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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
IN THE CASE OF
THE PROSECUTOR v. MAXIME JEOFFROY ELI MOKOM GAWAKA

Public redacted version

Decision on Mr Mokom's request for compensation

Decision to be notified in accordance with regulation 31 of the Regulations of the Court to:

☒ **The Office of the Prosecutor**

☒ **Counsel for Mr Mokom**

☐ **Legal Representatives of the Victims**

☐ **Legal Representatives of the Applicants**

☐ **Unrepresented Victims**

☐ **Unrepresented Applicants
(Participation/Reparation)**

☐ **The Office of Public Counsel for
Victims**

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

☐ **States' Representatives**

☐ **Amicus Curiae**

REGISTRY

Registrar
Mr Osvaldo Zavala Giler

☐ **Counsel Support Section**

☐ **Victims and Witnesses Unit**

☐ **Detention Section**

☐ **Victims Participation and Reparations
Section**

☐ **Other**

Table of Contents

I.	Relevant procedural background	4
II.	Overview of submissions.....	8
III.	Request for joinder.....	9
IV.	Confidentiality	10
V.	The merits of the request.....	10
A.	Applicable law	10
B.	Alleged grave and manifest miscarriage of justice – Article 85(3) of the Statute	13
1.	Mr Mokom’s claim under article 85(3) of the Statute regarding prosecutorial misconduct	13
a)	Submissions	13
b)	Determination by the Chamber	15
2.	Dismissal of related claims	24
C.	Alleged unlawful arrest and detention – Article 85(1) of the Statute	26
1.	Interim release during proceedings	26
a)	Submissions	26
b)	Determination by the Chamber	26
2.	Alleged ‘ <i>de facto</i> detention’ at a hotel after the termination of proceedings.....	32
a)	Chronology of events.....	32
b)	Submissions	43
c)	Determination by the Chamber	45
i.	The legal framework applicable to persons released without conviction	46
ii.	Specific situation of Mr Mokom	48
iii.	Allegations of Registry negligence	53
iv.	Conclusion.....	53

The Article 85 Chamber of the International Criminal Court (the ‘Court’ or ‘ICC’), in the case of *The Prosecutor v. Maxime Jeoffroy Eli Mokom Gawaka*, pursuant to article 85 of the Rome Statute (the ‘Statute’) and rules 173-175 of the Rules of Procedure and Evidence (the ‘Rules’), issues the following ‘Decision on Mr Mokom’s request for compensation’.

I. RELEVANT PROCEDURAL BACKGROUND

1. On 10 December 2018, Pre-Trial Chamber II (the ‘Pre-Trial Chamber’) issued a warrant of arrest against Mr Mokom (the ‘Arrest Warrant’),¹ following an application filed by the Office of the Prosecutor (the ‘Prosecution’) on 30 October 2018 (the ‘Arrest Warrant Application’).²
2. Mr Mokom was arrested on 27 February 2022³ and surrendered to the Court on 14 March 2022 by authorities of the Republic of Chad.⁴ His initial appearance took place before the Pre-Trial Chamber on 22 March 2022.⁵
3. On 14 November 2022, Mr Mokom applied for interim release.⁶
4. On 8 March 2023, the Pre-Trial Chamber rejected Mr Mokom’s application for interim release.⁷
5. On 9 March 2023, the Prosecution filed its document containing the charges against Mr Mokom.⁸

¹ Warrant of Arrest for Maxime Jeoffroy Eli Mokom Gawaka, ICC-01/14-01/22-2-US-Exp (under seal, *ex parte*, only available to the Prosecution; under seal, *ex parte* redacted version, only available to the Prosecution and the Victims and Witnesses Unit notified on 31 January 2019, ICC-01/14-01/22-2-US-Exp-Red; public redacted version notified on 22 March 2022, [ICC-01/14-01/22-2-Red2](#)).

² Prosecution’s Application for Warrants of Arrest for Patrice Edouard Ngaissona, Maxime Mokom, Alfred Yekatom [...], ICC-01/14-01/22-1-US-Exp (under seal, *ex parte*, only available to the Prosecution; with 11 under seal, *ex parte* annexes, only available to the Prosecution; confidential redacted version notified on 21 March 2022, ICC-01/14-01/22-1-Conf-Red).

³ Transcript of hearing, 22 March 2022, [ICC-01/14-01/22-T-001-Red-ENG](#), p. 9; Prosecution’s Renewed Request for Contact Restrictions pursuant to Regulation 101 of the Regulations of the Court, 10 March 2022, [ICC-01/14-01/22-18](#), para. 4 (reclassified public on 18 June 2024).

⁴ Order convening a hearing for the first appearance of Mr Mokom, 16 March 2022, [ICC-01/14-01/22-21](#), para. 4.

⁵ [ICC-01/14-01/22-T-001-Red-ENG](#).

⁶ Mr. Mokom’s Application for Interim Release pursuant to Order ICC-01/14-01/22-105, ICC-01/14-01/22-110-Conf, (public redacted version notified on 16 November 2022, [ICC-01/14-01/22-110-Red](#)) (the ‘Application for Interim Release’).

⁷ Decision on interim release, ICC-01/14-01/22-173-Conf (public redacted version notified on the same day [ICC-01/14-01/22-173-Red](#)) (the ‘Decision on Interim Release’).

⁸ Annex A to the Prosecution’s Submission of the Document Containing the Charges, ICC-01/14-01/22-174-Conf-AnxA (public redacted version notified on 13 March 2023, [ICC-01/14-01/22-174-AnxA-Red](#)).

6. Between 22 and 24 August 2023, the Pre-Trial Chamber held the hearing on the confirmation of charges.⁹
7. On 16 October 2023, before the decision of the Pre-Trial Chamber on the confirmation of charges was rendered, the Prosecution notified the Pre-Trial Chamber that it was withdrawing all charges against Mr Mokom pursuant to article 64(1) of the Statute (the ‘Notice of Withdrawal’).¹⁰ The Prosecution cited ‘changed circumstances regarding the state of the evidence’ in support of its withdrawal, notably that ‘several critical witnesses [were] unavailable to testify’ including ‘insider witnesses who provide critical information regarding the charges against Mr Mokom’. The Prosecution further stated that ‘ongoing investigative efforts [were] unlikely to result in new evidence of comparable probative value’.¹¹
8. On 17 October 2023, the Pre-Trial Chamber terminated the proceedings against Mr Mokom with immediate effect and ordered his release from detention (the ‘17 October 2023 Order’).¹² Mr Mokom was released from the ICC Detention Centre on the same day.¹³
9. On 18 January 2024, the Pre-Trial Chamber ordered that the Court’s residual jurisdiction over Mr Mokom would end as of 8 February 2024.¹⁴ Mr Mokom filed a notice of appeal and a request for suspensive effect against this decision on 24 January 2024¹⁵ and appealed the decision on 7 February 2024.¹⁶

⁹ Transcript of hearing, 22 August 2023, [ICC-01/14-01/22-T-006-Red-ENG](#); Transcript of hearing, 23 August 2023, [ICC-01/14-01/22-T-007-Red-ENG](#); Transcript of hearing, 24 August 2023, [ICC-01/14-01/22-T-008-Red-ENG](#).

¹⁰ Notice of Withdrawal of the Charges against Maxime Jeoffroy Eli Mokom Gawaka, [ICC-01/14-01/22-275](#) (reclassified public on 19 October 2023).

¹¹ Notice of Withdrawal, [ICC-01/14-01/22-275](#), paras 1, 3-4.

¹² Order in relation to the Prosecution’s ‘Notice of Withdrawal of the Charges against Maxime Jeoffroy Eli Mokom Gawaka’, [ICC-01/14-01/22-276](#) (reclassified public on 19 October 2023).

¹³ The Chamber notes that additional procedural details regarding Mr Mokom’s claim of unlawful detention after the termination of proceedings against him are provided in section V.C.2.a) of this decision.

¹⁴ Decision pursuant to Rule 185 of the Rules of Procedure and Evidence, ICC-01/14-01/22-309-Conf (public redacted version notified simultaneously, [ICC-01/14-01/22-309-Red](#)) (the ‘18 January 2024 Decision’), p. 10.

¹⁵ 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, ICC-01/14-01/22-312-Conf-Exp (confidential *ex parte*, available only to the Registry and counsel for Mr Mokom; confidential redacted version and public redacted version notified on 26 January 2024, ICC-01/14-01/22-312-Conf-Red and [ICC-01/14-01/22-312-Red](#)) (the ‘Notice of Appeal’).

¹⁶ Appeal against “Decision pursuant to Rule 185 of the Rules of Procedure and Evidence”, ICC-01/14-01/22-309-Conf-Exp, ICC-01/14-01/22-318-Conf-Exp (confidential *ex parte*, available only to the Registry and counsel for Mr Mokom; with two confidential annexes; public redacted version notified on 8 February 2024, [ICC-01/14-01/22-318-Red](#); confidential *ex parte* redacted version, available only to the Registry and counsel for Mr Mokom).

10. On 8 February 2024, the Appeals Chamber suspended the effect of the Pre-Trial Chamber's 18 January 2024 Decision.¹⁷ [REDACTED], Mr Mokom [REDACTED] and sought asylum [REDACTED].¹⁸ On 13 February 2024, the Appeals Chamber terminated the appeal proceedings against the Pre-Trial Chamber's 18 January 2024 Order.¹⁹
11. On 17 April 2024, Mr Mokom filed a request for compensation pursuant to article 85 of the Statute before the Presidency (the 'Request').²⁰
12. On 23 April 2024, the Presidency constituted the present Chamber and referred the Request to it.²¹
13. On 29 April 2024, the Prosecution responded to the Request (the 'Prosecution Response').²²
14. On 27 May 2024, following leave granted by the Chamber,²³ Mr Mokom filed a reply to certain issues raised in the Prosecution Response (hereinafter: 'Mr Mokom's Reply to the Prosecution').²⁴

and the [REDACTED], and confidential redacted version notified on 9 February 2024, ICC-01/14-01/22-318-Conf-Exp-Red and ICC-01/14-01/22-318-Conf-Red).

¹⁷ Decision on the request for suspensive effect and order concerning submissions on admissibility, [ICC-01/14-01/22-320](#) (reclassified public on 13 February 2024).

¹⁸ See annex to Corrected version of "Transmission of an Urgent Request [REDACTED]", ICC-01/14-01/22-325-Conf-Exp-Corr, 14 February 2024, ICC-01/14-01/22-325-Conf-Exp-Anx (filing and annex confidential *ex parte*, originally available only to the Registry and reclassified to also be available to counsel for Mr Mokom on 14 June 2024), p. 2. See also Request, ICC-01/14-01/22-329-Conf, para. 37; Registry Observations, ICC-01/14-01/22-343-Conf-Exp, para. 57.

¹⁹ Decision on the discontinuance of the appeal, [ICC-01/14-01/22-323](#).

²⁰ Request for Compensation under Article 85 of the Rome Statute, ICC-01/14-01/22-329-Conf (with confidential annexes A to G; public redacted version notified on 23 April 2024, [ICC-01/14-01/22-329-Red](#)).

²¹ 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), [ICC-01/14-01/22-330](#), p. 4.

²² Prosecution's Response to Maxime Mokom's Request for Compensation under Article 85 of the Rome Statute, ICC-01/14-01/22-332-Conf (with confidential annex A; public redacted version notified on 30 May 2024, [ICC-01/14-01/22-332-Red](#)).

²³ Decision on Mr Mokom's request for leave to reply and request for a hearing, 10 May 2024, [ICC-01/14-01/22-336](#).

²⁴ Mokom Defence Reply to 'Prosecution's Response to Maxime Mokom's Request for Compensation under Article 85 of the Rome Statute', ICC-01/14-01/22-337-Conf (with two confidential annexes; public redacted version notified on 3 July 2024, [ICC-01/14-01/22-337-Red](#)).

15. On 27 May 2024, having been instructed to do so by the Chamber,²⁵ the Registry filed its observations.²⁶ On 13 June 2024, following further instructions from the Chamber,²⁷ the Registry filed an updated version of its observations (the ‘Registry Observations’).²⁸
16. On 14 June 2024, in accordance with the deadline set by the Chamber,²⁹ Mr Mokom filed a response to the Registry Observations (hereinafter: ‘Mr Mokom’s Response to the Registry’).³⁰
17. On 11 July 2024, the Chamber scheduled a hearing,³¹ in accordance with the request of Mr Mokom.³² The hearing was held on 9 September 2024, during which the Chamber heard further submissions on the Request from counsel for Mr Mokom, the Prosecution and the Registry.³³ Mr Mokom also addressed the Chamber during the hearing.³⁴

²⁵ Order setting the schedule for further submissions on the request for compensation, 30 April 2024, [ICC-01/14-01/22-333](#).

²⁶ 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 Order instructing the Registry to re-file the Registry’s Submissions, 6 June 2024, [ICC-01/14-01/22-342](#). The Chamber instructed the Registry to file an updated version of its observations, in which the document was 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 was not already available on the record, the Chamber instructed the Registry to annex such documents to the updated filing and have the footnote reflect the relevant location of the document in the attached annex. The Chamber further instructed the Registry to attach as an annex any further correspondence between the Registry and counsel for Mr Mokom between the period of 17 October 2023-28 November 2023 that was not already on the record.

²⁸ Updated Registry’s Submissions on the Defence Request for Compensation under Article 85 of the Rome Statute (ICC-01/14-01/22-329-Conf), ICC-01/14-01/22-343-Conf-Exp (with eight confidential annexes, confidential redacted version notified on 18 June 2024, ICC-01/14-01/22-343-Conf-Red, public redacted version notified on 12 July 2024, [ICC-01/14-01/22-343-Red](#)).

²⁹ Order setting the schedule for further submissions on the request for compensation, 30 April 2024, [ICC-01/14-01/22-333](#).

³⁰ 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 (confidential *ex parte*, available only to Registry and counsel for Mr Mokom, with confidential *ex parte* Annex 1 available only to Registry and counsel for Mr Mokom; confidential redacted version notified on 18 July 2024, ICC-01/14-01/22-334-Conf-Red; public redacted version notified on 18 July 2024, [ICC-01/14-01/22-344-Red](#)).

³¹ [ICC-01/14-01/22-336](#); Order scheduling a hearing regarding Mr Mokom’s claim for compensation, 11 July 2024, [ICC-01/14-01/22-349](#).

³² Request, [ICC-01/14-01/22-329-Red](#), para. 64.

³³ Transcript of Hearing, ICC-01/14-01/22-T-009-CONF-ENG (public version, [ICC-01/14-01/22-T-009-Red2-ENG](#)).

³⁴ ICC-01/14-01/22-T-009-CONF-ENG, pp. 6-10.

18. On 13 September 2024, following an instruction from the Chamber,³⁵ the Registry filed further submissions, in which it provided [REDACTED].³⁶ Mr Mokom provided his response to this information, as directed by the Chamber,³⁷ on 16 September 2024.³⁸
19. On 13 September 2024, following the request from the Chamber for additional information,³⁹ the Prosecution provided a report of the Senior Trial Lawyer in the case which ‘summarises the most significant information known about the unavailability of certain witnesses [...] at the time of the Prosecutor’s decision to withdraw the charges’ (the ‘Prosecution’s Additional Information on Withdrawal’).⁴⁰
20. On 17 September 2024, Mr Mokom emailed the Chamber, indicating his willingness to provide additional submissions on the withdrawal of charges or ‘point the Chamber in the direction of material that may assist [...]’.⁴¹ On the same day, the Chamber responded that it would not be assisted by further submissions at that time.⁴²

II. OVERVIEW OF SUBMISSIONS

21. Mr Mokom claims that he has been subjected to a grave and manifest miscarriage of justice and unlawful arrest and detention based on alleged prosecutorial, judicial and administrative misconduct in the Court’s proceedings against him.⁴³ He submits that he suffered harm and damage as a result of the alleged misconduct, notably finding himself an asylum seeker, ‘separated from his family, and in a position of extreme uncertainty, [...] confusion, and distress’, with ‘no means of sustaining himself’ and his reputation

³⁵ Email from the Chamber, 10 September 2024, at 12:08 ‘The Registry is instructed to provide [REDACTED]; ICC-01/14-01/22-T-009-CONF-ENG, pp. 60-61.

³⁶ Registry’s Submission pursuant to Article 85 Chamber’s Instruction delivered during the Hearing of 9 September 2024, ICC-01/14-01/22-351-Conf-Exp.

³⁷ Email from the Chamber, 10 September 2024, at 12:08.

³⁸ Mokom Defence Response to the ‘Registry’s Submission pursuant to Article 85 Chamber’s Instruction delivered during the Hearing of 9 September 2024’, ICC-01/14-01/22-353-Conf-Exp (with six confidential *ex parte* annexes).

³⁹ Email from the Chamber, 10 September 2024 at 12:08, ‘Noting the Prosecution’s submission that the decision to withdraw the charges was based on the unavailability of several critical witnesses and its assessment that investigative efforts to supplement this evidence had been exhausted, the Prosecution is instructed to provide further information on which witnesses became unavailable and when, as well as supporting documentation by 13 September 2024 [...] The Chamber notes that the Prosecution, [...] may provide this information on an *ex parte* basis to the Chamber, providing the factual and legal basis chosen for this classification in accordance with regulation 23bis of the Regulations of the Court’; ICC-01/14-01/22-T-009-CONF-ENG, pp. 59-60.

⁴⁰ Prosecution’s Additional Information on Withdrawal, [ICC-01/14-01/22-352](#) (with under seal, *ex parte* Annex A, available only to the Prosecution, ICC-01/14-01/22-352-US-Exp-AnxA).

⁴¹ Email from Mr Mokom, 17 September 2024, at 12:42.

⁴² Email from the Chamber, 17 September 2024, at 16:30.

⁴³ Request, [ICC-01/14-01/22-329-Red](#), paras 4-5, 8-61, 67.

destroyed.⁴⁴ He seeks compensation in the sum of €2,850,000,⁴⁵ as well as €500,000 for his wife and children, whom he seeks to join to his request for compensation.⁴⁶

22. The Prosecution, addressing only the contentions against it and not those against the other organs of the Court, submits that Mr Mokom's claim of prosecutorial misconduct is without merit and that none of the allegations against the Prosecution demonstrate a miscarriage of justice.⁴⁷ It submits, *inter alia*, that the Request is predicated on incorrect facts and speculation, and conflates materially distinct factual and legal issues,⁴⁸ that it has not met the stringent requirements of article 85(3) and as such, the Request – insofar as the claims against the Prosecution are concerned – should be rejected.⁴⁹

23. The Registry, in its Observations, provides 'a factual overview of the events' related to the period during which Mr Mokom's liberty was allegedly restricted.⁵⁰ At the hearing, the Registry set out its views on the legal framework and its position that there is no reason for compensation to be granted in this case.⁵¹

III. REQUEST FOR JOINDER

24. Before turning to the substance of the Request, the Chamber first deals with the preliminary issue of Mr Mokom's request for joinder of his family members to the Request. Mr Mokom requests to 'join' his wife and children to his request for compensation on the basis that they have also suffered harm as a result of his alleged unlawful arrest and detention.⁵²

25. On the plain wording of article 85 of the Statute, only the person who claims to have been unlawfully arrested/detained, wrongfully convicted or whose acquittal or termination of proceedings resulted from a grave and manifest miscarriage of justice can seek compensation, as also submitted by the Prosecution.⁵³ The ordinary meaning of the terms of article 85 therefore excludes any other person who might have suffered indirect

⁴⁴ Request, [ICC-01/14-01/22-329-Red](#), paras 4, 67.

⁴⁵ Request, [ICC-01/14-01/22-329-Red](#), pp. 22-23.

⁴⁶ Request, [ICC-01/14-01/22-329-Red](#), paras 62-63, p. 23.

⁴⁷ Response, [ICC-01/14-01/22-332-Red](#), paras 2-3, 9-30, 34.

⁴⁸ Response, [ICC-01/14-01/22-332-Red](#), paras 2, 9-30.

⁴⁹ Response, [ICC-01/14-01/22-332-Red](#), paras 3, 9-30, 34.

⁵⁰ Registry Observations, ICC-01/14-01/22-343-Conf-Exp, paras 12-57.

⁵¹ ICC-01/14-01/22-T-009-CONF-ENG, pp. 42-64.

