

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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

Date: 28 March 2025

THE APPEALS CHAMBER

Before: Judge Tomoko Akane
Judge Luz del Carmen Ibáñez Carranza
Judge Solomy Balungi Bossa
Judge Gocha Lordkipanidze
Judge Erdenebalsuren Damdin

SITUATION IN THE CENTRAL AFRICAN REPUBLIC II

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

Public Document

Public Redacted Version of "Appeal brief against the 'Decision on Mr Mokom's request for compensation'", ICC-01/14-01/22-358-Conf, 27 March 2025

Source: Defence for Mr Maxime Mokom

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I. INTRODUCTION

1. Following his release from the International Criminal Court ('ICC' or 'the Court') Detention Centre on 17 October 2023, Maxime Jeoffroy Eli Mokom Gawaka ('the Claimant') was placed in a hotel designated as premises of the Court pending his transfer to a state willing to receive him pursuant to Rule 185 of the Rules of Procedure and Evidence ('Rules').

2. The Claimant could not safely return to his State of citizenship, the Central African Republic ('CAR'), meaning that a safe third State accepting to receive him on its territory had to be identified pursuant to Rule 185 of the Rules.

3. The Claimant hereby files its appeal brief against the 'Decision on Mr Mokom's request for compensation' rendered by the Article 85 Chamber on 31 January 2025 ('Impugned Decision'),¹ for which leave to appeal was granted by the Article 85 Chamber ('Chamber') on 14 March 2025 pursuant to Article 82(1)(d) of the Rome Statute ('the Statute') on the following issue:

whether the Chamber erred in law in finding that Mr Mokom could choose to leave the hotel designated as the premises of the Court despite the Court's obligations enshrined in rule 185 of the Rules regarding the transfer of persons released from the custody of the Court' ('the Issue').²

4. The Claimant submits that (i) the Impugned Decision is properly subject to appeal under Article 82(1)(d) of the Statute; and (ii) the Article 85 Chamber erred in law in finding that the Claimant could choose to leave the hotel designated as the premises of the Court despite the Court's obligations enshrined in Rule 185 of the Rules regarding the transfer of persons released from the custody of the Court.

5. The Claimant submits that the Appeals Chamber should address the issue certified for appeal by reference to three errors of law; namely that the Chamber erred by:

- i) erroneously concluding that the Claimant could unilaterally leave the premises of the Court and put an end to the mandatory negotiations held between States and the

¹ Decision on Mr Mokom's request for compensation, 31 January 2025, ICC-01/14-01/22-354-Conf-Exp (only available to Mr Mokom and the Registry, confidential version, ICC-01/14-01/22-354-Conf, and public redacted version, [ICC-01/14-01/22-354-Red](#), filed the same day) ('Impugned Decision').

² Decision on Mr Mokom's Request for Leave to Appeal the 'Decision on Mr Mokom's request for compensation', 14 March 2025, [ICC-01/14-01/22-357](#) ('Leave to Appeal Decision'), para. 29.

Court in relation to the Claimant's transfer to a State accepting to receive him on its territory pursuant to Rule 185 of the Rules;

- ii) erroneously concluding that the absence of a legal basis under the Court's legal framework to restrict the Claimant's liberty following his release entitled the Claimant to render void the obligations of the Court laid out in Rule 185 through making an illegal entrance on the territory of the Host State;
- iii) erroneously failing to consider that the Claimant was not entitled to leave the premises of the Court without having been informed about the outcome of [REDACTED] following his release from ICC custody.

6. The Claimant was put in an impossible situation after his release from ICC custody. Illegally entering the territory of the Host State and violating the laws of The Netherlands is not an alternative to being illegally detained in a hotel. Had the Claimant left the hotel and ended his period of illegal detention, as the Pre-Trial Chamber suggests he could have, he would have faced immigration detention, and obliterated his chances of ever receiving a legal status in any State. He would have also faced potential deportation to CAR, despite the clear risks of persecution and threats to his life.

7. For this reason, the Chamber's finding that the Claimant could have simply acted illegally and taken his chances in The Netherlands fails entirely to consider the consequences of this illegality for the Claimant and his family, and the reality of his re-incarceration at the hands of the Host State. It also contravenes the basic tenets of humanity upon which the Court has been created.

II. CLASSIFICATION

8. Pursuant to Regulation 23*bis*(1) of the Regulations of the Court, the Claimant files this Appeal Brief confidential given that the Appeal Brief refers to confidential filings, correspondence and information. A public redacted version will be filed as soon as possible.

III. RELEVANT PROCEDURAL BACKGROUND

9. On 14 March 2022, the Claimant was surrendered to the custody of the Court and arrived at the Detention Centre.³

³ Transcript of Hearing, 22 March 2022, [ICC-01/14-01/22-T-001-Red-ENG](#), p. 1.

10. On 16 October 2023, the Office of the Prosecutor filed a ‘Notice of Withdrawal of the Charges against Maxime Jeoffroy Eli Mokom Gawaka’, pursuant to Article 61(4) of the Statute.⁴

11. On 17 October 2023, Pre-Trial Chamber II (‘the Pre-Trial Chamber’) terminated the proceedings against the Claimant, and instructed the Registry to “make all necessary arrangements for the transfer of Mr Mokom to a State which is obliged to receive him or to another State”. The Pre-Trial Chamber also found that it retained jurisdiction for residual matters (‘17 October Order’).⁵

12. On 18 October 2023, the Registry reported that, further to his release from the Detention Centre, the Claimant had been transferred to a hotel room designated as “premises of the Court” by the Host State.⁶

13. On 30 October 2023, the Pre-Trial Chamber warned the Registry in an *ex parte* email that the Claimant’s conditions of stay in the hotel amounted to house arrest and instructed the Registry to explain why the Registry had not, from the very start, ensured that the Claimant had unrestricted freedom of movement.⁷

14. On 21 November 2023, the Pre-Trial Chamber found the Claimant had been subjected to a regime that appears to amount to a form of house arrest following his release from the detention center and reiterated that the Claimant’s rights as a free person are not restricted in any way under the Court’s legal framework.⁸

15. On 22 November 2023, the Pre-Trial Chamber ordered the Claimant to provide his views under Rule 185(1) of the Rules regarding any matters in connection with his transfer to a State referred to in that provision by 30 November 2023.⁹

⁴ Notice of Withdrawal of the Charges against Maxime Jeoffroy Eli Mokom Gawaka, 16 October 2023, [ICC-01/14-01/22-275](#).

