

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: *English*

No.: ICC-01/14-01/22 OA5

Date: 12 May 2025

**THE APPEALS CHAMBER**

**Before:** Judge Solomy Balungi Bossa, Presiding  
Judge Luz del Carmen Ibáñez Carranza  
Judge Gocha Lordkipanidze  
Judge Erdenebalsuren Damdin  
Judge Nicolas Guillou

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC II**

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

**Public**

**Public redacted version of “Registry’s Observations on the “Appeal Brief against the ‘Decision on Mr Mokom’s request for compensation’”, 1 May, ICC-01/14-01/22-362-Conf**

**Source: Registry**

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☒ Counsel for the Claimant

☐ 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

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**Registrar**

Mr Osvaldo Zavala Giler

☒ Counsel Support Section

☐ Victims and Witnesses Unit

☐ Detention Section

☐ Victims Participation and  
Reparations Section

☒ Other  
Judicial Cooperation and Support Section

## I. Introduction

1. Pursuant to the “Order on the filing of submissions by the Registrar” issued by the Appeals Chamber on 8 April 2025,<sup>1</sup> the Registry hereby submits its observations in response to the “Appeal brief against the 'Decision on Mr Mokom’s request for compensation’” (“Appeal Brief”),<sup>2</sup> filed by Maxime Jeoffroy Eli Mokom Gawaka (“Claimant”).
2. At the outset, the Registry wishes to indicate that it will not address in its present submissions the Claimant’s submissions regarding the admissibility of his appeal under article 82(1)(d) of the Rome Statute (“Statute”) and will defer to the Appeals Chamber’s legal determination.
3. For the purposes of the present appeal proceedings in the specific context of article 85(1) of the Statute (*i.e.* issue of alleged unlawful detention), the present Registry’s submissions will mostly refer to the Registry’s previous submissions before the Article 85 Chamber on the Court’s obligations enshrined in rule 185 of the Rules of Procedure and Evidence (“Rule 185”) and focus on whether Mr Mokom could choose to leave the hotel designated as the premises of the Court pending his transfer to one of the states as specified under that rule.
4. Referring to its previous submissions as specified below, the Registry maintains that the status and situation of the Claimant pending his transfer in accordance with Rule 185 in no way could have amounted to an unlawful detention within the meaning of article 85(1) of the Statute.

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<sup>1</sup> The Appeals Chamber, “Order on the filing of submissions by the Registrar”, 8 April 2025, ICC-01/14-01/22-361.

<sup>2</sup> Claimant, “Appeal brief against the 'Decision on Mr Mokom’s request for compensation’”, 27 March 2025, ICC-01/14-01/22-358-Conf.

## II. Classification

5. In accordance with regulation 23*bis*(2) of the Regulations of the Court, the present report is classified as confidential to be in line with the classification of the information redacted from the public redacted version of the Appeal Brief and the abovementioned Registry's submissions.

## III. Applicable Law

6. The following provisions are of particular relevance for the purpose of the present observations: articles 82(1)(d) and 85(1) of the Statute, Rule 185 and articles 44 and 48 of the Headquarters Agreement between the International Criminal Court and the Host State ("HQA").

## IV. Submissions

7. The Registry submits its observations on the scope of the Issue on Appeal mainly referring to its previous submissions before the Article 85 Chamber and makes additional factual clarifications to further assist the Appeals Chamber, notably on the fact that Mr Mokom was able to leave the hotel which was designated as premises of the Court ("Premises of the Court").

### *Scope of the Issue on Appeal*

8. The Registry notes that the issue on appeal that has been certified by the Article 85 Chamber ("Issue on Appeal") is limited in scope, namely:  

"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."
9. As a preliminary remark, the Registry notes that, despite the clear issue certified on appeal, the Claimant has newly formulated three grounds in support of his

appeal ("Three Grounds").<sup>3</sup> For the purpose of the present submissions, the Registry will limit its observations on the Issue on Appeal. The Registry is of the view that the Three Grounds raise issues that have not been certified on appeal and thus fall outside of the scope of the present proceedings. In any event, the Registry does not consider that the Three Grounds have brought new facts or new legal arguments that would have been wrongly dealt with by the Article 85 Chamber.