⁵² Request, [ICC-01/14-01/22-329-Red](#), paras 62-63, p. 23. *See also* Response, [ICC-01/14-01/22-332-Red](#), paras 31-33; Registry Observations, [ICC-01/14-01/22-343-Red](#), para. 66.

⁵³ Response, [ICC-01/14-01/22-332-Red](#), paras 31-33.

consequences from bringing a claim under this provision. There is therefore no legal basis for Mr Mokom's wife and children to 'join' his request for compensation. The Chamber accordingly dismisses this part of the Request.

IV. CONFIDENTIALITY

26. Pursuant to regulation 23*bis* of the Regulations of the Court, the Chamber has maintained the classification of information classified as confidential, *ex parte*, or under seal in the underlying court records. Information redacted in the public and confidential versions of the present decision falls in the following categories: (i) confidential personal information relating to Mr Mokom and his family; and (ii) diplomatic correspondence between the Court and the Kingdom of the Netherlands (the 'Host State'), some of which touches on issues of national security. Information in the latter category appears in the public version of this decision only to the extent that it is already in the public domain.

V. THE MERITS OF THE REQUEST

A. APPLICABLE LAW

27. Article 85 of the Statute provides for claims for compensation in the following distinct circumstances: (i) unlawful arrest and detention; (ii) punishment resulting from conviction that is subsequently 'reversed on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice'; and (iii) final decisions of acquittal or a termination of proceedings by reason of 'a grave and manifest miscarriage of justice'. Mr Mokom alleges prosecutorial, judicial and administrative misconduct/negligence and bases his claim on article 85(1) of the Statute (unlawful arrest and detention) and article 85(3) of the Statute (miscarriage of justice).

28. Article 85(1) of the Statute provides that '[a]nyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation'. The Chamber considers that arrest and detention are unlawful in the ICC context if they violate relevant provisions of the Statute (for example articles 58 or 55(1)(d)) or the Rules. Violation of other applicable rules of international law, in particular internationally recognised human rights, may also lead to a determination of unlawful arrest or detention.⁵⁴ The eventual release without

⁵⁴ Article 21(1) and (3) of the Statute. See also M. C. Bassiouni and W. A. Schabas, *The Legislative History of the International Criminal Court* (2016), p. 727. See also V. Nerlich, 'Article 85 Compensation to an arrested or convicted person' in K. Ambos, *Rome Statute of the International Criminal Court: Article-by-Article Commentary* (2022), pp. 2431-2432.

conviction of a person who was arrested and detained by the Court has *per se* no bearing on the lawfulness of their arrest and detention: a period of lawful detention does not become unlawful simply because the person was ultimately not convicted.⁵⁵ Compensation is not discretionary under article 85(1) and follows from a finding of unlawful arrest or detention under this provision.

29. Article 85(3) of the Statute provides that ‘[i]n exceptional circumstances, where the Court finds conclusive facts showing that there has been a grave and manifest miscarriage of justice, it may in its discretion award compensation, according to the criteria provided in the Rules of Procedure and Evidence, to a person who has been released from detention following a final decision of acquittal or a termination of the proceedings for that reason’.

30. The Chamber notes that while the term ‘grave and manifest miscarriage of justice’ is not defined in the Court’s legal framework, Black’s Law Dictionary defines a miscarriage of justice as ‘[a] grossly unfair outcome in a judicial proceeding, as when a defendant is convicted despite a lack of evidence on an essential element of the crime’.⁵⁶ Previous chambers of this Court have held that the threshold under article 85(3) of the Statute is ‘particularly high’ and for it to be met, ‘the violation must be so serious and exceptional as to indicate that [...] the proper administration of justice was compromised’.⁵⁷ The threshold also goes beyond typical errors, whether of fact or law, suitable to be addressed and remedied during appellate proceedings.⁵⁸ Accordingly, not every error committed in the course of the proceedings, or even violation of fair trial rights, is automatically considered a grave and manifest miscarriage of justice.⁵⁹ The ‘miscarriage of justice must also have

⁵⁵ Trial Chamber II, *The Prosecutor v. Mathieu Ngudjolo*, Decision on the ‘Requete en indemnisation en application des dispositions de l’article 85(1) et (3) du Statut de Rome’, 16 December 2015, [ICC-01/04-02/12-301-tENG](#) (the ‘Ngudjolo Request for Compensation Decision’), para. 15; Nerlich, in Ambos, *Rome Statute of the International Criminal Court: Article-by Article Commentary* (2022), p. 2432. *Contra* Mr Mokom’s suggestion that the whole period of detention before his release was unlawful under article 85(1) of the Statute since there was ultimately no ‘trial’ in his case ([ICC-01/14-01/22-T-009-Red2-ENG](#), pp. 12, 14-15).

⁵⁶ Black’s Law Dictionary (12th ed. 2024).

⁵⁷ Article 85 Chamber, *The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé*, Decision on Mr Blé Goudé’s request for compensation 10 February 2022, [ICC-02/11-01/15-1427](#) (the ‘Blé Goudé Request for Compensation Decision’), para. 30; Pre-Trial Chamber II, *The Prosecutor v. Jean-Pierre Bemba Gombo*, Decision on Mr Bemba’s claim for compensation and damages, 18 May 2020, [ICC-01/05-01/08-3694](#) (the ‘Bemba Request for Compensation Decision’), para. 42.

⁵⁸ Blé Goudé Request for Compensation Decision, [ICC-02/11-01/15-1427](#), para. 30; Bemba Request for Compensation Decision, [ICC-01/05-01/08-3694](#), para. 42. Pre-Trial Chamber II in the Bemba Request for Compensation Decision also listed scenarios that may be considered sufficiently grave so as to reach the relevant threshold, which included: the conviction of an innocent person; wrong decisions on the admissibility of evidence; demonstrated or substantiated suspicion of corruption; and, lack of impartiality on the part of the bench.

⁵⁹ Bemba Request for Compensation Decision, [ICC-01/05-01/08-3694](#), paras 41-42; Blé Goudé Request for Compensation Decision, [ICC-02/11-01/15-1427](#), para. 30.

given rise to a clear violation of the applicant's fundamental rights and must have caused serious harm to the applicant'.⁶⁰ A right to compensation does not arise 'by mere virtue of the fact that [an] acquittal was preceded by time spent in custody, [...] however lengthy [this] might have been'.⁶¹

31. Furthermore, article 85(3) of the Statute explicitly requires a causal connection, namely that the miscarriage of justice complained of must be *the reason for* the acquittal of the person or termination of the proceedings. Therefore, any potential unfairness in the conduct of proceedings that does not form the basis for the acquittal of the person or termination of proceedings cannot be a basis for a claim for compensation under article 85(3) of the Statute.
32. Finally, the Chamber notes that the Statute does not provide for an automatic right to compensation under article 85(3) in the event that a grave and manifest miscarriage of justice is established; rather the Chamber may award compensation at its discretion.⁶²
33. With respect to the burden and standard of proof, the Chamber notes that the present proceedings are not criminal in nature. The criminal case against Mr Mokom concluded when the Pre-Trial Chamber terminated the proceedings against him following the Prosecution's decision to withdraw the charges.⁶³ The current proceedings have been initiated by Mr Mokom against the Court, making them akin to a civil suit or administrative complaint, which impacts the applicable standard of proof.⁶⁴ Article 85(3) of the Statute requires that 'conclusive facts' support a finding by the Chamber on the alleged miscarriage of justice. While 'conclusive facts' is not defined in the Statute, the Court has interpreted it to mean that an applicant requesting compensation pursuant to article 85(3) need not prove their claim to the standard of beyond reasonable doubt, but there must be concrete evidence on the basis of which the Chamber is satisfied that a grave and manifest miscarriage of

⁶⁰ Ngudjolo Request for Compensation Decision, [ICC-01/04-02/12-301-tENG](#), para. 45; Blé Goudé Request for Compensation Decision, [ICC-02/11-01/15-1427](#), para. 30.

⁶¹ Bemba Request for Compensation Decision, [ICC-01/05-01/08-3694](#), para. 44; Blé Goudé Request for Compensation Decision, [ICC-02/11-01/15-1427](#), para. 24.

⁶² Blé Goudé Request for Compensation Decision, [ICC-02/11-01/15-1427](#), para. 23; Bemba Request for Compensation Decision, [ICC-01/05-01/08-3694](#), para. 22.

⁶³ 17 October 2023 Order, [ICC-01/14-01/22-276](#), para. 9; Blé Goudé Request for Compensation Decision, [ICC-02/11-01/15-1427](#), para. 18.

⁶⁴ Blé Goudé Request for Compensation Decision, [ICC-02/11-01/15-1427](#), para. 18.

justice took place.⁶⁵ For the purpose of article 85(1) of the Statute, it is for the applicant to demonstrate that they were arrested and/or detained without a lawful basis.⁶⁶

B. ALLEGED GRAVE AND MANIFEST MISCARRIAGE OF JUSTICE – ARTICLE 85(3) OF THE STATUTE

1. Mr Mokom’s claim under article 85(3) of the Statute regarding prosecutorial misconduct

a) Submissions

34. Mr Mokom submits that he was the subject of a grave and manifest miscarriage of justice based on alleged manifest failings and misconduct on the part of the Prosecution⁶⁷ and that he was the target of a wrongful prosecution which violated his fundamental rights.⁶⁸ At its core, Mr Mokom’s claim is about an alleged wilful or negligent failure by the Prosecution to properly evaluate the evidence in the case. He asserts that the Prosecution misled the Pre-Trial Chamber into issuing the Arrest Warrant based on allegations never capable of being substantiated, belatedly disclosed and identified information which showed or tended to show Mr Mokom’s innocence, mitigated his guilt or which may have affected the credibility of Prosecution evidence under article 67(2) of the Statute (hereinafter: ‘Potentially Exonerating Information’), and ultimately misled the Pre-Trial Chamber with respect to the reason for withdrawing the charges against him.⁶⁹

35. Notably, Mr Mokom refers to having identified 406 ‘exculpatory items’ following an intervention by the Pre-Trial Chamber in June 2023 to correct the Prosecution’s approach to disclosure, which brought ‘the total amount of exculpatory material to 425 items’.⁷⁰ Mr Mokom notes that 390 of these items were in the Prosecution’s possession before his arrest in 2022.⁷¹ Accordingly, Mr Mokom submits that the late identification and disclosure of additional Potentially Exonerating Information in his case was ‘so extreme’ as to indicate

⁶⁵ Blé Goudé Request for Compensation Decision, [ICC-02/11-01/15-1427](#), para. 34.

⁶⁶ See also Ngudjolo Request for Compensation Decision, [ICC-01/04-02/12-301-tENG](#), para. 18, ‘article 85(1) of the Statute requires the applicant to demonstrate that his or her arrest had been unlawful’.

⁶⁷ Request, ICC-01/14-01/22-329-Conf, paras 9-28. See also Mr Mokom’s Reply to the Prosecution, ICC-01/14-01/22-337-Conf, paras 5-33, 37-47.

⁶⁸ Request, [ICC-01/14-01/22-329-Red](#), para. 25.

⁶⁹ Request, ICC-01/14-01/22-329-Conf, paras 9-28; Mr Mokom’s Reply to the Prosecution, ICC-01/14-01/22-337-Conf, paras 5-33, 46-47.

⁷⁰ Request, [ICC-01/14-01/22-329-Red](#), paras 14, 16.

⁷¹ Request, [ICC-01/14-01/22-329-Red](#), para. 16. The Chamber notes that these 390 items are listed in Annex D of the Request, ICC-01/14-01/22-329-Conf-AnxD.

misconduct or negligence on the part of the Prosecution.⁷² Mr Mokom submits that the Prosecution's wilful or negligent failure to properly identify Potentially Exonerating Information caused it to mislead the Pre-Trial Chamber by misrepresenting the strength of its evidence when applying for the Arrest Warrant against him,⁷³ which undermines the legality of the Arrest Warrant and his ensuing detention.⁷⁴

36. Mr Mokom's further submission is that there are 'no doubts' that the Prosecution's wilful or negligent failure to properly evaluate its case was the reason for the withdrawal of the charges against him.⁷⁵ Mr Mokom submits that the Prosecution had 'tunnel vision' in relation to his case, which resulted in it failing to present a full picture of the evidence and instead sculpting the evidence to match its theory, before finally withdrawing the charges against him when it realised that its theory and the entirety of the evidence were incompatible.⁷⁶ Mr Mokom submits that the withdrawal of charges was a 'concession' by the Prosecution 'that the case was not strong enough to proceed'.⁷⁷ He alleges that the Prosecution's stated reason for the withdrawal – witness unavailability – was untrue and that the Prosecution has misled the Court by failing to reveal the 'real reasons' behind the withdrawal.⁷⁸ Mr Mokom further avers that the alleged failures on the part of the Prosecution are the result of its proximity to the current authorities of the Central African Republic (the 'CAR'), which 'highly corrupted' its investigation in this case.⁷⁹

37. The Prosecution submits that none of the allegations advanced in the Request against the Prosecution demonstrate a miscarriage of justice, and that Mr Mokom's claim that he was the subject of a wrongful prosecution is baseless.⁸⁰ The Prosecution submits that it did not mislead the Chamber by misrepresenting the evidence underpinning its Arrest Warrant Application⁸¹ and that it did not withhold material from counsel for Mr Mokom.⁸² Finally, the Prosecution submits that its decision to withdraw the charges was not based on the view

⁷² Request, [ICC-01/14-01/22-329-Red](#), para. 14.

⁷³ Request, ICC-01/14-01/22-329-Conf, paras 17-21, 24, 28.

⁷⁴ Request, [ICC-01/14-01/22-329-Red](#), paras 22, 24. *See also* Mr Mokom's Reply to the Prosecution, [ICC-01/14-01/22-337-Red](#), paras 22-27, 31-33.

⁷⁵ Mr Mokom's Reply to the Prosecution, [ICC-01/14-01/22-337-Red](#), para. 45; Request, [ICC-01/14-01/22-329-Red](#), para. 28.

⁷⁶ Mr Mokom's Reply to the Prosecution, [ICC-01/14-01/22-337-Red](#), paras 35-36.

⁷⁷ Request, [ICC-01/14-01/22-329-Red](#), para. 28.

⁷⁸ Mr Mokom's Reply to the Prosecution, [ICC-01/14-01/22-337-Red](#), para. 45. *See also* Mr Mokom's Reply to the Prosecution, ICC-01/14-01/22-337-Conf, paras 16-20.

⁷⁹ [ICC-01/14-01/22-T-009-Red2-ENG](#), pp. 16-17.

⁸⁰ Response, [ICC-01/14-01/22-332-Red](#), para. 2.

⁸¹ Response, [ICC-01/14-01/22-332-Red](#), paras 12-17.

⁸² Response, ICC-01/14-01/22-332-Conf, paras 18-24.

that the evidence against Mr Mokom was insufficient to sustain an arrest or to confirm the charges against him, but rather that it had formed the view that there was no longer a reasonable prospect of conviction due to the ‘unavailability of several critical witnesses, including insider witnesses who provided critical information regarding the charges against Maxime Mokom, and its assessment that [its] further investigative efforts [...] to supplement this evidence had been exhausted’.⁸³ The Prosecution in the course of these compensation proceedings also provided more detailed information specifying which witnesses became unavailable, when the Prosecution determined that the witnesses were unavailable, and the basis for this determination.⁸⁴

b) Determination by the Chamber

38. Mr Mokom’s claim is based on the general submission that the number of items that were belatedly identified by the Prosecution as containing ‘exculpatory information’ is ‘so extreme, as to indicate that the Prosecution had been wilfully or negligently blind about the reality of its casefile, to Mr. Mokom’s detriment’.⁸⁵

39. The Chamber notes that a number of disclosure issues were litigated during the pre-trial proceedings⁸⁶ and that the Prosecution itself has acknowledged that its disclosure in this case ‘was not perfect’.⁸⁷ However, mismanagement or even violations of disclosure obligations by the Prosecution do not necessarily suffice to establish a grave and manifest miscarriage of justice. As noted above, in order to meet this threshold, the conduct complained of must go beyond typical errors suitable to be addressed and remedied during the proceedings themselves or on appeal.⁸⁸

40. For a successful claim pursuant to article 85(3) of the Statute, the applicant must provide concrete facts and evidence showing that a grave and manifest miscarriage of justice occurred and that proceedings were terminated for that reason. In the present context, Mr

⁸³ Response, [ICC-01/14-01/22-332-Red](#), paras 27-29.

⁸⁴ [ICC-01/14-01/22-352](#); Annex, ICC-01/14-01/22-352-US-Exp-AnxA.

⁸⁵ Request, [ICC-01/14-01/22-329-Red](#), paras 12, 14-16. See also Mr Mokom’s Reply to the Prosecution, [ICC-01/14-01/22-337-Red](#), paras 12, 21.

⁸⁶ See notably Order on disclosure and related matters, 7 November 2022, [ICC-01/14-01/22-104](#); Second order on disclosure and related matters, 30 November 2022, [ICC-01/14-01/22-116](#); Decision on the Defence’s requests for disclosure and rectification of disclosure metadata, 5 June 2023, ICC-01/14-01/22-219-Conf (public redacted version notified on 3 July 2022, [ICC-01/14-01/22-219-Red](#)).

⁸⁷ [ICC-01/14-01/22-T-009-Red2-ENG](#), p. 38.

⁸⁸ Bemba Request for Compensation Decision, [ICC-01/05-01/08-3694](#), para. 42. Whilst this decision refers to appellate proceedings, in the Chamber’s view, the same is *a fortiori* true for errors that can be rectified in the course of proceedings at the first instance.

Mokom argues that the Prosecution's wilful or negligent failure to properly evaluate its case caused it to mislead the Pre-Trial Chamber into issuing an Arrest Warrant against him, belatedly disclose or identify evidence that would have demonstrated that it never had a case against him, and caused it to ultimately withdraw the charges in his case.

41. For the reasons set out below, the Chamber considers that Mr Mokom fails to show how the Potentially Exonerating Information belatedly identified impacted the Prosecution's case against him. Further, his allegation that the Prosecution misrepresented the reason for the withdrawal of the charges has not been made out.
42. At the outset, the Chamber observes that, although Mr Mokom alleges a failure on the part of the Prosecution in relation to *exonerating*⁸⁹ information, the litigation before the Pre-Trial Chamber he refers to in support of his arguments relates to the Prosecution's failure to identify *Potentially Exonerating Information*.⁹⁰
43. The Chamber notes that Potentially Exonerating Information is a broad category of information that includes not only evidence that shows the innocence of the accused but also evidence that 'tends to show the innocence of the accused, or to mitigate the guilt of the accused, or which may affect the credibility of prosecution evidence'.⁹¹
44. There is an important difference between identifying evidence as potentially exonerating for the purpose of disclosure, and the question of whether such evidence is actually exonerating in the Court's assessment. Parts of an item of evidence identified as 'potentially exonerating' for the purpose of disclosure may not actually 'exonerate' a suspect when evaluated in the context of the item of evidence as a whole (taking into account factors affecting the credibility and reliability of the evidence either as a whole or in relation to specific parts of the information provided) and together with all the other evidence available in the case at that stage.
45. The Chamber recalls that the case against Mr Mokom was factually complex and involved a large volume of evidence, relevant to different aspects of the charges, including: (i) the alleged existence of an armed conflict; (ii) the commission of the underlying crimes

⁸⁹ The Chamber notes that Mr Mokom uses the expression 'exculpatory' in the Request. The Chamber uses the terms 'exculpatory' and 'exonerating' interchangeably in this decision.

⁹⁰ Request, [ICC-01/14-01/22-329-Red](#), para. 14; Response, [ICC-01/14-01/22-332-Red](#), paras 11, 14, 18-22; also Mr Mokom's Reply to the Prosecution, [ICC-01/14-01/22-337-Red](#), paras 5-13, 47.

