Cour
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International
Criminal
Court

Original: English

No. ICC-01/05-01/08 OA 11
Date: 20 May 2015

THE APPEALS CHAMBER

Before: **Judge Sanji Mmasenono Monageng, Presiding Judge**
Judge Christine Van den Wyngaert
Judge Howard Morrison
Judge Piotr Hofmański
Judge Péter Kovács

SITUATION IN THE CENTRAL AFRICAN REPUBLIC

IN THE CASE OF THE PROSECUTOR v. JEAN-PIERRE BEMBA GOMBO

Public redacted version of
Judgment
on the appeal of Mr Jean-Pierre Bemba Gombo against the decision of Trial Chamber III of 23 December 2014 entitled "Decision on 'Defence Urgent Motion for Provisional Release'"

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

The Office of the Prosecutor
Ms Fatou Bensouda, Prosecutor
Ms Helen Brady

Counsel for the Defence
Mr Peter Haynes
Ms Kate Gibson

REGISTRY

Registrar
Mr Herman von Hebel

The Appeals Chamber of the International Criminal Court,

In the appeal of Mr Jean-Pierre Bemba Gombo against the decision of Trial Chamber III entitled "Decision on 'Defence Urgent Motion for Provisional Release'" of 23 December 2014 (ICC-01/05-01/08-3221),

After deliberation,

Unanimously,

Delivers the following

JUDGMENT

The "Decision on 'Defence Urgent Motion for Provisional Release'" is confirmed.

REASONS

I. KEY FINDINGS

1. Detention may be continued during deliberations under article 58 (1) (b) (i) of the Statute to ensure the availability of the accused for judgment and sentencing.

2. For the purposes of determining whether detention of a person is necessary, a Chamber may rely on the fact that relevant charges under article 70 of the Statute have been confirmed against him or her by another Chamber.

II. PROCEDURAL HISTORY

A. Proceedings before the Trial Chamber

3. On 5 December 2014, Mr Bemba filed the "Defence Urgent Motion for Provisional Release"[1] (hereinafter: "Request for Provisional Release"), requesting that the Trial Chamber provisionally release him to "either Portugal or Belgium for the period of deliberations pending the issuance of a Judgement under [a]rticle 74 of the Statute or, in the alternative, for the period of the upcoming winter judicial recess and during the weekends for the duration of the deliberations period".[2]

[1] ICC-01/05-01/08-3211.
[2] Request for Provisional Release, para. 11.

4. On 12 December 2014, the legal representative of victims filed the "Réponse de la Représentante légale des victimes à « *Urgent Motion for Provisional Release* », ICC-01/05-01/08-3211", requesting that the Request for Provisional Release be dismissed in its entirety.[3]

5. On 12 December 2014, the Prosecutor filed the "Prosecution's Response to the Defence Urgent Motion for Provisional Release", submitting that the Request for Provisional Release should be rejected in its entirety.[4]

6. On 15 December 2014, Mr Bemba filed the "Defence Reply to Responses to its Urgent Motion for Provisional Release"[5] (hereinafter: "Reply to Responses to the Request for Provisional Release").

7. On 23 December 2014, the Trial Chamber issued the "Decision on 'Defence Urgent Motion for Provisional Release'"[6] (hereinafter: "Impugned Decision"), denying the Request for Provisional Release in its entirety.

B. Proceedings before the Appeals Chamber

8. On 29 December 2014, Mr Bemba filed the "Defence Urgent Request for Extension of Time"[7] (hereinafter: "Extension of Time Request"), requesting that the applicable deadlines for appealing the Impugned Decision be suspended for the duration of the judicial recess.

9. On 29 December 2014, the Prosecutor filed the "Prosecution's Urgent Response to 'Defence Request for extension of time'",[8] opposing the Extension of Time Request.

10. On 29 December 2014, Mr Bemba filed the "Defence Urgent Notice of Appeal against Decision on 'Defence Urgent Motion for Provisional Release', ICC-01/05-01/08-3321 [*sic*]".[9]

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[3] Dated 12 December 2014 and registered on 16 January 2015, ICC-01/05-01/08-3214-tENG; original French version dated and registered on 12 December 2014 (ICC-01/05-01/08-3214).
[4] ICC-01/05-01/08-3215.
[5] ICC-01/05-01/08-3216.
[6] ICC-01/05-01/08-3221.
[7] ICC-01/05-01/08-3223 (OA 11).
[8] ICC-01/05-01/08-3224 (OA 11).
[9] ICC-01/05-01/08-3225 (OA 11).

11. On 30 December 2014, the Appeals Chamber issued the "Decision on the extension of the time limit for the filing of the document in support of the appeal" [10] (hereinafter: "Decision Extending Time for Filing the Document in Support of the Appeal") extending the time limit for the filing of the document in support of the appeal to 12 January 2015, with reasons to be issued thereafter.

12. On 12 January 2015, Mr Bemba filed the "Document in support of the Defence appeal against Trial Chamber III's 'Decision on "Defence Urgent Motion for Provisional Release"'"[11] (hereinafter: "Document in Support of the Appeal").

13. On 19 January 2015, the Prosecutor filed the "Prosecution Response to Defence Appeal against Trial Chamber III's 'Decision on "Defence Urgent Motion for Provisional Release"'"[12] (hereinafter: "Response to the Document in Support of the Appeal").

14. On 9 February 2015, the Appeals Chamber rejected a request by Mr Bemba to file additional submissions on the appeal.[13]

15. On 13 March 2015, following the solemn undertaking of six newly elected judges to the Court on 10 March 2015 and the Presidency's election on 11 March 2015, the Appeals Division was composed of Judge Silvia Fernández de Gurmendi, Judge Sanji Mmasenono Monageng, Judge Christine Van den Wyngaert, Judge Howard Morrison and Judge Piotr Hofmański.[14]

16. On 20 March 2015, the Presidency granted Judge Silvia Fernández de Gurmendi's request for excusal from all pending and future appeals in the case of *The*

[10] ICC-01/05-01/08-3227 (OA 11).
[11] ICC-01/05-01/08-3230-Conf (OA 11); a public redacted version was registered on 12 January 2015 (ICC-01/05-01/08-3230-Red (OA 11)).
[12] ICC-01/05-01/08-3235-Conf (OA 11); a public redacted version was registered on 19 January 2015 (ICC-01/05-01/08-3235-Red (OA 11)).
[13] "Decision on the defence request to file additional submissions", 9 February 2015, ICC-01/05-01/08-3243 (OA 11). "Defence request to file additional submissions in support of its appeal against Trial Chamber III's 'Decision on "Defence Urgent Motion for Provisional Release"'", 27 January 2015, ICC-01/05-01/08-3240 (OA 11).
[14] "Decision assigning judges to divisions", ICC-01/05-01/08-3244, p. 4.

Prosecutor v. Jean-Pierre Bemba Gombo and temporarily attached Judge Péter Kovács to the Appeals Chamber for the purpose of the interlocutory appeals.[15]

III. STANDARD OF REVIEW

17. In considering appeals in relation to decisions granting or denying interim release, the Appeals Chamber has previously held that it "will not review the findings of the […] Chamber *de novo*, instead it will intervene in the findings of the […] Chamber only where clear errors of law, fact or procedure are shown to exist and vitiate the Impugned Decision".[16]

18. The Appeals Chamber has explained its approach to factual errors in respect of decisions on interim release as follows:

> The Appeals Chamber has held that a Pre-Trial or Trial Chamber commits such an error if it misappreciates facts, disregards relevant facts or takes into account facts extraneous to the *sub judice* issues. In this regard, the Appeals Chamber has underlined that the appraisal of evidence lies, in the first place, with the relevant Chamber. In determining whether the Trial Chamber has misappreciated facts in a decision on interim release, the Appeals Chamber will "*defer or accord a margin of appreciation both to the inferences [the Trial Chamber] drew from the available evidence and to the weight it accorded to the different factors militating for or against detention*". Therefore, the Appeals Chamber "will interfere only in the case of a clear error, namely where it cannot discern how the Chamber's conclusion could have reasonably been reached from the evidence before it". [Emphasis added, footnotes omitted.][17]

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[15] "Decision replacing a judge in the Appeals Chamber", filed 20 March 2015 and registered on 23 March 2015, ICC-01/05-01/08-3245 (OA 11), p. 4.