10. With regard to the relevant points at issue on appeal, the Registry makes reference to and reiterates its previous comprehensive submissions during the proceedings before the Article 85 Chamber, including its submissions in the "Updated Registry's Submissions on the Defence Request for Compensation under Article 85 of the Rome Statute (ICC-01/14-01/22-329-Conf)" ("Registry's Updated Submission")<sup>4</sup> and during the hearing of 9 September 2024 ("Registry's Oral Submission")<sup>5</sup>. Such legal and factual submissions have been upheld by the Article 85 Chamber.

11. In particular, the Registry recalls the chronology provided in the Registry's Updated Report detailing all interactions it had with the Kingdom of the Netherlands ("host State") and the Counsel for the Claimant. In addition, the Registry draws the Appeals Chamber's attention to and maintains its observations

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<sup>3</sup> *Ibid.* The Claimant submitted three Grounds in support of his appeal, namely 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; 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 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; and 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 the [REDACTED] during the Rule 185 process.

<sup>4</sup> Registry, "Updated Registry's Submissions on the Defence Request for Compensation under Article 85 of the Rome Statute (ICC-01/14-01/22-329-Conf)", 13 June 2024, ICC-01/14-01/22-343-Conf-Exp.

<sup>5</sup> ICC-01/14-01/22-T-009-CONF-ENG.

on the Court's obligations under Rule 185 in relation to the arrangements for the transfer of a former suspect or accused as appropriate.<sup>6</sup> In this respect, the Registry underlines that the Article 85 Chamber clearly stated that the Registry did not commit any negligence making all efforts to "find a solution for Mr Mokom's temporary stay" and "diligently consulted with various States on the issue of Mr Mokom's transfer under rule 185 of the Rules".<sup>7</sup>

12. The Registry is of the view that the Three Grounds as framed by the Claimant have already been sufficiently responded to by the abovementioned Registry's submissions during the proceedings before the Article 85 Chamber. Therefore, the Registry limits its present submissions to the provision of additional facts and clarifications, in response to Grounds 1 and 2, in relation to the practical arrangements applied to the Claimant pending his transfer to a third country.

13. Under Ground 1, the Claimant submits that "[t]he 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 light of the Court's obligations laid out in Rule 185 to make arrangements for the Claimant's transfer following his release". In this regard, the Registry would like to reiterate that the restrictions on liberty alleged by the Claimant resulted from the practical arrangements requested by the host State to facilitate the stay of the Claimant on its territory prior to his transfer to a third state. As submitted in its previous submissions, the Registry did not put in place any measures to prevent the Claimant from leaving the Premises of the Court, as the Court has no legal title to restrict his liberty in any way.<sup>8</sup>

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<sup>6</sup> ICC-01/14-01/22-T-009-CONF-ENG, p. 42, line 3 to p. 57, line 16 and in particular ICC-01/14-01/22-T-009-Red2-ENG, p. 46, line 5 to p. 49, line 3 on the issue of the Court's obligations under Rule 185 referring to a "best efforts exercise".

<sup>7</sup> Article 85 Chamber, Decision on Mr Mokom's request for compensation, 31 January 2025, ICC-01/14-01/22-354-Red, para. 135.

<sup>8</sup> Pre-Trial Chamber II, "Order regarding arrangements pending Mr Mokom's transfer", 21 November 2023, ICC-01/14-01/22-294-Conf-Exp. Public redacted version was filed on 11 April 2024, ICC-01/14-

14. In ideal circumstances, the Registry would simply transfer the person referred to in Rule 185 to the state which is obliged to receive him or her or another state which agrees to receive that person. In the present case, due to the Claimant's refusal to return to the Central African Republic, which is the State obliged to receive him, and the time needed to identify a state which would agree to receive him, such a transfer was delayed.
15. The Registry understands that the host State considers having no statutory obligations under the Rome Statute or the "Headquarters Agreement between the International Criminal Court and the Host State" to either accept the Claimant's release on its territory or to permit his temporary stay on its territory pending his transfer to a third state.
16. In the present case, the Registry understands that, in the context of the application of article 48 of the HQA pending his transfer to a third state, the host State exercised its right as a sovereign state to apply its domestic legislation when determining the terms of the temporary stay of the Claimant on its territory, including the designation of "Premises of the Court" allowing his temporary stay in the host State's territory so he could be released from the ICC Detention Centre without any undue delay after acquittal. In other words, the terms of the temporary stay of the Claimant on the host State's territory, *i.e.* practical arrangements referred to in the Appeal Brief, were applied by the host State. The practical arrangements were determined by the host State due to a number of considerations as explained in the previous Registry submissions, including the ongoing [REDACTED]<sup>9</sup> and the fact that the Claimant had not formally entered

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

<sup>9</sup> Registry's Updated Report, para. 16.

the host State's territory and remained under the "jurisdiction" of the Court as requested by the host State.<sup>10</sup>

17. The fact that the Claimant agreed to – at least until 31 October 2023 - and did not contest the most stringent practical arrangements decided by the host State, which was also clearly stated by the Article 85 Chamber,<sup>11</sup> also demonstrates that such arrangements have been accepted by both the host State and the Claimant.