⁹¹ Article 67(2) of the Statute.

allegedly committed by the Anti-Balaka in various locations in the CAR (including Bangui, Bossangoa, the Lobaye Prefecture, Yaloké, Gaga, Bossempaté, Boda, Carnot and Berberati), between at least 5 December 2013 and at least December 2014; (iii) the involvement of different Anti-Balaka figures with whom or through whom Mr Mokom was alleged to have committed the crimes or aided and abetted in the commission of crimes; and (iv) the various ways Mr Mokom allegedly contributed to the commission of the crimes as the alleged *de facto* operations coordinator of the Anti-Balaka and, as of January 2014, the alleged Anti-Balaka National Coordinator of Operations.⁹² Approximately 5,000 items of evidence were disclosed in advance of the confirmation hearing as being relevant to the case,⁹³ and approximately 32,000 potentially relevant items were migrated from the *Yekatom and Ngaïssona* case database to the *Mokom* case database.⁹⁴

46. The Chamber notes that pointing to the number of items that were belatedly identified as containing Potentially Exonerating Information does not assist the Chamber in

⁹² Mr Mokom was alleged to have been criminally responsible for the commission of crimes against humanity and war crimes committed by the Anti-Balaka in various locations in the CAR, including Bangui, Bossangoa, the Lobaye Prefecture, Yaloké, Gaga, Bossempaté, Boda, Carnot and Berberati, between at least 5 December 2013 and at least December 2014. Mr Mokom was charged with (attempted) murder (articles 7(1)(a) and 25(3)(f) of the Statute), extermination (article 7(1)(b) of the Statute), deportation or forcible transfer of population (article 7(1)(d) of the Statute), imprisonment or other severe deprivation of physical liberty (article 7(1)(e) of the Statute), torture (article 7(1)(f) of the Statute), persecution (article 7(1)(h) of the Statute), enforced disappearance (article 7(1)(i) of the Statute) and other inhumane acts (article 7(1)(k) of the Statute) as crimes against humanity; and (attempted) murder (articles 8(2)(c)(i) and 25(3)(f) of the Statute), torture (article 8(2)(c)(i) of the Statute), cruel treatment (article 8(2)(c)(i) of the Statute), mutilation (articles 8(2)(c)(i) and/or 8(2)(e)(xi) of the Statute), intentionally directing an attack against the civilian population (article 8(2)(e)(i) of the Statute), intentionally directing an attack against personnel, installations, material, units or vehicles involved in a humanitarian assistance (article 8(2)(e)(iii) of the Statute), intentionally directing an attack against buildings dedicated to religion (article 8(2)(e)(iv) of the Statute), pillaging (article 8(2)(e)(v) of the Statute), enlistment of children under the age of 15 years and their use to participate actively in hostilities (article 8(2)(e)(vii) of the Statute), displacement of the civilian population (article 8(2)(e)(viii) of the Statute) and destroying or seizing the property of an adversary (article 8(2)(e)(xii) of the Statute) as war crimes. See Arrest Warrant, [ICC-01/14-01/22-2-Red2](#), para. 15, pp. 36-37. Specifically, Mr Mokom was alleged to have encouraged persons to join the Anti-Balaka, overseen Zone Commanders, instructed Anti-Balaka groups as to when and how to carry out operations, remained informed about the situation on the ground, provided logistical support to the Anti-Balaka such as money, ammunition and weapons, met with subordinates, communicated with Anti-Balaka members directly implicated in the crimes allegedly committed in some of the above-mentioned locations during the timeframe relevant to these crimes, kept Patrice-Edouard Ngaïssona (the alleged National General Coordinator of the Anti-Balaka) informed about the operations, represented the Anti-Balaka at negotiations, closely associated and worked with Anti-Balaka members involved in the commission of the crimes, and visited Anti-Balaka troops in some of the locations in which the alleged crimes were committed. See Arrest Warrant, [ICC-01/14-01/22-2-Red2](#), paras 16-18.

⁹³ See Mr Mokom's Reply to the Prosecution, [ICC-01/14-01/22-337-Red](#), para. 43. See also Response, [ICC-01/14-01/22-332-Red](#), para. 20.

⁹⁴ Response, [ICC-01/14-01/22-332-Red](#), para. 20. The Chamber notes the parties' dispute over facts related to the 'migration' of this material which arose out of the Prosecution's Response (see Response, [ICC-01/14-01/22-332-Red](#), para. 20; Mr Mokom's Reply to the Prosecution, [ICC-01/14-01/22-337-Red](#), paras 37-44). The Chamber observes that this dispute does not form a core part of Mr Mokom's argumentation in the present litigation and does not consider it necessary to address it further.

determining whether these items contained information that was actually exonerating when assessed holistically. As such, Mr Mokom's reference to the 406 items belatedly disclosed or identified as containing Potentially Exonerating Information does not in and of itself demonstrate that the Prosecution misled the Pre-Trial Chamber into issuing the Arrest Warrant or that it withheld evidence that would have demonstrated that it never had a case against Mr Mokom. With the exception of the two specific examples addressed below, Mr Mokom does not explain the significance of the information in the disclosed material and how such information would have actually exonerated him. Mr Mokom's references to correspondence between the Prosecution's Senior Trial Lawyer and Defence counsel, and to the pre-trial litigation regarding disclosure requirements merely shows that the parties disputed the extent of the Prosecution's disclosure requirements and the interpretation of 'potentially exonerating' in this context.⁹⁵

47. Mr Mokom on two occasions discusses the content and significance of specific evidence which, in his submission, demonstrates the Prosecution's failure to evaluate and investigate its own case.

48. First, Mr Mokom argues that exculpatory material belatedly identified by the Prosecution in June 2023 undermines the following findings of the Pre-Trial Chamber in the Arrest Warrant which were based on the evidence provided by Prosecution witnesses P-0966, P-1521, P-0876, P-1339, P-1847, P-0808 and P-1719: (i) that Mr Mokom's authority was recognised by Anti-Balaka members and, in addition, it was acknowledged by others; and (ii) that Mr Mokom's responsibilities included: (a) instructing Anti-Balaka groups as to when and how to carry out operations; and (b) providing logistical support to the Anti-Balaka such as money, ammunition and weapons.⁹⁶ In support of this proposition, Mr Mokom cites extracts of six witness statements, from five Prosecution witnesses: P-0876

⁹⁵ Request, [ICC-01/14-01/22-329-Red](#), paras 12-14, referring to ICC-01/14-01/22-329-Conf-AnxC.

⁹⁶ Request, [ICC-01/14-01/22-329-Red](#), para. 18, referring to Arrest Warrant, [ICC-01/14-01/22-2-Red2](#), para. 16, footnotes 179, 181, 184-185. These footnotes refer, as relevant, to the evidence of witnesses P-0966, P-1521, P-0876, P-1339, P-1847, P-0808 and P-1719. During the pre-trial proceedings these witnesses were described by the Prosecution or Defence as follows: P-0966, P-1521 and P-1139 – insider witnesses who allegedly directly participated in the large-scale attacks on Bossangoa and Bangui and linked Mr Mokom to them in some way; P-0876 and P-0808 – alleged Anti-Balaka members; P-1847 – a witness who was allegedly well-connected with other senior Anti-Balaka and had a good understanding of how information flowed in the Anti-Balaka at the time and who was in charge of relevant functions; and P-1719 – an Anti-Balaka insider witnesses who allegedly participated in the fighting in 2013 (see Public redacted version of "Prosecution's Additional Submissions following the Confirmation of Charges Hearing", ICC-01/14-01/22-269-Conf, 14 September 2023, 26 September 2023, ICC-01/14-01/22-269-Red, paras 3, 23; Public Redacted Version of "Defence Post-Confirmation Submissions", ICC-01/14-01/22-270-Conf, 14 September 2023, 13 October 2023, ICC-01/14-01/22-270-Red, para. 3, footnote 3).

(two witness statements), P-0884, P-0889, P-0954 and P-0996.⁹⁷ He also makes general reference to tables of evidence he considered to be exculpatory that were filed before the Pre-Trial Chamber in the context of the confirmation of charges proceedings.⁹⁸

49. The Chamber observes that five of the witness statements referenced by Mr Mokom were cited by the Prosecution in the Arrest Warrant Application⁹⁹ (including several of the specific ‘potentially exonerating’ extracts identified by Mr Mokom in the Request),¹⁰⁰ and four of those statements were cited by the Pre-Trial Chamber in the Arrest Warrant.¹⁰¹ The

⁹⁷ Request, [ICC-01/14-01/22-329-Red](#), para. 19, footnote 20, citing to (1) **P-0876**, CAR-OTP-2042-4970-R01, p. 4995, lines 903-904; (2) **P-0876**, CAR-OTP-2046-0249-R01, p. 0259, line 394 to p. 0260, line 400; lines 407-411; p. 0262, lines 524-526; p. 0265, lines 647-649; (3) **P-0884**, CAR-OTP-2072-1541-R01 p. 1569, lines 927-944; p. 1576, lines 1200-1212; (4) **P-0889**, CAR-OTP-2027-2290-R01, p. 2302, para. 75; (5) **P-0954**, CAR-OTP-2048-0171-R01 at 0176, para. 34; (6) **P-0996**, CAR-OTP-2031-0241-R01 pp. 0248-0250, para. 41. During the pre-trial proceedings these witnesses were described by the Prosecution or Defence as follows: P-0876 and P-0954 – alleged Anti-Balaka members; P-0884 – a witness allegedly on the ground in Bangui and in frequent touch with Mr Mokom in the relevant period; P-0889 – a witness who was allegedly with Mr Mokom for large portions of the charged period (see ICC-01/14-01/22-269-Red, paras 3, 21; ICC-01/14-01/22-270-Red, para. 3, footnote 3).

⁹⁸ Request, [ICC-01/14-01/22-329-Red](#), para. 24, footnote 25, referring to Annexes A and B to Mokom Defence Submission of Evidence Designated by the Prosecution as Exonerating, in advance of the Confirmation of Charges Hearing, 18 August 2023, ICC-01/14-01/22-260-Conf-AnxA and ICC-01/14-01/22-260-Conf-AnxB.

⁹⁹ (1) **P-0876**, CAR-OTP-2046-0249-R01, being an 18 page transcript of an interview with the witness cited in the Arrest Warrant Application in relation to the origins of the Anti-Balaka (see Arrest Warrant Application, ICC-01/14-01/22-1-Conf-Red, para. 50, footnote 37); (2) **P-0884**, CAR-OTP-2072-1541-R01, being a 41 page interview transcript cited several times in the Arrest Warrant Application, including notably in relation to the origins of the Anti-Balaka and Mr Mokom’s alleged coordinating role in and authority over the group (see Arrest Warrant Application, ICC-01/14-01/22-1-Conf-Red, para. 50, footnote 38, para. 55, footnote 50, para. 67, footnote 83, para. 131, footnote 256, para. 143, footnote 292, para. 236, footnote 584, para. 238, footnote 589); (3) **P-0889**, CAR-OTP-2027-2290-R01, being a 21 page witness statement cited extensively in the Arrest Warrant Application, including notably in relation to the origins of the Anti-Balaka and Mr Mokom’s alleged coordinating role in and authority over the group (see Arrest Warrant Application, ICC-01/14-01/22-1-Conf-Red, para. 49, footnote 34, para. 50, footnotes 36, 38, 39, para. 51, footnotes 40, 42, 44, para. 56, footnote 57, para. 76, footnote 119, para. 143, footnote 292, para. 233, footnote 572, para. 234, footnote 580, para. 236, footnote 583, para. 238, footnote 589); (4) **P-0954**, CAR-OTP-2048-0171-R01, being a 21 page witness statement cited extensively in the Arrest Warrant Application, including notably in relation to the Mr Mokom’s alleged role in providing money for weapons and ammunition (see Arrest Warrant Application, ICC-01/14-01/22-1-Conf-Red, para. 70, footnote 96, para. 75, footnotes 116, 117, para. 76, footnote 122); and (5) **P-0996**, CAR-OTP-2031-0241-R01, being a 24 page witness statement cited extensively in the Arrest Warrant Application, including notably in relation to the origins of the Anti-Balaka and Mr Mokom’s alleged coordinating role in and authority over the group (see Arrest Warrant Application, ICC-01/14-01/22-1-Conf-Red, para. 51, footnotes 40, 42, para. 67, footnote 86, para. 76, footnote 119, para. 122, footnote 217, para. 131, footnotes 256-258, para. 132, footnote 262, para. 133, footnotes 263-265, para. 134, footnotes 266-269, para. 146, footnote 298, para. 202, footnote 487, para. 251, footnote 613).

¹⁰⁰ See Request, [ICC-01/14-01/22-329-Red](#), para. 19, footnote 20, citing to: (1) **P-0876**, CAR-OTP-2046-0249-R01, pp. 0259 to 0260, cited in the Arrest Warrant Application, ICC-01/14-01/22-1-Conf-Red, para. 50, footnote 37; (2) **P-0884**, CAR-OTP-2072-1541-R01, p. 1569, cited in the Arrest Warrant Application, ICC-01/14-01/22-1-Conf-Red, para. 238, footnote 589 (albeit at different lines); and (3) **P-0889**, CAR-OTP-2027-2290-R01, p. 2302, para. 75, cited in Arrest Warrant Application, ICC-01/14-01/22-1-Conf-Red, para. 76, footnote 119.

¹⁰¹ (1) **P-0884**, CAR-OTP-2072-1541-R01, notably cited in the Arrest Warrant, [ICC-01/14-01/22-2-Red2](#), para. 16, footnote 176; (2) **P-0889**, CAR-OTP-2027-2290-R01, notably cited in the Arrest Warrant, [ICC-01/14-01/22-2-Red2](#), para. 6, footnote 17, para. 7, footnote 27, para. 8, footnotes 35, 36, para. 16, footnotes 178, 180, para. 17, footnote 188; (3) **P-0954**, CAR-OTP-2048-0171-R01, notably cited in the Arrest Warrant, [ICC-01/14-01/22-2-Red2](#), para. 8, footnote 40; (4) **P-0996**, CAR-OTP-2031-0241-R01, notably cited in the Arrest Warrant, [ICC-](#)

statements were before the Pre-Trial Chamber in their entirety when it was considering the Arrest Warrant Application and the Pre-Trial Chamber's assessment was based on the totality of the evidence,¹⁰² not just specific pages, paragraphs, or lines cited by the Prosecution. Moreover, in the view of this Chamber, while the extracts identified are potentially exonerating when viewed in isolation, they cannot be categorised, as Mr Mokom suggests, as 'crucial exculpatory information' casting 'significant doubt' on the Prosecution's case.¹⁰³ Mr Mokom has not explained in the present litigation how the portions of the evidence he cites, which are devoid of context, can be viewed as actually exculpatory when assessed in light of the evidence of witnesses P-0966, P-1521, P-0876, P-1339, P-1847, P-0808 and P-1719 considered by the Pre-Trial Chamber in finding that: (i) that Mr Mokom's authority was recognised by Anti-Balaka members and, in addition, it was acknowledged by others; and (ii) Mr Mokom's responsibilities included: (a) instructing Anti-Balaka groups as to when and how to carry out operations; and (b) providing logistical support to the Anti-Balaka such as money, ammunition and weapons.¹⁰⁴

50. As to the two-line extract from the single witness statement identified by Mr Mokom which was not cited in the Arrest Warrant Application or the Arrest Warrant,¹⁰⁵ this example is also incapable of supporting Mr Mokom's argument that the Prosecution wilfully or negligently misled the Pre-Trial Chamber by failing to bring this extract to its attention. The evidentiary item in question is one transcript out of a series of recorded Prosecution interviews with Anti-Balaka insider witness P-0876 and the relevant extract concerns an alleged phone call between the witness and Mr Mokom before 4 December 2013 where the witness states: 'I explained everything and he told me he couldn't make any decision but I should wait and someone else would call me.'¹⁰⁶ Importantly, other interview transcripts in

[01/14-01/22-2-Red2](#), para. 6, footnotes 18, 19, 22, para. 7, footnotes 24, 28, para. 8, footnotes 38, 40, para. 15, footnotes 84, 85, 91, para. 16, footnotes 179, 180, 184, para. 17, footnote 194. *See also* Response, [ICC-01/14-01/22-332-Red](#), para. 12 'the [Arrest Warrant Application] referred to 817 discrete evidentiary items, including the full statements of many of the witnesses on whose evidence Maxime Mokom selectively and substantially bases his claim'.

¹⁰² *See notably* Arrest Warrant, [ICC-01/14-01/22-2-Red2](#), para. 18.

¹⁰³ Request, [ICC-01/14-01/22-329-Red](#), para. 22.

¹⁰⁴ Arrest Warrant, [ICC-01/14-01/22-2-Red2](#), para. 16, footnotes 179, 181, 184-185, referring, as relevant, to the evidence of witnesses P-0966, P-1521, P-0876, P-1339, P-1847, P-0808 and P-1719.

¹⁰⁵ Request, [ICC-01/14-01/22-329-Red](#), para. 19, footnote 20, citing to **P-0876**, CAR-OTP-2042-4970-R01, at 4995, lines 903-904.

¹⁰⁶ Request, [ICC-01/14-01/22-329-Red](#), para. 19, footnote 20, citing to **P-0876**, CAR-OTP-2042-4970-R01, p. 4995, lines 903-904. *See also* English interpretation at lines 905-906.

this series were cited in the Arrest Warrant and the Arrest Warrant Application,¹⁰⁷ including one where the witness describes the same alleged phone call in more detail.¹⁰⁸ Mr Mokom has not identified any inconsistency in the two accounts of the alleged call which would undermine the more detailed account cited in the Arrest Warrant Application. He has not explained how this two-line extract can be viewed as actually exculpatory when assessed in light of the other evidence provided by P-0876 himself, as well as evidence provided by witnesses P-0966, P-1521, P-1339, P-1847, P-0808 and P-1719 considered by the Pre-Trial Chamber in finding that: (i) that Mr Mokom's authority was recognised by Anti-Balaka members and, in addition, it was acknowledged by others; and (ii) that Mr Mokom's responsibilities included: (a) instructing Anti-Balaka groups as to when and how to carry out operations; and (b) providing logistical support to the Anti-Balaka such as money, ammunition and weapons.¹⁰⁹

51. For the same reasons, Mr Mokom's general references to the Prosecution belatedly identifying or disclosing Potentially Exonerating Information or failing to submit such information with the Arrest Warrant Application and his general speculation that the information showed that the case against him was never viable or that the Pre-Trial Chamber's decision on the Arrest Warrant Application would have been different had it been privy to this evidence,¹¹⁰ are similarly insufficient to substantiate his argument.

52. Second, Mr Mokom alleges that the Prosecution relied on and failed to diligently investigate allegations against him which were demonstrably false.¹¹¹ In support of this assertion, he relies on the testimony of witness P-2232 who alleged that Mr Mokom was in contact with a particular commander during a specific attack.¹¹² Mr Mokom argues that the Prosecution's failure to submit call data evidence between Mr Mokom and this commander

¹⁰⁷ See for example Arrest Warrant, [ICC-01/14-01/22-2-Red2](#), para. 16, footnote 181, citing to CAR-OTP-2046-0295, at 0301, lines 185-201; Arrest Warrant Application, ICC-01/14-01/22-1-Conf-Red, para. 50, footnote 37, citing to CAR-OTP-2046-0249-R01, pp. 0259-0261, lines 375-458.

¹⁰⁸ Arrest Warrant Application, ICC-01/14-01/22-1-Conf-Red, para. 50, footnote 37, citing to CAR-OTP-2046-0249-R01, pp. 0259-0261, lines 375-458.

¹⁰⁹ Arrest Warrant, [ICC-01/14-01/22-2-Red2](#), para. 16, footnotes 179, 181, 184-185, referring, as relevant to the evidence of witnesses P-0966, P-1521, P-1339, P-1847, P-0808 and P-1719.

¹¹⁰ Request, ICC-01/14-01/22-329-Conf, paras 3, 11-12, 19-21, 24-27, footnote 25, referring to ICC-01/14-01/22-260-Conf-AnxA and ICC-01/14-01/22-260-Conf-AnxB; Mr Mokom's Reply to the Prosecution, [ICC-01/14-01/22-337-Red](#), paras 20, 24, 28-30, 33.

¹¹¹ Request, ICC-01/14-01/22-329-Conf, para. 26. The Chamber notes that Mr Mokom replied to the Prosecution's submissions on this issue despite not being granted leave to do so and accordingly the Chamber will not address his submissions on this matter in reply (see Mr Mokom's Reply to the Prosecution, [ICC-01/14-01/22-337-Red](#), paras 34-36). See also [ICC-01/14-01/22-336](#).

