

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **23/04/2024**

THE PRESIDENCY

Before: Judge Tomoko Akane, President
Judge Rosario Salvatore Aitala, First Vice-President
Judge Reine Alapini-Gansou, Second Vice-President

SITUATION IN THE CENTRAL AFRICAN REPUBLIC II

THE PROSECUTOR V. MAXIME JEOFFROY ELI MOKOM GAWAKA

Public

Public Redacted Version of “Request for Compensation under Article 85 of the Rome Statute”, ICC-01/14-01/22-329-Conf, 17 April 2024

Source: Philippe Larochelle, Counsel for Mr. Mokom

Document to be notified in accordance with regulation 31 of the *Regulations of the Court***to:****The Office of the Prosecutor**

Karim A. A. Khan KC
 Mame Mandiaye Niang
 Leonie von Braun

Counsel for the Defence

Philippe Larochelle
 Sheila Paylan
 Cécile Lecolle
 Julien Maton
 Camille Divet

Legal Representatives of the Victims**Legal Representatives of the Applicant****Unrepresented Victims****Unrepresented
(Participation/Reparation)****Applicants****The Office of Public Counsel for Victims****The Office of Public Counsel for the
Defence****States' Representatives****Amicus Curiae****REGISTRY****Registrar**

Oswaldo Zavala Giler

Counsel Support Section**Deputy Registrar****Victims and Witnesses Unit****Detention Section****Victims Participation and Reparations
Section Other**

I. INTRODUCTION

1. On 10 December 2018, Pre-Trial Chamber II of the International Criminal Court (hereinafter “the Court” or “ICC”) issued a warrant of arrest against Maxime Jeoffroy Eli Mokom Gawaka.¹ Mr. Mokom was arrested on 27 February 2022 and surrendered to the Court by authorities of the Republic of Chad on 14 March 2022.² His initial appearance took place before the Pre-Trial Chamber in The Hague a week later on 22 March 2022, at which time the date of the hearing for the confirmation of the charges against him was set to 31 January 2023.³ Due to delays in establishing Mr. Mokom’s legal representation, details of which are elaborated below,⁴ the confirmation of charges hearing was eventually held from 22 to 24 August 2023.⁵ Meanwhile, the Prosecution filed its Document Containing the Charges on 9 March 2023, nearly a full year after Mr. Mokom’s initial appearance.⁶

2. Seven months later, on 16 October 2023, the Prosecution withdrew all charges against Mr. Mokom, claiming “changed circumstances in the state of the evidence” in that “several critical witnesses are unavailable to testify”, but providing no further details.⁷ The following day on 17 October 2023, the Pre-Trial Chamber, noting that the reasons for withdrawal provided by the Prosecution were “limited and lack additional information in support”, terminated the proceedings against Mr. Mokom with immediate effect and ordered the Registry to complete a series of related implementing actions,⁸ which, as elaborated below,⁹ the Registry failed to properly execute.

3. By 17 October 2023, it was therefore confirmed that the Prosecution, from the very start, never had a prosecutable case against Mr. Mokom. Regardless, the Prosecution had Mr.

¹ A public redacted version was issued on 22 March 2022, see: Pre-Trial Chamber II: Public Redacted Version of ‘Warrant of Arrest for Maxime Jeoffroy Eli Mokom Gawaka’ (ICC-01/14-01/22-2-US-Exp), [ICC-01/14-01/22-2-Red2](#).

² Transcript of Hearing (Initial Appearance), 22 March 2022, ICC-01/14-01/22-T-001-RED-ENG, p.1.

³ *Ibid.* p.11.

⁴ See *infra*, section 2 “Judicial Negligence”.

⁵ Transcript of hearing, 22 August 2023 (ICC-01/14-01/22-T-006-Red-ENG and ICC-01/14-01/22-T-006-Red-FRA), Transcript of hearing, 23 August 2023 (ICC-01/14-01/22-T-007-Red-ENG and ICC-01/14-01/22-T-007-Red-FRA); Transcript of hearing, 24 August 2023 (ICC-01/14-01/22-T-008-Red-ENG and ICC-01/14-01/22-T-008-Red-FRA).

⁶ See Prosecution’s Submission of the Document Containing the Charges, [ICC-01/14-01/22-174](#), 9 March 2023, and its associated Annexes A, B, C1, C2 and D.

⁷ Notice of Withdrawal of the Charges against Maxime Jeoffroy Eli Mokom Gawaka, 16 October 2023, [ICC-01/14-01/22-275](#).

⁸ Order in Relation to the Prosecution’s ‘Notice of Withdrawal of the Charges against Maxime Jeoffroy Eli Mokom Gawaka, 17 October 2023, [ICC-01/14-01/22-276](#), paras. 8-12.

⁹ See *infra*, Section 3.b “Mr. Mokom’s release and re-detention”.

Mokom arrested on insufficient evidence, which it then tried for more than a year and a half to supplement. Ultimately, it was unable to do so. Mr. Mokom spent 19 months and 20 days in detention, between his arrest in Chad on 27 February 2022, and the termination of the proceedings. He was then detained for nearly four more months while the Registry and Appeals Chamber mishandled the matter of his transfer and release.

4. Mr. Mokom's treatment while under the Court's jurisdiction amounts to a grave and manifest miscarriage of justice. The failings, mismanagement, and negligence by different actors and sections of the Court, as detailed below, can lead to no other conclusion. It is not an exaggeration to submit that the Court has left Mr. Mokom literally on the street to fend for himself. Today, he is an asylum seeker, with no legal status, no means of sustaining himself, and no realistic prospect of returning to the position he was in before his arrest. His status as a former ICC suspect has not only destroyed his reputation, and [REDACTED], but has also imposed seemingly insurmountable legal and administrative barriers to any prospect of a future dignified life. Mr. Mokom [REDACTED], and was denied medical care during the time he was unlawfully detained in The Hague following his release from the ICC Detention Unit. Mr. Mokom remains indigent, separated from his family, and in a position of extreme uncertainty, [REDACTED], confusion, and distress.

5. The manner in which the Court washed its hands of Mr. Mokom, despite being responsible for the position in which he finds himself, is incompatible with the basic tenets of humanity which were said to underpin the creation of the Court itself. The details of his claim set out below, demonstrate that the threshold for compensation under Article 85 of the Statute has been met.

6. On 25 March 2024, Mr. Mokom wrote to the Prosecutor and the Registrar, explaining his current situation. He proposed that, rather than seek compensation from the Court, a confidential and final settlement could be reached whereby he would be given a monthly allowance of 5000 Euros, for a duration of 60 months. This monthly sum would have allowed him to pay for the necessities of life, primarily accommodation and food, while he attempted to get back on his feet, regularise his legal status and – if possible – reunite with his wife and children.¹⁰ In exchange, Mr. Mokom offered to sign a comprehensive release for any future claims against the Court, whether before the ICC, or before domestic or regional courts or

¹⁰ Annex A.

human rights mechanisms, and to forever stay silent about his reality of having been an ICC suspect, and where it had left him. On 5 April 2024, the ICC Registrar and ICC Prosecutor replied in nearly identical terms with a summary refusal to entertain the possibility of such a settlement.¹¹ Mr. Mokom accordingly brings the current claim for compensation, to seek full compensation for the harm and damage caused to him.