⁵ Order in relation to the Prosecution’s ‘Notice of Withdrawal of the Charges against Maxime Jeoffroy Eli Mokom Gawaka, 17 October 2023, [ICC-01/14-01/22-276](#) (‘Order of 17 October 2023’).

⁶ 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, paras 9–14.

⁷ Redacted version of “Corrected version of the “Registry’s Report pursuant to Pre-Trial Chamber II’s Instruction of 30 October 2023 and Request for Guidance”, 2 November, ICC-01/14-01/22-258-US-Exp”, 3 November 2023, ICC-01/14-01/22-285-Conf-Exp-Corr-Red, para. 1, fn. 1. *See also* Order regarding arrangements pending Mr Mokom’s transfer”, 21 November 2023, ICC-01/14-01/22-294-Conf (public redacted version notified on 11 April 2024: [ICC-01/14-01/22-294-Red](#)) (‘Order of 21 November 2023’), para. 3.

⁸ Order of 21 November 2023, [ICC-01/14-01/22-294-Red](#), para. 3.

⁹ Order to provide views under rule 185(1) of the Rules of Procedure and Evidence, 22 November 2023, [ICC-01/14-01/22-295](#).

16. On 23 November 2023, the Registry transmitted a letter from the CAR authorities, requesting the Prosecution's cooperation to facilitate the extradition of the Claimant based on an arrest warrant and an *in absentia* judgement issued against Mr Mokom by the CAR authorities in September 2023.¹⁰

17. On 27 November 2023, the Registry submitted a report on its efforts in transmitting the Defence's Requests for Assistance ('RFAs') to States to which the Claimant agreed to be transferred.¹¹

18. On 28 November 2023, the Pre-Trial Chamber extended the deadline for the Defence to file submissions pursuant to Rule 185 from 30 November 2023 to 8 December 2023.¹² This followed a Defence request for an extension of time, to allow the Claimant sufficient time to substantiate his views pursuant to Rule 185(1) of the Rules *inter alia* with responses to pending RFAs.¹³

19. On 8 December 2023, the Defence submitted the Claimant's views pursuant to Rule 185(1) of the Rules,¹⁴ submitting that the Claimant's life and fundamental rights would be undermined by his possible return to the CAR, and asking the Pre-Trial Chamber to deny the CAR's extradition request. The Defence also provided up-to-date information about the Defence's efforts to contact States for the Claimant's resettlement outside of the territory of the Host State.¹⁵

20. On 18 January 2024, the Pre-Trial Chamber instructed the Registry to liaise with each of the States to which the Claimant had agreed to be transferred, and report by 7 February 2024.¹⁶ The Pre-Trial Chamber found that should no State be identified by this date, its residual jurisdiction in the proceedings involving the Claimant and the procedure foreseen under Rule

¹⁰ Registry's Transmission of the letter of the authorities of the Central African Republic, 23 November 2023, ICC-01/14-01/22-296-Conf-Exp; 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-Conf-AnxI.

¹¹ 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 ('Registry Report of 27 November 2023').

¹² Decision on 'Defence Request for Variation of Time Limit', 28 November 2023, ICC-01/14-01/22-302-Conf-Exp.

¹³ Defence Request for Variation of Time Limit, 24 November 2023, ICC-01/14-01/22-297-Conf-Exp.

¹⁴ Mokom Defence Submissions pursuant to Rule 185(1), 8 December 2023, ICC-01/14-01/22-307-Conf-Exp (confidential *ex parte*, only available to the Registry and the Defence, together with annexes A, B, C, D, E, F, G, H, I, J, K, L, N, O, P, confidential *ex parte*, only available to the Registry and the Defence, and public annexes M and Q; public redacted versions of the submissions were made available on the same day: [ICC-01/14-01/22-307-Red](#) ('Defence Rule 185(1) Submissions').

¹⁵ Defence Rule 185(1) Submissions, ICC-01/14-01/22-307-Conf-Exp, paras 46–50.

¹⁶ Public Redacted Version of 'Decision pursuant to Rule 185 of the Rules of Procedure and Evidence', 18 January 2024, ICC-01/14-01/22-309-Conf (public redacted version: [ICC-01/14-01/22-309-Red](#)) ('Rule 185 Decision'), para. 17.

185 would come to an end.¹⁷ The Chamber also indicated that, following the conclusion of its residual jurisdiction, the Claimant would fall under the exclusive jurisdiction of the Host State.¹⁸ The termination of the Pre-Trial Chamber’s residual jurisdiction was also found to mean that the designation of the location where the Claimant was staying will no longer be regarded as “premises of the Court”.¹⁹

21. On 17 April 2024, the Claimant submitted a request for compensation pursuant to article 85 of the Statute (“Request for Compensation”) in which he requested *inter alia* compensation for the unlawful ‘*de facto* detention’ that he endured in the hotel for 43 days following his release.²⁰

22. On 23 April 2024, the Presidency constituted the Article 85 Chamber and referred the Request for Compensation to it.²¹ On 11 July 2024, the Chamber scheduled a hearing to take place on 9 September 2024 in relation to the Request for Compensation.²² On 9 September 2024, a hearing was held during which the Claimant’s Counsel, the Prosecution, and the Registry made submissions to the Chamber.²³

23. On 31 January 2025, the Chamber issued the Impugned Decision.²⁴ On 7 February 2025, the Claimant submitted a request for leave to appeal the Impugned Decision.²⁵ On 14 March 2025, the Chamber issued the Decision on Leave to Appeal.²⁶

IV. THE APPEAL IS ADMISSABLE UNDER ARTICLE 82(1)(d)

24. As a preliminary matter, the Claimant addresses the admissibility of the present appeal under Article 82(1)(d) of the Statute. While the Article 85 Chamber granted the Claimant leave to appeal the Issue under this *proviso*, it deferred the question of whether ‘decisions pursuant to article 85 fall within the ambit of article 82(1)(d) of the Statute’ to the Appeals Chamber, reasoning that this will ‘allow the Appeals Chamber to consider all relevant arguments and

¹⁷ Rule 185 Decision, [ICC-01/14-01/22-309-Red](#), para. 18.

¹⁸ Rule 185 Decision, [ICC-01/14-01/22-309-Red](#), para. 19.

¹⁹ Rule 185 Decision, [ICC-01/14-01/22-309-Red](#), paras 20–21.

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](#)) (‘Request for Compensation’), paras 46–61.