¹¹² Request, ICC-01/14-01/22-329-Conf, para. 26.

to prove that this call took place suggests that the allegation is demonstrably false.¹¹³ He argues that the Prosecution should have diligently investigated this allegation and discarded it.¹¹⁴ The Prosecution denies Mr Mokom's assertion and argues that Mr Mokom's 'argument incorrectly presumes that the Prosecution had obtained all call data records for all of [Mr] Mokom's personal phones and those that he otherwise used in coordinating Anti-Balaka comzones in military operations.'¹¹⁵ The Prosecution submits that '[t]he absence of a call data for an unknown device cannot reasonably dispel clear evidence of a witness who was present when the call occurred'.¹¹⁶ The Chamber considers that the absence of call data records does not concretely show that the testimony that this call took place was demonstrably false. The Chamber accordingly rejects Mr Mokom's claim that this example serves as evidence that the Prosecution relied on demonstrably false allegations and failed to pursue reasonable lines of inquiry.

53. The Chamber notes that Mr Mokom submits that he previously raised 'other examples of demonstrably false allegations, which a diligent Prosecution would have investigated, and discarded' in hearings and filings before the Pre-Trial Chamber.¹¹⁷ Mr Mokom does not further explain this submission or provide specific page references to the submissions he made before the Pre-Trial Chamber. Noting that the incorporation of arguments by reference to other documents is generally impermissible and the inadequacy of the references provided, the Chamber dismisses this argument as unsubstantiated.

54. Finally, the Chamber restates that, according to article 85(3) of the Statute, the grave and manifest miscarriage of justice must be the reason for the termination of the proceedings. Mr Mokom submits that the reason for the withdrawal of charges in this case was the Prosecution's realisation, through the annexes of exculpatory evidence filed by the Defence during the confirmation of charges proceedings, that the case had no reasonable prospect of conviction.¹¹⁸ He avers that the Prosecution misled the Pre-Trial Chamber in stating that the withdrawal was due to witness unavailability.¹¹⁹ Mr Mokom emphasises that, in the months leading up to the confirmation of charges hearing, the Prosecution had not

¹¹³ Request, ICC-01/14-01/22-329-Conf, para. 26.

¹¹⁴ Request, ICC-01/14-01/22-329-Conf, para. 26.

¹¹⁵ Response, ICC-01/14-01/22-332-Conf, para. 23.

¹¹⁶ Response, ICC-01/14-01/22-332-Conf, para. 23.

¹¹⁷ Request, [ICC-01/14-01/22-329-Red](#), para. 26, footnote 28.

¹¹⁸ Mr Mokom's Reply to the Prosecution, ICC-01/14-01/22-337-Conf, para. 45.

¹¹⁹ Mr Mokom's Reply to the Prosecution, ICC-01/14-01/22-337-Conf, paras 14-20, 45.

indicated that there was any issue regarding the availability of its witnesses and, as late as 14 September 2023, ‘continued to seek the confirmation of each and every charge’.¹²⁰

55. In light of the limited information provided by the Prosecution regarding the reasons for the withdrawal of the charges,¹²¹ and the seriousness of Mr Mokom’s allegation that the Prosecution misled the Court in this regard, the Chamber instructed the Prosecution to provide additional information regarding its reasons for the withdrawal, as well as supporting documentation.¹²² Having reviewed the additional information provided by the Prosecution¹²³ – which was filed under seal *ex parte* – the Chamber finds that Mr Mokom’s allegations are unfounded.¹²⁴ The Chamber is satisfied that it became clear to the Prosecution in mid-September 2023 that certain witnesses would be unlikely to testify at a potential trial.¹²⁵ In the weeks preceding the Notice of Withdrawal on 16 October 2023, the Prosecution considered the totality of the evidence and whether further investigative efforts could produce comparable evidence, and unsuccessfully attempted to interview additional potential witnesses.¹²⁶ In light of the foregoing, the Chamber finds that Mr Mokom’s claim that the Prosecution misled the Court with regard to the reasons for its withdrawal is not substantiated.

56. In conclusion, while the Chamber notes that the Prosecution failed to properly implement the Pre-Trial Chamber’s disclosure orders, it finds that this does not suffice to establish a grave and manifest miscarriage of justice under article 85(3) of the Statute. Although Mr Mokom complains that Potentially Exonerating Information was belatedly identified and disclosed, he fails to show how this information would have impacted the Prosecution’s case against him. Further, his allegation that the Prosecution misrepresented the reason for the withdrawal of the charges has not been made out. In these circumstances,

¹²⁰ Mr Mokom’s Reply to the Prosecution, ICC-01/14-01/22-337-Conf, paras 14-18.

¹²¹ Notice of Withdrawal, [ICC-01/14-01/22-275](#), paras 1, 3-4; Response, [ICC-01/14-01/22-332-Red](#), para. 28.

¹²² Email from the Chamber, 10 September 2024, at 12:08; [ICC-01/14-01/22-T-009-Red2-ENG](#), pp. 58-60.

¹²³ Prosecution’s Additional Information on Withdrawal, [ICC-01/14-01/22-352](#); Annex, ICC-01/14-01/22-352-US-Exp-AnxA. The Chamber notes that the Prosecution filed the Annex under seal and *ex parte* on the basis that the information in the Annex is protected under the Court’s legal framework including article 42(1) of the Statute and rule 81(1) of the Rules.

¹²⁴ The Chamber also notes that Mr Mokom misrepresents the Pre-Trial Chamber’s 17 October 2023 Order by characterising it as that chamber ‘accepting the Prosecution’s admission that it had no prosecutable case against Mr. Mokom’ (Request, [ICC-01/14-01/22-329-Red](#), para. 8). To the contrary, the Pre-Trial Chamber made no such determination. It merely noted that the reasons in the Prosecution’s Notice of Withdrawal were ‘limited and lack[ed] additional information in support’, however, noting that withdrawal of charges was a matter of prosecutorial discretion, observed that it would not scrutinise the reasons put forward by the Prosecution to support its decision to withdraw the charges (17 October 2023 Order, [ICC-01/14-01/22-276](#), para. 8).

¹²⁵ ICC-01/14-01/22-352-US-Exp-AnxA.

¹²⁶ [ICC-01/14-01/22-T-009-Red2-ENG](#), p. 40; Notice of Withdrawal, [ICC-01/14-01/22-275](#), paras 3-4.

the Chamber finds that Mr Mokom has not presented concrete facts and evidence to support his allegations that the Prosecution's wilful or negligent failure to properly evaluate its case caused it to mislead the Pre-Trial Chamber into issuing the Arrest Warrant, to belatedly disclose or identify evidence that would have demonstrated that it never had a case against him, and to ultimately withdraw the charges in his case. Accordingly, the Chamber rejects this part of the claim under article 85(3) of the Statute.

2. Dismissal of related claims

57. The Chamber notes that Mr Mokom also alleges unlawful arrest and detention arising from the Prosecution's management of the case against him.¹²⁷ From his submissions, it is unclear whether Mr Mokom also intends to invoke article 85(1) of the Statute (in addition to article 85(3)) in respect of the Prosecution's alleged misconduct. Irrespective of the legal basis, the Chamber notes that Mr Mokom relies on the same factual allegations, namely – that the Prosecution's wilful or negligent failure to properly identify and disclose certain information caused it to mislead the Pre-Trial Chamber by misrepresenting the strength of its evidence in its application for the Arrest Warrant against Mr Mokom.¹²⁸ The Chamber considers that the legal framework applicable to these allegations is article 85(3) and will not separately assess them under article 85(1) of the Statute.

58. Further, the Chamber notes that Mr Mokom invokes article 85(3) of the Statute in relation to, *inter alia*: (i) two instances of alleged judicial negligence, namely: (a) alleged delays in resolving a dispute on the assignment of counsel;¹²⁹ and (b) an alleged undue delay on the part of the Appeals Chamber in ruling on his request to suspend the effect of the Pre-Trial Chamber's 18 January 2024 Decision ending the Court's residual jurisdiction over him;¹³⁰ and (ii) two instances of alleged unlawful detention, namely during: (a) the period

¹²⁷ See for example Request, ICC-01/14-01/22-329-Conf, paras 9-22, 24. See also ICC-01/14-01/22-T-009-CONF-ENG, pp. 11-13. Mr Mokom submits that this period of unlawful detention ran for 19 months and 20 days between his arrest in Chad on 27 February 2022 and the termination of proceedings against him on 17 October 2023 (Request, [ICC-01/14-01/22-329-Red](#), para. 3).

¹²⁸ Request, ICC-01/14-01/22-329-Conf, paras 20-22, 24, 27-28.

¹²⁹ Request, [ICC-01/14-01/22-329-Red](#), paras 29-33; [ICC-01/14-01/22-T-009-Red2-ENG](#), pp. 21-22. On this point, Mr Mokom avers that he 'did not have appropriate legal counsel to oversee the sufficiency of the evidence underpinning the still unconfirmed charges against him' for 10 months between March 2022 and January 2023 while issues surrounding his legal representation were adjudicated by the Pre-Trial and Appeals Chamber (Request, [ICC-01/14-01/22-329-Red](#), para. 33).

¹³⁰ Request, ICC-01/14-01/22-329-Conf, paras 29, 34-38; ICC-01/14-01/22-T-009-CONF-ENG, pp. 26-28. Mr Mokom claims that he suffered 'irreparable harm' and that his 'fundamental rights to safety and security were jeopardised' as a result of an alleged undue delay on the part of the Appeals Chamber to issue its decision on suspensive effect relating to the Pre-Trial Chamber's 18 January 2024 Decision to end the Court's residual

between the Pre-Trial Chamber's 8 March 2023 decision on his application for interim release and his release on 17 October 2023;¹³¹ and (b) the period between 17 October and 28 November 2023 regarding alleged unlawful '*de facto* detention' or 'house arrest' in a hotel.¹³² The Chamber further notes that Mr Mokom also claims that he suffered harm as a result of the cancellation of a family visit.¹³³ Mr Mokom does not specify to which part of article 85 of the Statute this claim relates but the Chamber understands it to relate to his overarching argument under article 85(3) of the Statute that there was a miscarriage of justice in his case.

59. With respect to these claims, the Chamber recalls that, in accordance with the explicit wording of article 85(3) of the Statute, the grave and manifest miscarriage of justice complained of must be *the reason for* the termination of the proceedings. The Chamber notes that the above-mentioned arguments raised by Mr Mokom with reference to article 85(3) of the Statute¹³⁴ do not bear any relation to the reason for the termination of the proceedings in this case (withdrawal of charges due to witness unavailability), or even the reason for the termination of proceedings as alleged by Mr Mokom himself (wrongful prosecution of 'a case that, in reality, never existed').¹³⁵ Procedural errors or violations of the person's rights that may have occurred in the course of the proceedings, but did not lead to the termination of proceedings cannot give rise to a compensation claim under this

jurisdiction over Mr Mokom on 8 February 2024, after unsuccessful attempts to find a State willing to accept him. Mr Mokom takes issue with the fact that the Appeals Chamber issued its decision suspending the effect of the Pre-Trial Chamber's 18 January 2024 Decision on the same day as the jurisdictional deadline, namely 8 February 2024, and submits that '[b]y that time, Mr. Mokom was stateless, and both the Court and the Host State, were declining jurisdiction over him, while his native country, CAR, was seeking his extradition with the help of a fabricated judgment' (Request, [ICC-01/14-01/22-329-Red](#), para. 37).

¹³¹ [ICC-01/14-01/22-T-009-Red2-ENG](#), pp. 14, 22. See also Request, [ICC-01/14-01/22-329-Red](#), para. 44, where counsel for Mr Mokom designated 14 November 2022 as the start date for this period (the date of Mr Mokom's application for interim release).

¹³² [ICC-01/14-01/22-T-009-Red2-ENG](#), pp. 25-26; Request, ICC-01/14-01/22-329-Conf, paras 46-61.

¹³³ Mr Mokom submits that his 'right to a family visit' was violated after the Registry cancelled a family visit scheduled for October 2023. He argues that as he still fell within the residual jurisdiction of the Court after his release, [REDACTED], his situation was akin to that of a person in detention during this period. Mr Mokom also submits that he has not seen his wife and children since [REDACTED] 2022 and may not see them again for many years. He argues that the importance of family links is acknowledged in regulation 179(1) of the Regulations of the Registry, which states that the Registrar shall give specific attention to visits by family of the detained persons with a view to maintaining such links. Mr Mokom submits that the Registry's decision to cancel his family visit a few days prior is incompatible with the Registry's duty under regulation 179(1) of the Regulations of the Registry (Request, ICC-01/14-01/22-329-Conf, para. 60; Mr Mokom's Response to the Registry, ICC-01/14-01/22-344-Conf-Red, paras 58-63).

¹³⁴ The Chamber makes specific reference to Mr Mokom's submission at the hearing, in which he claimed that there were six 'exceptional' circumstances that demonstrate a grave and manifest miscarriage of justice under article 85(3) of the Statute. See ICC-01/14-01/22-T-009-CONF-ENG, pp. 15-28.

¹³⁵ Request, [ICC-01/14-01/22-329-Red](#), para. 26. See also discussion in section V.B.1 above.

provision. Accordingly, the Chamber dismisses these claims under article 85(3) of the Statute.

C. ALLEGED UNLAWFUL ARREST AND DETENTION – ARTICLE 85(1) OF THE STATUTE

1. Interim release during proceedings

a) Submissions

60. Mr Mokom submits that he was subjected to unlawful detention between the day of the Pre-Trial Chamber's 8 March 2023 decision on his application for interim release and the termination of proceedings against him on 17 October 2023.¹³⁶ He argues that the Pre-Trial Chamber's decision rejecting interim release because no State could be identified to accept him and enforce the conditions set by the Pre-Trial Chamber 'demonstrates a manifest structural failing in the framework of the ICC',¹³⁷ whereby a State must agree to accept the individual concerned on its territory before conditional release may be granted.¹³⁸ Mr Mokom submits that this makes indefinite pre-trial detention 'the rule, rather than the exception; a position which cannot be reconciled with internationally accepted human rights norms surrounding detention' and concludes that '[t]he ICC's legal framework on international cooperation and judicial assistance is [...] unfit for purpose'.¹³⁹

b) Determination by the Chamber

61. The Chamber at the outset notes that Mr Mokom in this part of his claim essentially challenges the Court's legal framework with regard to interim release and related State cooperation rather than individual decisions or actions by the Court. Various provisions of the Statute govern the permissible restrictions on the right to liberty in the context of proceedings before the Court. Article 60 of the Statute, read together with article 58(1) of the Statute, specifies the conditions that must be met to justify the continued detention of an individual pending trial. According to these provisions, the Pre-Trial Chamber must be

¹³⁶ Request, [ICC-01/14-01/22-329-Red](#), paras 39-45; [ICC-01/14-01/22-T-009-Red2-ENG](#), p. 14. *See also* Request, [ICC-01/14-01/22-329-Red](#), para. 44, where counsel for Mr Mokom designated 14 November 2022 as the start date for this period (the date of Mr Mokom's application for interim release).

¹³⁷ Request, [ICC-01/14-01/22-329-Red](#), para. 44.

¹³⁸ Request, [ICC-01/14-01/22-329-Red](#), paras 40-41, 44.

¹³⁹ Request, [ICC-01/14-01/22-329-Red](#), para. 44. The Chamber notes that Mr Mokom also submits that his counsel's efforts to consult with States regarding interim release were hampered by counsel 'being deprived of any legal avenues under the ICC legal framework through which States' representatives would be bound to discuss Mr. Mokom's interim release [with them]' (Request, [ICC-01/14-01/22-329-Red](#), para. 43). The Chamber does not consider it necessary to expressly address this point given its conclusions below.

satisfied that: (a) there are reasonable grounds to believe that the person has committed a crime within the jurisdiction of the Court; and (b) that the arrest of the person appears necessary in order to: (i) ensure the person's appearance at trial; (ii) ensure that the person does not obstruct or endanger the investigation or the court proceedings; or (iii) where applicable, prevent the person from continuing with the commission of that crime or a related crime which is within the jurisdiction of the Court and which arises out of the same circumstances.¹⁴⁰ If the Pre-Trial Chamber is not satisfied as to the existence of these grounds for detention, it is required to release the person, with or without conditions.¹⁴¹ Rule 119 of the Rules allows the Pre-Trial Chamber to set conditions restricting liberty as an alternative to detention or on release.

62. The Chamber considers that these provisions are in line with the protection afforded by major international and regional human rights instruments,¹⁴² and standards articulated by human rights courts and bodies to the effect that:

Detention pending trial must be based on an individualized determination that it is reasonable and necessary taking into account all the circumstances, for such purposes as to prevent flight, interference with evidence or the recurrence of crime. The relevant factors should be specified in law and should not include vague and expansive standards such as "public security". [...] Courts must examine whether alternatives to pretrial detention, such as bail, electronic bracelets or other conditions, would render detention unnecessary in the particular case.¹⁴³

63. The Chamber acknowledges that the system for interim release under the Statute and the Court's character as an international treaty-based judicial institution that possesses no territory of its own makes the interim release of detainees more challenging than in domestic jurisdictions in certain cases. This is particularly true in situations where a detainee does not wish to or cannot be released to a State that is obliged to receive them. In this regard, it is important to note that individuals detained by the Court may apply for interim release to

¹⁴⁰ Article 58(1) and 60(2) of the Statute.

¹⁴¹ Article 60(2) of the Statute.

¹⁴² Article 9(3) of the International Covenant on Civil and Political Rights, 16 December 1966, 999 United Nations Treaty Series 14668; Article 5 of the European Convention on Human Rights, 'Convention for the Protection of Human Rights and Fundamental Freedoms', 4 November 1950, as amended by Protocols No. 11 and No. 14, 213 United Nations Treaty Series 2889; Article 6 of the African Charter on Human and Peoples' Rights, 27 June 1981, 1520 United Nations Treaty Series 26363; Article 7 of the American Convention on Human Rights, 'Pact of San Jose, Costa Rica', 22 November 1969, 1144 United Nations Treaty Series 17955.

¹⁴³ Human Rights Committee, General Comment No 35 on Article 9, (Liberty and security of person), 16 December 2014, CCPR/C/GC/35, para. 38 (footnotes excluded). *See also*, European Court of Human Rights, Guide on Article 5 of the European Convention on Human Rights, Right to Liberty and Security, 31 August 2024, paras 80, 82-83, 88-89.

States that are obliged to receive them. Such requests for release may also be made to other States, even if the detained person would otherwise have no legal entitlement to enter their territory. In such cases, the cooperation and consent of the State(s) in question is required before the judges can make a determination on interim release.¹⁴⁴ In order to facilitate the possibility of release, the Court has been seeking to negotiate agreements with States Parties for the interim release of detainees held by the Court and has reiterated to the Assembly of States Parties the importance of States accepting persons who are eligible for interim release onto their territory.¹⁴⁵

64. Mr Mokom refers to the obligations of the Host State under the headquarters agreement between the Court and the Host State (the ‘Headquarters Agreement’) regarding the release onto its territory of persons who are not otherwise legally entitled to be there. The Chamber notes that the Host State is required to facilitate the transfer of individuals granted interim release to and from another State according to the terms of the Headquarters Agreement.¹⁴⁶ Contrary to Mr Mokom’s submissions, this obligation applies only when a State of release other than the Host State has been identified and does not create a default obligation for the Host State’s authorities to accept such persons. This is distinguishable from the Host State’s obligations with regard to convicted persons and the enforcement of sentence, where the Host State is obliged to accept a sentenced individual for whom no other State of

¹⁴⁴ Appeals Chamber, *The Prosecutor v. Jean-Pierre Bemba Gombo*, Public Redacted Version Judgment on the appeal of the Prosecutor against Pre-Trial Chamber II’s “Decision on the Interim Release of Jean-Pierre Bemba Gombo and Convening Hearings with the Kingdom of Belgium, the Republic of Portugal, the Republic of France, the Federal Republic of Germany, the Italian Republic, and the Republic of South Africa” 2 December 2009, [ICC-01/05-01/08-631-Red](#) (OA 2) (confidential version filed on the same day ICC-01/05-01/08-631-Conf) (hereinafter: ‘Bemba OA2 Judgment’), paras 106-107. Rule 119 of the Rules allows the Pre-Trial Chamber to set one or more conditions restricting liberty on conditional release, but requires that the Pre-Trial Chamber consult with a number of parties including any relevant State before any such conditions are set. It is silent on the consequences of a refusal on the part of a State to implement conditional release if requested. While States Parties accept, pursuant to article 86 of the Statute, that they have a general obligation to cooperate with the Court in its investigation and prosecution of crimes within the jurisdiction of the Court, it is generally accepted by the Court and its States Parties that the possibility of interim release on the territory of States that are not obliged to receive the person falls outside Part 9 of the Statute and the general framework for international cooperation and judicial assistance and would have to be regulated through separate agreements or other arrangements with States Parties. *See for example*, Assembly of States Parties, Cooperation, Resolution ICC-ASP/8/Res.2, Adopted at the 8th plenary meeting, on 26 November 2009, para. 16(h); Assembly of States Parties, Cooperation, Resolution ICC-ASP/10/Res.2, adopted at the 7th plenary meeting, on 20 December 2011, para. 7; Assembly of States Parties, Report of the Court on cooperation, 18 November 2011, ICC-ASP/10/40, paras 49-51.

