15 and 17.

²⁹ [ICC-01/14-01/22-338-Conf-Exp](#), paras. 26, 28 and 39. *See also* [ICC-01/14-01/22-329-Conf](#), para. 51.

³⁰ [ICC-01/14-01/22-338-Conf-Exp](#), para. 10 (emphasis added).

³¹ 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; Redacted version of “Registry’s Report pursuant to Pre-Trial Chamber II’s Instruction of 25 October 2023”, 26 October, ICC-01/14-01/22-280-US-Exp, 30 November 2023, [ICC-01/14-01/22-280-Conf-Exp-Red2](#), para. 22; Redacted version of “Addendum to the ‘Registry’s Report pursuant to Pre-Trial Chamber II’s Instruction of 25 October 2023’”, ICC-01/14-01/22-280-US-Exp”, 27 October 2023, ICC-01/14-01/22-281-Conf-Exp, 30 November 2023, [ICC-01/14-01/22-281-Conf-Red](#), para. 16; *See also* [ICC-01/14-01/22-329-Conf](#), para. 52.

the facts.³² It was the Registry's failure to communicate information that prevented the Defence from taking adequate legal steps, including before the Dutch courts.

38. Relevantly, on 31 October 2023, the Defence had explicitly asked the Registry to provide the legal basis for the imposition of conditions during Mr Mokom's stay in the host State in order to litigate the issue "**before and outside the Court**".³³ No legal basis or justifications have ever been provided by the Registry to the Defence. Why Mr Mokom remained detained in the hotel premises remains a complete mystery, particularly when in doing so, the Registry was violating the Pre-Trial Chamber's explicit instructions.

39. The Registry's failure, therefore, led to the violation of Mr Mokom's fundamental rights to, *inter alia*, health and access to healthcare, freedom of expression and freedom of religion as demonstrated in the Request for Compensation.³⁴

b. The Registry failed to inform the Defence about the outcome of [REDACTED]

40. The Defence's ability to litigate Mr Mokom's conditions of stay in the host State was also dependent on [REDACTED] about Mr Mokom's stay in the Netherlands further to his release.

41. The Registry asserts that the Defence received confirmation from the Registry about the **outcome** [REDACTED].³⁵ However, the Registry informed the Defence during a meeting that [REDACTED] related to Mr Mokom's stay in the Netherlands. In other words, the Registry only told the Defence that [REDACTED] **at that stage** by the host State [REDACTED] in The Netherlands. The Defence was never informed that [REDACTED].

42. As stated in the Registry Submissions, the Pre-Trial Chamber itself asked the Registry "to obtain [REDACTED]".³⁶ Although the Pre-Trial Chamber's request was emailed to the Registry on 30 October 2023, the Defence only became aware of it on 30 November 2023, being **after** Mr Mokom had left the hotel for the first time.³⁷ The Registry's failure to inform the Defence about [REDACTED] was a further obstacle to the Defence taking legal steps at an

³² [ICC-01/14-01/22-338-Conf-Exp](#), paras. 10 and 72.

³³ [ICC-01/14-01/22-338-Conf-Exp](#), para. 36; [ICC-01/14-01/22-329-Conf](#), para. 54; [ICC-01/14-01/22-329-Conf-AnxG](#), p. 4, Email from the Mokom Defence to the Registry, 31 October 2023, 12:17.

³⁴ [ICC-01/14-01/22-329-Conf](#), paras. 55-61.

³⁵ *Contra* [ICC-01/14-01/22-338-Conf-Exp](#), para. 37.

³⁶ [ICC-01/14-01/22-338-Conf-Exp](#), para. 34.

³⁷ [ICC-01/14-01/22-285-Conf-Exp-Corr-Red](#), para. 1.

earlier stage, including through litigation in front of the Pre-Trial Chamber or before the Dutch courts.

- c. The Registry failed to adequately communicate the terms of the 17 October Order throughout the consultations

43. The Registry states that **throughout** the consultations, it told the host State that the Court cannot, under its legal framework, impose any conditions on Mr Mokom's stay in The Netherlands pending his transfer, despite the Court's residual jurisdiction with regard to Mr Mokom.³⁸ In making this assertion, the Registry relies on a Registry report from 24 November 2023 describing an exchange during which the Registry was informing the host State about the content of the 21 November Order.³⁹

44. The Registry's Submissions therefore suggest that the Registry had made clear to the host State that no conditions ought to be imposed on Mr Mokom **throughout** the consultations, while relying on an exchange held with the host State at a late stage of the consultations. This is misleading. The Pre-Trial Chamber issued the 21 November Order precisely because the Registry had been negotiating with the host State the imposition of conditions since Mr Mokom's release "notwithstanding the clear terms of the 17 October Order to the contrary."⁴⁰

45. The 21 November Order thereby ascertained the Registry's failure to act as a channel of communication and to adequately communicate to the host State throughout the consultations that no conditions ought to be imposed upon Mr Mokom further to his release. This failure, once again, was a direct violation of Mr Mokom's fundamental rights as exposed in the Request for Compensation.⁴¹

- (iv) *The Registry has never provided a legal basis for Mr Mokom's 43-day detention*

46. The Registry Submissions again demonstrate that the Registry can provide no legal basis for the imposition of conditions on Mr Mokom during his stay in the host State.