II. LEVEL OF CONFIDENTIALITY

7. Pursuant to Regulation 23*bis*(1) of the Regulations of the Court, the Defence files these submissions as confidential, since they refer to confidential documents and information. A public redacted version will be filed.

III. ADMISSIBILITY

8. In the order terminating the proceedings against Mr. Mokom on 17 October 2023, the Pre-Trial Chamber noted that the justification offered by the Prosecution for withdrawing the charges was “limited and without additional support”, thereby accepting the Prosecution’s admission that it had no prosecutable case against Mr. Mokom.¹² This order accordingly constitutes the relevant decision of the Court concerning: (1) the unlawfulness of Mr. Mokom’s arrest and detention under Article 85(1) of the Rome Statute;¹³ and (2) the existence of a grave and manifest miscarriage of justice under Article 85(3) of the Rome Statute.¹⁴ The present request for compensation is therefore submitted within the 6-month time limit prescribed at Rule 173 of the Rules of Procedure and Evidence (‘RPE’).

IV. SUBMISSIONS

1. Prosecutorial Negligence

a. Unlawful arrest and detention

9. Article 85(3) of the Rome Statute states that:

3. In 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

¹¹ Annex B.

¹² Order in relation to the Prosecution’s ‘Notice of Withdrawal of the Charges against Maxime Jeoffroy Eli Mokom Gawaka’, 17 October 2023, [ICC-01/14-01/22-276](#), para.8.

¹³ See also Rule 173(2)(a) of the Rules of Procedure and Evidence .

¹⁴ See also Rule 173(2)(c) of the Rules of Procedure and Evidence.

been released from detention following a final decision of acquittal or a termination of the proceedings for that reason.

11. Mr. Mokom's circumstances are exceptional. He was arrested on 27 February 2022, on the basis of a warrant of arrest dated 10 December 2018, alleging his responsibility for war crimes and crimes against humanity committed in the Central African Republic. Mr. Mokom's warrant of arrest was supported by evidence that was later found to be insufficient to support any of the charges therein. This led to the withdrawal of charges by the Prosecution, on 16 October 2023; that is, after the confirmation hearings, and before the Pre-Trial Chamber issued a confirmation decision.

12. This could have all been avoided. Within weeks of the appointment of Me. Larochelle as Mr. Mokom's Lead Counsel, the Defence wrote to the Senior Prosecution Trial Attorney who was then responsible for the case, Mr. Kweku Vanderpuye, to alert him to the volume of exculpatory evidence which the Prosecution had failed to identify as such in the case record. **Annex C** includes a selection of correspondence between the Defence and Mr. Vanderpuye, in April and May of 2023, showing Mr. Vanderpuye's repeated refusal to acknowledge the existence of this exculpatory evidence.¹⁵

13. As such, as late as 3 May 2023, the Prosecution team responsible for Mr. Mokom's case, under the direction of Mr. Vanderpuye, either had a complete misapprehension of its own case, or was wilfully or recklessly refusing to acknowledge the vast amounts of exculpatory evidence contained in Mr. Mokom's case record.

14. It took the intervention of the Pre-Trial Chamber, upon a Defence Request,¹⁶ by its decision of 5 June 2023,¹⁷ and a new Senior Prosecution Trial Attorney, before the Prosecution acknowledged, identified, and communicated the exculpatory evidence contained in Mr. Mokom's casefile to the Defence. Following the Pre-Trial Chamber's intervention, the Prosecution disclosed **406 additional exculpatory items**, bringing the total amount of exculpatory material to 425 items. While it is understandable that, during the Prosecution's preparation for a confirmation hearing, it identifies and discloses additional items of exculpatory material, the figures in Mr. Mokom's case are so extreme, as to indicate that the

¹⁵ [ICC-01/14-01/22-198-Conf-AnxA](#).

¹⁶ Mokom Defence Request for Disclosure, 4 May 2023, [ICC-01/14-01/22-198-Conf](#). A PRV was filed on 28 June 2023.

¹⁷ Decision on the Defence's requests for disclosure and rectification of disclosure metadata, 5 June 2023, [ICC-01/14-01/22-219-Conf](#). A PRV was filed on 3 July 2023.

Prosecution had been wilfully or negligently blind about the reality of its casefile, to Mr. Mokom's detriment.

15. Perhaps most telling, when looking at this additional exculpatory evidence, are the dates on which it came into the Prosecution's possession. **Annex D** contains a table identifying examples of the exculpatory evidence in Mr. Mokom's case record, and the dates on which this evidence came into the Prosecution's possession. This table indicates that much of the exculpatory evidence was known to the Prosecution **before** Mr. Mokom was arrested in March 2022.

16. Out of the 425 documents containing exculpatory evidence highlighted by the Prosecution following the Pre-Trial Chamber's order,¹⁸ 208 were already in the possession of the Prosecution **before the 2018 warrant of arrest** against Mr. Mokom. 390 of these documents were in the possession of the Prosecution **before his arrest in 2022**. Prior to the confirmation of charges hearing, the Defence then demonstrated that a large volume of *additional* exculpatory evidence, not designated as such by the Prosecution, was also present in the casefile, despite not having time to perform an exhaustive review before the confirmation hearing. Regardless, this was the job of the Prosecution. The (incomplete) communication of exculpatory material in June 2023 (when the confirmation hearing was scheduled between 22 and 24 August 2023), and only after the intervention of the Pre-Trial Chamber, was incompatible with the Prosecution's obligations of disclosure and diligence.

17. Importantly, it was only on 9 June 2023 that the Prosecution first conceded that material previously disclosed and relied upon as incriminating, was in fact inconsistent or tended to undermine its own case, through the reclassification of material by way of a metadata update. Egregiously, this included 31 documents **cited in the footnotes of the arrest warrant**.¹⁹

18. To give a concrete example, the warrant of arrest issued in December 2018 contained the following allegation in para. 16:

[Mr] Mokom's responsibilities included: [...] instructing Anti-Balaka groups as to when and how to carry out operations, [...] providing logistical support to the Anti-Balaka such as money, ammunition and weapons[...]. [Mr] Mokom's authority was recognised by Anti-Balaka members and, in addition, it was acknowledged by others.

¹⁸ *Ibid.*

¹⁹ During their metadata updates between 9 June to 21 June, the Prosecution reclassified 31 documents in footnotes of the warrant of arrest as containing exculpatory material. See Annex E.