[16] *The Prosecutor v. Jean-Pierre Bemba Gombo*, "Judgment on the appeal of the Prosecutor against Pre-Trial Chamber II's 'Decision on the Interim Release of Jean-Pierre Bemba Gombo and Convening Hearings with the Kingdom of Belgium, the Republic of Portugal, the Republic of France, the Federal Republic of Germany, the Italian Republic, and the Republic of South Africa'", 2 December 2009, ICC-01/05-01/08-631-Conf (OA 2); a public redacted version was registered on 2 December 2009 (ICC-01/05-01/08-631-Red (OA 2)) (hereinafter: "*Bemba* OA 2 Judgment"), para. 62, cited in *The Prosecutor v. Callixte Mbarushimana*, "Judgment on the appeal of Mr Callixte Mbarushimana against the decision of Pre-Trial Chamber I of 19 May 2011 entitled 'Decision on the "Defence Request for Interim Release"'", 14 July 2011, ICC-01/04-01/10-283 (OA) (hereinafter: "*Mbarushimana* OA Judgment"), para. 15.

[17] *The Prosecutor v. Jean-Pierre Bemba Gombo*, "Judgment on the appeal of Mr Jean-Pierre Bemba Gombo against the decision of Trial Chamber III of 6 January 2012 entitled 'Decision on the defence's 28 December 2011 "Requête de Mise en liberté provisoire de M. Jean-Pierre Bemba Gombo"'", 5 March 2012, ICC-01/05-01/08-2151-Conf (OA 10); a public redacted version was registered on 5 March 2012 (ICC-01/05-01/08-2151-Red (OA 10)) (hereinafter: "*Bemba* OA 10 Judgment"), para. 16. *See also The Prosecutor v. Laurent Koudou Gbagbo*, "Judgment on the appeal of Mr Laurent Koudou Gbagbo against the decision of Pre-Trial Chamber I of 13 July 2012 entitled 'Decision on the "Requête de la Défense demandant la mise en liberté provisoire du président Gbagbo"'", 26 October 2012, ICC-02/11-01/11-278-Conf (OA); a public redacted version was registered on 26 October 2012 (ICC-02/11-01/11-278-Red (OA)), para. 51; *The Prosecutor v. Jean-Pierre Bemba Gombo et al.*, "Judgment on the

In the *Mbarushimana* OA Judgment, the Appeals Chamber noted that the appellant's mere disagreement with the conclusions that the first instance Chamber drew from the available facts or the weight it accorded to particular factors is not enough to establish a clear error.[18]

19. In relation to alleged errors of law, the Appeals Chamber has previously held that it will not defer to the Trial (or Pre-Trial) Chamber's legal interpretation, but "will arrive at its own conclusions as to the appropriate law and determine whether or not [that] Chamber misinterpreted the law".[19]

20. It is also recalled that an appellant is not only obliged to set out an alleged error, "but also to indicate, with sufficient precision, how this error would have materially affected the impugned decision".[20]

IV. REASONS FOR DECISION EXTENDING TIME FOR FILING THE DOCUMENT IN SUPPORT OF THE APPEAL

21. The Appeals Chamber recalls that the Decision Extending Time for Filing the Document in Support of the Appeal was issued with reasons to follow. The reasons for granting the requested extension of time are set out below.

22. Pursuant to regulation 64 (5) of the Regulations of the Court, "the document in support of the appeal shall be filed by the appellant within seven days of notification of the relevant decision". Pursuant to regulation 35 (2) of the Regulations of the Court, the Appeals Chamber may extend a time limit stipulated in the Regulations of the Court "if good cause is shown".

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appeal of Mr Jean-Jacques Mangenda Kabongo against the decision of Pre-Trial Chamber II of 17 March 2014 entitled 'Decision on the "Requête de mise en liberté" submitted by the Defence for Jean-Jacques Mangenda'", 11 July 2014, ICC-01/05-01/13-560 (OA 4) (hereinafter: "*Bemba* et al. OA 4 Judgment"), para. 25.

[18] *Mbarushimana* OA Judgment, paras 21, 31.

[19] *The Prosecutor v. Abdallah Banda Abakaer Nourain and Saleh Mohammed Jerbo Jamus*, "Judgment on the appeal of the Prosecutor against the decision of Trial Chamber IV of 12 September 2011 entitled 'Reasons for the Order on translation of witness statements (ICC-02/05-03/09-199) and additional instructions on translation'", 17 February 2012, ICC-02/05-03/09-295 (OA 2), para. 20; *Bemba* et al. OA 4 Judgment, para. 26.

[20] *The Prosecutor v. Jean-Pierre Bemba Gombo*, "Judgment on the appeal of Mr Jean-Pierre Bemba Gombo against the decision of Trial Chamber III of 24 June 2010 entitled 'Decision on the Admissibility and Abuse of Process Challenges'", 19 October 2010, ICC-01/05-01/08-962 (OA 3), para. 102, citing *The Prosecutor v. Joseph Kony* et al., "Judgment on the appeal of the Defence against the 'Decision on the admissibility of the case under article 19 (1) of the Statute' of 10 March 2009", 16 September 2009, ICC-02/04-01/05-408 (OA 3), para. 48.

23. The Appeals Chamber noted Mr Bemba's argument that the Impugned Decision was filed during the judicial recess and that his defence team would be obliged to work throughout the recess in order to meet the time limit for the filing of the document in support of the appeal.[21] The Appeals Chamber further noted the submissions of Mr Bemba that, due to the particular exigencies of the case, his defence team was required to work through the last two judicial recesses.[22]

24. In the particular circumstances of the present case, the Appeals Chamber was satisfied that, in light of these submissions, "good cause" had been shown. The Appeals Chamber considered the requested extension to be reasonable and therefore set the time limit for the filing of the document in support of the appeal as 12 January 2015.

V. MERITS

A. First ground of appeal

25. Mr Bemba's first ground of appeal is that the Trial Chamber erred in law in finding that, given that a 'trial' encompasses the deliberations period, his detention continues to be necessary to ensure his appearance at trial, in accordance with article 58 (1) (b) (i) of the Statute.[23]

1. Background and submissions of the parties

(a) Relevant part of the Impugned Decision

26. The Trial Chamber considered that it is clear that "the commencement of deliberations does not mean that the *trial* has concluded".[24] In this regard, it noted (i) the Appeals Chamber's finding, in the context of regulation 55 of the Regulations of the Court, that "the deliberations stage forms a part of the trial"; [25] (ii) Trial Chamber V(A)'s finding that "the trial includes the delivery of the judgement and, if applicable, the sentencing hearing, sentencing itself, victim impact hearings, and reparation

[21] Extension of Time Request, paras 3-4.
[22] Extension of Time Request, paras 6-7.
[23] Document in Support of the Appeal, paras 15-20.
[24] Impugned Decision, para. 30 (emphasis in original).
[25] Impugned Decision, para. 29, referring to "Judgment on the appeal of Mr Germain Katanga against the decision of Trial Chamber II of 21 November 2012 entitled 'Decision on the implementation of regulation 55 of the Regulations of the Court and severing the charges against the accused persons'", 27 March 2013, ICC-01/04-01/07-3363 (OA 13) (hereinafter: "*Katanga* OA 13 Judgment"), paras 17, 20.

hearings";[26] and (iii) the fact that article 74, which sets out the requirements for the Trial Chamber's decision, article 75 on reparations and article 76 on sentencing "are all included in Part 6 of the Statute entitled 'The Trial'".[27] It found that "[a]s such, neither the closure of evidence nor the start of deliberations mean, *per se*, that the condition of [a]rticle 58(b)(i) [*sic*] is no longer met".[28]

27. In addition, the Trial Chamber found that the "commencement of deliberations does not alter the four factors relied upon by the Chamber in its previous decision that the accused poses a flight risk" (footnote omitted).[29]

28. On the basis of the foregoing, the Trial Chamber found that "the commencement of deliberations is not a changed circumstance requiring modification of its prior finding that the accused's continued detention is necessary to ensure his appearance at trial […]".[30]

(b) Mr Bemba's submissions

29. Mr Bemba submits that, before the Trial Chamber, he "pointed to a changed circumstances [*sic*] arising from 'the completion of the proceedings in the present case'" (footnote omitted).[31] He argues that, following the closing arguments, the Presiding Judge of the Trial Chamber herself indicated that the trial had come to an end and had moved on to the next stage of proceedings, "namely, the Chamber retiring 'in order to **start deliberations**'" (footnote omitted).[32] Having summarised the findings of the Trial Chamber in the Impugned Decision, Mr Bemba argues that, in the context of provisional release, the word "trial" under article 58 (1) (b) (i) of the Statute should be given its plain meaning.[33] As Mr Bemba does not "appear" at deliberations, he argues that his imprisonment during the period of deliberations is merely punitive.[34] He argues that in substance "the hearing of evidence has concluded; witnesses are not being heard; the pleadings are over; the courtroom is