¹⁴⁵ Assembly of States Parties, Report of the Court on Cooperation, 26 October 2023, ICC-ASP/22/24, paras 45-47.

¹⁴⁶ Headquarters Agreement between the International Criminal Court and the Host State, 1 March 2008, [ICC-BD/04-01-08](#), article 47 Interim release: 1. The host State shall facilitate the transfer of persons granted interim release into a State other than the host State. 2. The host State shall facilitate the re-entry into the host State of persons granted interim release and their short-term stay in the host State for any purpose related to proceedings before the Court. 3. The Court and the host State shall make practical arrangements as to the implementation of this article.

enforcement could be identified.¹⁴⁷ While, in certain circumstances, the Host State may have obligations to give effect to the human rights of persons detained on or being transferred through its territory, this would have to be adjudicated before the domestic courts of the Host State.¹⁴⁸

65. Therefore, as previously highlighted by the Appeals Chamber, ‘in order to grant conditional release the identification of a State willing to accept the person concerned as well as enforce related conditions is necessary. [...] It follows that a State willing and able to accept the person concerned ought to be identified prior to a decision on conditional release’.¹⁴⁹

66. The thrust of Mr Mokom’s argument in this section of his compensation claim is that the denial of his application for interim release based on the absence of a State willing to accept him on its territory rendered his continued detention unlawful.¹⁵⁰ For the purposes of the present compensation claim, the Chamber does not have to determine in the abstract whether the absence of a State willing to accept a detainee on interim release could ever lead to a finding that detention by the Court was unlawful in terms of article 85(1) of the Statute. Even accepting such a claim to be possible, the Chamber is of the view, based on the considerations set out below, that Mr Mokom has failed to establish that the lack of willingness of various States to receive him on their territory had the effect of violating his

¹⁴⁷ According to article 103(4) of the Statute and article 49 of the Headquarters Agreement, the Host State is obliged to accept the individual for enforcement of a prison sentence where no other state of enforcement has been designated.

¹⁴⁸ See similarly, The Kingdom of the Netherlands, District Court of The Hague, 28 December 2011, ECLI:NL:RBSGR:2011:BU9492; The Kingdom of the Netherlands, Council of State, 22 March 2012, ECLI:NL:RVS:2012:BW0617, paras 2.1.6-2.1.7; The Kingdom of the Netherlands, District Court of The Hague, 26 September 2012, ECLI:NL:RBSGR:2012:BX8320; The Kingdom of the Netherlands, Court of Appeal The Hague, 29 October 2012, ECLI:NL:GHSGR:2012:BY1393; The Kingdom of the Netherlands, Council of State, 12 November 2013, ECLI:NL:RVS:2013:1882; The Kingdom of the Netherlands, Council of State, 27 June 2014, ECLI:NL:RVS:2014:2426; European Court of Justice, Case C–402/05 P and C–415/05, *P. Kadi and Al Barakaat International Foundation v. Council and Commission*, 2008, ECR I–6351; European Court of Human Rights (Grand Chamber), *Bosphorus Hava Yolları Turizm e. Ticaret Anonim Şirketi v. Ireland*, Application no. 45036/98, Judgment, 30 June 2005. In the view of the Chamber, the present situation can be distinguished from that addressed by the European Court of Human Rights (Third Section), *Bède Djokaba Lambi Longa v. The Netherlands*, Application no. 33917/12, Decision, 9 October 2012, paras 76-80.

¹⁴⁹ Bemba OA2 Judgment, [ICC-01/05-01/08-631-Red](#), para. 106. See also, Appeals Chamber, *The Prosecutor v. Jean-Pierre Bemba Gombo*, Public Redacted Version Judgment on the appeal of Mr Jean-Pierre Bemba Gombo against the decision of Trial Chamber III of 27 June 2011 entitled ‘Decision on Applications for Provisional Release’, 19 August 2011, [ICC-01/05-01/08-1626-Red](#) (OA 7) (confidential version filed on the same day ICC-01/05-01/08-1626-Conf), paras 47-48, 55.

¹⁵⁰ Request, [ICC-01/14-01/22-329-Red](#), paras 40-41, 44.

rights under the Statute or under international human rights law and that this gave rise to unlawful detention.

67. In its Decision on Interim Release, the Pre-Trial Chamber found that Mr Mokom continued to present a flight risk and that his detention was required in order to ensure his appearance during the proceedings within the meaning of article 58(1)(b)(i) of the Statute.¹⁵¹ As found by the Pre-Trial Chamber, Mr Mokom: (i) was accused of serious crimes arising from his alleged role as a senior leader and operations coordinator of the Anti-Balaka;¹⁵² and (ii) if convicted, could have received a prison sentence of a number of years.¹⁵³ The Pre-Trial Chamber took into account that Mr Mokom was arrested outside of the CAR, which signified ‘his willingness and capability to move between States as a result of developments affecting him’.¹⁵⁴ [REDACTED].¹⁵⁵

68. The Pre-Trial Chamber noted that the length of Mr Mokom’s detention due to delays in pre-trial proceedings not attributable to him militated in favour of his interim release,¹⁵⁶ and considered that the risk of flight it had identified could be sufficiently mitigated by adopting and enforcing a number of conditions. In other words, the Pre-Trial Chamber considered that Mr Mokom could only be released from the ICC Detention Centre if these conditions were to be enforced. The minimum conditions considered necessary by the Pre-Trial Chamber were extensive and included requirements for Mr Mokom to remain within certain territorial limits, reside at a particular address, physically report on a daily basis to a police station, and wear a device to electronically monitor his movements, as well as restrictions on his communications in terms of the persons with whom he could communicate, the methods and content of permissible communications, and the possibility of having a designated mobile telephone verified for any disallowed communication.¹⁵⁷

69. In his application for interim release, Mr Mokom identified a large number of European States on whose territory he sought to be released.¹⁵⁸ Mr Mokom did not seek to be released

¹⁵¹ Decision on Interim Release, [ICC-01/14-01/22-173-Red](#), paras 53, 55.

¹⁵² Decision on interim release, [ICC-01/14-01/22-173](#), para. 51; Arrest Warrant, [ICC-01/14-01/22-2-Red2](#), paras 16-17.

¹⁵³ Decision on Interim Release, [ICC-01/14-01/22-173-Red](#), para. 53.

¹⁵⁴ Decision on Interim Release, [ICC-01/14-01/22-173-Red](#), para. 53.

¹⁵⁵ Decision on Interim Release, ICC-01/14-01/22-173-Conf, para. 47.

¹⁵⁶ Decision on Interim Release, [ICC-01/14-01/22-173-Red](#), para. 58. *See also* Order postponing the confirmation of charges hearing, 23 January 2023, [ICC-01/14-01/22-137](#).

¹⁵⁷ Decision on Interim Release, [ICC-01/14-01/22-173-Red](#), para. 56.

¹⁵⁸ Application for Interim Release, ICC-01/14-01/22-110-Conf, paras 14-28. *Contra* [ICC-01/14-01/22-T-009-Red2-ENG](#), p. 12.

to the CAR, the State of which he is a national, or other States that may have been obliged to receive him.¹⁵⁹ It is significant to note that Mr Mokom did not have a legal right to enter and had limited or no connections to any of the States that were consulted regarding the possibility of interim release.¹⁶⁰ It transpired that none of these States was willing to accept Mr Mokom on their territory under the conditions proposed.¹⁶¹ The Registry reported that States indicated that they were not in a position to accept an ICC suspect on their territory for interim release, *inter alia*, ‘due to security concerns, the lack of family or other connections with a State and due to the lack of relevant provisions in their national legislation to cooperate with the Court on the matter and to enforce conditions’.¹⁶²

70. Given the absence of a State willing to receive Mr Mokom and to enforce conditions, and recalling the above-cited jurisprudence of the Appeals Chamber, the Pre-Trial Chamber concluded that Mr Mokom’s interim release could not be ordered.¹⁶³

71. Based on the above, the Chamber considers that the continued detention of Mr Mokom was a necessary measure aimed at ensuring his appearance at trial pursuant to article 58(1)(b)(i) of the Statute. Notably, Mr Mokom did not seek release to the State of which he is a national, or other States that may have been obliged to receive him, but only to European States located within a [REDACTED] of the Host State. He did not have a legal right to enter and had limited or no connections to any of these States. The Pre-Trial Chamber considered that Mr Mokom represented a flight risk and the minimum conditions considered necessary to mitigate the risk were extensive. In the absence of a State willing to enforce conditions, the risk of flight persisted and Mr Mokom’s continued detention was therefore necessary. Thus, Mr Mokom’s detention was both lawful under the legal framework of the Court and consistent with internationally recognised human rights. Accordingly, Mr Mokom’s claim that he was unlawfully detained following the rejection of his interim release request is rejected.

¹⁵⁹ Application for Interim Release, ICC-01/14-01/22-110-Conf, paras 14-28.

¹⁶⁰ Application for Interim Release, ICC-01/14-01/22-110-Conf, paras 14-28.

¹⁶¹ Decision on Interim Release, [ICC-01/14-01/22-173-Red](#), para. 59. The Chamber notes that the 33 States were consulted with respect to conditions proposed by Mr Mokom, which differed in some respects from the conditions considered necessary by the Pre-Trial Chamber in its Decision on Interim Release. The Pre-Trial Chamber ruled that because States already had ‘several opportunities to express their positions and/or consult with the Court [...] there [was] no basis for further engagement at present, without prejudice to receiving any outstanding responses by some of the States concerned’.

¹⁶² Assembly of States Parties, Report of the Court on Cooperation, 26 October 2023, ICC-ASP/22/24, para. 46.

¹⁶³ Decision on Interim Release, [ICC-01/14-01/22-173-Red](#), paras 59-60.

2. Alleged ‘*de facto* detention’ at a hotel after the termination of proceedings

72. Mr Mokom submits that he was subjected to unlawful ‘*de facto* detention’ or ‘house arrest’ in a hotel for 43 days after the proceedings against him were terminated, between 17 October and 28 November 2023 (the ‘Hotel Stay Period’).¹⁶⁴ Mr Mokom claims that this stay amounted to an unlawful detention under article 85(1) of the Statute.

73. Before addressing the submissions, the Chamber will start by setting out a chronology of how events unfolded during the relevant period.

a) Chronology of events

74. In the 17 October 2023 Order, the Pre-Trial Chamber ordered Mr Mokom’s immediate release from the ICC Detention Centre and ordered the Registry to complete a series of related actions. The Pre-Trial Chamber noted that:

With the withdrawal of the charges, the Warrant of Arrest “shall cease to have effect” under article 61(10) of the Statute. The Chamber additionally recalls that, in view of the right to liberty, pre-trial detention is the exception and not the rule. Therefore, as of the notification of the present order, there is no longer a legal title for the continued detention of Mr Mokom. As a result, the Chamber instructs the Registry to ensure that Mr Mokom is released from the ICC Detention Centre today.¹⁶⁵

The Pre-Trial Chamber further stated:

The Chamber is aware that the sudden termination of the case means that arrangements will have to be made before Mr Mokom can be transferred to a State which is obliged to receive him or to another State. The Registry shall immediately make all necessary arrangements for these purposes, including by liaising with Mr Mokom and the Defence, as well as the relevant States, in particular the Central African Republic and the Host State. However, in 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. The Registry is further instructed to provide Mr Mokom with the reasonably necessary assistance in the interim period pending his transfer to allow him to enjoy his rights as a free person.¹⁶⁶

¹⁶⁴ Request, ICC-01/14-01/22-329-Conf, paras 46-61.

¹⁶⁵ 17 October 2023 Order, [ICC-01/14-01/22-276](#), para. 9.

¹⁶⁶ 17 October 2023 Order, [ICC-01/14-01/22-276](#), para. 10.

75. [REDACTED] after the issuance of the 17 October 2023 Order, the Registry [REDACTED] requested the Host State's agreement for Mr Mokom to stay at a hotel designated as the premises of the Court, [REDACTED].¹⁶⁷ The Registry also [REDACTED].¹⁶⁸ The Registry [REDACTED].¹⁶⁹
76. On the same day, Mr Mokom's counsel emailed the Registry to advise that 'Mr Mokom would like to be released from detention' and [REDACTED].¹⁷⁰ Mr Mokom's legal team also noted that Mr Mokom did not wish to be returned to the CAR.¹⁷¹
77. Also on 17 October 2023, Mr Mokom was released from the ICC Detention Centre and accommodated in a hotel in The Hague.¹⁷² The Host State, following the Registry's proposal, designated specific rooms of the hotel as 'premises of the Court' pending the transfer of Mr Mokom to a State pursuant to rule 185 of the Rules.¹⁷³ The Host State explicitly stated to the Registry that this could not be interpreted as agreement to receive Mr Mokom onto its territory as described in article 48 of the Headquarters Agreement (relating to the transfer of persons released without conviction to *inter alia* a 'State which agrees to receive' them).¹⁷⁴ The Host State further stated that it has no legal obligation to accept the release of any (formerly) detained person from the Court onto its territory.¹⁷⁵ The Host State further communicated to the Registry that it wished to apply certain 'practical arrangements' to Mr Mokom's stay (the 'First Practical Arrangements') which included Mr Mokom not leaving his hotel room.¹⁷⁶
78. Mr Mokom's legal team was informed of the First Practical Arrangements by email on 17 October 2023.¹⁷⁷ The same day, Mr Mokom's legal team responded to the Registry

¹⁶⁷ ICC-01/14-01/22-277-Conf-Exp-AnxII.

¹⁶⁸ ICC-01/14-01/22-277-Conf-Exp-AnxII.

¹⁶⁹ ICC-01/14-01/22-277-Conf-Exp-AnxII.

¹⁷⁰ [ICC-01/14-01/22-343-AnxVIII-Red.](#)

¹⁷¹ [ICC-01/14-01/22-343-AnxVIII-Red.](#)

¹⁷² See Registry Observations, ICC-01/14-01/22-343-Conf-Red, para. 18. [REDACTED]. See Registry Observations, ICC-01/14-01/22-343-Conf-Red, para. 15, footnote 23.

¹⁷³ Registry Observations, ICC-01/14-01/22-343-Conf-Red, para. 15, footnote 23. [REDACTED]. See Registry Observations, ICC-01/14-01/22-343-Conf-Red, para. 15.

¹⁷⁴ Registry Observations, [ICC-01/14-01/22-343-Red](#), para. 15 referring to ICC-01/14-01/22-277-Conf-Exp-AnxIII.

¹⁷⁵ Registry Observations, [ICC-01/14-01/22-343-Red](#), para. 4; ICC-01/14-01/22-277-Conf-Exp-AnxIII.

¹⁷⁶ The First Practical Arrangements stipulated that [REDACTED]. See Registry Observations, ICC-01/14-01/22-343-Conf-Red, para. 15.

¹⁷⁷ Registry Observations, [ICC-01/14-01/22-343-Red](#), para. 17; ICC-01/14-01/22-343-Conf-Exp-AnxI.

acknowledging receipt of the email, advising that they would revert should any clarifications be needed.¹⁷⁸

79. On 18 October 2023, responding to a request from the Host State, the Registry [REDACTED] to the Host State providing it information about practical arrangements [REDACTED].¹⁷⁹

80. On the same day, the Host State informed the Registry that Mr Mokom was allowed to [REDACTED].¹⁸⁰ The Registry reported its activities to the Pre-Trial Chamber on the same day.¹⁸¹

81. On 20 October 2023, the Registry received further confirmation from the Host State that Mr Mokom could leave his hotel room for limited purposes to [REDACTED]. Mr Mokom started to leave his hotel room accordingly.¹⁸²

82. [REDACTED].¹⁸³

83. On 24 October 2023, Mr Mokom filed an urgent request before the Pre-Trial Chamber to ‘afford Mr Mokom the right to make submissions’ before any transfer was ordered pursuant to rule 185 of the Rules.¹⁸⁴ Mr Mokom also requested that the Pre-Trial Chamber grant him ‘the time necessary to consult with lawyers in The Netherlands to have a full picture of his options and rights’.¹⁸⁵ Mr Mokom stated that he ‘must be afforded the opportunity to assess all of his options regarding the country he will be transferred to, including the right to seek asylum in The Netherlands should there be no other safe or viable options’.¹⁸⁶ Mr Mokom stated that he did not wish to be returned to the CAR on the basis

¹⁷⁸ ICC-01/14-01/22-343-AnxI-Red, pp. 5-6.

¹⁷⁹ Registry Observations, ICC-01/14-01/22-343-Conf-Red, para. 20, citing to ICC-01/14-01/22-280-Conf-AnxIII.

¹⁸⁰ Registry Observations, ICC-01/14-01/22-343-Conf-Red, para. 21.

¹⁸¹ 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 (with confidential Annex I and confidential *ex parte* Annexes II and III, only available to the Registry).

¹⁸² Registry Observations, ICC-01/14-01/22-343-Conf-Red, para. 24.

¹⁸³ Defence Request for Variation of Time Limit, 24 November 2023, ICC-01/14-01/22-297-Conf-Exp (confidential *ex parte*, only available to the Registry and counsel for Mr Mokom; with two confidential *ex parte* annexes, only available to the Registry and counsel for Mr Mokom; public redacted version notified on 31 January 2024) (the ‘Defence Request dated 24 November 2023’), para. 11.

¹⁸⁴ Defence Urgent Request, 23 October 2023, [ICC-01/14-01/22-278](#) (with two public annexes) (the ‘Defence Request dated 23 October 2023’), para. 10.

¹⁸⁵ Defence Request dated 23 October 2023, [ICC-01/14-01/22-278](#), para. 10.

¹⁸⁶ Defence Request dated 23 October 2023, [ICC-01/14-01/22-278](#), para. 10.

that he would face torture, inhumane treatment and arbitrary detention.¹⁸⁷ Mr Mokom noted that he was convicted *in absentia* in October 2023 in the CAR and sentenced to life imprisonment with hard labour.¹⁸⁸

84. On 26 October 2023, Mr Mokom filed a request before the Pre-Trial Chamber asking it to instruct the Registry to ‘extend the current arrangements which have been made between the Court and the [Host State] until [he] can be safely relocated to a receiving State’.¹⁸⁹ This request referred to the First Practical Arrangements, in place at the time.

85. Between 23 October 2023 and 26 October 2023, the Registry continued to engage with the Host State regarding the arrangements applicable to Mr Mokom. A second set of practical arrangements were advanced by the Host State on 23 October 2023 (the ‘Second Practical Arrangements’).¹⁹⁰ As the Second Practical Arrangements were not in conformity with the 17 October 2023 Order, the Registry immediately resumed consultations with the Host State to secure practical arrangements for Mr Mokom’s stay in line with the 17 October 2023 Order.¹⁹¹ The Host State informed the Registry that [REDACTED].¹⁹²

86. On 26 October 2023, a third set of practical arrangements, very similar to the Second Practical Arrangements, were communicated by the Host State to the Registry (the ‘Third Practical Arrangements’).¹⁹³ The Host State, *inter alia*, required (as with the Second

¹⁸⁷ Defence Request dated 23 October 2023, [ICC-01/14-01/22-278](#), paras 2, 7.