19. However, the newly exculpatory material identified in June 2023 demonstrated that Mr. Mokom did not provide logistical support, did not instruct Anti-Balaka groups as to when and how to carry out operations, and did not exercise authority over the Anti-Balaka fighters. All of the evidence referenced below, was in the Prosecution possession at the time it sought the warrant of arrest.²⁰ With this as the Prosecution's starting point, the ultimate withdrawal of the charges was inevitable.

20. What does this mean for Mr. Mokom? Firstly, it demonstrates that the Prosecution negligence in Mr. Mokom's case stems from well before his arrest. The only rational conclusion, when looking at the exculpatory evidence relevant to each of the charges within the warrant of arrest against Mr. Mokom, is that the Prosecutor misled the Pre-Trial Chamber, wilfully or recklessly, to obtain it.

²⁰ See, e.g. **P-0876**, CAR-OTP-2042-4970-R01, p. 4995, l. 903-904, 12 July 2016: Personne entendue: J'ai tout expliqué et il me dit lui, il ne maîtrise pas, il ne peut pas prendre de décision, j'attends quelqu'un d'autre va m'appeler ; **P-0876**, CAR-OTP-2046-0249-R01, p. 0259, 394 to p. 0260, l. 400; l. 407-411, 7 August 2016: J'explique, j'explique, j'explique. Il finit par me dire: « Bon, de toutes les façons, ce n'est pas moi qui décide. Quelqu'un va t'appeler, et parle avec cette personne. Si la personne me dit de demander aux éléments sur le terrain de te suivre, ils vont te suivre. » ; **P-0876**, CAR-OTP-2046-0249-R01, p. 0262, l. 524-526: [REDACTED] ; **P-0876**, CAR-OTP-2046-0249-R01, p. 0265, l. 647-649 [REDACTED] ; **P-0884**, CAR-OTP-2072-1541-R01 p. 1569, l. 927-944, 12 January 2018: disent de ... de parler ou bien de faire ... ou bien faire une attaque, moi je refuse. Je dis: « Non. » Mm-mm? Et si les paroles ne sont pas bien, j'arrange avant de parler. Mais le ... Maxime MOKOM, il me donne pas de l'ordre [phon.]. Interprète: Before any public statement, we had to meet. And they will tell me what to say. But if what they tell me is to do ... to say: "We will carry out an attack." No, I said, "No", or, from what they told me, there are things that were not right, I will adjust. But I didn't receive instructions from Maxime MOKOM. Personne entendue: Mm. Intervieweur 1: But did you discuss with Maxime MOKOM the security situation in BANGUI, for example? Interprète: Est-ce que vous aviez discuté avec Maxime MOKOM sur la situation sécuritaire à BANGUI, à l'époque? Personne entendue: Euh, j'ai pas discuté avec lui sur ça. Interprète: No. Personne entendue: J'ai pas discuté parce que moi, je considère qu'il n'est pas à BANGUI et que ... Interprète: I didn't discuss with him about that, because I took it as he was not present in BANGUI and ... ; **P-0884**, CAR-OTP-2072-1541-R01, p. 1576, l. 1200-1212, 12 January 2018: Personne entendue: Oui. Donc, pour l'instant, pour dire que ... il y a quelqu'un qui est derrière pour organiser ou bien les payer, ou bien ... Ça, je ne peux pas dire ça très tôt, parce que, en voyant ... en voyant l'auto-défense, ils n'avaient même pas des mitrailleurs, ils n'ont ... ils n'avaient même pas de ... des ... des ... c'est-à-dire il y a pas une structure d'une rébellion en tant que telle. Ils n'ont pas de BG 75 avec des armes, des 12,7 tout ça. Ils n'ont ... ils n'ont pas ça. Interprète: Uh ... when you see these auto-defence, you wouldn't say that they were organised because they had no ... proper weapons, no BGS [phon.] or things. Voix non identifiée: [Inaudible, 00:55:58]. Interprète: But they didn't have ... they didn't have all these rifles that has a structured rebellion. Personne entendue: Voilà. Donc, ça veut dire que ... au début, c'est trop tôt de parler ... de dire que quelqu'un est derrière eux ; **P-0889**, CAR-OTP-2027-2290-R01, p. 2302, para. 75, 8 May 2016: 75. Il n'y avait pas d'approvisionnement en armes ou en munitions coordonné par la Coordination. Chaque Comzone avait récupéré les armes des Seleka en prenant le contrôle d'une zone, ou avait des armes de chasses. Ils étaient responsables de se fournir leurs munitions eux-mêmes ; **P-0954**, CAR-OTP-2048-0171-R01 at 0176, para. 34, 2 March 2017: [REDACTED] ; **P-0996**, CAR-OTP-2031-0241-R01 pp. 0248-0250, paras. 41, 25 June 2016: 41. We didn't have weapons, just stones, wood sticks and makeshift fire weapons (we used SODECA iron tubes attached to sticks), 12 calibre bullets and fetishes. On the front line we fought with makeshift traditional weapons. We seized weapons from the Seleka when we could, but their automatic weapons were too complicated to operate and thus would remain in the back. We used cartridges and parts to make our own ammunition with fetishes inside and weapons.

21. Warrants of arrest are sought against individuals on an *ex parte* basis, requiring that the Prosecutor acts with the utmost good faith and professionalism. The Prosecutor has an obligation to present the Judges with cases where the evidence has been analysed objectively, taking into account both incriminating and exculpatory aspects. This did not happen in Mr. Mokom’s case. The Prosecutorial duties in this regard are grounded in Article 54(1) of the Rome Statute, a duty that is echoed in Articles 49 and 51 of the *Code of Conduct for the Office of the Prosecutor*. The Prosecutor’s failure to abide by these standards meant that the Pre-Trial Chamber issuing the warrant of arrest was misled as to the strength of the underlying evidence.

22. When assessing whether arrest and detention were unlawful, the *Ngudjolo* Trial Chamber stated that “[i]t is not permissible to seek compensation if the pre-trial detention was based on properly reasoned decisions in keeping with the provisions of the Statute, including article 58, interpreted in accordance with internationally recognised human rights law.”²¹ In this case, the decision to detain Mr. Mokom, and deprive him of his liberty, was necessarily undermined by the Prosecution failure to acknowledge the existence of crucial exculpatory information which cast significant doubt on its own case. As a result, Mr. Mokom spent 19 months and 20 days in detention before the eventual admission from the Prosecution that the case was not prosecutable.

b. A grave and manifest miscarriage of justice

22. The term “grave and manifest miscarriage of justice” is not defined in the Court’s statutory provisions.²² However, the *Ngudjolo* Trial Chamber stated:²³

a grave and manifest miscarriage of justice, within the meaning of [Article 85(3) of the Rome Statute], is a certain and undeniable miscarriage of justice following, for example, an erroneous decision by a trial chamber or wrongful prosecution. The miscarriage of justice must have given rise to a clear violation of the applicant’s fundamental rights and must have caused serious harm to the applicant.