[26] Impugned Decision, para. 29, referring to *The Prosecutor v. William Samoei Ruto and Joshua Arap Sang*, "Reasons for the Decision on Excusal from Presence at Trial under Rule 134*quater*", 18 February 2014, ICC-01/09-01/11-1186 (hereinafter: "Trial Chamber V(A)'s Decision of 18 February 2014"), para. 79.
[27] Impugned Decision, para. 30.
[28] Impugned Decision, para. 30.
[29] Impugned Decision, para. 31.
[30] Impugned Decision, para. 32.
[31] Document in Support of the Appeal, para. 15.
[32] Document in Support of the Appeal, para. 15 (emphasis in original).
[33] Document in Support of the Appeal, para. 17.
[34] Document in Support of the Appeal, para. 17.

empty; the proceedings have finished" and his presence is no longer required in The Hague.[35] He submits that in "placing an emphasis on terminology over substance, the Trial Chamber erroneously failed to consider these factors, or weigh the impact of continuing to detain Mr. Bemba at the seat of the Court in The Hague when he most likely will not be required to be present in the ICC building until the eventual rendering of his Judgement".[36]

30. Mr Bemba also contends that the Trial Chamber failed to engage with his submissions on "the accepted practice at the ICTY, according to which provisional release during periods of judicial recess, or while waiting for a Judgement to be delivered, is viewed as not creating additional risks, but constituting a positive measure on the part of Chambers to ensure that defendants are not detained for an unreasonable length of time during the proceedings, and compliance with international human rights standards concerning detention".[37] Mr Bemba argues that the Trial Chamber's failure to address his submissions constitutes an error of law vitiating the Impugned Decision and warranting its reversal.[38]

(c) Prosecutor's submissions

31. The Prosecutor submits that "the term 'trial' in article 58(1)(b)(i) of the Statute, viewed in its context, must necessarily include the period of judicial deliberations leading to the issue of the Trial Chamber's decision pursuant to article 74".[39] In support of her argument, the Prosecutor references: (i) the *Katanga* OA 13 Judgment; (ii) Trial Chamber V(A)'s Decision of 18 February 2014; (iii) the definition of the word "trial" provided in the Oxford English Dictionary, which "encompasses not just the examination of a cause but also its determination"; and (iv) "other provisions of the Statute, such as articles 36(10), 64(6), and 76(2), [which] necessarily include the deliberations period within the ambit of a 'trial'" (emphasis omitted, footnotes omitted).[40]

32. The Prosecutor argues that "[i]t is implicit in article 81(3)(a) of the Statute, which provides that 'a convicted person shall remain in custody pending an appeal',

[35] Document in Support of the Appeal, para. 18.
[36] Document in Support of the Appeal, para. 18.
[37] Document in Support of the Appeal, para. 19.
[38] Document in Support of the Appeal, para. 20.
[39] Response to the Document in Support of the Appeal, para. 13.
[40] Response to the Document in Support of the Appeal, paras 13-14.

that the personal appearance before the Court of an accused person is accorded just as much weight at the conclusion of a trial as at its beginning".[41]

33. The Prosecutor contends that, contrary to Mr Bemba's assertions, the Appeals Chamber of the International Criminal Tribunal for the former Yugoslavia (hereinafter: "ICTY") adopts a cautious approach when considering provisional release applications at an advanced stage of proceedings.[42] She argues that only two of the cases cited by Mr Bemba are even relevant to the facts of this appeal and in both of those cases the defendants had surrendered voluntarily to the ICTY.[43]

34. Finally, the Prosecutor argues that the Trial Chamber had clearly stated the basis for "its legal conclusion and was not obliged to address expressly each Defence argument" (footnotes omitted).[44]

2. Determination by the Appeals Chamber

35. Mr Bemba's arguments under this ground of appeal raise three separate issues: (i) the legal issue of whether deliberations are part of the trial and, as a result, whether, as a matter of law, detention can be continued under article 58 (1) (b) (i) of the Statute once deliberations have started; (ii) the factual issue of whether in this case the commencement of deliberations constituted a "changed circumstance" requiring a modification of the Trial Chamber's prior ruling on detention within the meaning of article 60 (3) of the Statute; and (iii) the legal issue of whether the Trial Chamber erred by failing to address Mr Bemba's submissions on the practice of the ICTY.[45] These issues are addressed in turn below.

36. The first question for the Appeals Chamber to determine is whether the Trial Chamber erred in law in finding that the condition under article 58 (1) (b) (i) of the Statute – that detention appears necessary to ensure the person's appearance at trial – continues to apply during the period of deliberations. In other words, the question is whether it is possible to detain a person on the basis of article 58 (1) (b) (i) of the Statute once the proceedings have entered the deliberations phase.

[41] Response to the Document in Support of the Appeal, para. 15.
[42] Response to the Document in Support of the Appeal, para. 17.
[43] Response to the Document in Support of the Appeal, para. 16.
[44] Response to the Document in Support of the Appeal, para. 18.
[45] Document in Support of the Appeal, paras 15-20.

37. The ordinary meaning of the word "trial", according to Black's Law Dictionary, is "[a] formal judicial examination of evidence and determination of legal claims in an adversary proceeding".[46] As the Prosecutor points out, a similar definition, encompassing not only the "examination of a cause but also its *determination*" is provided by the Oxford English Dictionary.[47]

38. The Appeals Chamber considers that this interpretation of the word 'trial' is appropriate in the context of article 58 (1) (b) (i) of the Statute.[48] The presence of the accused at trial is required not only for the purposes of hearing the evidence against him or her, but also to ensure the accused's availability for judgment and sentencing. Indeed, it is notable that at an early stage of the drafting of the Rome Statute, the need to ensure the availability of the accused for judgment and sentencing was identified as a key reason for the prohibition of trials *in absentia* and the inclusion of a requirement that the accused be present during the trial under article 63 (1) of the Statute.[49]

39. The Appeals Chamber considers that Mr Bemba's argument, if accepted, would lead to the result that the detention of an accused person under article 58 (1) (b) (i) of the Statute would no longer be permissible during deliberations. In this case, there would be no legal basis under the Statute to continue to detain persons deemed to be a flight risk following the evidentiary hearing and prior to the decision on conviction or acquittal. In the Appeals Chamber's view, it would undermine the entire purpose of remanding accused persons in detention on the grounds that they are flight risks during the evidentiary hearing, if they were ultimately to be released prior to the rendering of the judgment simply on the basis that their presence is not required for deliberations.

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[46] Black's Law Dictionary, (Thomson Reuters, 9th ed. 2009), under Trial.

[47] Response to the Document in Support of the Appeal, para. 14 (emphasis in original), referring to definition of trial provided in the Oxford English Dictionary Online, December 2014: "The examination and determination of a cause by a judicial tribunal; determination of the guilt or innocence of an accused person by a court".

[48] The equivalent provision for the ICTY, Rule 65(B) of the ICTY Rules of Procedure and Evidence, provides that "[r]elease may be ordered *at any stage of the trial proceedings prior to the rendering of the final judgement* […] only if [the Trial Chamber] is satisfied that the accused will appear for *trial*" (emphasis added).

[49] Report of the International Law Commission on the work of its forty-sixth session, Official Records of the General Assembly, Forty-ninth Session, Supplement No. 10 (A/49/10), 1 September 1994, Draft Statute for an International Criminal Court, p. 109, where the International Law Commission indicated that it believed that it was "right to begin […] with the proposition that the presence of the accused at the trial is 'of vital importance', not only because of article 14 (1) (d) of the ICCPR but in order to establish the facts and, if the accused is convicted, to enable an appropriate and enforceable sentence to be passed".

40. The Appeals Chamber also notes that, in the event of an acquittal, article 81 (3) (c) of the Statute specifies that the detention of an acquitted person may be maintained pending appeal.[50] Article 81 (3) (c) of the Statute specifies that this may only be done "under exceptional circumstances", "having regard, *inter alia*, to the *concrete risk of flight*, the seriousness of the offence charged and the probability of success on appeal" (emphasis added). It would seem illogical for the Statute to explicitly provide for the possibility of continuing an acquitted person's detention pending appeal on the grounds that he or she represents a flight risk, if it did not also envisage the possibility of keeping the person in detention during deliberations on the grounds that he or she is a flight risk, pending delivery of the final judgment. In the view of the Appeals Chamber, a reading of article 58 (1) (b) (i) of the Statute in context and in light of its purpose confirms that the word "trial" was intended to cover the entire period of the trial until the final determination of the matter.

41. In view of the foregoing considerations, the Appeals Chamber finds no error in the Trial Chamber's determination that the deliberations period is encompassed in the 'trial'.