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), 23 April 2024, [ICC-01/14-01/22-330](#).

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

²³ Transcript of Hearing, 9 September 2024, [ICC-01/14-01/22-T-009-Red2- ENG](#).

²⁴ Impugned Decision, [ICC-01/14-01/22-354-Red](#).

²⁵ Request for Leave to Appeal the ‘Decision on Mr Mokom’s request for compensation’, 7 February 2025, [ICC-01/14-01/22-355](#).

²⁶ Leave to Appeal Decision, [ICC-01/14-01/22-357](#).

ultimately determine whether decisions under article 85 may or may not be appealed under article 82(1)(d)', a determination which it considered 'to be in the interest of legal certainty'.²⁷ The Claimant submits that decisions concerning the first limb of Article 85 claims fall within the scope of Article 82(1)(d), that this conclusion is supported by the jurisprudence of the Appeals Chamber, and that what the Article 85 Chamber characterises as divergent jurisprudence fails to take into account the binding authority of the Appeals Chamber's jurisprudence.

25. A decision is subject to appeal, pursuant to Article 82(1)(d) of the Statute, where it 'involves an issue that would significantly affect the fair and expeditious conduct of proceedings or the outcome of the trial, and for which ... an immediate resolution by the Appeals Chamber may materially advance the proceedings'. The Appeals Chamber has interpreted this basis for appeal as applying with respect to decisions of an interlocutory character which 'affect the fair and expeditious conduct of the proceedings or the outcome of the trial'.²⁸

A. The Two-Limb Procedure Applicable to Compensation Proceedings

26. The provisions of the Statute and the Rules governing compensation claims before the Court provide for a two-limb procedure for the adjudication of all requests for compensation, with a decision on the first of those two limbs—no matter which ground for compensation invoked by a claimant—constituting an interlocutory decision.

27. Rule 173(2) of the Rules supplements Article 85 of the Statute, providing that the decision on whether or not to award compensation is premised on a preceding decision establishing the existence of a particular ground for compensation in line with those specified in Article 85 of the Statute. Rule 173(2) provides as follows:

The request for compensation shall be submitted not later than six months from the date the person making the request was notified of the decision of the Court concerning:

- (a) The unlawfulness of the arrest or detention under article 85, paragraph 1;
- (b) The reversal of the conviction under article 85, paragraph 2;
- (c) The existence of a grave and manifest miscarriage of justice under article 85, paragraph 3.

28. In turn, Rule 174 of the Rules governs a subsequent decision on whether or not to award

²⁷ Leave to Appeal Decision, [ICC-01/14-01/22-357](#), para. 16.

²⁸ *Situation in the Democratic Republic of the Congo*, Judgement on the Prosecutor's Application for Extraordinary Review of Pre-Trial Chamber I's 31 March 2006 Decision Denying Leave to Appeal, 24 July 2006, [ICC-01/04-168](#) ('DRC Extraordinary Review Appeal Judgment'), paras. 13, 36; *Prosecutor v. Bemba et al.*, Judgment on Mr Mangenda's appeal against the "Decision on request for compensation for unlawful detention", 8 August 2016, [ICC-01/05-01/13-1964](#) ('Mangenda Compensation Appeal Judgment'), para. 15.

compensation to a claimant, with Rule 175 of the Rules further governing the amount of compensation awarded, if awarded. In the early jurisprudence of the Court, Trial Chambers found that, while a decision on the existence of a ground for compensation under Rule 173(2) had not been taken prior to the submission of a given compensation claim, a decision concerning the existence of a ground for compensation could be made by the chamber ‘in the interests of justice’.²⁹ The rendering of such a decision was considered necessary as, absent a first limb decision on the existence of grounds for compensation, a decision whether or not to be aware of compensation and, if so, in what amount, could not be taken.³⁰

29. Subsequent chambers found that this approach was not exceptional to be taken only in the interests of justice, but instead, one which comports to the procedural approach to compensation claims prescribed by the Statute and Rules. The Appeals Chamber held as follows in *Mangenda* confirmation proceedings, clearly providing that compensation proceedings involve two distinct decisions:

[C]ompensation proceedings under article 85 (1) of the Statute involve a two-step process that requires at least two distinct decisions. These decisions are the following: (i) a decision on the unlawfulness of the arrest or detention under article 85, paragraph 1 (rule 173 (2) (a) of the Rules); and (ii) a decision on the request for compensation (rule 174 (3) of the Rules of Procedure and Evidence (“Rules”).³¹

30. The Appeals Chamber’s above interpretation applies equally to all claims under any of the three grounds of compensation under Article 85 of the Statute and Rule 173(2) of the Rules. The two-fold approach, where a chamber first determines whether a ground for compensation has been established before, secondly, determines whether compensation should be awarded and, in the affirmative, in what amount, has since been affirmed in the *Bemba* and *Blé Goudé* compensation proceedings.³² This two limb procedure applicable to compensation claims is now firmly established in the Court’s jurisprudence.

B. A ‘First Limb’ Decision Denying Compensation is Interlocutory in Nature

31. It is trite that if a chamber finds the first limb to be unfulfilled—i.e., that no ground for compensation has been established—the proceedings are terminated, and no consideration of

²⁹ *Ngudjolo Chui* Compensation Decision, para. 16; *Mangenda* Compensation Decision, para. 20.

³⁰ *Ngudjolo Chui* Compensation Decision, paras 15–16; *Mangenda* Compensation Decision, paras. 18, 20.

³¹ *Mangenda* Compensation Appeal Judgment, [ICC-01/05-01/13-1964](#), para. 17.