23. In *Zigiranyirazo*, an ICTR Trial Chamber also considered that “such compensation remains most appropriate where there has been a clear violation of a Claimant's fundamental rights [...]”.²⁴

²¹ Trial Chamber II, *The Prosecutor v. Ngudjolo*, Decision on the “Requête 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](#), para.18. *See also* fn 30.

²² *Ibid*, para.18.

²³ *Ibid*, para.45.

²⁴ ICTR, Trial Chamber III, *Prosecutor v. Protais Zigiranyirazo*, Decision on Protais Zigiranyirazo’s Motion for Damages, 18 June 2012, [ICTR-2001-01-073](#), para.21.

24. Here, Mr. Mokom's arrest was based not only on allegations which were never capable of being substantiated, but was grounded in a situation where the strength of the evidence against him was misrepresented. The exercise finally performed by the Prosecution in June 2023 should have been conducted before it ever went before a Pre-Trial Chamber seeking Mr. Mokom's arrest. The tables of exculpatory evidence²⁵ filed by Mr. Mokom ahead of the confirmation hearing, undermine every aspect of the warrant of arrest and document containing the charges against him.

25. The only rational conclusion, when comparing the exculpatory evidence with the charges against Mr. Mokom, is that he was the target of a wrongful prosecution, which violated his fundamental rights. The Prosecution is responsible for the prejudice caused to Mr. Mokom as a result of this wrongful prosecution, namely, the enormous stress and anxiety, the 19 months and 20 days of unlawful detention, the irreparable damage to his health, the destruction of his reputation and the violations of his freedom of movement, his freedom of expression and his private and family life.

26. In addition to manifest errors as regards the exculpatory material, the Prosecution also failed to diligently investigate, and relied on allegations against Mr. Mokom which has been manufactured. For example, a central allegation against Mr. Mokom, which was relied upon by the Prosecution in support of its case, came from P-2232. P-2232 alleged that Mr. Mokom was in contact with [REDACTED], through whom he supervised and coordinated all the actions.²⁶ This allegation was demonstrably false. The Prosecution's own evidence, a register of calls between Mr. Mokom and [REDACTED] contained no calls between Mr. Mokom and [REDACTED] during this attack.²⁷ The Defence submissions both during and following the confirmation hearing contain other examples of demonstrably false allegations, which a diligent Prosecution would have investigated, and discarded.²⁸ In Mr. Mokom's case, they were used in an unsuccessful attempt to construct a case that, in reality, never existed.

27. The Prosecution is also responsible for the cruel and inhuman treatment suffered by Mr. Mokom following his arrest and detention by the Chadian authorities.²⁹ The appalling conditions of Mr. Mokom's detention and treatment by the Chadian authorities is recounted by

²⁵ [ICC-01/14-01/22-260-Conf-AnxA](#), [ICC-01/14-01/22-260-Conf-AnxB](#).

²⁶ P-2232, CAR-OTP-00000899, p. 45, ll.10-14, p.52.ll.3-4, p.59, ll.7-10.

²⁷ CAR-OTP-00001168 rows 76-77.

²⁸ See ICC-01/14-01/22-T-0007-CONF-ENG; ICC-01/14-01/22-T-0008-CONF-ENG; ICC-01/14-01/22-270-Conf; ICC-01/14-01/22-274-Conf.

²⁹ ICC-01/14-01/22-T-001-CONF-ENG ET, p.9, l.8-p.11, l.3.

Mr. Mokom in his sworn statement.³⁰ Given that he was arrested on the basis of a warrant of arrest that misrepresented the strength of the evidence against him, Mr. Mokom's mistreatment in Chadian detention also stems from this same negligence.

28. The Prosecution undoubtedly has discretion as regards the cases it brings, and the warrants of arrests it seeks. This discretion is not absolute, and must be exercised legally, in the interests of justice, and not cause unnecessary prejudice to anyone, including suspects. In Mr. Mokom's case, the Prosecution sought a warrant of arrest having misrepresented the strength of its evidence, in violation of Article 54(1) of the Rome Statute, and in violation of its own *Code of Conduct for the Office of the Prosecutor*. The Prosecution then ignored the exculpatory evidence it obtained following that warrant of arrest, and presented a case at confirmation that it had no ability to substantiate, relying on demonstrably false allegations. The Prosecution's conduct in Mr. Mokom's case accordingly fell short of the obligation to perform its duties to the highest standard of integrity, which is nowhere better demonstrated than through its ultimate concession that the case was not strong enough to proceed. The manifest Prosecution failings amount to a grave and manifest miscarriage of justice, warranting compensation.

2. Judicial Negligence

29. The Pre-Trial Chamber and the Appeals Chamber were called on to provide a timely resolution of two crucial matters in this case: (i) the dispute over the disqualification of his chosen counsel; and (ii) the decision to end the Court's jurisdiction over Mr. Mokom after unsuccessful attempts to find a State willing to accept him upon termination of proceedings. Judicial mismanagement in both instances caused Mr. Mokom irreparable harm.

- *Undue delays in resolving dispute on assignment of counsel*

30. On 25 March 2022, three days after Mr. Mokom's initial appearance, the Pre-Trial Chamber decided *proprio motu* to order the Registry to remove Mr. Nicholas Kaufman as legal counsel to Mr. Mokom by reason of a possible conflict of interest, by virtue of his involvement in other cases.³¹ Over the next five days, Mr. Kaufman sought reconsideration by the Pre-Trial Chamber, and subsequently, intervention by the Appeals Chamber, in an effort to prevent the

³⁰ Annex F.

³¹ Order to the Registry concerning the appointment of Mr Nicholas Kaufman as counsel for Mr Maxime Jeoffroy Eli Mokom Gawaka, 25 March 2022, [ICC-01/14-01/22-26-Red](#).

injustice of imposing on Mr. Mokom undesired counsel.³² The urgency of the matter led Mr. Kaufman on 30 March 2022 to seek the Appeals Chamber’s immediate resolution of the matter to ensure the fair and expeditious conduct of the proceedings.³³

31. The next weeks were a procedural black hole, as the Pre-Trial Chamber refused to acknowledge Mr. Kaufman’s standing to seek leave for reconsideration or appeal. It was not until Mr. Mokom was assigned a Duty Counsel that the Pre-Trial Chamber was willing to hear his pleas that they reverse the decision to revoke Mr. Kaufman’s appointment.³⁴ Meanwhile, the Prosecution actually **agreed** that the Pre-Trial Chamber should reconsider its decision “in so far as it may, *inter alia*, avoid an injustice in potentially prejudicing [Mr. Mokom]’s statutory right to choice of Counsel”.³⁵ Leave to appeal was finally granted to Mr. Mokom on 14 April 2022, and sent to the Appeals Chamber for its resolution of the matter.³⁶