42. Mr Bemba also argues that, before the Trial Chamber, he "pointed to a changed circumstances [*sic*] arising from 'the completion of the proceedings in the present case'" (footnote omitted).[51] He submits that "the debate about nomenclature obscures the central point: the hearing of evidence has concluded; witnesses are not being heard; the pleadings are over; the courtroom is empty; the proceedings have finished; Mr. Bemba can no longer be said to be needed in The Hague".[52] He submits that

> [b]y placing an emphasis on terminology over substance, the Trial Chamber erroneously failed to consider these factors, or weigh the impact of continuing to detain Mr. Bemba at the seat of the Court in The Hague when he most likely

[50] Article 81 (3) provides as follows: "(a) Unless the Trial Chamber orders otherwise, a convicted person shall remain in custody pending an appeal; (b) When a convicted person's time in custody exceeds the sentence of imprisonment imposed, that person shall be released, except that if the Prosecutor is also appealing, the release may be subject to the conditions under subparagraph (c) below; (c) In case of an acquittal, the accused shall be released immediately, subject to the following: (i) Under exceptional circumstances, and having regard, *inter alia*, to the concrete risk of flight, the seriousness of the offence charged and the probability of success on appeal, the Trial Chamber, at the request of the Prosecutor, may maintain the detention of the person pending appeal; (ii) A decision by the Trial Chamber under subparagraph (c) (i) may be appealed in accordance with the Rules of Procedure and Evidence".
[51] Document in Support of the Appeal, para. 15.
[52] Document in Support of the Appeal, para. 18.

> will not be required to be present in the ICC building until the eventual rendering of his Judgement.[53]

43. The Appeals Chamber understands these arguments as raising the question of whether the Trial Chamber erred in its determination that "the commencement of deliberations is not a changed circumstance requiring modification of its prior finding that the accused's continued detention is necessary to ensure his appearance at trial […]".[54] Accordingly, the Trial Chamber's review under article 60 (3) of the Statute is addressed below in light of Mr Bemba's arguments.

44. Article 60 (3) of the Statute provides that a Chamber may modify an earlier order relating to a person's detention "if it is satisfied that changed circumstances so require". The Appeals Chamber recalls that it has previously laid out the following procedure for reviewing decisions on detention or release under article 60 (3) of the Statute:

> […] First, the Pre-Trial or Trial Chamber must identify the "ruling on release or detention" that needs to be reviewed, i.e. the initial decision made under article 60 (2) of the Statute as well as any potential subsequent modifications made to that decision under article 60 (3) of the Statute. Second, the Pre-Trial or Trial Chamber needs to consider whether there are "changed circumstances", i.e. whether there is a "change in some or all of the facts underlying a previous decision on detention, or a new fact satisfying a Chamber that a modification of its prior ruling is necessary". If there are changed circumstances, the Pre-Trial or Trial Chamber will need to consider their impact on the factors that form the basis for the decision to keep the person in detention. If, however, the Pre-Trial or Trial Chamber finds that there are no changed circumstances, that Chamber is not required to further review the ruling on release or detention.[55] [Footnotes omitted.]

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[53] Document in Support of the Appeal, para. 18.
[54] Impugned Decision, para. 32.
[55] *Bemba* OA 10 Judgment, para. 31. *See also The Prosecutor v. Laurent Gbagbo*, "Judgment on the appeal of Mr Laurent Gbagbo against the decision of Pre-Trial Chamber I of 11 July 2013 entitled 'Third decision on the review of Laurent Gbagbo's detention pursuant to article 60(3) of the Rome Statute'", 29 October 2013, ICC-02/11-01/11-548-Conf (OA 4); a public redacted version was registered on 29 October 2013 (ICC-02/11-01/11-548-Red (OA 4)), para. 40; *Bemba* OA 2 Judgment, para. 60; "Judgment on the appeal of Mr Jean-Pierre Bemba Gombo against the decision of Trial Chamber III of 2 September 2011 entitled 'Decision on the "Demande de mise en liberté de M. Jean-Pierre Bemba Gombo afin d'accomplir ses devoirs civiques en République Démocratique du Congo"'", 9 September 2011, ICC-01/05-01/08-1722 (OA 8) (hereinafter: "*Bemba* OA 8 Judgment"), para. 30, quoting "Judgment on the appeal of Mr Jean-Pierre Bemba Gombo against the decision of Trial Chamber III of 27 June 2011 entitled 'Decision on Applications for Provisional Release'", 19 August 2011, ICC-01/05-01/08-1626-Conf (OA 7); a public redacted version was registered on 12 September 2011, (ICC-01/05-01/08-1626-Red (OA 7)) (hereinafter: "*Bemba* OA 7 Judgment"), para. 71; s*ee also The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, "Judgment In the Appeal by Mathieu Ngudjolo Chui of 27 March 2008 against the Decision of Pre-Trial Chamber I on the Application of the

45. In the present case, it is noted that Mr Bemba argued in his Request for Provisional Release before the Trial Chamber that his "detention is no longer warranted to ensure his appearance at trial, given that the trial process has now concluded".[56] He submitted that "[h]aving attended the trial and participated in the process in full, Mr Bemba's presence in The Hague is simply no longer required" and that any consultation with his legal team "can be conducted at a distance […]".[57]

46. In the Impugned Decision, the Trial Chamber, having concluded that "neither the closure of evidence nor the start of deliberations mean, *per se*, that the condition of [a]rticle 58(b)(i) [*sic*] is no longer met",[58] found that "the commencement of deliberations does not alter the four factors relied upon by the Chamber in its previous decision that the accused poses a flight risk" (footnote omitted)[59] and, in addition, that "the commencement of deliberations is not a changed circumstance requiring modification of its prior finding […]" under article 58 (1) (b) (i) of the Statute.[60]

47. The Appeals Chamber finds that the Trial Chamber's conclusions were not unreasonable. In the context of this case, there was no indication that the commencement of deliberations, although a changed circumstance, would have any impact on the risk that Mr Bemba would abscond previously identified under article 58 (1) (b) (i) of the Statute. It is notable in this regard that Mr Bemba did not raise any relevant substantive arguments before the Trial Chamber and has not, in the Document in Support of the Appeal, pointed to any error in the Trial Chamber's reasoning as to the impact of the commencement of deliberations on the factors grounding the necessity of his detention.

48. Finally, Mr Bemba argues that the Trial Chamber's failure to engage with the Defence submissions on the practice of the ICTY was an error of law which vitiates the Impugned Decision and warrants its reversal.[61] The Appeals Chamber considers that the Trial Chamber indicated with sufficient clarity the basis of its decision in relation to Mr Bemba's first ground of appeal and was not required to exhaustively

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Appellant for Interim Release", 9 June 2008, ICC-01/04-01/07-572 (OA 4) (hereinafter: "*Katanga and Ngudjolo* OA 4 Judgment"), para. 14.
[56] Request for Provisional Release, para. 35.
[57] Request for Provisional Release, para. 35.
[58] Impugned Decision, para. 30.
[59] Impugned Decision, para. 31.
[60] Impugned Decision, para. 32.
[61] Document in Support of the Appeal, paras 19-20.

address the arguments of the parties. In view of the foregoing, the Appeals Chamber finds that the Trial Chamber did not err in failing to engage with the Defence submissions on the jurisprudence of the ICTY.

B. Second ground of appeal

49. Mr Bemba's second ground of appeal is that the Trial Chamber erred in law by relying on factual findings from the "Decision pursuant to Article 61(7)(a) and (b) of the Rome Statute", rendered by Pre-Trial Chamber II (hereinafter: "Pre-Trial Chamber") in the context of the article 70 proceedings[62] (hereinafter: "Confirmation Decision"), to add an additional justification for Mr Bemba's continued detention under article 58 (1) (b) (ii) of the Statute (risk of obstructing or endangering the investigation or court proceedings).[63]

1. Background and submissions of the parties

(a) Relevant part of the Impugned Decision

50. In the Impugned Decision, the Trial Chamber noted that Mr Bemba was not currently detained under article 58 (1) (b) (ii) of the Statute.[64] It referred to its decision of 26 September 2011,[65] in which it had found that article 58 (1) (b) (ii) of the Statute constituted an additional ground for Mr Bemba's detention, and recalled that the Appeals Chamber subsequently found that, pursuant to rule 118 (3) of the Rules of Procedure and Evidence, it had "made a procedural error in relying on a ground of detention where the accused 'could not possibly have […] foreseen at that time that this would be a reason for denying his application'" and "that 'the Trial Chamber therefore should have sought submissions from Mr Bemba concerning witness intimidation before deciding on this issue as an additional ground of detention […]'".[66] The Trial Chamber recalled that, in "subsequent decisions [it] did not consider whether the accused's detention may be warranted under [a]rticle 58(1)(b)(ii)" (footnotes omitted).[67] It went on to note that "the present circumstances

[62] 11 November 2014, ICC-01/05-01/13-749.
[63] Document in Support of the Appeal, paras 21-30.
[64] Impugned Decision, para. 38.
[65] "Decision on the accused's application for provisional release in light of the Appeals Chamber's judgment of 19 August 2011", ICC-01/05-01/08-1789-Conf; a public redacted version was registered on 27 September 2011 (ICC-01/05-01/08-1789-Red) (hereinafter: "Decision of 26 September 2011"), paras 27-33.
[66] Impugned Decision, para. 39.
[67] Impugned Decision, para. 39.