³² *Prosecutor v. Bemba*, Decision on Mr Bemba’s claim for compensation and damages, 18 May 2020, [ICC-01/05-01/08-3694](#) (‘*Bemba* Compensation Decision’), para. 22; *Prosecutor v. Gbagbo and Blé Goudé*, Decision on Mr Blé Goudé’s request for compensation, 10 February 2022, [ICC-02/11-01/15-1427](#) (‘*Blé Goudé* Compensation Decision’), para. 23.

the second limb shall take place.³³

32. A primary distinction between decisions on the first limb and decisions on the second limb is that the former are decisions on questions of facts and/or law, i.e., whether the claimant has demonstrated that a ground for compensation specified under Article 85 and Rule 173(2) exists,³⁴ while the second falls to the discretion of the chamber.³⁵ An affirmative decision on the first limb in no way guarantees an affirmative decision on the second limb.³⁶

33. In *Mangenda*, the Appeals Chamber observed that ‘before making its final determination on whether or not to grant compensation under article 85 (1) of the Statute, the Chamber may need to take other decisions that could be considered to be interlocutory to the final outcome of such “stand alone” proceedings’.³⁷ The Appeals Chamber went on to consider ‘that the preliminary decision on the unlawfulness of the arrest or detention’, that is, the decision on the first limb of the procedure, ‘represents only the first decision in a two-step decision-making process and for that reason it may be considered to be an interlocutory decision within the meaning of article 82 (1) (d) of the Statute.’³⁸ Furthermore, the Appeals Chamber explicitly reasoned that a first limb decision remains interlocutory in nature ‘even if such a decision has ... the effect of denying the right to receive compensation and thereby brings the compensation proceedings to an end.’³⁹

34. This rationale applies *mutatis mutandis* to the first limbs of compensation claims under any of the grounds for compensation under Article 85.⁴⁰ The Appeals Chamber’s unambiguous holding clearly provides that a decision on the first limb of compensation proceedings constitutes an ‘interlocutory’ decision for the purposes of Article 82(1)(d) of the Statute.

³³ See *Bemba* Compensation Decision, [ICC-01/05-01/08-3694](#), para. 22 (‘second, and only in the event that the first question is answered in the affirmative, it shall determine whether compensation under article 85(3) of the Statute should be awarded and, in the affirmative, in what amount’ (emphasis added)); *Blé Goudé* Compensation Decision, [ICC-02/11-01/15-1427](#), para. 23 (‘If this is found to have been the case [in the first limb], the Chamber will, as a second step, consider whether it will exercise its discretion to award compensation’ (emphasis added)).

³⁴ *Bemba* Compensation Decision, [ICC-01/05-01/08-3694](#), para. 21; *Blé Goudé* Compensation Decision, [ICC-02/11-01/15-1427](#), paras 33–34; Impugned Decision, [ICC-01/14-01/22-354-Red](#), para. 33.

³⁵ *Bemba* Compensation Decision, [ICC-01/05-01/08-3694](#), para. 21; *Blé Goudé* Compensation Decision, [ICC-02/11-01/15-1427](#), para. 23; Impugned Decision, [ICC-01/14-01/22-354-Red](#), para. 32.

³⁶ See *Bemba* Compensation Decision, [ICC-01/05-01/08-3694](#), para. 40 (‘even upon fulfilment of all relevant requirements [of the first limb], the award of compensation [under the second limb] does not ensue as a right but is ultimately left to the discretion of the Court’); Impugned Decision, para. 32 (‘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’).

³⁷ *Mangenda* Compensation Appeal Judgment, [ICC-01/05-01/13-1964](#), para. 17.

³⁸ *Mangenda* Compensation Appeal Judgment, [ICC-01/05-01/13-1964](#), para. 17.

³⁹ *Mangenda* Compensation Appeal Judgment, [ICC-01/05-01/13-1964](#), para. 17.

⁴⁰ Leave to Appeal Decision, [ICC-01/14-01/22-357](#), para. 14.

C. A ‘First Limb’ Decision Denying Compensation Affects the Fair Conduct of Compensation Proceedings

35. A decision on the first limb of the compensation procedure is, furthermore, one which ‘affect[s] the fair and expeditious conduct of the proceedings or the outcome of the trial’.⁴¹ While compensation claims generally take place after trial proceedings have come to an end and constitute stand-alone proceedings, in *Mangenda*, the Appeals Chamber was ‘of the view that this does not justify depriving the parties of the possibility of appellate intervention throughout the conduct of such proceedings’.⁴² The Appeals Chamber thus clearly views the term ‘proceedings’ in the phrase ‘conduct of the proceedings’ as encompassing stand-alone or ancillary proceedings such as those concerning compensation requests under Article 85 of the Statute. Accordingly, a decision on the first limb falls within the scope of Article 82(1)(d) of the Statute insofar as it may affect the fair and expeditious conduct of *compensation* proceedings. A decision need not affect the fair and expeditious conduct of the entire proceedings against a claimant taken as a whole.

36. As discussed in the preceding subsection, a decision to deny a compensation claim based on the first limb effectively ends the compensation proceedings, which would otherwise advance to the second limb. If such a decision was decided incorrectly, it would significantly impact the fairness of the compensation proceedings, as it terminates them, preventing them from moving forward to the second limb, where the chamber would exercise its discretion to decide whether to award compensation and, if so, determine the amount.⁴³ If a decision on the first limb is decided incorrectly, that is, it is denied when it should have been decided in the affirmative, it precludes a claimant from recovering compensation where they may be entitled to do so, thus depriving them of the fair adjudication of their compensation claim.

D. The Immediate Resolution of Appeals of First Limb Compensation Decisions Materially Advances Compensation Proceedings

37. Article 82(1)(d) of the Statute applies to appeals concerning issues whose resolution by the Appeals Chamber would ‘materially advance the proceedings’. The same considerations apply with respect to this point of law as those discussed in the preceding subsection. If the Appeals Chamber finds that a decision denying compensation on the basis of a finding that the first limb was not satisfied was decided incorrectly, this would have the effect of remanding the matter

⁴¹ *DRC Extraordinary Review Appeal Judgment*, [ICC-01/04-168](#), paras 13, 36.

⁴² *Mangenda Compensation Appeal Judgment*, [ICC-01/05-01/13-1964](#), para. 16.

⁴³ See *Prosecutor v. Bemba et al.*, Decision on Defence request seeking leave to appeal the ‘Decision on request for compensation for unlawful detention’, 13 May 2016, [ICC-01/05-01/13-1893](#) (*‘Mangenda Leave to Appeal Decision’*), para. 21.

back to the Article 85 Chamber, which would then be left to decide whether or not to exercise its discretion to award compensation and, if so, in what amount. A negative decision on the first limb forscloses not only a procedural step, but a legally meaningful remedy. As appeal of compensation decisions does not lie as a right, a negative decision on the first limb, if wrongly decided, occasions irreparable prejudice to the Claimant's right to be compensated.

38. As a first limb decision terminates proceedings that would have moved proceedings to the consolidation of the second limb, any appeal concerning an issue that would render the first limb decision wrongly decided and thus result in the proceedings being advanced to the consideration of the second limb may be properly considered to concern an issue whose resolution by the Appeals Chamber would materially advance the compensation proceedings.