32. Far from issuing an expeditious decision, however, the Appeals Chamber took two and a half (2.5) months to issue an unnecessarily lengthy non-decision on 19 July 2022 whereby it remanded the matter *back* to the Pre-Trial Chamber for the provision of more reasons.³⁷ It is noteworthy that the dissenting opinions of two members of the appellate bench already considered at that time that the Pre-Trial Chamber erred in disqualifying Mr. Kaufman as counsel for Mr. Mokom.³⁸ Upon issuance of the Pre-Trial Chamber’s additional reasons one month later on 19 August 2022, the Pre-Trial Chamber *proprio motu* granted leave to appeal to the Defence on one issue,³⁹ leave which the Appeals Chamber subsequently denied again a month later for procedural reasons.⁴⁰ Mr. Mokom was finally permitted to submit his appeal on 30 September 2022.⁴¹ The Appeals Chamber then took another two and a half (2.5) months to finally render its decision to uphold the disqualification of Mr. Kaufman on 19 December

³² Decision on Mr. Mokom’s requests for reconsideration and leave to appeal the “Order on appointment of Mr Kaufman as Counsel for Mr. Mokom”, 14 April 2022, [ICC-01/14-01/22-43](#).

³³ *Ibid.*, paras. 9-10.

³⁴ *Ibid.*, para. 16.

³⁵ *Ibid.*, para. 15.

³⁶ *Ibid.*

³⁷ Judgment on the appeal of Maxime Jeoffroy Eli Mokom Gawaka against the decision of Pre-Trial Chamber II of 25 March 2022 entitled “Order to the Registry concerning the appointment of Mr Nicholas Kaufman as counsel for Mr Maxime Jeoffroy Eli Mokom”, 19 July 2022, [ICC-01/14-01/22-70-Conf](#). A PRV was filed on 19 July 2022.

³⁸ Partially Dissenting Opinion of Judge Luz Del Carmen Ibáñez Carranza and Judge Solomy Balungi Bossa, 19 July 2022, [ICC-01/14-01/22-70-Conf-Anx](#).

³⁹ Decision on legal representation further to the Appeals Chamber’s judgment of 19 July 2022, 19 August 2022, [ICC-01/14-01/22-80](#).

⁴⁰ Decision on the admissibility of the appeal, 27 September 2022, [ICC-01/14-01/22-91](#).

⁴¹ Appeal Brief against Pre-Trial Chamber Decision ICC-01/14-01/22-80, 30 September 2022, [ICC-01/14-01/22-95](#).

2022.⁴² It would take another month before Me Larochelle would be appointed on 23 January 2023 as Mr. Mokom's new counsel.⁴³

33. This means that, from 25 March 2022 until 23 January 2023, that is ten (10) full months, Mr. Mokom did not have appropriate legal counsel to oversee the sufficiency of the evidence underpinning the still unconfirmed charges against him. The situation required moving the date of the confirmation of charges hearing to late August 2023 so that newly appointed counsel could get up to speed to represent his client's interests⁴⁴. In other words, the procedural Kafkaesque nightmare caused by judicial negligence in the matter of the appointment of counsel for Mr. Mokom caused an undue delay of more than 10 months from the time of his initial appearance before the Court in his ability to defend himself in the confirmation of the Prosecution's charges against him. Meanwhile, the entire time, the Prosecution had no case for Mr. Mokom to answer.

- ***Undue delay in deciding on suspensive effect leading to loss of jurisdiction***

34. On 18 January 2024, the Pre-Trial Chamber decided pursuant to Rule 185 of the Rules, that Mr. Mokom could not be sent back to the Central African Republic where he faced a risk of torture and death. The Pre-Trial Chamber then 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 he would then fall under the exclusive jurisdiction of the Host State (Netherlands).⁴⁵ Importantly, this arbitrary deadline was imposed, despite there being no time limit on the Court's obligation under Rule 185 of the Rules to arrange for Mr. Mokom's transfer to a safe third state. This deadline, less than four months after his release, had no basis in the prior practice, jurisprudence, or statutory framework of the Court.

35. Within a few days of this egregious decision, the Defence for Mr. Mokom immediately filed a Notice of Appeal and sought its urgent suspensive effect, particularly of the 7 February

⁴² Judgment on the appeal of Maxime Jeoffroy Eli Mokom Gawaka against the decision of Pre-Trial Chamber II of 19 August 2022 entitled "Decision on legal representation further to the Appeals Chamber's judgment of 19 July 2022", 19 December 2022, [ICC-01/14-01/22-124-Conf](#). A PRV was filed on 19 December 2022.

⁴³ Notification of the Appointment of Mr Philippe Larochelle as Counsel for Mr Maxime Jeoffroy Eli Mokom Gawaka, 23 January 2023, [ICC-01/14-01/22-136](#).

⁴⁴ Decision setting the date for the confirmation of charges hearing, 3 February 2023, [ICC-01/14-01/22-151](#), para. 10.

⁴⁵ Decision pursuant to Rule 185 of the Rules of Procedure and Evidence, 18 January 2024, [ICC-01/14-01/22-309-Conf-Exp](#). A PRV was filed on 18 January 2024; See also Transmission of a Note Verbale dated 19 January 2024 received from the Host State, 22 January 2024, [ICC-01/14-01/22-311](#).

2024 deadline which was completely arbitrary and promised Mr. Mokom the staggeringly dire consequences of finding himself inadvertently an illegal alien on the territory of the Host State. The Netherlands had already expressed their categorical refusal to accept exclusive jurisdiction over him, thereby exposing him to possible arrest and deportation to the Central African Republic.⁴⁶

36. The Defence incorporates by reference its submissions in the Notice of Appeal as demonstrative of the irreparable and irreversible harm that would be caused by the implementation of the Pre-Trial Chamber's decision.⁴⁷

37. A decision on suspensive effect could and should have been rendered well before 7 February 2024, if not immediately. Instead, the Appeals Chamber took thirteen days to issue its order (indicated as "urgent" on the cover page), out of time, the order was issued on 8 February 2024, when jurisdiction had already expired.⁴⁸ By 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. Faced with this real risk of persecution, [REDACTED], Mr. Mokom [REDACTED] sought asylum in [REDACTED].

38. By way of mind-bending judicial negligence, Mr. Mokom's fundamental rights to safety and security were jeopardised and he now lives in a state of further flux as to his future without any means of subsistence, all of which the Court must compensate him for adequately.