differ greatly from those that prevailed at the time the September 2011 [d]ecision was taken".[68]

51. First, the Trial Chamber noted that Mr Bemba had made submissions on the necessity of detention under article 58 (1) (b) (ii) of the Statute and that the Prosecutor and legal representative of victims had responded to these submissions.[69] Second, it noted that the Pre-Trial Chamber, in the article 70 proceedings against Mr Bemba, had found substantial grounds to believe that Mr Bemba "(i) committed or solicited the offences of corruptly influencing witnesses and presenting false evidence; and (ii) solicited the commission of the offence of giving false testimony".[70] The Trial Chamber noted that the Prosecutor and legal representative of victims had addressed issues related to the article 70 proceedings in their submissions and that Mr Bemba had addressed submissions on this matter in his Reply to Responses to the Request for Provisional Release.[71] The Trial Chamber found that it had "received observations on the conditions of [a]rticle 58(1)(b)(ii), including specifically relating to [the article 70 proceedings], from the prosecution, the legal representative, and the defence. Consequently, no argument can be made that the defence 'could not have foreseen at that time that this would be a reason for denying' its Provisional Release Motion".[72] As a result, it went on to consider whether Mr Bemba's detention could be justified under that provision.[73] It recalled that the Appeals Chamber had found that this ground could be relied upon "where there is a 'possibility' that the arrest of the person appears necessary to ensure that the person does not obstruct or endanger the court proceedings" and that it "has also held that factors relevant to determining whether an accused has the incentive and means to abscond ([a]rticle 58(1)(b)(i)), are also relevant to determining whether he or she has the incentive and means to obstruct the proceedings ([a]rticle 58(1)(b)(ii))" (footnotes omitted).[74]

52. The Trial Chamber rejected Mr Bemba's argument that considerations related to the article 70 proceedings "fall outside the scope of an [a]rticle 58 assessment in [the

[68] Impugned Decision, para. 40.
[69] Impugned Decision, para. 41.
[70] Impugned Decision, para. 42, referring to Confirmation Decision, para. 25; pp. 47-48.
[71] Impugned Decision, para. 42.
[72] Impugned Decision, para. 43.
[73] Impugned Decision, para. 44.
[74] Impugned Decision, para. 44.

Bemba case]".[75] It found that "[i]nsofar as information has a factual bearing on the question of whether there exists a risk that the accused may 'obstruct or endanger the … court proceedings', it falls squarely within the scope of the Chamber's assessment pursuant to [a]rticle 58(1)(b)(ii)".[76]

53. The Trial Chamber noted that the Pre-Trial Chamber released Mr Bemba's co-suspects in the article 70 proceedings, "relying", according to Mr Bemba, "on the lack of risk of interference that proceedings or investigations might be obstructed or endangered…'" (footnote omitted).[77] The Trial Chamber noted first that the Pre-Trial Chamber, in its decision releasing the four suspects, "did not find that a 'lack of risk of interference' alone justified provisional release, but also considered, '*more specifically*, that the reasonableness of the duration of the detention has to be balanced *inter alia* against the statutory penalties applicable to the offences at stake…and that, accordingly, the *further extension of the period of the pre-trial detention would result in making its duration disproportionate*'".[78] Second, the Trial Chamber found that the Pre-Trial Chamber's finding of a reduced risk that the article 70 proceedings or investigations might be obstructed or endangered "has no bearing on" the Trial Chamber's assessment of the risk that Mr Bemba may obstruct or endanger the court proceedings in the main case against him.[79]

54. Turning specifically to article 58 (1) (b) (ii) of the Statute, the Trial Chamber:

> while noting its decision not to authorise submission of evidence collected in investigations related to [the article 70 proceedings], […] considers that the existence of a finding by Pre-Trial Chamber II that there are "substantial grounds to believe" that the accused committed or solicited offences against the administration of justice related to the *Bemba* case, […] clearly satisfies the standard set by the Appeals Chamber that there must be a "possibility" that the arrest of the person appears necessary to ensure that the person does not obstruct or endanger the court proceedings. In this regard, the Chamber is also mindful of the three factors relating to the accused's incentive to abscond, and its finding as to "the financial and material support from which the accused benefits",

[75] Impugned Decision, para. 45.
[76] Impugned Decision, para. 45.
[77] Impugned Decision, para. 46.
[78] Impugned Decision, para. 47 (emphasis in original), referring to "Decision ordering the release of Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse Arido", 21 October 2014, ICC-01/05-01/13-703 (hereinafter: "Decision Releasing Mr Bemba's Co-suspects in the Article 70 Proceedings"), p. 4.
[79] Impugned Decision, para. 48, referring to Decision Releasing Mr Bemba's Co-suspects in the Article 70 Proceedings, p. 4.

> which underlay its finding that the accused poses a flight risk. The Chamber finds these factors equally relevant in assessing whether the accused has the incentive and means to obstruct or endanger the proceedings.[80] [Footnotes omitted.]

55. Finally, the Trial Chamber noted that Mr Bemba would give a "'personal guarantee' not to discuss his case with anyone other than his counsel. While noting that this undertaking may bear on its assessment pursuant to [a]rticle 58(1)(b)(ii) [of the Statute], the Chamber [found] that this undertaking is insufficient to mitigate the risks outlined above" (footnote omitted).[81]

56. Based on these considerations, the Trial Chamber found that Mr Bemba's detention was warranted under article 58 (1) (b) (ii) of the Statute.[82]

(b) Mr Bemba's submissions

57. Mr Bemba points out that in relation to the article 70 proceedings, "[t]he Prosecution's investigative techniques and its use of Registry organs […] to collect and access privileged and confidential Defence information has prompted extensive litigation in the [m]ain [c]ase which will likely plague the current proceedings well into any appeal phase, and arguably beyond" (footnote omitted).[83] He points to the fact that the Trial Chamber had been "improperly seized" with various requests by the Prosecutor in relation to the article 70 investigations, over a period of five months during which the defence case was being presented, "exposing the bench to details of unproven allegations against both Defence witnesses and the Defence team to which it should never have been exposed" (footnote omitted).[84] Mr Bemba submits that, having acknowledged that it was not competent to deal with the Prosecutor's requests and should not have been so seised, the Trial Chamber went a step further and "[i]n April 2014, […] explicitly rejected a Prosecution request to admit [a]rticle 70 material in the [m]ain [c]ase" (footnotes omitted).[85] He points out that the Trial Chamber "found, *inter alia*, that the material in question concerned matters being litigated by Pre-Trial Chamber II in the [a]rticle 70 [c]ase, and that it was not appropriate for

[80] Impugned Decision, para. 49.
[81] Impugned Decision, para. 50.
[82] Impugned Decision, para. 51.
[83] Document in Support of the Appeal, para. 21.
[84] Document in Support of the Appeal, para. 22.
[85] Document in Support of the Appeal, para. 22.

matters to be litigated in parallel in the [m]ain [c]ase" (footnote omitted).[86] He submits that "[i]n marked contrast […], the Impugned Decision adopts, accepts, and relies upon factual findings made by Pre-Trial Chamber II in the [a]rticle 70 [c]ase".[87] Mr Bemba submits that "[b]y virtue of the Trial Chamber's ruling of April 2014, there is no evidence in the [m]ain [c]ase on the matter of whether Mr. Bemba committed or solicited offences against the administration of justice".[88]

58. Mr Bemba argues that a "Chamber has a duty to draw its own reasonable conclusions **on the evidence admitted** in the case before it" (footnote omitted) and that it "cannot simply pick and choose findings from other Pre-Trial or Trial Chambers without itself scrutinising the evidence underpinning these findings and affording the parties an opportunity to challenge the evidence and make submissions as to its weight and impact on the case at hand, particularly vis-à-vis the other evidence in the casefile unknown to the first Chamber".[89] In support of this proposition, Mr Bemba references (i) the *Katanga and Ngudjolo* OA 4 Judgment;[90] (ii) the decision of Trial Chamber II of 26 April 2012[91] (hereinafter: "*Katanga and Ngudjolo* Decision of 26 April 2012"); and (iii) jurisprudence from the ICTY.[92]

59. Mr Bemba argues that, the Trial Chamber, "[i]n adopting the findings from Pre-Trial Chamber II, […] falls foul of [the *Katanga and Ngudjolo* OA 4 Judgment]" and that "the unfairness and prejudice to the fairness of the proceedings is patent".[93] He submits that he "has been given no chance to defend against the [a]rticle 70 allegations and charges in the [m]ain [c]ase, yet he is being detained on this basis in these proceedings".[94] He further argues that he has sought leave to appeal in the