E. The Binding Force of the Appeals Chamber's Jurisprudence

39. The Appeals Chamber has held that while it 'has discretion to depart from its previous jurisprudence, it will not readily do so, given the need to ensure predictability of the law and the fairness of adjudication to foster public reliance on its decisions'.⁴⁴ The Appeals Chamber has, furthermore, observed that it will not depart from its previous decisions absent 'convincing reasons' to do so.⁴⁵

40. In *Mangenda*, the Appeals Chamber held that first limb decisions on compensation requests brought under Article 85(1) of the Statute concerning unlawful detention can be considered interlocutory in nature, even where it results in the termination of compensation proceedings; and that a such a decision may affect the 'fair and expeditious conduct of the proceedings' even in the context of compensation proceedings.⁴⁶ This rationale 'appl[ies] to appeals of all compensation decisions irrespective of which limb of article 85 is invoked.'⁴⁷

⁴⁴ *Prosecutor v. Gbagbo and Blé Goudé*, Reasons for the "Decision on the 'Request for the recognition of the right of victims authorized to participate in the case to automatically participate in any interlocutory appeal arising from the case and, in the alternative, application to participate in the interlocutory appeal against the ninth decision on Mr Gbagbo's detention (ICC-02/11-01/15-134-Red3)", 31 July 2015, [ICC-02/11-01/15-172](#) ('*Gbagbo and Blé Goudé* Victims Participation Appeal Decision'), para. 14. See also *Prosecutor v. Aleksovski*, Case No. IT-95-14/1-A, [Judgment](#), 24 March 2000, para. 113.

⁴⁵ *Prosecutor v. Bemba*, Reasons for the "Decision on the Participation of Victims in the Appeal against the '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'", 20 October 2009, [ICC-01/05-01/08-566](#), para. 16; *Gbagbo and Blé Goudé* Victims Participation Appeal Decision, [ICC-02/11-01/15-172](#), para. 14; *Prosecutor v. Said*, Judgment on the appeal of Mr Mahamat Said Abdel Kani against the decision of Trial Chamber VI entitled "Decision on the Defence Application for Interim Release of Mahamat Said Abdel Kani and Contact Restrictions", 19 May 2022, [ICC-01/14-01/21-318](#), para. 45.

⁴⁶ *Mangenda* Compensation Appeal Judgment, [ICC-01/05-01/13-1964](#), paras 16, 17.

⁴⁷ Leave to Appeal Decision, [ICC-01/14-01/22-357](#), para. 14.

41. The Article 85 Chamber opines that ‘there is currently divergent jurisprudence on the admissibility of appeals of compensation decisions under article 82(1)(d) of the Statute’, referring to the fact that Trial Chamber VI granted leave to appeal its compensation decision in *Mangenda* while Pre-Trial Chamber II rejected leave to appeal its compensation decision in *Bemba* based on conflicting reasonings as to whether decisions under Article 85 fall within the scope of Article 82(1)(d).⁴⁸ However, this assessment of a purported inconsistency in the Court’s jurisprudence neglects the fact that Trial Chamber VI’s decision granting leave to appeal in *Mangenda* was explicitly affirmed by the Appeals Chamber in the latter’s *de novo* consideration of the admissibility of the claimant’s appeal of the decision denying their compensation claim on the first limb.

42. While it is for the chamber that issued an impugned decision to determine whether the criteria of Article 82(1)(d) are fulfilled,⁴⁹ the Appeals Chamber retains the authority to determine whether an appeal for which leave was granted under Article 82(1)(d) properly falls within the scope of that provision and thus whether it is properly seized of the appeal.⁵⁰ The Appeals Chamber exercised this authority to consider *de novo* the admissibility of the appeal in *Mangenda*⁵¹ and thus upheld Trial Chamber VI’s decision that an appeal of a decision on the first limb of the compensation procedure to be admissible as an interlocutory appeal under Article 82(1)(d).⁵²

43. Pre-Trial Chamber II’s attempt in *Bemba* to distinguish *Mangenda* is unconvincing. It mischaracterises the purported centrality of human rights considerations under Article 21(3) of the Statute in the Appeals Chamber’s *ratio decidendi* on the admissibility of appeals of first limb compensation decisions under Article 82(1)(d).⁵³ While, in granting leave to appeal in *Mangenda*, Trial Chamber VI noted its discretion to broadly interpret the requirements of

⁴⁸ Leave to Appeal Decision, [ICC-01/14-01/22-357](#), para. 13. Compare *Mangenda* Leave to Appeal Decision, [ICC-01/05-01/13-1893](#), para. 21; with *Prosecutor v. Bemba*, Decision on the request for leave to appeal the ‘Decision on Mr Bemba’s claim for compensation and damages’, 1 October 2020, [ICC-01/05-01/08-3697](#) (‘*Bemba* Leave to Appeal Decision’), paras. 12–14.

⁴⁹ *Prosecutor v. Gbagbo and Blé Goudé*, Judgment on the appeal of Mr Laurent Gbagbo against the decision of Trial Chamber I entitled “Decision giving notice pursuant to Regulation 55(2) of the Regulations of the Court”, 18 December 2015, [ICC-02/11-01/15-369](#), para. 18.

⁵⁰ *Mangenda* Compensation Appeal Judgment, [ICC-01/05-01/13-1964](#), para. 13, referring to *Prosecutor v. Lubanga*, Decision on the admissibility of the appeals against Trial Chamber I’s “Decision establishing the principles and procedures to be applied to reparations” and directions on the further conduct of proceedings, 14 December 2012, [ICC-01/04-01/06-2953](#), paras 50, 63–64. See also *Prosecutor v. Lubanga*, Decision on the “Urgent Request for Directions” of the Kingdom of the Netherlands of 17 August 2011, 26 August 2011, [ICC-01/04-01/06-2799](#), para. 8.

⁵¹ *Mangenda* Compensation Appeal Judgment, [ICC-01/05-01/13-1964](#), para. 14.

⁵² *Mangenda* Compensation Appeal Judgment, [ICC-01/05-01/13-1964](#), paras. 17–18.

⁵³ See *Bemba* Leave to Appeal Decision, [ICC-01/05-01/08-3697](#), para. 14.

Article 82(1)(d) in matters involving human rights concerns in accordance with Article 21(3),⁵⁴ the Appeals Chamber itself never relied on such reasoning in considering the admissibility of the appeal *de novo*. Rather, the Appeals Chamber's approach is rooted in an ordinary interpretation of the relevant legal instruments governing compensation proceedings.