47. The Submissions refer to a Registry Report informing the Pre-Trial Chamber that the Registry was **not aware of any legal basis** for having Mr Mokom signing [REDACTED] and solely indicating that it is the **Registry's understanding** from the host State that

³⁸ [ICC-01/14-01/22-338-Conf-Exp](#), para. 7.

³⁹ [ICC-01/14-01/22-338-Conf-Exp](#), para. 7, footnote 16, referring to [ICC-01/14-01/22-298-Conf-Exp](#), para. 22

⁴⁰ [ICC-01/14-01/22-294-Conf-Exp](#), para. 3.

⁴¹ [ICC-01/14-01/22-329-Conf](#), paras. 55-61.

“[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.”⁴²

48. In other words, the Registry conducted consultations in which it accepted the host State’s request that conditions restricting Mr Mokom’s rights and freedoms be imposed on Mr Mokom, without any legal foundation for those conditions under the Court’s legal framework, and in violation of the Pre-Trial Chamber’s 17 October Order.⁴³

49. The Registry also states that it “**understood**” from the host State that [REDACTED] and the practical arrangements were necessary to ensure that Mr Mokom did not enter the host State’s territory and remained under the Court’s jurisdiction.⁴⁴ The Registry therefore accepted that conditions could be imposed on Mr. Mokom based on nothing more than an **understanding** of the host State’s position and without indication of any legal basis being offered to justify these restrictions.

50. The Registry then asserts that it implemented the practical arrangements sought by the host State because Mr Mokom was on the territory of the Netherlands and, *inter alia*, the Registry “is **dependent** on the host State for cooperation on an array of matters – matters which are vital for the Court’s functioning”.⁴⁵ The Registry’s dependence on the cooperation of a State Party is not a *carte blanche* to violate judicial orders. The Pre-Trial Chamber had stated that the Registry “**shall ensure**” that Mr. Mokom’s liberties are not restricted **in any way** during his temporary stay **within** the territory of the host State.⁴⁶ The Pre-Trial Chamber’s instructions were therefore not conditional upon the Registry’s dependence on the degree of cooperation afforded by the host State.

51. The illegality of the Registry’s approach was reinforced by the 21 November Order. Having acknowledged that Mr Mokom fell **within both the Court’s residual jurisdiction and the host State’s jurisdiction**, the Pre-Trial Chamber reiterated that the Registry “shall ensure”

⁴² [ICC-01/14-01/22-338-Conf-Exp](#), para. 38 (emphasis added).

⁴³ [ICC-01/14-01/22-276](#), para. 4.

⁴⁴ [ICC-01/14-01/22-338-Conf-Exp](#), para. 38 (emphasis added).

⁴⁵ [ICC-01/14-01/22-338-Conf-Exp](#), paras. 5 and 9 (emphasis added).

⁴⁶ [ICC-01/14-01/22-276](#), para. 10 (emphasis added).

that Mr Mokom’s liberties are not restricted in any way during his temporary state in the host State.⁴⁷

52. After having considered the “reports provided by the Registry on, *inter alia*, the arrangements applicable to Mr Mokom pending his transfer”, the Pre-Trial Chamber pointed out the Registry’s responsibility in having subjected Mr Mokom to practical arrangements appearing to amount to a form of house arrest “despite the clear terms of the 17 October 2023 Order to the contrary”, and thereby found that the Registry’s dependence on the host State’s discretion to cooperate with the Court did not constitute a legal requirement justifying Mr Mokom’s confinement in the hotel.

53. The Registry chose to prioritise its working relationship with the host State over an order of the Pre-Trial Chamber, to the detriment of the right and welfare of a vulnerable former suspect. The Pre-Trial Chamber had found that the Court has no power to **under the Court’s legal framework** from the day of his release from the Detention Centre.⁴⁸ The Registry’s conduct, and its inability to provide any legal basis for this conduct in the Registry Submissions, reinforce Mr Mokom’s claim for compensation under Article 85 of the Statute.

(iv) Mr Mokom was deprived of access to healthcare

54. Contrary to the Registry Submissions, the Registry did not facilitate Mr Mokom’s access to healthcare when it was informed of this need.⁴⁹ Specifically, the Registry assertion that it assisted Mr Mokom [REDACTED] on 19 October 2023 is false.⁵⁰

55. On that day, [REDACTED]. The Registry’s submissions that “on 19 October 2023, [...] Mr Mokom [REDACTED], who discussed matters with Counsel for Mr Mokom”, are inaccurate.⁵¹

56. [REDACTED].⁵² [REDACTED].

⁴⁷ [ICC-01/14-01/22-294-Conf-Exp](#), paras. 3-4.

⁴⁸ [ICC-01/14-01/22-276](#), para. 4.