[86] Document in Support of the Appeal, para. 22.
[87] Document in Support of the Appeal, para. 23.
[88] Document in Support of the Appeal, para. 24, referring to "Decision on 'Prosecution's Application to Submit Additional Evidence'", 2 April 2014, ICC-01/05-01/08-3029, para. 26.
[89] Document in Support of the Appeal, para. 24 (emphasis in original).
[90] Document in Support of the Appeal, paras 25-27, referring to *Katanga and Ngudjolo* OA 4 Judgment, paras 26-27.
[91] Document in Support of the Appeal, paras 28-30, referring to "Decision on the request by the Defence for Germain Katanga seeking to admit excerpts from the judgment rendered in *Lubanga*", dated 26 April 2012 and registered on 11 October 2012, ICC-01/04-01/07-3279-tENG; original French version, dated and registered on 26 April 2012 (ICC-01/04-01/07-3279), paras 14, 18.
[92] Document in Support of the Appeal, para. 24, referring to ICTY. Appeals Chamber, *Prosecutor v. Milomir Stakić*, "Judgement", 22 March 2006, IT-97-24-A, para. 346; ICTR, Appeals Chamber, *Édouard Karemera & Matthieu Ngirumpatse v. The Prosecutor*, "Judgement", 29 September 2014, ICTR-98-44-A, fn. 1288.
[93] Document in Support of the Appeal, para. 27.
[94] Document in Support of the Appeal, para. 27.

article 70 proceedings the very findings that the Trial Chamber relied on in the Impugned Decision and, assuming that these findings are overturned on appeal, "this in turn would undermine the Impugned Decision, and the basis for the ongoing deprivation of his liberty".[95]

60. In relation to the *Katanga and Ngudjolo* proceedings, Mr Bemba argues:

> The prejudice finds further illustration in a decision in the *Katanga & Ngudjolo* case. Following the closure of evidence in that case, the Defence sought the admission of portions of the *Lubanga* judgement concerning the improper behaviour of certain Prosecution intermediaries who were common to both cases. In rejecting the Defence request, the Trial Chamber correctly observed that the admission of fresh evidence (namely findings from another Trial Chamber) after the closure of the evidence would automatically entail "the reopening of oral proceedings to hear adversarial submissions as to the appropriate weight to be attached in the light of the whole casefile, in accordance with article 74(2) of the Statute." This can be contrasted with the approach in the Impugned Decision, where the Trial Chamber simply cut and pasted helpful factual findings of another Chamber into its own decision.[96] [Footnotes omitted.]

61. Mr Bemba argues that "the Trial Chamber employed none of the 'scrutiny' or safeguards to which the *Katanga* Chamber refers" and he submits that "[i]n sanctioning the adoption of factual findings of other Chambers in the absence of any submissions from the parties, the Impugned Decision sets a troubling precedent in undermining the right of an accused to challenge the evidence against him".[97] He asserts that the Impugned Decision "simply dispenses with the entire process of the admission of evidence".[98] He submits that "[t]he reliance by the Trial Chamber on findings of Pre-Trial Chamber II in the [a]rticle 70 [c]ase to justify Mr. Bemba's detention in the [m]ain [c]ase is a legal error which warrants the reversal of the Impugned Decision".[99]

(c) Prosecutor's submissions

62. The Prosecutor submits that "the Trial Chamber made its own, independent determination" of the risk that Mr Bemba may obstruct or endanger the Court's proceedings and that the Confirmation Decision "was a relevant (but not the sole)

[95] Document in Support of the Appeal, para. 27.
[96] Document in Support of the Appeal, para. 28.
[97] Document in Support of the Appeal, para. 30.
[98] Document in Support of the Appeal, para. 30.
[99] Document in Support of the Appeal, para. 30.

piece of evidence supporting this determination".[100] The Prosecutor argues that the Trial Chamber did not simply apply the finding of the Pre-Trial Chamber for the purposes of the main case, but referred to "the existence of [this] finding" "only as '*a matter of fact and strictly for the purposes of its assessment under [a]rticle 58(1)(b)(ii)*'".[101] She contends that the Trial Chamber identified other facts "equally relevant in assessing whether the accused has the incentive and means to obstruct or endanger the proceedings" and "considered whether a 'personal guarantee' from Mr Bemba was sufficient to offset the risk it had identified" (footnotes omitted).[102]

63. The Prosecutor submits that the Trial Chamber's finding related to "Mr Bemba's anticipated *future* conduct" (footnote omitted), whereas the Pre-Trial Chamber's finding related to his "alleged past conduct".[103] In her submission, the Prosecutor noted that "[a]lthough the Trial Chamber rightly considered suspicions of past conduct to be highly relevant to future conduct, the two issues are different".[104]

64. The Prosecutor submits that the "Trial Chamber was not obliged itself to 'scrutinise the evidence underpinning' Pre-Trial Chamber II's analysis" as "[t]he material point […] was not whether Mr Bemba had actually committed the article 70 offences alleged but simply that Pre-Trial Chamber II […] had considered there were substantial grounds to believe that he had committed such offences" (footnote omitted).[105] The Prosecutor asserts that the Trial Chamber was aware of the standard of proof applied by the Pre-Trial Chamber as well as the lower standard applicable for the purposes of its own decision.[106] In her submission, "there was no need for the [p]arties to be heard by the Trial Chamber regarding any countervailing evidence".[107]

65. The Prosecutor submits that "the Trial Chamber's independent analysis is plain" and therefore the present case is distinguishable from that addressed in the *Katanga and Ngudjolo* OA 4 Judgment.[108] She argues that the other jurisprudence to which Mr Bemba refers is likewise inapposite as the *Katanga and Ngudjolo* Decision of 26

[100] Response to the Document in Support of the Appeal, para. 20.
[101] Response to the Document in Support of the Appeal, para. 21 (emphasis in original).
[102] Response to the Document in Support of the Appeal, para. 21.
[103] Response to the Document in Support of the Appeal, para. 22 (emphasis in original).
[104] Response to the Document in Support of the Appeal, para. 22.
[105] Response to the Document in Support of the Appeal, para. 24.
[106] Response to the Document in Support of the Appeal, para. 24.
[107] Response to the Document in Support of the Appeal, para. 24.
[108] Response to the Document in Support of the Appeal, para. 23.

April 2012 simply underlines that caution "may be necessary in attempting to rely on factual findings from other proceedings for the truth of their contents", while the cited jurisprudence of the ICTY merely confirms "the common sense view that a Trial Chamber 'is not bound by the factual findings of another case'" (footnotes omitted).[109]

2. Determination by the Appeals Chamber

66. In essence, the issue under the second ground of appeal is whether the Trial Chamber erred in law in relying on the fact that relevant charges under article 70 of the Statute had been confirmed against Mr Bemba by another Chamber of the Court in order to justify continuing his detention. Mr Bemba has not raised arguments regarding the reasonableness of the Trial Chamber's factual conclusions under article 58 (1) (b) (ii) of the Statute and this question is not addressed by the Appeals Chamber.

67. Mr Bemba argues that the Appeals Chamber should rely on its previous finding in the *Katanga and Ngudjolo* OA 4 Judgment, wherein it held that a finding under article 58 (1) (b) (ii) of the Statute was ill-founded because it was "based on the appreciation of facts […] made by another member of the Pre-Trial Chamber acting as a Single Judge in proceedings unrelated to the warrant of arrest of the appellant" (footnote omitted).[110] In that case, the Appeals Chamber stated:

> 26. […] The Single Judge in that case found that from the facts laid before her, it appeared that the appellant had the capacity to interfere with ongoing or further investigations, or Prosecution witnesses, victims, or members of their families. What these facts are is not explained. What is missing is the evaluation of the relevant facts by the Single Judge in the present proceedings. In this case the Single Judge adopted the findings made by another Single Judge in other proceedings; this is impermissible. A judge, the Single Judge in this case, is duty-bound to appraise facts bearing on sub judice matters, determine their cogency and weight and come to his/her findings, as the Single Judge was bound to do in this case but failed to do.
>
> 27. The Single Judge was not relieved of that duty because another judge within the context of the proceedings made an appraisal of the facts, nor was any evaluation made in such proceedings binding on the Chamber charged with the determination of a sub judice issue. It was the responsibility of the judge in this case to assess the facts pertinent to her decision, and found her judgment

[109] Response to the Document in Support of the Appeal, para. 27.
[110] *Katanga and Ngudjolo* OA 4 Judgment, para. 26.