¹⁸⁸ Defence Request dated 23 October 2023, [ICC-01/14-01/22-278](#), paras 5-6; ICC-01/14-01/22-278-AnxA.

¹⁸⁹ Defence Urgent Request for an Extension of Pre-Trial Chamber’s II Order of 17 October 2023, ICC-01/14-01/22-279-Conf-Exp (confidential *ex parte*, available only to counsel for Mr Mokom and Registry; with six confidential *ex parte* annexes only available to counsel for Mr Mokom and Registry; public redacted version notified on 18 December 2023, [ICC-01/14-01/22-279-Red](#)) (the ‘Defence Request dated 26 October 2023’), para. 14.

¹⁹⁰ The Second Practical Arrangements were proposed by the Host State on 23 October 2023 and stipulated that: [REDACTED]. See Registry Observations, ICC-01/14-01/22-343-Conf-Red, para. 26.

¹⁹¹ Registry Observations, [ICC-01/14-01/22-343-Red](#), para. 28; ICC-01/14-01/22-281-Conf-Exp, paras 13-14, referring to [REDACTED] had been finalised, and that the Second Practical Arrangements took the [REDACTED] into account. The Host State did not provide the Registry with a copy of the [REDACTED]. See, 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 (under seal *ex parte*, only available to the Registry; with confidential *ex parte* annexes I-V, only available to the Registry; *ex parte* redacted versions additionally available to the Prosecution (ICC-01/14-01/22-280-Conf-Exp-Red) and counsel for Mr Mokom (ICC-01/14-01/22-280-Conf-Exp-Red2) notified on 30 November 2023; confidential redacted version also notified on 30 November 2023, ICC-01/14-01/22-280-Conf-Red; annexes I-III and V reclassified confidential on 1 December 2023; public redacted version of the report (ICC-01/14-01/22-280-Red) and annexes I, II and V notified on 31 January 2024), 30 November 2023 (the ‘Registry’s Report dated 26 October 2023’), ICC-01/14-01/22-280-Conf-Red, para. 25.

¹⁹² Registry’s Report dated 26 October 2023, ICC-01/14-01/22-280-Conf-Red, para. 26. [REDACTED] (Registry Observations, ICC-01/14-01/22-343-Conf-Red, para. 28, footnote 40).

¹⁹³ The Third Practical Arrangements were agreed to by the Host State on 26 October 2023, and stipulated that: [REDACTED]. See Registry Observations, ICC-01/14-01/22-343-Conf-Red, para. 28.

Practical Arrangements) that Mr Mokom sign an undertaking [REDACTED].¹⁹⁴ The Registry submits that it was informed by the Host State that the Third Practical Arrangements would enter into force once Mr Mokom had signed the undertaking.¹⁹⁵ The Registry reported these developments to the Pre-Trial Chamber.¹⁹⁶

87. The Pre-Trial Chamber, in an email dated 30 October 2023, stated that Mr Mokom had ‘been subjected to a regime that appears to amount to a form of house arrest’ and that it was [REDACTED].¹⁹⁷ The Pre-Trial Chamber instructed the Registry to provide clarification [REDACTED].¹⁹⁸ The Pre-Trial Chamber further instructed the Registry to [REDACTED].¹⁹⁹ The Pre-Trial Chamber noted the proposed undertaking to be signed by Mr Mokom [REDACTED].²⁰⁰ The Pre-Trial Chamber found that the Court no longer had any power to restrict Mr Mokom’s freedom, [REDACTED].²⁰¹ The Pre-Trial Chamber instructed the Registry to [REDACTED] ‘refrain from presenting Mr Mokom with any undertaking’.²⁰²

88. On 27 October 2023, Mr Mokom’s counsel emailed the Registry stating that [REDACTED] (the ‘27 October 2023 Request’).²⁰³

89. On 30 October 2023, the Registry informed counsel for Mr Mokom that [REDACTED].²⁰⁴

¹⁹⁴ Registry Observations, ICC-01/14-01/22-343-Conf-Red, para. 28. *See also* para. 26; [ICC-01/14-01/22-T-009-Red2-ENG](#), p. 55.

¹⁹⁵ Registry Observations, ICC-01/14-01/22-343-Conf-Red, para. 28; *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, 30 October 2023, ICC-01/14-01/22-281-Conf-Exp (confidential *ex parte*, only available to the Registry; with confidential *ex parte* annexes I-II, only available to the Registry; annexes reclassified confidential on 1 December 2023) (the ‘Registry’s Report dated 27 October 2023’), para. 17; [ICC-01/14-01/22-T-009-Red2-ENG](#), p. 55.

¹⁹⁶ Registry’s Report dated 26 October 2023, ICC-01/14-01/22-280-Conf-Red; Registry’s Report dated 27 October 2023, ICC-01/14-01/22-281-Conf-Exp.

¹⁹⁷ Registry Observations, [ICC-01/14-01/22-343-Red](#), para. 32; ICC-01/14-01/22-314-Conf-Exp-Anx26.

¹⁹⁸ Registry Observations, [ICC-01/14-01/22-343-Red](#), para. 34; ICC-01/14-01/22-314-Conf-Exp-Anx26.

¹⁹⁹ Registry Observations, [ICC-01/14-01/22-343-Red](#), para. 34; ICC-01/14-01/22-314-Conf-Exp-Anx26.

²⁰⁰ Annex 26 to the to the Fifth Registry Quarterly Report on Decisions issued by way of e-mail from 01 August 2023 until 31 October 2023, 1 February 2024, ICC-01/14-01/22-314-Conf-Exp-Anx26 (confidential *ex parte*, only available to the Registry).

²⁰¹ Registry Observations, ICC-01/14-01/22-343-Conf-Red, para. 33; ICC-01/14-01/22-314-Conf-Exp-Anx26.

²⁰² Registry Observations, ICC-01/14-01/22-343-Conf-Red, para. 34; ICC-01/14-01/22-314-Conf-Exp-Anx26; [ICC-01/14-01/22-T-009-Red2-ENG](#), p. 55.

²⁰³ Registry Observations, ICC-01/14-01/22-343-Conf-Exp, para. 30; ICC-01/14-01/22-343-Conf-Exp-AnxII. [REDACTED].

²⁰⁴ Registry Observations, ICC-01/14-01/22-343-Conf-Exp, para. 31; ICC-01/14-01/22-343-Conf-Exp-AnxII.

90. On 31 October 2023, Mr Mokom’s legal team wrote to the Registry regarding the [REDACTED] and stated that ‘no legal basis ha[d] been offered for this restriction on Mr Mokom’s movement’.²⁰⁵ His legal team argued that since 17 October 2023, Mr Mokom was subjected to ‘conditions which vastly reduce his freedom of movement and which are tantamount to constructive detention’.²⁰⁶ His legal team noted that the Pre-Trial Chamber in its 17 October 2023 Order did not set any conditions to be imposed on Mr Mokom.²⁰⁷ Mr Mokom’s legal team stated that the conditions of Mr Mokom’s stay were impacting [REDACTED].²⁰⁸ They argued that ‘[REDACTED], he should be allowed to enjoy unrestricted freedom of movement in the Netherlands. There is no legal basis for Mr Mokom’s ongoing constructive detention’.²⁰⁹ Mr Mokom’s counsel further stated that: ‘In this context, the Defence asks the Registry to urge the Dutch authorities to authorise [Mr Mokom’s] freedom of movement within The Netherlands, pending a State approval to receive him on its territory. If the Registry is unwilling to do so, we would be grateful to be informed of the legal basis of these restrictions, in order for the Defence to be able to litigate the issue [REDACTED]’.²¹⁰

91. Also on 31 October 2023, the Registry [REDACTED].²¹¹ [REDACTED].²¹² [REDACTED].²¹³

92. On 1 November 2023, the Host State informed the Registry that [REDACTED].²¹⁴ The Registry informed Mr Mokom of this outcome.²¹⁵ The Registry reported its activities to the Pre-Trial Chamber on 2 November 2023.²¹⁶

²⁰⁵ Registry Observations, ICC-01/14-01/22-343-Red, para. 36; [ICC-01/14-01/22-343-AnxII-Red](#). See also ICC-01/14-01/22-343-Conf-Exp-AnxII.

²⁰⁶ [ICC-01/14-01/22-343-AnxII-Red](#). See also ICC-01/14-01/22-343-Conf-Exp-AnxII.

²⁰⁷ [ICC-01/14-01/22-343-AnxII-Red](#). See also ICC-01/14-01/22-343-Conf-Exp-AnxII.

²⁰⁸ ICC-01/14-01/22-343-Conf-Exp-AnxII.

²⁰⁹ ICC-01/14-01/22-343-Conf-Exp-AnxII. See also [ICC-01/14-01/22-343-AnxII-Red](#).

²¹⁰ Registry Observations, ICC-01/14-01/22-343-Conf-Red, para. 36; ICC-01/14-01/22-343-Conf-Exp-AnxII. See also [ICC-01/14-01/22-343-AnxII-Red](#).

²¹¹ ICC-01/14-01/22-285-Conf-AnxI. See also Registry Observations, ICC-01/14-01/22-343-Conf-Red, para. 35.

²¹² ICC-01/14-01/22-285-Conf-AnxI.

²¹³ ICC-01/14-01/22-285-Conf-AnxI.

²¹⁴ Registry Observations, ICC-01/14-01/22-343-Conf-Red, para. 37.

²¹⁵ Registry Observations, ICC-01/14-01/22-343-Conf-Red, para. 37. There is no indication of the date on which this occurred. Mr Mokom notes that ‘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]’ (see Mr Mokom’s Response to the Registry, ICC-01/14-01/22-344-Conf-Red, para. 41 and generally paras 40-42).

²¹⁶ 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 2023, ICC-01/14-01/22-285-US-Exp, 3 November 2023, ICC-01/14-01/22-285-Conf-Exp-Corr (report filed confidential *ex parte*, only available to the Registry; with

93. On 6 and 13 November 2023, the Registry [REDACTED].²¹⁷ Following these meetings, less restrictive practical arrangements were accepted by the Host State on 14 November 2023 (the ‘Fourth Practical Arrangements’).²¹⁸ The Registry reported these arrangements to the Pre-Trial Chamber by way of email on 14 November 2023.²¹⁹
94. On 17 November 2023, counsel for Mr Mokom emailed the Registry, stating that Mr Mokom had been limited to the hotel premises for a month and ‘despite being a free man, his conditions of stay drastically impact his freedom of movement’²²⁰ and that the situation was impacting Mr Mokom, ‘taking a significant toll on [REDACTED]’.²²¹ Counsel requested the Registry to ask the Host State for ‘variations in Mr Mokom’s situation, effective immediately’.²²² The requested relief in conditions included a number of activities outside the hotel.²²³ Counsel for Mr Mokom advised that Mr Mokom [REDACTED].²²⁴
95. On 21 November 2023, the Pre-Trial Chamber issued an order (the ‘21 November 2023 Order’),²²⁵ stating that ‘Mr Mokom has been subjected to a regime that appears to amount to a form of house arrest’ notwithstanding the clear terms of the 17 October 2023 Order.²²⁶ The Pre-Trial Chamber reiterated that the Registry must ensure that Mr Mokom’s rights as a free person were not restricted in any way under the Court’s legal framework.²²⁷ It further indicated:

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

confidential *ex parte* Annexes I and II, only available to the Registry; confidential *ex parte* redacted version of the report, also available to counsel for Mr Mokom, notified on 30 November 2023, ICC-01/14-01/22-285-Conf-Exp-Corr-Red; confidential redacted version of the report also notified on 30 November 2023, ICC-01/14-01/22-285-Conf-Corr-Red; Annex I to the report reclassified confidential on 1 December 2023, ICC-01/14-01/22-285-Conf-AnxI) (the ‘Registry Report dated 2 November 2023’).

²¹⁷ Registry Observations, ICC-01/14-01/22-343-Conf-Red, para. 39. [REDACTED].

²¹⁸ Registry Observations, ICC-01/14-01/22-343-Conf-Red, para. 39. [REDACTED].

²¹⁹ Registry Observations, [ICC-01/14-01/22-343-Red](#), para. 40.

²²⁰ [ICC-01/14-01/22-343-AnxIII-Red](#). See also ICC-01/14-01/22-343-Conf-Exp-AnxIII; Registry Observations, ICC-01/14-01/22-343-Conf-Red, para. 41.

²²¹ ICC-01/14-01/22-343-Conf-Exp-AnxIII. See also Registry Observations, ICC-01/14-01/22-343-Conf-Red, para. 41.

²²² [ICC-01/14-01/22-343-AnxIII-Red](#). See also ICC-01/14-01/22-343-Conf-Exp-AnxIII; Registry Observations, ICC-01/14-01/22-343-Conf-Red, para. 41.

²²³ ICC-01/14-01/22-343-Conf-Exp-AnxIII. See also Registry Observations, ICC-01/14-01/22-343-Conf-Red, para. 41. [REDACTED].

²²⁴ ICC-01/14-01/22-343-Conf-Exp-AnxIII. See also Registry Observations, ICC-01/14-01/22-343-Conf-Red, para. 41.

²²⁵ Order regarding arrangements pending Mokom’s transfer, 21 November 2023, ICC-01/14-01/22-294-Conf-Exp (confidential *ex parte*, only available to the Registry; reclassified on 11 December 2023 to be additionally available to counsel for Mr Mokom; public redacted version notified 11 April 2024, [ICC-01/14-01/22-294-Red](#)).

²²⁶ 21 November 2023 Order, [ICC-01/14-01/22-294-Red](#), para. 3.

²²⁷ 21 November 2023 Order, [ICC-01/14-01/22-294-Red](#), para. 3.

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.²²⁸

96. The Pre-Trial Chamber considered it appropriate, in the specific circumstances, including with regard to Mr Mokom's personal safety, to request him to do the following (the 'Practical Arrangements in the Order'):

- (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 member 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.²²⁹

97. The Pre-Trial Chamber indicated that the foregoing would allow Mr Mokom to receive the required support in view of his current status under the legal framework of the Court, while additionally contributing to the efficient and expeditious conduct of the procedure under rule 185 of the Rules.²³⁰ The Pre-Trial Chamber ordered the Registry to inform Mr Mokom of the contents of the 21 November 2023 Order and to seek his consent to abide by the Practical Arrangements in the Order without obliging him to do so.²³¹ The Pre-Trial Chamber also ordered the Registry to inform the Host State of the contents of the 21 November 2023 Order and to continue liaising with the Host State in respect of the practical arrangements pertaining to Mr Mokom.²³²

98. On the same day, the Registry held a meeting with Mr Mokom's legal team at which the Registry communicated the contents of the 21 November 2023 Order to Mr Mokom and his legal team and advised that Mr Mokom would be requested to sign a form consenting to abide by the Practical Arrangements in the Order (the 'Consent Form').²³³ On the same day following this meeting, counsel for Mr Mokom emailed the Registry to note that he had advised Mr Mokom not to sign anything before the Host State authorities agreed to the

²²⁸ 21 November 2023 Order, [ICC-01/14-01/22-294-Red](#), para. 4.

²²⁹ 21 November 2023 Order, [ICC-01/14-01/22-294-Red](#), para. 5.

²³⁰ 21 November 2023 Order, [ICC-01/14-01/22-294-Red](#), para. 5.

²³¹ 21 November 2023 Order, [ICC-01/14-01/22-294-Red](#), p. 5.

²³² 21 November 2023 Order, [ICC-01/14-01/22-294-Red](#), p. 5.

²³³ ICC-01/14-01/22-298-Conf-Exp-AnxIV; Registry Observations, [ICC-01/14-01/22-343-Red](#), para. 45.

Practical Arrangements in the Order, citing concerns that acting without the Host State's approval could negatively impact Mr Mokom's situation in the Host State, which counsel described as 'very fragile'. Mr Mokom's counsel noted that any changes to Mr Mokom's circumstances depended on the Host State's consent.²³⁴

99. On 22 November 2023, the Registry responded to the aforementioned email from Mr Mokom's counsel.²³⁵ The Registry also sent a [REDACTED].²³⁶

100. On the same day, 22 November 2023, the Registry held a meeting with Mr Mokom's legal team [REDACTED].²³⁷ [REDACTED].²³⁸ [REDACTED].²³⁹ [REDACTED].²⁴⁰

101. Also on 22 November 2023, Mr Mokom signed the Consent Form and included a supplementary statement [REDACTED].²⁴¹

102. Still on the same day, 22 November 2023, [REDACTED].²⁴²

²³⁴ [ICC-01/14-01/22-343-AnxV-Red](#) ('We thank you for your visit earlier today. We acknowledge receipt of the document entitled "*Consentement aux dispositions pratiques*" which appears to emanate from Pre-Trial Chamber II following a determination of "*dispositions pratiques*" concerning the release of Mokom on 17 October 2023, pursuant to the Pre-Trial Chamber's order in ICC-01/14-01/22-276. Without getting into the issue of whether these "*dispositions pratiques*" are acceptable or not on their face, we have advised Mr. Mokom not to sign anything before the Dutch authorities have indicated that they agree to facilitate the terms set out in this document. The reason for this should be clear. Mr. Mokom has lived through a month of uncertainty and significant stress, both in terms of where he will end up and how he will live in the interim. *After this month, one thing is crystal clear: any change to his situation will ultimately depend on the consent of the Dutch authorities. We also gather from our exchanges and meetings that the Dutch would be very reluctant to consent to the current regime, and that the presence of Mr. Mokom on their territory is considered a significant nuisance.* We understand that you are scheduled to consult with the Dutch authorities to obtain their views, and, we would hope, their consent to the modification of Mr. Mokom's current conditions. In these circumstances, *we fear how the Dutch authorities may react should Mr. Mokom sign a document to which they have not agreed, and the obvious repercussions for him.* For this reason, we will wait for confirmation from your office, that the Dutch authorities have accepted the "*dispositions pratiques*" mentioned in the document. *We are genuinely concerned that signing the document before this confirmation may backfire on Mr. Mokom, and throw his already very fragile conditions into jeopardy.* We can, of course, confirm that once the Dutch authorities have expressed their agreement with the terms of the document, we will recommend that it be signed by Mr. Mokom') (emphasis added).

²³⁵ [ICC-01/14-01/22-343-AnxV-Red](#).

²³⁶ Registry's Report pursuant to Order ICC-01/14-01/22-294-Conf-Exp, 24 November 2024, ICC-01/14-01/22-298-Conf-Exp (confidential *ex parte* only available to the Registry and counsel for Mr Mokom; with confidential *ex parte* Annex I only available to the Registry and confidential *ex parte* Annexes II to VIII only available to the Registry and counsel for Mr Mokom; confidential redacted version of the report notified on the same day, ICC-01/14-01/22-298-Conf-Red; confidential redacted version of Annex I notified on 29 November 2023, ICC-01/14-01/22-298-Conf-AnxI-Red; public redacted version of Annex II notified on 1 February 2024 and corrected version notified on 10 May 2024, ICC-01/14-01/22-298-AnxII-Red) (the 'Registry Report dated 24 November 2023'), para. 16; ICC-01/14-01/22-298-Conf-Exp-AnxV.

²³⁷ ICC-01/14-01/22-298-Conf-Exp-AnxVI.

²³⁸ ICC-01/14-01/22-298-Conf-Exp-AnxVI.

²³⁹ ICC-01/14-01/22-298-Conf-Exp-AnxVI.

²⁴⁰ ICC-01/14-01/22-298-Conf-Exp-AnxVI.

²⁴¹ Registry Observations, [ICC-01/14-01/22-343-Red](#), para. 47; ICC-01/14-01/22-343-Conf-Exp-AnxVI.

²⁴² Registry Observations, ICC-01/14-01/22-343-Conf-Red, para. 46.