44. The decision of Pre-Trial Chamber II in *Bemba* cannot undermine the binding force of the Appeals Chamber's jurisprudence. The inconsistency of the *Bemba* Leave to Appeal Decision with the approach affirmed by the Appeals Chamber in *Mangenda* does not evidence a divergence or inconsistency within the Court's case law so much as it demonstrates that Pre-Trial Chamber II decided the issue before it in *Bemba* incorrectly without regard for the Appeals Chamber's jurisprudence.

45. The Prosecution's attempts to distinguish the *Mangenda* Appeal Decision are also unconvincing and, as noted by the Article 85 Chamber, based on an erroneous interpretation of the Appeals Chamber's reasoning.⁵⁵ Furthermore, neither the Prosecution nor the Article 85 Chamber have offered any convincing reasons to depart from the jurisprudence of the Appeals Chamber in *Mangenda* on the admissibility of appeals of decisions on the first limb of Article 85 within the scope of Article 82(1)(d).

F. Conclusion

46. On the basis of the foregoing submissions, the Claimant submits that decisions under the first limb of the applicable test denying compensation properly fall within the scope of appeals under Article 82(1)(d) of the Statute. The Claimant accordingly submits that his appeal of the Impugned Decision is admissible.

V. GROUNDS OF APPEAL

Ground 1: Whether the Chamber erred in law in finding that the Claimant was entitled to leave the premises of the Court in the absence of arrangements for his transfer, notwithstanding the language of Rule 185 of the Rules indicating an obligation of result that the Court identify a safe State for the purposes of the Claimant's transfer

47. The Chamber erred in law in finding that the Claimant was at liberty to leave the hotel designated as premises of the Court and enter the Host State's territory without a legal basis, in

⁵⁴ *Mangenda* Leave to Appeal Decision, [ICC-01/05-01/13-1893](#), para. 21, referring to *Prosecutor v. Bemba et al.*, Decision on the "Requête en appel de la défense de monsieur Aimé Kilolo Musamba contre la décision de la Chambre de première instance VII du 17 novembre 2015, 23 December 2015, [ICC-01/05-01/13-1533](#), para. 16.

⁵⁵ Leave to Appeal Decision, [ICC-01/14-01/22-357](#), para. 14.

light of the Court's obligations laid out in Rule 185 to make arrangements for the Claimant's transfer following his release. As such, the Impugned Decision reasoned that '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.'⁵⁶

48. Rule 185 of the Rules frames the Court's obligation to make arrangements for the transfer of a former suspect or accused in mandatory terms. Rule 185 places a positive obligation on the Court to make appropriate arrangements for the transfer of certain categories of released persons to "a State which is obliged to receive him or her, to another State which agrees to receive him or her, or to a State which has requested his or her extradition with the consent of the original surrendering State" ('Rule 185 process').

49. Rule 185 also provides that "the Court shall" make such arrangements for the transfer of the person. The use of the obligatory "shall" in Rule 185 indicates an obligation of result, not an obligation of means.

50. The Court's requirement to make arrangements for the transfer of the person is a corollary of the fact that the person has been brought to the territory of the Host State through the Court's actions and decisions. As such, the power of the Court to incarcerate individuals and deprive them of fundamental rights, gives rise to concomitant obligations as to their treatment following their release, such as arranging for their transfer to a safe state following their release from ICC custody.

51. Furthermore, Article 48 of the Headquarters Agreement between the ICC and the Host State mirrors the language of Rule 185, through recognising the Court's obligation to arrange for the transfer of the released person. Nothing in Article 48 of the Headquarters Agreement or in Court's legal framework in general requires the Host State to make arrangements for the person's transfer.

52. On 19 January 2024, the Ministry of Foreign Affairs of the Netherlands transmitted a *Note Verbale* to the Court in which the position of the Host State regarding the Court's obligations pursuant to Rule 185 ('*Note Verbale*') was made clear.⁵⁷ It stated that "it is the Court that has to make arrangements for the transfer of Mr Mokom to a third State following the termination

⁵⁶ Leave to Appeal Decision, [ICC-01/14-01/22-357](#), para. 29, referring to Impugned Decision, [ICC-01/14-01/22-354-Red](#), para. 132.

⁵⁷ Transmission of a Note Verbale dated 19 January 2024 received from the Host State, 22 January 2024, [ICC-01/14-01/22-311](#). The Note Verbale from the Host State was included as an annex: [ICC-01/14-01/22-311-Anx](#) ('Note Verbale').

of the proceedings against him. [...] the Ministry underlines that the Netherlands is under no obligation to allow Mr Mokom's entry and stay in the Netherlands [...] and reiterates the position that Mr Mokom remains and should remain solely under the jurisdiction and responsibility of the Court pending his transfer to a third State in line with article 48 of the Headquarters Agreement and Rule 185 of the Rules of Procedure and Evidence. The **obligation of the Court** to make arrangements for the transfer of Mr Mokom to a third State continues to exist after the termination of the proceedings against him."⁵⁸

53. The *Note Verbale* is publicly available and had been referred to by the Claimant in the Request for Compensation.⁵⁹ Whilst the Impugned Decision states that the Claimant had the "possibility to leave the premises of the Court in the context of the Rule 185 process", it failed to consider the position of the Host State on that matter. If the Claimant had left the hotel in the absence of agreement from the Host State, the obligations listed under Rule 185 and Article 48 would have been violated.

54. The Impugned Decision also ignores that the obligation of results of the Court enshrined in Rule 185 entails making arrangements for the transfer of the person "to another State which agrees to receive him".

55. Almost immediately after the charges were dropped, the Claimant and his Defence team had been actively engaging with States in relation to possible relocation by sending Requests for Assistance ('RFAs') through the Registry. [REDACTED]. [REDACTED].⁶⁰ If the Claimant had left the hotel, he would have annihilated the efforts taken by his Defence team and the Registry to secure his safe relocation to a third State, [REDACTED].

56. The Chamber thus erred in law by finding that the Claimant was in a position to leave the hotel designated as the premises of the Court, as such action would have overturned the mandatory Rule 185 process held between the Court, States and the Claimant in relation to his relocation pursuant to Rule 185 of the Rules. This finding should be overturned on appeal.

Ground 2: Whether the Chamber erred in law in finding that the absence of legal basis under the Court's legal framework to restrict the Claimant's liberty following

⁵⁸ Note Verbale, [ICC-01/14-01/22-311-Anx](#), pp. 2–3.