> thereupon. The decision of the Pre-Trial Chamber to the effect that article 58 (1) (b) (ii) provides an additional reason for the detention of the appellant is ill-founded, and for that reason it must be disregarded as a ground validating the appellant's detention, otherwise warranted, as the Appeals Chamber has determined, under article 58 (1)(b)(i). [Footnote omitted.][111]

68. The Appeals Chamber notes that, in the case of *The Prosecutor v. Katanga and Ngudjolo*, the Single Judge relied, for the purposes of an interim release decision, on findings made in an entirely different context, that is, a decision to authorise redactions. In the relevant part of the interim release decision that was ultimately reversed by the Appeals Chamber in the *Katanga and Ngudjolo* OA 4 Judgment, the Single Judge adopted findings that witnesses were at risk made in the context of a decision to redact certain information from documents to be disclosed to the defence; the Single Judge relied exclusively on these findings in order to justify the continued detention of the suspect under article 58 (1) (b) (ii) of the Statute, without conducting any further assessment of their applicability and relevance in that context. The Appeals Chamber considers that the facts underlying the *Katanga and Ngudjolo* OA 4 Judgment must be distinguished from those under consideration in the instant case.

69. The Appeals Chamber notes that the standard of "substantial grounds to believe" applicable for the purposes of the confirmation of charges under article 61 (7) of the Statute is higher than that applicable under article 58 (1) (b) (ii) of the Statute. In relation to this latter standard, the Appeals Chamber has previously held that

> What may justify arrest (and, in this context, continued detention) under article 58 (1) (b) of the Statute is that it must "appear" to be necessary. The question revolves around the possibility, not the inevitability, of a future occurrence.[112]

70. The Appeals Chamber notes that, in the present case, the Trial Chamber relied on the fact that charges had been confirmed against Mr Bemba in relation to article 70 offences of corruptly influencing witnesses and presenting false evidence and soliciting the commission of the offence of giving false testimony, offences that had allegedly been carried out in the context of the case before it.[113] The relevance of these charges to an assessment as to whether the arrest of Mr Bemba appears necessary to ensure that he does not obstruct or endanger the investigation or the court

[111] *Katanga and Ngudjolo* OA 4 Judgment, paras 26-27.
[112] *Katanga and Ngudjolo* OA 4 Judgment, para. 21.
[113] Impugned Decision, para. 42, referring to Confirmation Decision, para. 25; pp. 47-48.

proceedings is, in principle, evident. The Appeals Chamber considers that the Trial Chamber did not adopt the conclusions of the Pre-Trial Chamber in the sense of endorsing its findings on the merits; rather, as part of its assessment of the existence of a risk under article 58 (1) (b) (ii) of the Statute, the Trial Chamber took into account the fact that charges had been confirmed against Mr Bemba in the article 70 proceedings and assessed this fact in light of all the circumstances of the case.[114]

71. In view of the foregoing, the Appeals Chamber finds that the Trial Chamber did not err in law in relying on the fact that charges had been confirmed against Mr Bemba in the article 70 proceedings, for the purposes of its analysis as to whether Mr Bemba's detention appeared necessary under article 58 (1) (b) (ii) of the Statute in the main case.

C. Third ground of appeal

72. Mr Bemba's third ground of appeal is that the Trial Chamber erred in denying provisional release on the basis that it was not clear that the Kingdom of Belgium had offered to accept him and to enforce conditions.[115]

1. Background and submissions

(a) Background and relevant part of the Impugned Decision

73. The Trial Chamber noted Mr Bemba's argument that the conclusion of an agreement between the ICC and the Kingdom of Belgium on the provisional release of detainees constitutes a change in circumstances warranting the reconsideration of his detention.[116] It noted Mr Bemba's submissions that he is:

> "willing to provide personal guarantees as necessary to reassure the Court that no risk of flight exists" including: to remain in a residence designated by the court; to be subject to the extradition laws of either Belgium or Portugal; to be subject to an order to remain in the country; to surrender his passport to the court; to be subject to 24-hour electronic surveillance; to report to local police or authorities on a daily basis; to receive unannounced visits by the police or local authorities; not to discuss his case with anyone other than his counsel; to assume all responsibility for travel costs; and to ensure strict compliance with

[114] Impugned Decision, para. 49.
[115] Document in Support of the Appeal, paras 31-41.
[116] Impugned Decision, para. 52.

> any order of the Chamber varying or terminating his provisional release. [Footnote omitted.][117]

74. By reference to the jurisprudence of the Appeals Chamber, the Trial Chamber found that when no State has expressly offered to accept the accused and enforce conditions, "Chambers are 'not duty-bound to consider conditional release […]'".[118] The Trial Chamber observed that, while Mr Bemba "makes reference to the existence of an agreement between Belgium and the ICC relating to interim release" (footnote omitted), "it is far from clear that such an agreement constitutes an 'offer to accept' the accused onto its territory or to enforce conditions, nor is such an offer self-evident".[119] The Trial Chamber concluded that, "on the information before it, no State has 'offered to accept [the accused] and to enforce conditions' nor is such an offer self-evident" and that "[a]s a consequence, […] the Chamber is not required to consider conditional release, and has discretion in this regard".[120]

75. The Trial Chamber found that "[t]his notwithstanding, [it] will consider whether conditional release might be appropriate in the present circumstances" and "whether it is necessary to seek further information from Belgium or Portugal relating to any potential period of conditional release".[121] It stated:

> 58. In line with its previous findings that the accused constitutes a flight risk and that it is "appropriate at this stage for the accused to remain within a detention regime overseen by the Court", the Chamber concludes that there is no condition short of detention at the seat of the Court that would be sufficient to mitigate the accused's flight risk. In exercising its discretion in this regard, the Chamber has paid particular attention to the factual circumstances on which it based its finding that the accused poses a flight risk, namely: (i) that the trial is ongoing; (ii) the gravity of the charges confirmed against the accused; (iii) the potential substantial sentence in case of conviction; and (iv) the financial and material support from which the accused benefits. […]
>
> 59. The Chamber also recalls its finding that the accused's detention is necessary pursuant to [a]rticle 58(1)(b)(ii) in paragraphs 38 to 51 above. In light of Pre-Trial Chamber II's findings, the Chamber is of the view that no condition short of maintaining the accused's detention would be sufficient to mitigate the

[117] Impugned Decision, para. 53.
[118] Impugned Decision, para. 55 referring to "Judgment on the appeal of Mr Fidèle Babala Wandu against the decision of Pre-Trial Chamber II of 14 March 2014 entitled 'Decision on the "Requête urgente de la Défense sollicitant la mise en liberté provisoire de monsieur Fidèle Babala Wandu"'", 11 July 2014, ICC-01/05-01/13-559 (OA 3), para. 117; *Bemba* et al. OA 4 Judgment, para. 129.
[119] Impugned Decision, para. 56.
[120] Impugned Decision, para. 57.
[121] Impugned Decision, para. 57.

> risk that the accused might obstruct or endanger the court proceedings. [Footnotes omitted.][122]

76. The Trial Chamber concluded that it did "not consider that conditional release would be appropriate in the present circumstances"[123] and that, in light of its conclusions, it did "not consider it necessary 'that a status conference be called, with representatives from [Belgium and Portugal] to discuss the implementation of appropriate conditions and logistical arrangements for any eventual period of provisional release'" (footnote omitted).[124]

(b) Mr Bemba's submissions

77. Mr Bemba argues that the Impugned Decision has put him "in an impossible position, rendering his right to seek provisional release illusory".[125] Mr Bemba submits that, [REDACTED].[126] He states that, [REDACTED].[127] Mr Bemba submits that, [REDACTED] a request which was dismissed by the Trial Chamber as "'premature' in the absence of a legally and factually substantiated request for provisional release" (footnote omitted).[128]

78. Mr Bemba submits that he brought a substantiated request before the Trial Chamber "once the trial had drawn to a close and changed conditions arose warranting a modification of the orders governing his detention" […].[129] He indicates that, in the Reply to Responses to the Request for Provisional Release of 15 December 2014, he informed the Trial Chamber that "[a]s in the past, [he] ha[d] been informed that Belgium remains willing to accommodate any request from the Court concerning [his] provisional release".[130] He states that, "[i]n the absence of any indication that the Trial Chamber ha[d] solicited the views of either Belgium or Portugal" […], he requested that the Trial Chamber convene a status conference with representatives of both States to "discuss the implementation of appropriate

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[122] Impugned Decision, paras 58-59.
[123] Impugned Decision, para. 60.
[124] Impugned Decision, para. 61.
[125] Document in Support of the Appeal, para. 31.
[126] Document in Support of the Appeal, para. 32.
[127] Document in Support of the Appeal, para. 33.
[128] Document in Support of the Appeal, paras 34-35.
[129] Document in Support of the Appeal, para. 36.
[130] Document in Support of the Appeal, para. 36.

conditions and logistical arrangements for any eventual period of provisional release".[131]

79. He argues that "[t]he Trial Chamber was therefore [REDACTED], and was also directly seized with a request to solicit observations from Belgium in both June and December 2014".[132] He submits that "[d]eclining to do so, and yet finding that 'it is not clear that Belgium has offered to accept [Mr. Bemba] and enforce conditions' makes [it] complicit in the catch-22 which renders [his] right to provisional release illusory".[133]