3. Administrative Negligence

a. Mr. Mokom unjustified detention while he was entitled to provisional release

39. On 7 November 2022, following the judicial delays in resolving the situation of Mr. Mokom's legal representation, the Pre-Trial Chamber issued an Order instructing Mr. Mokom to provide submissions on interim release.⁴⁹ On 14 November 2022, Duty Counsel for Mr. Mokom submitted an application, listing proposed states to facilitate Mr. Mokom's interim

⁴⁶ Notice of Appeal against "Decision pursuant to Rule 185 of the Rules of Procedure and Evidence", ICC-01/14-01/22-309-Conf-Exp and Request for Suspensive Effect, 24 January 2024, [ICC-01/14-01/22-312-Conf-Exp](#). A PRV was filed on 26 January 2024.

⁴⁷ *Ibid.*

⁴⁸ Decision on the request for suspensive effect and order concerning submissions on admissibility, 8 February 2024, [ICC-01/14-01/22-320](#).

⁴⁹ Order to Mr. Mokom to provide submissions on interim release, 7 November 2022, [ICC-01/14-01/22-105](#), para. 12.

release.⁵⁰ On 15 February 2023, permanent Counsel for Mr. Mokom filed observations and submitted, *inter alia*, that Mr. Mokom's eligibility for provisional release cannot hinge on the willingness of a State to receive him.⁵¹

40. On 8 March 2023, the Pre-Trial Chamber found that the specific circumstances of the proceedings militated in favour of Mr. Mokom's interim release, emphasising the excessive length of Mr. Mokom's pre-trial detention, mostly caused by the unreasonable time required by the proceedings on legal representation.⁵² The Chamber held that any risk of flight could be sufficiently mitigated by adopting and enforcing a number of conditions.⁵³

41. Despite these findings, the Pre-Trial Chamber concluded that it was not in a position to order Mr. Mokom's interim release in the absence of a State willing to accept Mr. Mokom on its territory. Mr. Mokom accordingly remained in detention.⁵⁴

42. Importantly, despite the Chamber's specific instructions that the Registry consult with the Host State about its willingness to accept Mr. Mokom on its territory,⁵⁵ the Netherlands refused, reasoning that this would place a **disproportionate burden** on the Host State that wished to prevent such an **undesired precedent**.⁵⁶ The Pre-Trial Chamber was therefore not even in the position to order Mr. Mokom's temporary transfer into the territory of the Host State despite the clear terms of Article 47(1) and (2) of the Headquarters Agreement, under which the Host State "shall" facilitate the transfer of persons granted interim release into a State other than the Host State.

43. Following the Decision, the Defence made sustained and repeatedly unsuccessful efforts to consult with the States listed in Mr. Mokom's Application. These efforts were hampered by the Defence 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 the Defence.

⁵⁰ Mr. Mokom's Application for Interim Release pursuant to Order ICC-01/14-01/22-105', 14 November 2022, [ICC-01/14-01/22-110-Conf](#). A PRV was filed on 16 November 2022 ('Application').

⁵¹ Mokom Defence Observations on the Interim Release Application Submitted by Duty Counsel on behalf of Mr. Mokom, 15 February 2023, [ICC-01/14-01/22-162](#), para. 13.

⁵² Decision on Interim Release, 8 March 2022, [ICC-01/14-01/22-173-Conf](#), para. 58.

⁵³ *Ibid*, paras. 55-56.

⁵⁴ *Ibid*, paras. 58-59.

⁵⁵ Order to Mr. Mokom to provide submissions on interim release, 7 November 2022, [ICC-01/14-01/22-105](#), para. 14.

⁵⁶ Decision on Interim Release, 8 March 2022, [ICC-01/14-01/22-173-Conf](#), para. 40.

44. This incident demonstrates a manifest structural failing in the framework of the ICC, which renders the Court incapable of granting provisional release to suspects, in the absence of a willing State. As such, indefinite pre-trial detention is the rule, rather than the exception; a position which cannot be reconciled with internationally accepted human rights norms surrounding detention.⁵⁷ The ICC's legal framework on international cooperation and judicial assistance is accordingly unfit for purpose. Any deprivation of liberty must be prescribed by law and must not suffer any arbitrary interference. The reality that ICC States Parties are unwilling to facilitate provisional release of suspects, is not a basis prescribed by law. Mr. Mokom's detention accordingly became unlawful under Article 85(1) between the day of his application for interim release (14 November 2022) and his release on 17 October 2023.

45. Importantly, the Pre-Trial Chamber's Decision made Mr. Mokom aware that he was detained solely because no ICC State Party was willing to facilitate his provisional release. This understandably impacted Mr. Mokom's morale in detention, and led to a decline in his physical and mental wellbeing. The impacts of prolonged pre-trial detention are well known. That prolonged pre-trial detention is the **only option** for ICC suspects, must be recognised for what it is: a central structural failing in the operation of the Court. It also further supports the present application for compensation.

b. Mr. Mokom's release and re-detention

46. When terminating the proceedings against Mr. Mokom on 17 October 2023, the Pre-Trial Chamber instructed the Registry to '**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**'.⁵⁸

47. On the same day, Mr. Mokom was released from the ICC Detention Unit and transferred to a hotel in The Hague.⁵⁹ The Host State [REDACTED] as of 17 October 2023.⁶⁰ The Registry told the Defence that whether Mr. Mokom could leave the hotel depended on the finalisation of confidential consultations between the Registry and the Dutch authorities on the applicable

⁵⁷ *Ibid*, para. 49.

⁵⁸ Order in relation to the Prosecution's 'Notice of Withdrawal of the Charges against Maxime Jeoffroy Eli Mokom Gawaka', 17 October 2023, [ICC-01/14-01/22-276](#), para. 10.

⁵⁹ 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](#), para. 14.

⁶⁰ *Ibid*, para. 11.

conditions of Mr. Mokom's stay. In the meantime, Mr. Mokom was bound to stay in the hotel, [REDACTED].

48. On 30 October 2023, the Pre-Trial Chamber warned the Registry in an *ex parte* email that Mr. Mokom'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 Mr. Mokom had unrestricted freedom of movement. The Pre-Trial Chamber had also emphasised that the Court no longer had any power to restrict Mr. Mokom's freedoms.⁶¹ The Defence was, obviously, unaware of this directive.

49. By 17 November 2023, the situation of constructive detention was becoming untenable for Mr. Mokom, [REDACTED]. As such, the Defence asked the Registry to negotiate an urgent variation of the conditions it understood to be in place, so that Mr. Mokom could leave the hotel to seek [REDACTED] medical care. The Defence explained that [REDACTED], the limitations imposed on Mr. Mokom to remain in the premises of the hotel [REDACTED].⁶²

50. On 21 November 2023, the Pre-Trial Chamber stated that following his release, Mr. Mokom has been **subjected** to a regime that appeared to amount to a form of house arrest notwithstanding the clear terms of the 17 October 2023 Order. The Chamber thereby **reiterated** that the Registry was required to ensure that Mr. Mokom's rights as a free person were not restricted in any way under the Court's legal framework.⁶³

51. The Defence was subsequently informed, through the notifications of Registry Reports, that the Host State had agreed to relaxations of Mr. Mokom's conditions long before the 21 November Order. On 30 November 2023, the Registry filed a redacted version of a Registry report dated 26 October 2023, which indicated that the Host State had agreed on **23 October 2023** that Mr. Mokom could [REDACTED].⁶⁴ The redacted version of another Registry Report

⁶¹ 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-Exp](#), para. 3. A PRV was filed on 11 April 2024.