⁵⁹ Request for Compensation, [ICC-01/14-01/22-329-Red](#), fn. 45.

⁶⁰ Annex III to Registry's Report pursuant to Pre-Trial Chamber II's Instruction of 22 November 2023, 27 November 2023, ICC-01/14-01/22-299-Conf-AnxIII.

his release from ICC custody entitled the Claimant to put an end to the Rule 185 process through making an illegal entrance on the Host State's territory

57. The Impugned Decision found that the Claimant was free to leave the hotel based on the position of the Court laid out in the 17 October Order, according to which the Court did not have any legal basis to restrict the Claimant's liberty following his release from ICC custody.⁶¹

58. Whilst the 17 October Order stated that the Claimant was a free man,⁶² the Order did not entitle the Claimant to circumvent the Rule 185 process by illegally entering the Host State's territory outside of the premises of the Court. The 17 October Order had expressly acknowledged the mandatory requirements related to the completion of the Rule 185 process through stating that arrangements "will have to be made" for the Claimant's transfer to a State pursuant to Rule 185 and Article 48 of the Headquarters Agreement.⁶³

59. The reference in the Impugned Decision to the possibility for the Claimant to make an application for international protection with the Host State authorities is irrelevant, given that prior to making such application, the Claimant would have been required to illegally enter the Host State's territory in violation of the laws of the Host State.⁶⁴ The scope of the Claimant's liberty following his release was limited to what was permitted under both the Court's legal framework and the laws of the Host State. The Chamber thereby erred in finding that the Claimant retained the option to leave the hotel.

60. Moreover, the 17 October Order had instructed the Registry to ensure that the Claimant's conditions of stay did not in any way amount to a deprivation of liberty and that no restrictions were placed on his freedom of movement or his freedom of communication within the territory of the host State throughout the Rule 185 process.⁶⁵

61. Although the Host State had agreed to four sets of practical arrangements related to the Claimant's stay on its territory during the Hotel Stay Period,⁶⁶ the Claimant was only informed by the Registry about the Host State's consent to the First Practical Arrangements, according to which the Claimant agreed to remain in the hotel pending the conclusion of a [REDACTED].

⁶¹ Impugned Decision, [ICC-01/14-01/22-354-Red](#), para. 132.

⁶² Order of 17 October 2023, [ICC-01/14-01/22-276](#), para. 10.

⁶³ Order of 17 October 2023, [ICC-01/14-01/22-276](#), para. 10 and fn. 8.

⁶⁴ *Contra* Impugned Decision, [ICC-01/14-01/22-354-Red](#), paras. 125-126.

⁶⁵ Order of 17 October 2023, [ICC-01/14-01/22-276](#), para. 10.

⁶⁶ Impugned Decision, ICC-01/14-01/22-354-Conf-Exp, paras 77, 85, 86, 93; *See also* Registry's Submissions on the Defence Request for Compensation under Article 85 of the Rome Statute (ICC-01/14-01/22-329-Conf), 30 May 2024, ICC-01/14-01/22-338-Conf-Exp ('Registry Submission of 30 May 2024'), paras. 15, 26, 28 and 39.

As such, pending the outcome of [REDACTED], the Claimant was not entitled to leave the hotel [REDACTED].⁶⁷

62. The Claimant was never told by the Registry about the Second, Third or Fourth Practical Arrangements at the time that these were agreed with the Host State, despite the fact that they would have meant the gradual relaxations of the Claimant's conditions of stay on the Host State's territory.⁶⁸ The Host State informed the Registry about its consent for the implementation of these arrangements respectively on 23 October 2023, 26 October 2023 and 14 November 2023.⁶⁹ The Claimant was only informed on 30 November 2023 through the notifications of redacted versions of Registry reports.⁷⁰

63. Although the Impugned Decision had expressly acknowledged that the Registry had "failed to inform the Claimant of certain relaxations of restrictions proposed by the Host State",⁷¹ the Chamber erred in finding that this failure did not change "the Chamber's view on the overall characterisation of Mr Mokom's situation [...] because, [...], Mr Mokom always retained the option to terminate the practical arrangements by leaving the hotel."⁷²

64. This finding vitiates the 17 October Order as, contrary to the finding in the Impugned Decision, it was the Registry's failure to abide by the clear terms of the 17 October Order that transformed the Claimant's situation into one of unlawful detention, not the Claimant's decision not to breach the laws of the Host State.⁷³ As such, the Registry's failure to communicate the gradual relaxations of the conditions of stay, deprived the Claimant's of liberties that he was gradually entitled to legally exercise on the territory of the Host State throughout the Rule 185 process.

65. In addition, the Impugned Decision erroneously states that the Registry's failure to inform the Claimant of the relaxations agreed by the Host State was "in compliance with the Pre-Trial

⁶⁷ Impugned Decision, ICC-01/14-01/22-354-Conf-Exp, fn. 176.

⁶⁸ Impugned Decision, ICC-01/14-01/22-354-Conf-Exp, paras 85, 86, 93; *See also* Registry Submission of 30 May 2024, ICC-01/14-01/22-338-Conf-Exp, paras 26, 28, 39; Request for Compensation, ICC-01/14-01/22-329-Conf, para. 51.

⁶⁹ Impugned Decision, [ICC-01/14-01/22-354-Red](#), paras. 85, 86, 93.

⁷⁰ Registry's Report pursuant to Order ICC-01/14-01/22-294-Conf-Exp, 24 November 2023, ICC-01/14-01/22-298-Conf-Exp, para. 9; Redacted version of "Registry's Report pursuant to Pre-Trial Chamber II's Instruction of 25 October 2023", 26 October, ICC-01/14-01/22-280-US-Exp, 30 November 2023, ICC-01/14-01/22-280-Conf-Exp-Red2, para. 22; Redacted version of "Addendum to the 'Registry's Report pursuant to Pre-Trial Chamber II's Instruction of 25 October 2023'", ICC-01/14-01/22-280-US-Exp", 27 October 2023, ICC-01/14-01/22-281-Conf-Exp, 30 November 2023, ICC-01/14-01/22-281-Conf-Red, para. 16; *See also* Request for Compensation, ICC-01/14-01/22-329-Conf, para. 52.

⁷¹ Impugned Decision, [ICC-01/14-01/22-354-Red](#), para. 134.

⁷² Impugned Decision, [ICC-01/14-01/22-354-Red](#), para. 134.