103. On 23 November 2023, the Registry [REDACTED]. [REDACTED] the Registrar emphasised to the Host State that the Court cannot, under the Court's legal framework, impose any condition on Mr Mokom's stay in the Host State pending his transfer, and that the Registry would not put in place any measure to prevent Mr Mokom from leaving the hotel.²⁴³ [REDACTED].²⁴⁴
104. On the same day, 23 November 2023, the authorities of the CAR sent a letter to the Court seeking the cooperation of the ICC Prosecutor in executing a warrant for Mr Mokom's arrest in order to secure his extradition to the CAR following a conviction announced by the Bangui Criminal Court.²⁴⁵
105. On 24 November 2023, the Registry reported its activities to the Pre-Trial Chamber.²⁴⁶ [REDACTED].²⁴⁷
106. On 27 November 2023, the Registry reported its activities to the Pre-Trial Chamber.²⁴⁸ On 28 November 2023, the Host State informed the Registry that it agreed to the Practical Arrangements in the Order.²⁴⁹ Mr Mokom was informed about the Host State's approval and began to leave the hotel.²⁵⁰ The Registry reported its activities to the Pre-Trial Chamber on the same day.²⁵¹

²⁴³ Registry Observations, [ICC-01/14-01/22-343-Red](#), para. 7, citing to Registry Report dated 24 November 2023, ICC-01/14-01/22-298-Conf-Red, para. 22.

²⁴⁴ See also Registry Observations, ICC-01/14-01/22-343-Conf-Red, para. 48.

²⁴⁵ Annex I to Registry's Transmission of the letter of the authorities of the Central African Republic, 23 November 2023, ICC-01/14-01/22-296, ICC-01/14-01/22-296-Conf-Anx1 (filing and annex originally confidential *ex parte*, only available to the Registry and counsel for Mr Mokom; filing and annex reclassified confidential on 29 November 2023; filing further reclassified public on 3 May 2024). See also Request, [ICC-01/14-01/22-329-Red](#), para. 37.

²⁴⁶ Registry Report dated 24 November 2023, ICC-01/14-01/22-298-Conf-Red.

²⁴⁷ Registry Observations, ICC-01/14-01/22-343-Conf-Red, para. 48.

²⁴⁸ Registry's Report pursuant to Pre-Trial Chamber II's Instruction of 22 November 2023, 27 November 2023, ICC-01/14-01/22-299-Conf-Exp (confidential *ex parte* only available to the Registry and counsel for Mr Mokom; with confidential *ex parte* Annexes I-IV only available to the Registry and counsel for Mr Mokom; confidential redacted version of the report notified on the same day; Annexes I and III reclassified confidential on 3 May 2024).

²⁴⁹ Registry Observations, [ICC-01/14-01/22-343-Red](#), para. 50.

²⁵⁰ Registry Observations, ICC-01/14-01/22-343-Conf-Red, paras 51-52.

²⁵¹ 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 (confidential *ex parte* only available to the Registry; confidential redacted version of the report notified on the same day).

107. On 8 December 2023, Mr Mokom submitted his views pursuant to rule 185(1) of the Rules.²⁵² In his submissions, Mr Mokom noted that in ‘normal circumstances, the CAR would be the natural destination’ for him as it is ‘Mr Mokom’s place of birth and he remains, to date, a citizen of that country’.²⁵³ However, Mr Mokom submitted that he could not be returned to the CAR, in part, because: (i) he had been subjected to an unfair trial *in absentia* after which he was sentenced to life imprisonment with hard labour;²⁵⁴ (ii) he risked being subjected to cruel treatment, torture or death if returned to the CAR;²⁵⁵ (iii) he risked being subjected to substandard conditions of detention;²⁵⁶ and (iv) he would be subjected to persecution on the basis of race and political opinion.²⁵⁷

108. On 18 January 2024, the Pre-Trial Chamber issued a decision pursuant to rule 185 of the Rules. In this decision, the Pre-Trial Chamber decided that it was not in a position to order Mr Mokom to return to the CAR pursuant to the extradition request submitted by the CAR authorities.²⁵⁸ It noted that the reference to ‘extradition with the consent of the original surrendering State’ in rule 185 of the Rules ‘entails that an extradition procedure may take place between a State requesting extradition and the original surrendering State, whereas the Court may only “transfer” the person concerned to the requesting State.’²⁵⁹ The Pre-Trial Chamber noted that the Court is not vested with the power to extradite a free person, as in the case of Mr Mokom, to a State.²⁶⁰ As such, the Pre-Trial Chamber held that it did not need to consider Mr Mokom’s submissions in relation to the alleged risks to his well-being should he be returned to the CAR.²⁶¹ The Pre-Trial Chamber instructed the Registry to continue to try to find a State willing to take Mr Mokom until 7 February 2024, and, should no such State be found by this date, ordered that the Court’s residual jurisdiction over Mr Mokom would end ‘as of 8 February 2024’, ‘thus entailing that Mr Mokom will

²⁵² Mokom Defence Submissions pursuant to Rule 185(1), ICC-01/14-01/22-307-Conf-Exp (confidential *ex parte*, only available to the Registry and counsel for Mr Mokom, with 15 confidential *ex parte* annexes only available to the Registry and counsel for Mr Mokom, and two public annexes; public redacted versions of the submissions ([ICC-01/14-01/22-307-Red](#)) and two of the annexes notified on the same day) (hereinafter: ‘Mr Mokom’s Rule 185 Submissions’).

²⁵³ Mr Mokom’s Rule 185 Submissions, [ICC-01/14-01/22-307-Red](#), para. 26.

²⁵⁴ Mr Mokom’s Rule 185 Submissions, ICC-01/14-01/22-307-Conf-Exp, paras 28-32. *See also* Defence Request dated 23 October 2023, [ICC-01/14-01/22-278](#), paras 5-6.

²⁵⁵ Mr Mokom’s Rule 185 Submissions, ICC-01/14-01/22-307-Conf-Exp, paras 33-37.

²⁵⁶ Mr Mokom’s Rule 185 Submissions, [ICC-01/14-01/22-307-Red](#), para. 38.

²⁵⁷ Mr Mokom’s Rule 185 Submissions, [ICC-01/14-01/22-307-Red](#), paras 39-44.

²⁵⁸ 18 January 2024 Decision, [ICC-01/14-01/22-309-Red](#), paras 10-11.

²⁵⁹ 18 January 2024 Decision, [ICC-01/14-01/22-309-Red](#), para. 12.

²⁶⁰ 18 January 2024 Decision, [ICC-01/14-01/22-309-Red](#), para. 11.

²⁶¹ 18 January 2024 Decision, [ICC-01/14-01/22-309-Red](#), paras 10-11.

fall under the exclusive jurisdiction of the Host State’.²⁶² The Pre-Trial Chamber noted that Mr Mokom had ‘entered [the territory of the Host State] upon his transfer from Chad, [...] remained [there] during his detention in the ICC Detention Centre, and [...] [was] currently located [there] following his release’ and that ‘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 Host State’.²⁶³ Mr Mokom appealed this decision and requested that its effect be suspended pending the outcome of the appeal.²⁶⁴

109. On 8 February 2024, the Appeals Chamber granted Mr Mokom’s request for suspensive effect.²⁶⁵ [REDACTED] Mr Mokom [REDACTED] sought asylum in [REDACTED].²⁶⁶ On 13 February 2024, the Appeals Chamber terminated the appeal proceedings against the Pre-Trial Chamber’s 18 January 2024 Order.²⁶⁷

b) Submissions

110. Mr Mokom claims that he was subjected to unlawful detention within the meaning of article 85(1) of the Statute for 43 days after the proceedings against him were terminated, between 17 October and 28 November 2023.²⁶⁸ Mr Mokom alleges ‘administrative negligence’,²⁶⁹ asserting that the alleged ‘unlawful detention’ was the result of the Registry’s non-compliance with the 17 October 2023 Order.²⁷⁰ In particular, Mr Mokom alleges that the Registry ‘actively misrepresented the views of the Host State’ by failing to inform Mr Mokom of the Host State’s agreement to relax certain conditions of his stay at the hotel.²⁷¹ Mr Mokom submits that this conduct gave rise to the violation of his rights to

²⁶² 18 January 2024 Decision [ICC-01/14-01/22-309-Red](#), p. 10.

²⁶³ 18 January 2024 Decision, [ICC-01/14-01/22-309-Red](#), para. 19.

²⁶⁴ Notice of Appeal, [ICC-01/14-01/22-312-Red](#).

²⁶⁵ Decision on the request for suspensive effect and order concerning submissions on admissibility, 8 February 2024, [ICC-01/14-01/22-320](#) (reclassified public on 13 February 2024).

²⁶⁶ See annex to Corrected version of “Transmission of an Urgent Request [REDACTED]”, ICC-01/14-01/22-325-Conf-Exp-Corr, 14 February 2024, ICC-01/14-01/22-325-Conf-Exp-Anx (filing and annex confidential *ex parte*, originally available only to the Registry and reclassified to also be available to counsel for Mr Mokom on 14 June 2024), p. 2. See also Request, ICC-01/14-01/22-329-Conf, para. 37; ICC-01/14-01/22-329-Conf-AnxA, p. 3; Registry Observations, ICC-01/14-01/22-343-Conf-Exp, para. 57.

²⁶⁷ Decision on the discontinuance of the appeal, 13 February 2024, [ICC-01/14-01/22-323](#).

²⁶⁸ Request, ICC-01/14-01/22-329-Conf, paras 46-61; Mr Mokom’s Response to the Registry, ICC-01/14-01/22-344-Conf-Red, paras 2, 31, 46-53.

²⁶⁹ Request, [ICC-01/14-01/22-329-Red](#), p. 14.

²⁷⁰ Request, [ICC-01/14-01/22-329-Red](#), para. 52; Mr Mokom’s Response to the Registry, ICC-01/14-01/22-344-Conf-Exp, paras 12-14, 19-53, 65-66.

²⁷¹ Request, [ICC-01/14-01/22-329-Red](#), paras 51-52; Mr Mokom’s Response to the Registry, ICC-01/14-01/22-344-Conf-Red, paras 32-39, 65. Notably, that the Host State had agreed to certain relaxation of the restrictions on 23 October 2023 that Mr Mokom could [REDACTED] and on 26 October 2023 to Mr Mokom being allowed to [REDACTED] (Request, ICC-01/14-01/22-329-Conf, para. 51).

health and access to healthcare,²⁷² freedom of expression,²⁷³ freedom of religion,²⁷⁴ and also to moral damage on the basis of degrading treatment.²⁷⁵

111. In its Observations, the Registry provides a chronology of the events that took place during the period relevant to the Request.²⁷⁶ During the hearing, the Registry, *inter alia*, submitted that the ‘ICC bubble’ – which the Chamber understands to be a reference to the designation of hotel rooms as the premises of the ICC – ‘did not lead to the illegal detention of Mr Mokom’²⁷⁷ and that there is no reason for compensation to be granted in this case.²⁷⁸

112. The Registry acknowledges that the Pre-Trial Chamber reiterated to the Registry that Mr Mokom is a free person, that the Court had no legal basis to restrict his liberty in any way, and that he should be able to enjoy his rights as a free person.²⁷⁹ The Registry notes that the consistent position of the Host State has been that the latter had no legal obligation to accept Mr Mokom onto its territory, and that the absence of conditions/practical arrangements applicable to him would, in the view of the Host State, result in illegal entry or stay in the territory, [REDACTED].²⁸⁰ The Registry explains that the Host State requested Mr Mokom to abide by ‘practical arrangements’ pending his transfer to a third state,²⁸¹ and that Mr Mokom agreed to the restrictions.²⁸² The Registry also submits that Mr Mokom was ‘completely opposed’ to returning to CAR.²⁸³ The Registry states that it was mindful of both the 17 October 2023 Order and the position of the Host State, and sought to secure the least restrictive practical arrangements acceptable to the Host State for Mr Mokom.²⁸⁴ It argues that the practical arrangements were imposed by the Host State – not the Registry, and that the Registry was acting as a ‘channel of communication conveying the views between the two’.²⁸⁵

²⁷² Request, ICC-01/14-01/22-329-Conf, paras 55-57; Mr Mokom’s Response to the Registry, ICC-01/14-01/22-344-Conf-Exp, paras 54-57.

²⁷³ Request, ICC-01/14-01/22-329-Conf, para. 58.

²⁷⁴ Request, [ICC-01/14-01/22-329-Red](#), para. 59.

²⁷⁵ Request, ICC-01/14-01/22-329-Conf, paras 60-61.

²⁷⁶ Registry Observations, ICC-01/14-01/22-343-Conf-Exp, paras 12-57.

²⁷⁷ [ICC-01/14-01/22-T-009-Red2-ENG](#), p. 52.

²⁷⁸ [ICC-01/14-01/22-T-009-Red2-ENG](#), p. 57.

²⁷⁹ Registry Observations, [ICC-01/14-01/22-343-Red](#), para. 3.

²⁸⁰ Registry Observations, ICC-01/14-01/22-343-Conf-Red, paras 4, 25.

²⁸¹ Registry Observations, [ICC-01/14-01/22-343-Red](#), para. 9.

²⁸² ICC-01/14-01/22-T-009-CONF-ENG, p. 49. *See also* pp. 50, 53, 62-63.

²⁸³ ICC-01/14-01/22-T-009-CONF-ENG, p. 48.

²⁸⁴ Registry Observations, [ICC-01/14-01/22-343-Red](#), para. 7.

²⁸⁵ Registry Observations, [ICC-01/14-01/22-343-Red](#), para. 10.

c) Determination by the Chamber

113. The question before the Chamber is whether Mr Mokom was subjected to ‘unlawful detention’ within the meaning of article 85(1) of the Statute during the Hotel Stay Period (17 October 2023 to 28 November 2023). Following the Pre-Trial Chamber’s termination of the proceedings against Mr Mokom on 17 October 2023, the Arrest Warrant against him ceased to have effect and the Court no longer had any legal basis to detain Mr Mokom.²⁸⁶ Therefore, for the purposes of the present compensation claim, the sole question before the Chamber is whether Mr Mokom was ‘detained’ during the Hotel Stay Period.

114. In line with its obligation under article 21(3) of the Statute to apply and interpret article 85(1) of the Statute consistently with internationally recognised human rights, the Chamber draws on human rights jurisprudence to interpret the meaning of the term ‘detention’ in this context. Under international human rights law, the prohibition against unlawful detention arises in the context of the protection against the arbitrary deprivation of a person’s liberty.²⁸⁷ In order to determine whether an individual has been deprived of their liberty, the starting-point must be the person’s specific situation. The analysis must take into account a range of factors such as the type, duration, effects and manner of implementation of the measure in question.²⁸⁸ The subjective will of the person concerned is also an important consideration: a person who has validly consented to the confinement in question cannot be considered to have been deprived of their liberty.²⁸⁹

²⁸⁶ 17 October 2023 Order, [ICC-01/14-01/22-276](#), para. 9. *See also* article 61(10) of the Statute which provides that [a]ny warrant previously issued shall cease to have effect with respect to any charges [...] which have been withdrawn by the Prosecutor’.

²⁸⁷ *See* footnote 142 above.

²⁸⁸ *See* European Court of Human Rights (Grand Chamber), *Ilias and Ahmed v. Hungary*, Application no. 47287/15, Judgment, 21 November 2019, para. 212; European Court of Human Rights (Grand Chamber), *Z.A. and Others v. Russia*, Applications nos. 61411/15, 61420/15, 61427/15 and 3028/16, Judgment, 21 November 2019, para. 134.

²⁸⁹ *See* European Court of Human Rights (Third Section), *Storck v. Germany*, Application no. 61603/00, Judgment, 16 September 2005, para. 74; European Court of Human Rights (Grand Chamber), *Stanev v. Bulgaria*, Application no. 36760/06, Judgment, 17 January 2012, para. 117. The Chamber notes that in *N. v. Romania*, the European Court of Human Rights found that the applicant’s continued detention after the decision ordering his release was found to be arbitrary, even though the applicant had agreed to remain in detention until such time as the social services found an appropriate solution to his situation (European Court of Human Rights (Fourth Section), *N. v. Romania*, Application no. 59152/08, Judgment, 28 February 2018, paras 165-167). The Chamber finds this case distinguishable from the present scenario, noting that in that case, the applicant remained in a psychiatric hospital that he could not leave on his own volition and was in a particularly vulnerable situation as a person suffering from ‘mental disorders’ (paras 149, 164).

i. The legal framework applicable to persons released without conviction

115. The legal framework regarding persons released from the custody of the Court other than on completion of sentence²⁹⁰ (hereinafter: ‘Persons Released Without Conviction’) is set out in rule 185 of the Rules and article 48 of the Headquarters Agreement.

116. Specifically, rule 185 of the Rules provides that the Court must, as soon as possible, make ‘such arrangements as it considers appropriate for the transfer of the person, taking into account’ their views, to one of three categories of States: (i) a State which is obliged to receive the person; (ii) another State which agrees to receive them; or (iii) a State which has requested the person’s extradition with the consent of the original surrendering State.

117. The legal framework does not specify a deadline for the completion of the process under rule 185 of the Statute, other than an indication that the Court must make these arrangements ‘as soon as possible’. The Registry has noted that, in practice, ‘it takes time to identify a destination country, time for judicial cooperation and time to consult the Host [State]’, and that the time required varies depending on the complexity of the situation.²⁹¹

118. Rule 185 of the Rules does not set out any modalities regarding temporary stay in the Host State of Persons Released Without Conviction who are not otherwise legally entitled to be present on the territory of the Host State, nor is this question expressly addressed in the Headquarters Agreement. Neither the Headquarters Agreement nor the Court’s core legal texts oblige the Host State to issue a visa or otherwise accept such persons on its territory following their release from ICC custody after proceedings against them have been terminated.²⁹² The only explicit references in the Headquarters Agreement to arrangements for Persons Released Without Conviction appear in article 48(3) and article 51. Article 48(3) provides that in case of the release of a person by the Court without conviction, the provisions of article 44 of the Headquarters Agreement regarding transportation to the point of departure from the Host State apply *mutatis mutandis*. Article 44 of the Headquarters Agreement, in turn, provides in its paragraph 7 that the ‘Court and the [H]ost State shall, as

²⁹⁰ ‘Persons released without conviction’ is defined in article 48 of the Headquarters Agreement and rule 185 of the Rules as persons surrendered to the Court who are ‘released from the custody of the Court because the Court does not have jurisdiction, the case is inadmissible under article 17, paragraph 1(b), (c) or (d), of the Statute, the charges have not been confirmed under article 61 of the Statute, the person has been acquitted at trial or on appeal, or for any other reason’.

²⁹¹ [ICC-01/14-01/22-T-009-Red2-ENG](#), p. 46.

²⁹² The categories of persons in relation to whom such an obligation exists are set out explicitly in articles 17 to 29 of the Headquarters Agreement.

appropriate, make practical arrangements for the transport of persons in custody in accordance with this article'. Article 51 of the Headquarters Agreement provides that the Host State shall not exercise its jurisdiction or proceed with a request for assistance or extradition from another State with regard to Persons Released Without Conviction for any acts, omissions or convictions *prior to* the surrender, the transfer or the appearance before the Court except as provided for in the Statute and the Rules for a period of 15 consecutive days from the date of their release.

119. Mr Mokom submits that, following his release on 17 October 2023, 'he became one of those "Other persons required to be present at the seat of the Court"', for whom privileges, immunities and facilities are envisaged under article 29 of the Headquarters Agreement.²⁹³ For present purposes, the Chamber does not consider it necessary to take a position on the question of whether Persons Released Without Conviction could ever be considered as falling within the category of '[o]ther persons required to be present at the seat of the Court'. It suffices to note that individuals cannot be interpreted as automatically falling within article 29 of the Headquarters Agreement based on their circumstances alone. Rather, the Court must determine that the presence of such persons is required and issue a document certifying this requirement.²⁹⁴ In Mr Mokom's case, no such determination was made. Mr Mokom raises this argument for the first time in his response to the Registry's submissions for the purposes of this compensation claim.²⁹⁵ There is no record of this issue being discussed between the Court and the Host State or raised by Mr Mokom at the relevant time. The Chamber considers that the question of whether Mr Mokom should have been treated as a person required to be present at the seat of the Court should have been raised at the time

²⁹³ See Mr Mokom's Response to the Registry, [ICC-01/14-01/22-344-Red](#), paras 16-18. Article 29 of the Headquarters Agreement reads: 1. Other persons required to be present at the seat of the Court shall, to the extent necessary for their presence at the seat of the Court, be accorded the privileges, immunities and facilities provided for in article 27 of this Agreement, subject to production of the document referred to in paragraph 2 of this article. 2. Persons referred to in this article shall be provided by the Court with a document certifying that their presence is required at the seat of the Court and specifying a time period during which such presence is necessary. Such document shall be withdrawn prior to its expiry if their presence at the seat of the Court is no longer required. 3. The privileges, immunities and facilities referred to in paragraph 1 of this article shall cease to apply after fifteen consecutive days following the date on which the presence of such other person concerned is no longer required by the Court, provided that such other person had an opportunity to leave the host State during that period. 4. Persons referred to in this article who are nationals or permanent residents of the host State shall enjoy no privileges, immunities and facilities, except, to the extent necessary for their presence at the seat of the Court, immunity from legal process in respect of words spoken or written and all acts performed by them in the course of their presence at the seat of the Court. Such immunity shall continue to be accorded even after their presence at the seat of the Court is no longer required. 5. Persons referred to in this article shall not be subjected by the host State to any measures which may affect their presence before the Court.