⁴⁹ [ICC-01/14-01/22-338-Conf-Exp](#), para. 68.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² [ICC-01/14-01/22-329-Conf](#), para. 56.

57. Moreover, contrary to the Registry's Submissions, the Registry did not facilitate [REDACTED] on 28 November 2023, the day Mr Mokom left the hotel for the first time.⁵³ [REDACTED]. The Registry's Submissions are again entirely misleading.

(v) *The Registry deprived Mr Mokom of a family visit*

58. According to the Registry, Mr Mokom's right to a family visit was not violated, because he was not [REDACTED] detained person eligible for an ICC [REDACTED] family visit after his release from the Detention Centre.⁵⁴

59. [REDACTED]. An ICC [REDACTED] family visit was the only way for Mr Mokom and his family to reunite in the circumstances in which he had been placed by the ICC, against his will. A previous family visit had taken place in [REDACTED] 2022. Mr Mokom has not seen his wife or any of his children since then.

60. When the Registry notified the Defence about the cancellation of the family visit on 19 October 2023, the Registry was aware that Mr Mokom was confined in a hotel pursuant to the 1st Practical Arrangements put in place by the host State. As such, Mr Mokom remained "under the jurisdiction and responsibility of the Court", [REDACTED].⁵⁵ The fact that Mr Mokom still fell within the residual jurisdiction of the Court after his release and was subject to [REDACTED] put him in a similar situation of a person in ICC custody. Mr Mokom's status as an [REDACTED] person did not change either following his release from the Detention Center. As such, he was still an [REDACTED] person under the Court's legal framework and will remain so until the conclusion of the compensation proceedings. The Registry had a clear discretion to facilitate the visit which had already been organised. It decided to interpret the governing framework in a way that deprived Mr Mokom of perhaps his last chance to see his family for many years.

61. The importance of family links is acknowledged by Regulation 179(1) of the Regulations of the Registry, which state that "The Registrar **shall** give specific attention to visits by family of the detained persons **with a view to maintaining such links.**" The cancellation of Mr Mokom's family visit a few days prior to the start of the visit is incompatible with the

⁵³ [ICC-01/14-01/22-338-Conf-Exp](#), para. 68.

⁵⁴ [ICC-01/14-01/22-338-Conf-Exp](#), paras. 66-67.

⁵⁵ [ICC-01/14-01/22-338-Conf-Exp](#), para. 15.

Registry's duty to ensure that family links are maintained through visits for all persons having been subjected to an ICC detention.

62. Notably, the ICC Detention Centre and the members of Mr Mokom's Defence team had been organising Mr Mokom's family visit since March 2023. The logistics of the family visit had been finalised whilst Mr Mokom was in detention.⁵⁶ The fact that Mr Mokom was at the Detention Centre during the seven months it took to organise the visit further supports his legal entitlement under Regulation 179(1) to have had the family visit taking place.

63. The moral damages demonstrated as suffered by Mr Mokom and the request for joinder for Mr Mokom's wife and children to the Request for Compensation⁵⁷ are only strengthened by the Registry Submissions. They show its failure to understand Mr Mokom's situation as an [REDACTED] person, falling under the jurisdiction of the Court, and show the deprivation of liberty and basic fundamental freedoms that the Registry, by its actions, imposed on Mr Mokom.

V. CONCLUSION

64. The Registry has adopted the position that it "will not address the legal issues raised in the Request for Compensation" through invoking the Registry's role regarding the non-judicial aspects of the Court's proceedings under Article 43(1) of the Statute.⁵⁸ As such, the Registry Submissions contain no admission that the Registry failed to comply with the Pre-Trial Chamber's instructions related to Mr Mokom's stay in the host State.

65. However, the Request for Compensation was submitted under Article 85(1) of the Statute and grounded in allegations by the Defence against the Registry in its treatment of Mr Mokom.⁵⁹ The Registry had no legal basis to seek the least restrictive arrangements regarding Mr Mokom's stay in the Netherlands, based on [REDACTED]. The Registry failed to communicate the relaxations of the Practical Arrangements that the host State sought apply during Mr Mokom's stay and, consequently, prevented his Defence team from taking legal action which would have been available. Mr Mokom's fundamental rights were violated because of the Registry's approach of the consultations, including his access to any healthcare,

⁵⁶ See Annex I.

⁵⁷ [ICC-01/14-01/22-329-Conf](#), paras. 60-63.

⁵⁸ [ICC-01/14-01/22-338-Conf-Exp](#), para. 62.

⁵⁹ *Id.*

which the Registry took no steps to facilitate during his 43-day confinement in the hotel. A simple statement that the Registry “will not address” these issues, is manifestly inadequate, obstructive, and unhelpful to both the Chamber, and Mr Mokom.

66. The Registry was instructed to apply a Court’s Order and not to adapt the Order based on the practical arrangements proposed by the host State. Its failure to comply with this order subjected Mr Mokom to illegal detention warranting compensation under Article 85(1) of the Statute.

Respectfully submitted,



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