*Mr Mokom was able to freely leave the hotel*

18. Most importantly, the Registry would like to highlight the fact that the Claimant was able to leave and indeed [REDACTED], thus showing that he was neither deprived of liberty when staying in the Premises of the Court nor had any concern for "making an illegal entrance on the Host State's territory", as stated in Ground 2 of the Appeal Brief.

19. The Registry wishes to clarify the context in which the Claimant was able to freely leave the Premises of the Court. [REDACTED], Pre-Trial Chamber II responded to the Counsel's request by first referring to its Order, dated 21 November 2023, by which the Claimant was required to "inform, without requesting permission, the Registry regarding any travel outside the municipality The Hague 48 hours in advance of such travel".<sup>12</sup> Pre-Trial Chamber II further stressed that [REDACTED].<sup>13</sup>

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<sup>10</sup> *Ibid*, para. 25.

<sup>11</sup> Article 85 Chamber, "Decision on Mr Mokom's request for compensation", 31 January 2025, ICC-01/14-01/22-354-Red, paras. 131, 133 and 134.

<sup>12</sup> Pre-Trial Chamber II, "Order Regarding Arrangements pending Mr Mokom's transfer" dated 21 November 2023, ICC-01/14-01/22-294-Conf-Exp; classified as "Confidential, *ex parte*, only available to the Registry and the Defence" pursuant to an instruction of Pre-Trial Chamber II dated 11 December 2023.

<sup>13</sup> Email communicated by Pre-Trial Chamber II to the Registry, with the Counsel of the Claimant in copy, on 15 December at 15:43.

20. It should be noted that in no communications either to Pre-Trial Chamber II or to the Registry, the Claimant has expressed any concerns regarding an alleged “breach of the practical arrangement” by leaving the municipality of The Hague without being accompanied by an ICC Staff member at all times when outside the Premises of the Court. Although, as per Pre-Trial Chamber II’s instruction, the Registry informed [REDACTED]. Contrary to what is submitted in the Appeal Brief,<sup>14</sup> the Claimant did not show any concern at the time of his travel about illegally entering the host State’s territory in violation of the laws of the host State. [REDACTED],<sup>15</sup> [REDACTED].

*Additional observations*

21. Lastly, in relation to the [REDACTED] referred to in the Appeal Brief under Ground 3, the Registry would like to take this opportunity to clarify that, following Pre-Trial Chamber II’s instructions,<sup>16</sup> it indeed requested the host State to share the [REDACTED]. [REDACTED].<sup>17</sup>

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<sup>14</sup> Claimant, “Appeal brief against the ‘Decision on Mr Mokom’s request for compensation’”, 27 March 2025, ICC-01/14-01/22-358-Conf, paras. 58 and 59.

<sup>15</sup> ICC-01/14-01/22-T-009-CONF-ENG, p. 57.

<sup>16</sup> Registry, “Corrected version of the “Registry’s Report pursuant to Pre-Trial Chamber II’s Instruction of 30 October 2023 and Request for Guidance”, 2 November, ICC-01/14-01/22-285-US-Exp”, 3 November 2024.2023, ICC-01/14-01/22-285-Conf-Exp-Corr-Red, para. 1 and accompanying footnote; Email from the Chamber to the Registry dated 30 October 2023, at 13:10.

<sup>17</sup> Registry’s Updated Report, para. 37.

22. In conclusion, in view of the foregoing, the Registry maintains that the Claimant could neither be considered as detained nor a “victim” of an “unlawful detention” under article 85(1) of the Statute in the specific time period of the Claimant’s stay on the Dutch territory, pending his transfer in accordance with Rule 185.

A handwritten signature in dark ink, appearing to read 'Dubuisson', with a long horizontal stroke extending to the right.

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

Dated this 12 May 2025

At The Hague, The Netherlands