²⁹⁴ Article 29(2) of the Headquarters Agreement.

²⁹⁵ Mr Mokom's Response to the Registry, [ICC-01/14-01/22-344-Red](#), paras 16-18.

when any dispute as to his status could have been resolved. This Chamber cannot *ex post facto* determine that Mr Mokom was a ‘person required to be present at the seat of the Court’, within the meaning of article 29 of the Headquarters Agreement, for the purposes of a compensation claim.

120. The Registry submitted during the hearing that the Court has the obligation to ensure that ‘[a] person who has been released must leave the Court legally, no matter what the destination location may be.’²⁹⁶ The Chamber notes that, indeed, the legal framework does not provide a basis to deprive a person awaiting transfer pursuant to rule 185 of the Rules of their liberty.²⁹⁷

121. Given that the Court has an obligation to release the person from the detention centre, and the Host State has no obligation to receive the person onto its territory, ‘practical arrangements’ [REDACTED].²⁹⁸ [REDACTED].

ii. Specific situation of Mr Mokom

122. Below, the Chamber considers the objective and subjective factors relevant to assessing whether Mr Mokom was subjected to ‘detention’ within the meaning of article 85(1) of the Statute.

a. Objective factors

123. In the present case, following the termination of proceedings against Mr Mokom, the Registry immediately initiated consultations under rule 185 of the Rules to make appropriate arrangements for Mr Mokom’s transfer – taking into account his views – to a State which was obliged or willing to receive him.

124. The CAR, being the State of Mr Mokom’s nationality, was obliged to receive him under rule 185 of the Rules. However, in October 2023, Mr Mokom had been convicted *in absentia* in the CAR and sentenced to life imprisonment with hard labour.²⁹⁹ Within an hour of the issuance of the 17 October 2023 Order, Mr Mokom communicated to the Registry that he did not wish to be transferred to the CAR and he consistently maintained this position

²⁹⁶ [ICC-01/14-01/22-T-009-Red2-ENG](#), p. 43.

²⁹⁷ See 21 November 2023 Order, [ICC-01/14-01/22-294-Red](#), para. 3.

²⁹⁸ Registry Report dated 2 November 2023, ICC-01/14-01/22-285-Conf-Corr-Red, para. 15.

²⁹⁹ Defence Request dated 23 October 2023, [ICC-01/14-01/22-278](#), paras 5-6.

thereafter.³⁰⁰ Later in the proceedings, Mr Mokom invoked the principle of non-refoulement based on his view that his return to CAR would entail risks including torture, inhumane treatment, arbitrary detention and possibly death.³⁰¹

125. The Chamber observes that, pursuant to the applicable legal framework, since no State agreed to receive Mr Mokom, the Court could have engaged the Host State to facilitate Mr Mokom's transfer to the CAR as the State obliged to receive him.³⁰² It would then have been for Mr Mokom to decide whether to make a claim for international protection with the authorities of the Host State, potentially invoking the principle of non-refoulement, and, per the jurisprudence of the Court, for the Host State 'to assess the extent of [its] obligations under the non-refoulement principle', as required.³⁰³

³⁰⁰ [ICC-01/14-01/22-343-AnxVIII-Red](#); Defence Request dated 23 October 2023, [ICC-01/14-01/22-278](#); Mr Mokom's Rule 185 Submissions, [ICC-01/14-01/22-307-Red](#).

³⁰¹ Mr Mokom's Rule 185 Submissions, [ICC-01/14-01/22-307-Red](#), paras 27, 42-44; Defence Request dated 23 October 2023, [ICC-01/14-01/22-278](#), paras 5-6.

³⁰² Regarding the extradition request communicated by the CAR authorities to the Court on 23 November 2023, as noted above, on 18 January 2024 the Pre-Trial Chamber noted that '[t]he Court is not vested with the power to extradite a free person, as is the case in respect of Mr Mokom, to a State' and decided that was 'not in a position to order Mr Mokom to return to the CAR pursuant to the extradition request submitted by the CAR authorities' (18 January 2024 Decision, [ICC-01/14-01/22-309-Red](#), paras 10-11).

³⁰³ Trial Chamber II, *The Prosecutor v. Germain Katanga and Ngudjolo Chui*, Decision on an *Amicus Curiae* application and on the '*Requête tendant à obtenir présentations des témoins DRC-D02-P-0350, DRC-D02-P-0236, DRC-D02-P-0228 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: 'as an international organisation with a legal personality, the Court cannot disregard the customary rule of *non-refoulement*. However, since it does not possess any territory, it is unable to implement the principle within its ordinary meaning, and hence is unlikely to maintain long-term jurisdiction over persons who are at risk of persecution or torture if they return to their country of origin. In the Chamber's view, only a State which possesses territory is actually able to apply the *non-refoulement* rule. Furthermore, the Court cannot employ the cooperation mechanisms provided for by the Statute in order to compel a State Party to receive onto its territory an individual invoking this rule. Moreover, it cannot prejudge, in lieu of the Host State, obligations placed on the latter under the *non-refoulement* principle. In this case, it is therefore incumbent upon the Dutch authorities, and them alone, to assess the extent of their obligations under the *non-refoulement* principle, should the need arise'; Appeals Chamber, *The Prosecutor v. Mathieu Ngudjolo Chui*, Order on the implementation of the cooperation agreement between the Court and the Democratic Republic of the Congo concluded pursuant article 93 (7) of the Statute, 20 January 2014, [ICC-01/04-02/12-158](#), para. 24: 'The right to apply for asylum and the principle of *non-refoulement*, as well as the right to an effective remedy are internationally recognised human rights. The Court, however, has no jurisdiction over the Detained Witnesses' asylum claims as they fall within the sole purview of The Netherlands. In this context, the Appeals Chamber notes that the Detained Witnesses' respective asylum claims are currently being considered by the competent Dutch administrative and judicial bodies. Further, the Appeals Chamber considers that the right to an effective remedy is also solely an obligation of The Netherlands vis-à-vis the Detained Witnesses, not of this Court. However, the Appeals Chamber must take note of the specific circumstances of this situation, particularly that the Detained Witnesses are in the physical custody of the Court in The Netherlands, which, in the Appeals Chamber's view, could impact upon the Detained Witnesses' internationally recognised human right to an effective remedy from The Netherlands in respect of their asylum claims. Thus, the Appeals Chamber considers that, in this specific situation, the Court should not frustrate The Netherlands' ability to give effect to the Detained Witnesses' human right to an effective remedy in respect of their asylum claims'.

126. Although the Pre-Trial Chamber had ordered Mr Mokom's immediate release from the ICC Detention Centre,³⁰⁴ the position of the Host State authorities was that, if Mr Mokom were to leave the premises of the Court, [REDACTED] as they did not regard him as having any lawful basis to be present on their territory.³⁰⁵ As stated above, to avoid [REDACTED], Mr Mokom could have made an application for international protection with the Host State authorities.

127. The Chamber observes that, in order to facilitate Mr Mokom's temporary stay in the Host State while the Court's consultations with States pursuant to rule 185 of the Rules were ongoing, practical arrangements were put in place. Mr Mokom stayed at a hotel, which the Host State designated as the 'premises of the Court'. The Chamber understands that it was this designation, with the attendant inviolability as per article 6 of the Headquarters Agreement, that allowed Mr Mokom, from the Host State's perspective, to remain on its territory lawfully, pending his transfer to another State.³⁰⁶ Importantly, these arrangements prevented the executive authorities of the Host State, by agreement, from exercising jurisdiction over Mr Mokom. The Court [REDACTED].³⁰⁷ As noted above, as part of these practical arrangements, the Host State required that certain restrictions be placed on Mr Mokom during the Hotel Stay Period (17 October 2023 to 28 November 2023), including that he could only leave his hotel room in limited circumstances.³⁰⁸ From 28 November 2023 Mr Mokom began to leave the hotel and was [REDACTED].³⁰⁹

128. [REDACTED].³¹⁰ [REDACTED].³¹¹ [REDACTED];³¹² [REDACTED].³¹³

b. Subjective factors

129. The Chamber notes that Mr Mokom was aware of the potential consequences of the executive authorities of the Host State exercising their jurisdiction over him. In correspondence with the Registry, his legal team noted that the practical arrangements

³⁰⁴ 17 October 2023 Order, [ICC-01/14-01/22-276](#), para. 9.

³⁰⁵ ICC-01/14-01/22-298-Conf-Exp-AnxI, p. 2; ICC-01/14-01/22-308-Conf-Exp-Anx.

³⁰⁶ See also Registry Observations, ICC-01/14-01/22-343-Conf-Red, para. 9.

³⁰⁷ ICC-01/14-01/22-T-009-CONF-ENG, p. 53.

³⁰⁸ See paragraph 77 above. [REDACTED].

³⁰⁹ ICC-01/14-01/22-T-009-CONF-ENG, p. 53; Mr Mokom's Response to the Registry, ICC-01/14-01/22-344-Conf-Red, para. 3.

³¹⁰ See paragraph 77 and footnote 176 and paragraph 85, footnote 190 above.

³¹¹ ICC-01/14-01/22-T-009-CONF-ENG, p. 63.

³¹² ICC-01/14-01/22-T-009-CONF-ENG, p. 63.

³¹³ ICC-01/14-01/22-T-009-CONF-ENG, pp. 63-64.

regarding Mr Mokom's hotel stay were 'pending [the Host State's] approval to receive him on its territory',³¹⁴ [REDACTED]³¹⁵ and spoke of the 'obvious repercussions' for Mr Mokom.³¹⁶ Even after the Pre-Trial Chamber issued its 21 November 2023 Order, which proposed lesser restrictions to Mr Mokom, he conditioned his acceptance on receipt of confirmation that the Host State had explicitly agreed to them.³¹⁷ The Chamber also notes that counsel for Mr Mokom stated that [REDACTED].³¹⁸ This is also demonstrated by the fact that Mr Mokom left the hotel and [REDACTED] and sought asylum [REDACTED] when the Court's residual jurisdiction over him ended pursuant to the Pre-Trial Chamber's 18 January 2024 Order [REDACTED].³¹⁹

130. The Chamber further notes that Mr Mokom had access to his ICC legal team throughout the process and [REDACTED].³²⁰ Mr Mokom's legal team reported, as early as 24 October 2023, that since learning of the 17 October 2023 Order, it had been urgently liaising with, *inter alia*, immigration lawyers, 'taking all reasonable and possible steps to secure a safe third state for Mr Mokom's relocation.'³²¹

131. From the outset, Mr Mokom had requested that he be afforded the possibility of making submissions before any transfer was ordered pursuant to rule 185 of the Rules, and the opportunity and time necessary to assess his options regarding the country to which he would be transferred.³²² The Chamber considers that Mr Mokom initially expressly consented to the restrictions in place during his hotel stay. He was notified on 17 October 2023 of the relevant restrictions³²³ and responded on the same day, acknowledging receipt.³²⁴ Significantly, on 26 October 2023, Mr Mokom requested the Pre-Trial Chamber to instruct the Registry to 'extend the current arrangements [meaning the First Practical Arrangements] [...] until Mr Mokom [could] be safely relocated to a receiving State'.³²⁵ Moreover, the Chamber notes that even after 28 November 2023 – the end date alleged in Mr Mokom's claim concerning alleged unlawful detention – a number of restrictions on his

³¹⁴ [ICC-01/14-01/22-343-AnxII-Red](#), p. 3.

³¹⁵ ICC-01/14-01/22-298-Conf-Exp-AnxVI.

³¹⁶ [ICC-01/14-01/22-343-AnxV-Red](#).

³¹⁷ ICC-01/14-01/22-343-Conf-Exp-AnxVII; ICC-01/14-01/22-298-Conf-Exp-AnxVI.

³¹⁸ Mr Mokom's Rule 185 Submissions, ICC-01/14-01/22-307-Conf-Exp, para. 51.

³¹⁹ Request, [ICC-01/14-01/22-329-Red](#), para. 37.

³²⁰ Defence Request dated 24 November 2023, ICC-01/14-01/22-297-Conf-Exp, para. 11.

³²¹ Defence Request dated 23 October 2023, [ICC-01/14-01/22-278](#), para. 3.

³²² Defence Request dated 23 October 2023, [ICC-01/14-01/22-278](#), para. 10.

³²³ Registry Observations, [ICC-01/14-01/22-343-Red](#), para. 17; ICC-01/14-01/22-343-Conf-Exp-AnxI.

³²⁴ ICC-01/14-01/22-343-Conf-Exp-AnxI.

³²⁵ Defence Request dated 26 October 2023, [ICC-01/14-01/22-279-Red](#), para. 14.

liberty continued to be in force, including a request to abide by a curfew. Mr Mokom expressly consented to and abided by those restrictions as well.³²⁶

132. During the Hotel Stay Period, Mr Mokom retained the option to avoid the restrictions applied to him by leaving the hotel, which would have had the effect of unilaterally putting an end to the practical arrangements. The Chamber notes that the position of the Court – that the latter did not have any legal basis to restrict Mr Mokom’s liberty – had been made clear at the outset in the 17 October 2023 Order. This was also specifically emphasised [REDACTED].³²⁷

133. Mr Mokom did not attempt to leave the hotel premises and his lawyers never petitioned the Pre-Trial Chamber or, to the Chamber’s knowledge, the courts of the Host State alleging that Mr Mokom’s liberty was being unlawfully restricted in any way. The Chamber is not persuaded by Mr Mokom’s submission that he was not ‘in a position to litigate anything because [he was] never provided with the full reasoning’ related to Mr Mokom’s alleged detention.³²⁸ If Mr Mokom considered that he was being unlawfully detained by the ICC, he could have raised the matter with the Pre-Trial Chamber or the courts of the Host State regardless of what information was available to him at the time.

134. The Chamber notes that from 31 October 2023, Mr Mokom began complaining about the scope of the restrictions in place during the Hotel Stay Period. Mr Mokom through his legal team complained that the restrictions in place were ‘tantamount to constructive detention’ and requested the Registry to seek less restrictive arrangements from the Host State authorities.³²⁹ In addition, the Chamber observes that, as noted by Mr Mokom, the Registry failed to inform Mr Mokom of certain relaxations of restrictions proposed by the Host State.³³⁰ This was notably in compliance with the Pre-Trial Chamber’s direction that Mr Mokom should not be presented with the required undertakings.³³¹ However, these issues do not change the Chamber’s view on the overall characterisation of Mr Mokom’s

³²⁶ Registry Observations, [ICC-01/14-01/22-343-Red](#), paras 43, 47; ICC-01/14-01/22-343-Conf-Exp-AnxVI.

³²⁷ ICC-01/14-01/22-298-Conf-Exp-AnxVI.

³²⁸ [ICC-01/14-01/22-T-009-Red2-ENG](#), p. 66; Mr Mokom’s Response to the Registry, ICC-01/14-01/22-344-Conf-Red, paras 37, 42.

³²⁹ ICC-01/14-01/22-343-Conf-Exp-AnxII. See also [ICC-01/14-01/22-343-AnxII-Red](#).

³³⁰ Request, [ICC-01/14-01/22-329-Red](#), paras 51-52; Mr Mokom’s Response to the Registry, ICC-01/14-01/22-344-Conf-Red, paras 32-39, 65. Notably, that the Host State had agreed to certain relaxation of the restrictions on 23 October 2023 that Mr Mokom could [REDACTED] and on 26 October 2023 to Mr Mokom being allowed to [REDACTED] (Request, ICC-01/14-01/22-329-Conf, para. 51).

³³¹ See paragraph 87 above.

situation. This is because, as explained above, Mr Mokom always retained the option to terminate the practical arrangements by leaving the hotel. His reluctance to subject himself to the authorities of the Host State does not transform his situation during the Hotel Stay Period into one of detention. His desire to avoid any negative consequences arising from his status in the Host State by remaining in the hotel reflected a preference rather than an obligation that was imposed on him.

iii. Allegations of Registry negligence

135. In respect of Mr Mokom's allegations about negligence on the part of the Registry, the Chamber observes that the Registry was active from the outset and persistently engaged with the Host State, including at the highest level, to find a solution for Mr Mokom's temporary stay and for the practical arrangements to be re-visited by the Host State and relaxed. The Registry regularly reported to the Pre-Trial Chamber about its activities in detail and provided Mr Mokom with assistance within its power. In its negotiations with the Host State, the Registry explicitly requested the [REDACTED].³³² The Registry also diligently consulted with various States on the issue of Mr Mokom's transfer under rule 185 of the Rules. The Chamber recognises the Registry's efforts for this purpose in the communications between the Registry and various States as well as those between the Registry and Mr Mokom's counsel.

136. Mr Mokom submits that the Registry commenced discussions with the Host State on a basis which presupposed that limits would be 'placed on specific rights and liberties', by conveying to the Host State information about [REDACTED].³³³ The Chamber has reviewed the relevant correspondence and clarifies that the conditions provided by the Registry to the Host State were practical arrangements [REDACTED].³³⁴

iv. Conclusion

137. In light of the objective and subjective factors outlined above, the Chamber does not consider that the restrictions on Mr Mokom's liberty of movement agreed as part of the practical arrangements amounted to a deprivation of liberty or 'detention' against his will.

³³² The Registry made this clear [REDACTED] (see ICC-01/14-01/22-277-Conf-Exp-AnxII; *contra* Mr Mokom's Response to the Registry, [ICC-01/14-01/22-344-Red](#), paras 43-45). [REDACTED] (see Registry Report dated 24 November 2023, ICC-01/14-01/22-298-Conf-Red, para. 22. See also Registry Observations, [ICC-01/14-01/22-343-Red](#), para. 7).

³³³ Mr Mokom's Response to the Registry, ICC-01/14-01/22-344-Conf-Red, para. 29.

³³⁴ See Registry's Report dated 26 October 2023, ICC-01/14-01/22-280-US-Exp, paras 17, 21.

In particular, the Chamber notes that the CAR was obliged to receive Mr Mokom following his release, but authorities there had sentenced him to life imprisonment with hard labour and Mr Mokom objected to being returned there. The Registry consulted with other States under rule 185 of the Rules to secure Mr Mokom's transfer, but it was unable to secure a third State to receive Mr Mokom in the short-term. For its part, the Host State authorities had made it clear that, if Mr Mokom were to leave the premises of the Court, [REDACTED] as they did not regard him as having any lawful basis to be present on their territory. Against this background, Mr Mokom accepted the practical arrangements, which allowed him to lawfully remain in the Host State while consultations were ongoing between the Registry and States Parties under rule 185 of the Rules. These arrangements safeguarded Mr Mokom from the Host State treating him as entering/residing on its territory illegally and [REDACTED]. The restrictions on movement applicable to Mr Mokom during the Hotel Stay Period only applied to him as a consequence of his voluntary decision to remain at the hotel and benefit from the practical arrangements. The option to leave the hotel and [REDACTED] – undesirable as it may have been for Mr Mokom – was always available.

138. In conclusion, the Chamber finds that Mr Mokom was not deprived of his liberty during the Hotel Stay Period and as such was not subjected to unlawful detention within the meaning of article 85(1) of the Statute. Mr Mokom's claim in this regard is accordingly rejected.

FOR THESE REASONS, THE CHAMBER HEREBY

REJECTS the Request.

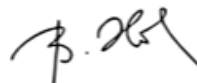
Done in both English and French, the English version being authoritative.



Judge Miatta Maria Samba, Presiding Judge



Judge Keebong Paek



Judge Beti Hohler

Dated 31 January 2025

At The Hague, The Netherlands