⁷³ *Contra* Impugned Decision, [ICC-01/14-01/22-354-Red](#), para. 134.

Chamber's direction that Mr Mokom should not be presented with the required undertakings."⁷⁴ While the Pre-Trial Chamber had instructed the Registry in an email dated 30 October 2023 to refrain from presenting undertakings to the Claimant, this instruction did not prevent the Registry from fulfilling its function of the Court's channel of communications pursuant to Rule 13 of the Rules by informing the Claimant about the relaxations of the conditions of stay.

Ground 3: Whether the Chamber erred in law in finding that the Claimant was entitled to leave the premises of the Court without having been informed about the outcome of [REDACTED] during the Rule 185 process

66. The Chamber erred in law through stating the Claimant was in a position to leave the premises of the Court in light of the absence of information received by the Claimant about the conclusion of [REDACTED]. Following his release from ICC custody, the Claimant had to remain in the hotel [REDACTED] pending the conclusion of [REDACTED].⁷⁵

67. Whilst the Claimant's freedom to leave the hotel was dependent upon the outcome of [REDACTED], the Claimant and his legal team had neither been informed by the Registry [REDACTED] had concluded, nor were they provided with the said outcome. As such, the Impugned Decision erroneously states that the Claimant had been informed about the conclusion of [REDACTED], although the Claimant had explicitly submitted to the Chamber that he had never received such information.⁷⁶

68. The communication of information related to the [REDACTED] constitutes an essential criteria in light of the Court's obligations enshrined in Rule 185 of the Rules. The Claimant could not indeed assume that he would be safely relocated to a third State pursuant to Rule 185 of the Rules if he had no information about [REDACTED] pending the outcome of the Rule 185 process.

69. The Impugned Decision further considered that the request for the extension of the First Practical Arrangements made by the Claimant on 26 October 2023 displays the Claimant's consent to the First Practical Arrangements.⁷⁷ The Impugned Decision ignores that, in the absence of information related to the conclusion of [REDACTED], the only purpose of this request was to ensure the Claimant's safety during the consultations held with States pursuant

⁷⁴ Impugned Decision, [ICC-01/14-01/22-354-Red](#), para. 134, referring to para. 87.

⁷⁵ Impugned Decision, ICC-01/14-01/22-354-Conf-Exp, para. 77, fn. 176.

⁷⁶ *Contra* Impugned Decision, ICC-01/14-01/22-354-Conf-Exp, para. 92, fn. 15. *See also* Mr Mokom's Response to the Registry, ICC-01/14-01/22-344-Conf-Red, paras 40–42.

⁷⁷ Impugned Decision, [ICC-01/14-01/22-354-Red](#), paras 131–32.

to Rule 185. The Claimant had expressly stated that the extension of the initial arrangements was made to ensure the Claimant's presence "in a **safe location in the Netherlands**" which was "necessary for the conduct of these ongoing and urgent consultations [...] **to help facilitate Mr Mokom's safe relocation**."⁷⁸

70. Moreover, whilst the Impugned Decision acknowledges that the Second Practical Arrangements took into account the fact that [REDACTED] had been finalised⁷⁹ and stipulated that the Claimant was entitled to leave the hotel for compelling reasons,⁸⁰ the Chamber erroneously omitted to consider that the Registry's failure to inform the Claimant about the conclusion of [REDACTED] deprived the Claimant from legally exercising his liberty on the territory of the Host State during the Rule 185 process and thereby contributed to the Claimant's *de facto* unlawful detention in the hotel.

VI. CONCLUSION

71. In the Impugned Decision, through setting that the Claimant retained the option to leave the premises of the Court and subject himself to the authorities of the Host State, the Chamber makes an erroneous interpretation of the Court's obligations enshrined in Rule 185 of the Rules.

72. The legality of the Claimant's presence on the territory of the Host State was a corollary to the Court's obligations under Rule 185. In other words, the Court was not in a position to fulfil its obligations pursuant to Rule 185 if the Claimant had made an illegal entrance on the territory of the Host State.

73. The Impugned Decision also failed to acknowledge that the Registry's failure to communicate the gradual relaxations of the Claimant's conditions of stay on the territory of the Host State prevented the Claimant from assessing the degree of liberty which he was progressively entitled to enjoy on the territory of the Host State pending the conclusion of the Rule 185 process.

74. As such, the Chamber mischaracterised the Claimant's situation in the hotel in light of the Court's obligations under Rule 185 and failed to consider the violations of the Claimant's

⁷⁸ Public Redacted Version of "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, 26 October 2023, 18 December 2023, [ICC-01/14-01/22-279-Red](#), para. 13.

⁷⁹ Impugned Decision, ICC-01/14-01/22-354-Conf-Exp, fn. 191, referring 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, paras 13–14.

⁸⁰ Impugned Decision, ICC-01/14-01/22-354-Conf-Exp, fn. 190, referring to 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-Red, para. 26.

fundamental rights to, *inter alia*, health and access to healthcare, freedom of expression and freedom of religion as demonstrated in the Request for Compensation.⁸¹

75. It is undisputed that the Court is responsible for the Claimant's detention in ICC custody on the territory of the Host State. It cannot be the case that the Court is entitled to arrest suspects, ruin their reputation following an unjustified prosecution for grave crimes, and then present them with the alternatives of illegal detention, or illegal presence in The Netherlands and re-incarceration through immigration detention, destroying any chance of legal resettlement, and any prospect of their returning to the position they were in before their arrest.

76. Rule 185 constituted the only safeguard under the Court's legal framework that the Claimant could rely upon for a safe transfer to a third State accepting to receive him. The Claimant is a victim of the Court's failure to put in place an adequate system of relocation of released individuals. He must be compensated accordingly.

77. The Impugned Decision must therefore be overturned by the Appeals Chamber and remanded to the Article 85 Chamber for consideration of the amount of compensation to be awarded to the Claimant for his unlawful detention in the hotel pursuant to Article 85(1) of the Statute.

VII. RELIEF SOUGHT

FOR THESE REASONS, the Claimant requests that the Appeals Chamber:

GRANT the present appeal and **REVERSE** the Impugned Decision;

REMAND the issue to the Article 85 Chamber for determination of the Compensation to be awarded to the Claimant following his unlawful detention under Article 85(1) of the Statute

Respectfully submitted,

⁸¹ Request for Compensation, ICC-01/14-01/22-329-Conf, paras 55–61.



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Dated this 28 March 2025

At Montreal, Canada