⁶² Annex G, Email from the Defence to the Registry, 17 November 2023, 18:10.

⁶³ Order regarding arrangements pending Mr. Mokom's transfer, 21 November 2023, [ICC-01/14-01/22-294-Conf-Exp](#), para. 3. A PRV was filed on 11 April 2024.

⁶⁴ 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-Red](#), para. 22. A PRV was filed on 31 January 2024.

indicated that the Host State had consented on **26 October 2023** to Mr. Mokom being allowed to [REDACTED].⁶⁵

52. As such, between 17 October 2023 and 28 November 2023, **Mr. Mokom was subjected to de facto detention for 43 days**, because of the Registry's non-compliance with the 17 October 2023 Order.⁶⁶ The Registry actively misrepresented the views of the Host State to the Defence and to Mr. Mokom. In doing so, the Registry prevented Mr. Mokom from accessing [REDACTED] medical care, despite having been informed of the impact that his situation of house arrest [REDACTED]. In addition, the Registry was knowingly in breach of the Pre-Trial Chamber's order to ensure that the conditions of Mr. Mokom's temporary stay pending his transfer did not **in any way** amount to a deprivation of liberty.⁶⁷

53. The European Court of Human Rights ('ECHR') has held that house arrest is considered to amount to deprivation of liberty and stated that this type of deprivation of liberty requires relevant and sufficient reasons.⁶⁸ In order to protect individuals from arbitrariness, any deprivation of liberty must be prescribed by law, and there are only narrow grounds on which individuals may be deprived of their right to liberty.⁶⁹ Providing legal and factual grounds for a deprivation of liberty constitutes an essential requirement so that an individual is able to apply to a court to challenge its lawfulness.⁷⁰

54. Despite having asked, Mr. Mokom was never given a legal basis justifying the 43 days he spent confined in the hotel. A few days after Mr. Mokom's release from prison, the Defence asked the Registry to urge the Dutch authorities to allow Mr. Mokom to leave the hotel, given that his conditions were tantamount to constructive detention. Alternatively, the Defence asked the Registry provide the legal basis justifying the restrictions, in order to allow the Defence to

⁶⁵ 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.

⁶⁶ Order in relation to the Prosecution's 'Notice of Withdrawal of the Charges against Maxime Jeoffroy Eli Mokom Gawaka', 17 October 2023, [ICC-01/14-01/22-276](#), para. 10.

⁶⁷ Order in relation to the Prosecution's 'Notice of Withdrawal of the Charges against Maxime Jeoffroy Eli Mokom Gawaka', 17 October 2023, [ICC-01/14-01/22-276](#), para. 10.

⁶⁸ ECHR, Grand Chamber, [Buzadji v. the Republic of Moldova](#), 5 July 2016, Application No. 23755/07, paras. 104 and 113-114; [Navalny v. Russia](#), 9 September 2019, Application No. 43734/14, para. 57; See also [Petrenco and Other v. the Republic of Moldova](#), 14 September 2021, Applications nos. 6345/16, 52055/16, 52063/16, 52133/16, 52171/16, 52179/16 and 52189/16, para. 32; [Delijorgji v. Albania](#), Application no. 6858/11, § 75, 28 April 2015; [Ninescu v. the Republic of Moldova](#), no. 47306/07, § 53, 15 July 2014; [Nikolova v. Bulgaria](#) (no. 2), Application no. 40896/98, § 60, 30 September 2004; [Lavenis v. Latvia](#), no. 58442/00, §§ 64, 28 November 2002; [Mancini v. Italy](#), 12 December 2001, no. 44955/98, para. 17.

⁶⁹ ECHR, Grand Chamber, [Khlaifia and Others v. Italy](#), 15 December 2016, Application 16483/12, paras. 88 and 91; See also ECHR, [Mancini v. Italy](#), 12 December 2001, no. 44955/98, para. 23.

⁷⁰ ECHR, Grand Chamber, [Khlaifia and Others v. Italy](#), 15 December 2016, Application 16483/12, para. 115.

litigate the issue in an efficient manner.⁷¹ No basis was ever provided. This detention was manifestly illegal, and warrants compensation. It also gave rise to other violations of Mr. Mokom's rights, set out below.

Violation of the Right to Health and Access to Healthcare

55. During his unlawful 43 days under house arrest, Mr. Mokom [REDACTED]. As outlined above, on 17 November 2023, the Defence asked the Registry to facilitate a variation of the restrictions it understood were in place, to allow him to [REDACTED] medical centre. Of course, the Registry was concealing that already on **23 October 2023**, the Dutch authorities had said that [REDACTED].⁷²

56. Upon first being told he could leave the hotel 28 November 2023, Mr. Mokom [REDACTED]. [REDACTED] medical care [REDACTED] outside the hotel.

57. Although informed by the Defence about [REDACTED], the Registry did not take any steps to assist. By contrast, it actively misrepresented the views of the Dutch authorities, to Mr. Mokom's detriment. The Registry's failure to comply with such an elementary duty of care is in breach with the 17 October Order according to which the Registry had been 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."⁷³

Freedom of Expression

58. Mr. Mokom's freedom of expression was also restricted by the Registry during his unlawful 43-days house arrest. As stated above, the Defence was only informed on 30 November 2023 that the Host State had consented on **26 October 2023** that [REDACTED].⁷⁴ The Registry's failure to immediately inform the Defence about the Host State's position contravened the 17 October Order which stated that the Registry had to ensure that no

⁷¹ Annex G, Email from the Mokom Defence to the Registry, 31 October 2023, 12:17.

⁷² 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-Red](#), para. 22. A PRV was filed on 31 January 2024.

⁷³ Order in relation to the Prosecution's 'Notice of Withdrawal of the Charges against Maxime Jeoffroy Eli Mokom Gawaka', 17 October 2023, [ICC-01/14-01/22-276](#), para. 10.

⁷⁴ 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.

restrictions are placed on Mr. Mokom's freedom of communication within the territory of the Host State.⁷⁵

Freedom of Religion

59. Mr. Mokom is a pastor in the Central African Republic and religion has always occupied a central part of his life. The hotel did not contain any premises for the provision of religious services, and he was unable to leave to attend church. Freedom of religion encompasses the freedom to manifest one's belief, alone and in private but also to practice in community with others and in public. Any limitation must be prescribed by law.⁷⁶ As such, his unlawful confinement also amounted to an unwarranted restriction on his freedom of religion.⁷⁷

Moral Damage

60. Mr. Mokom's conditions following his release from prison were incompatible with basic respect for human dignity and amounted to degrading treatment. His unlawful 43-day detention in the hotel remains inexplicable; there is no possible justification for having confined Mr. Mokom in this way. This ongoing *de facto* detention gave Mr. Mokom the impression that he was still suspected of crimes; confusion that was shared by his family. His distress, confusion, and humiliation were palpable, and were conveyed to the Registry. Exacerbating Mr. Mokom's decline, was the Registry's decision to cancel a family visit which had been arranged for his wife and [REDACTED] children, and was scheduled to take place [REDACTED] 2023. The Registry reasoned that Mr. Mokom was no longer considered an [REDACTED] detained person under the custody of the ICC, and therefore he was not entitled to ICC support for a family visit.⁷⁸ This decision was taken by the Registry, knowing that Mr. Mokom had no other reasonable prospect of seeing his family in the foreseeable future.

61. The general purpose of the prohibition of degrading treatment is to prevent particularly serious interferences with human dignity.⁷⁹ Treatment may be characterised as degrading even in the absence of evidence of bodily injury, if such treatment humiliates or diminishes human

⁷⁵ Order in relation to the Prosecution's 'Notice of Withdrawal of the Charges against Maxime Jeoffroy Eli Mokom Gawaka', 17 October 2023, [ICC-01/14-01/22-276](#), para. 10.

⁷⁶ ECHR, *Eweida and Others v. the United Kingdom*, 15 January 2013, Application Nos. 48420/10, 59842/10, 51671/10 and 36516/10, para. 80.

⁷⁷ Annex G, Email from the Defence to the Registry, 17 November 2023, 18:10.

⁷⁸ Annex G, Email from the ICC Detention Center to the Mokom Defence, 19 October 2023, 12:29.

⁷⁹ ECHR, Grand Chamber, *Bouyid v. Belgium*, 28 September 2015, Application no. 23380/09, para. 90; ECHR, Grand Chamber, *Kudla v. Poland*, 26 October 2000, Application no. 30210/96, para. 94.

dignity. It may also suffice for a victim to be humiliated in their own eyes, even if not in the eyes of others.⁸⁰ Mr. Mokom's situation during his 43 days of unlawful house arrest meets this standard.

4. Request for joinder to the request of compensation for Mr. Mokom's wife and children

62. Mr. Mokom's wife and [REDACTED] children⁸¹ have also suffered harm as a result of Mr. Mokom's arrest and unlawful detention. Before Mr. Mokom's arrest in Chad, Mr. Mokom and his family [REDACTED], and Mr. Mokom could play an active role supporting them financially [REDACTED].

63. In addition to the trauma caused by Mr. Mokom's arrest and unlawful detention, Mr. Mokom's wife and children [REDACTED]. The cancellation of the family visit scheduled in [REDACTED] 2023 was a further blow, compounded by the stress and uncertainty of Mr. Mokom's current situation as an asylum seeker in [REDACTED]. The prejudice collectively suffered by Mr. Mokom's family is therefore ongoing and will continue for months or years until Mr. Mokom manages to regularise his situation and reunite with his family. On this basis, Mr. Mokom's wife and children are included in the request below.

REQUEST FOR AN ORAL HEARING

64. Rule 174(2) of the Rules provides that "[a] hearing shall be held if the Prosecutor or the person seeking compensation so requests". Pursuant to this rule, Mr Mokom hereby asks the Presidency to convene an oral hearing.

65. Mr Mokom's situation is unique in many respects. No other ICC suspect has ended up indigent, distressed, and homeless on the streets of a foreign state in which he has no legal status, and no reasonable prospect of reuniting with his family. As such, many of the issues raised in the present application are novel. They also implicate multiple parties within the Court, and potentially the authorities of the Host State.

66. An oral hearing would allow the interested parties to make full submissions, for the assistance of the Presidency, and respond directly to questions and concerns. It would allow

⁸⁰ ECHR, Grand Chamber, *Khlaifia and Others v. Italy*, 15 December 2016, Application 16483/12, paras. 169 ; *Vasyukov v. Russia*, 5 April 2011, Application no. 2974/05, para. 59.

⁸¹ [REDACTED]

for a full airing of the relevant issues, which will help shape the Court's approach to ensure these kinds of harm are not inflicted on future suspects.

CONCLUSION

67. It is beyond doubt that Mr Mokom has suffered harm as a result of his interactions with the Court. At a most basic level, he is in a far worse position than he was when the Prosecution had him arrested in Chad in February 2022. His reputation is destroyed. He is separated from his family. He is indigent, stateless, and in a situation of utter uncertainty and distress. The infliction of harm gives rise to a right to a remedy.⁸² The drafters of the Rome Statute built in a mechanism for compensation, precisely to repair this kind of harm. Mr Mokom's situation is exceptional. The proceedings against him were a grave and manifest miscarriage of justice, and compensation should be awarded as a result.

RELIEF SOUGHT

- **GRANT** an oral hearing;
- **ORDER** that an expert be appointed to assess the psychological harm inflicted on Mr. Mokom as the result of the wrongful conduct of the Prosecutor and Registrar, and provide the Court with an expert opinion on the matter;
- **ORDER** the Registrar to pay the fees associated with such expertise;
- **RESERVE** Mr. Mokom's right to amend his compensation claim once such expertise has been completed;
- **ORDER** that a total compensation of 2,850,000 Euros be awarded to Mr. Mokom, namely:
 - For psychological harm, stress and anxiety, and separation from his family: 1,000,000 Euros;

⁸² The right to a remedy is well-entrenched in international law: see, for example: Universal Declaration of Human Rights, art. 8; International Covenant on Civil and Political Rights, art. 2; Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.

- For 19 months of illegal and unjustified detention, 50,000 Euros per month, for a total of 950,000 Euros;
- For the time spent on house arrest after his release, due to the failure of the Registrar to inform the Pre-Trial Chamber of the possibility of leaving the hotel room: 100,000 Euros;
- For the trouble and inconvenience arising out of Mr. Mokom's reinstallation in [REDACTED], the asylum proceedings and the time necessary to acquire a legal status and a job in that country, an amount of 300,000 Euros;
- As exemplary damages, to dissuade the Registrar and Prosecutor of repeating such conduct: 500,000 Euros;
- **GRANT Mr. Mokom's wife and children's joinder to Mr. Mokom's request for compensation;**
- **ORDER** that a total compensation of 500,000 Euros be awarded to Mr. Mokom's wife and kids for the stress, the anxiety and the harm caused to them as a result of the Prosecutor and Registrar's conduct.

Respectfully submitted,



Philippe Larochelle,
Counsel for Maxime Mokom

The Hague, The Netherlands
Tuesday, April 23, 2024