80. He submits:

> [REDACTED] the Trial Chamber refuses to ask for its observations, there will forever be a stalemate. In circumstances in which a State has indicated that it will submit observations concerning its willingness to enforce specific conditions upon order of a Chamber, the Chamber's discretion to seek such observation does not apply.[134]

81. Mr Bemba argues that "[i]n contrast to the situation where no proposal for conditional release has been presented, a concrete proposal has been introduced" in the present case, by virtue of the fact that he had "requested to be released to Belgium, which has both entered into an agreement with the Court concerning provisional release of accused into its territory [REDACTED]".[135] He argues that "[t]his scenario thus falls squarely within the parameters of the Appeals Chamber's judgment in *Bemba* to the effect that the Chamber has no discretion not to request observations in such circumstances".[136] He submits that "[t]o hold otherwise would deprive the initial *Bemba* ruling of any force, and create an unfair distinction between countries which will respond to Defence co-operation requests directly, and those (mainly civil law countries) which require such requests to be routed through an order of the Chamber".[137]

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[131] Document in Support of the Appeal, para. 36.
[132] Document in Support of the Appeal, para. 37.
[133] Document in Support of the Appeal, para. 37.
[134] Document in Support of the Appeal, para. 38.
[135] Document in Support of the Appeal, para. 38.
[136] Document in Support of the Appeal, para. 38 (emphasis in original), referring to the *Bemba* OA 7 Judgment, para. 55.
[137] Document in Support of the Appeal, para. 38.

82. Furthermore, Mr Bemba submits that "the Trial Chamber's conclusion that 'there is no condition short of detention at the seat of the Court that would be sufficient to mitigate the accused's flight risk' was taken in the absence of relevant information from Belgium concerning the conditions able to be put in place […]" (footnote omitted).[138] He argues that the Trial Chamber's conclusion was based on (i) prior findings that were not made in the context of a decision considering conditional release, and (ii) findings of the Pre-Trial Chamber in the article 70 proceedings.[139] He contends that, "[g]iven that this was the first time that the Trial Chamber had held that no conditions of release could satisfy the criteria set out in [a]rticle 58(1), it was incumbent on the Trial Chamber to make such a finding on the basis of submissions and evidence before it, rather than relying on previous findings that were issued at a different period and under different circumstances".[140]

(c) Prosecutor's submissions

83. The Prosecutor argues that the Request for Provisional Release did not refer to anything other than the agreement between the ICC and the Kingdom of Belgium as showing that this State had offered to accept him on its territory and enforce conditions.[141] She submits that Mr Bemba has not shown any "error in the Trial Chamber's assessment that 'it is not clear that Belgium has "offered to accept [the accused] and to enforce conditions"'" (footnote omitted) based on the information before it.[142]

84. She further argues that the Trial Chamber's approach did not materially affect the Impugned Decision, as "the Trial Chamber nonetheless did consider 'whether conditional release might be appropriate in the present circumstances'" (footnote omitted).[143] She submits that Mr Bemba has not shown any error in "the Trial Chamber's assessment that 'there is no condition short of detention' which could mitigate either the risk under article 58(1)(b)(i) or (ii)".[144] She submits that in such circumstances, "the Trial Chamber's 'discretion to consider conditional release is unfettered'" and it was "reasonable to consider that its determination would not

[138] Document in Support of the Appeal, para. 39.
[139] Document in Support of the Appeal, para. 39.
[140] Document in Support of the Appeal, para. 40.
[141] Response to the Document in Support of the Appeal, para. 30.
[142] Response to the Document in Support of the Appeal, paras 29-30.
[143] Response to the Document in Support of the Appeal, para. 31.
[144] Response to the Document in Support of the Appeal, para. 31.

further be assisted by requiring further submissions from the Belgian authorities" (footnotes omitted).[145]

2. Determination by the Appeals Chamber

85. Mr Bemba prefaces his third ground of appeal with the following title: "*The Trial Chamber erred in denying provisional release on the basis that it was not clear that Belgium offered to accept the accused and enforce conditions*".[146] Before entering into the merits of Mr Bemba's arguments on this ground of appeal, the Appeals Chamber finds it necessary to clarify that the approach adopted by the Trial Chamber is not properly represented by this title. Although the Trial Chamber indicated that it was "not required to consider conditional release, and has discretion in this regard", because "on the information before it, no State has 'offered to accept [the accused] and to enforce conditions' nor is such an offer self-evident",[147] it stated that "[t]his notwithstanding, the Chamber will consider whether conditional release might be appropriate in the present circumstances" and "whether it is necessary to seek further information from Belgium or Portugal relating to any potential period of conditional release".[148] Thereafter, it did not, as argued by Mr Bemba, deny conditional release because it was in doubt as to the willingness of the Kingdom of Belgium to receive him. Rather, it denied conditional release on the basis that "there is no condition short of detention at the seat of the Court that would be sufficient to mitigate the accused's flight risk".[149]

86. Mr Bemba submits that "the Trial Chamber's conclusion that 'no condition short of detention at the seat of the Court […] would be sufficient to mitigate the accused's flight risk' was taken in the absence of relevant information from Belgium concerning the conditions able to be put in place, after the Chamber had actively shut its eyes to receiving information directly relevant to its consideration of this question" (footnote omitted).[150] He also submits that "the views of Belgium could have had a decisive impact on the Trial Chamber's decision" regarding the existence of a risk based on the article 70 Confirmation Decision, "given that Belgium has demonstrated

[145] Response to the Document in Support of the Appeal, paras 31-32.
[146] Document in Support of the Appeal, p. 13.
[147] Impugned Decision, para. 57.
[148] Impugned Decision, para. 57.
[149] Impugned Decision, para. 58.
[150] Document in Support of the Appeal, para. 39.

itself both willing and able to enforce the conditions of release in relation to Mr. Bemba's co-defendant in the [a]rticle 70 case".[151] Mr Bemba submits that a concrete proposal for conditional release had been presented and that, following the Appeals Chamber's ruling in the *Bemba* OA 7 Judgment, the Trial Chamber was obliged to request observations.[152]

87. In the situation addressed in the *Bemba* OA 7 Judgment to which Mr Bemba refers, [REDACTED] had confirmed, in response to a request from the Chamber, that it was willing to receive Mr Bemba, and was in a position to enforce one or more of the conditions under rule 119 of the Rules of Procedure and Evidence.[153] The Trial Chamber nevertheless rejected Mr Bemba's request for conditional release, on the basis that [REDACTED] had conveyed "little more than a general willingness to accept the accused into [REDACTED] territory and [did] not specify which of rule 119 (1)'s conditions [REDACTED] would be able to implement". It was in these circumstances that the Appeals Chamber found that the Trial Chamber should have requested further observations, if it considered the State's observations to be insufficient to enable it to make an informed decision.[154]

88. In the view of the Appeals Chamber, the factual scenario in the present case is quite different from the situation described above. In this case, the Appeals Chamber notes that the Kingdom of Belgium had, according to Mr Bemba, [REDACTED].[155] [REDACTED] by the Trial Chamber and, therefore, contrary to Mr Bemba's arguments, no concrete proposal had been presented by a State. Moreover, the Appeals Chamber notes that, had such observations been received, adherence to the relevant ruling to which Mr Bemba refers in the *Bemba* OA 7 Judgment would have required the Trial Chamber to request further information only if it found that the State's observations were insufficient to enable it to make an informed decision on conditional release.[156] As the Appeals Chamber has subsequently clarified:

> [The *Bemba* OA 7 Judgment] in no way indicated a general obligation on the Trial Chamber to seek observations in the case of doubt as to submissions by a

[151] Document in Support of the Appeal, para. 39.
[152] Document in Support of the Appeal, para. 38.
[153] *Bemba* OA 7 Judgment, paras 28-34.
[154] *Bemba* OA 7 Judgment, paras 55-56.
[155] Document in Support of the Appeal, para. 32, referring to [REDACTED].
[156] *Bemba* OA 7 Judgment, para. 55.

> State in relation to interim release, let alone in a situation such as the present where the State has not indicated its willingness or ability to receive the said person.[157]

89. The Appeals Chamber also notes that in the *Bemba* OA 9 Judgment delivered on 23 November 2011, the Appeals Chamber stated that the obligation "to specify possible conditions of detention [*sic*] and, if necessary, to seek further information […] are only triggered when: (a) the Chamber is considering conditional release; (b) a State has indicated its general willingness and ability to accept a detained person into its territory; and (c) the Chamber does not have sufficient information before it to make an informed decision".[158]

90. In the present case, the Trial Chamber, in considering conditional release, concluded that "there is no condition short of detention at the seat of the Court that would be sufficient to mitigate the accused's flight risk" and that "no condition short of maintaining the accused's detention would be sufficient to mitigate the risk that the accused might obstruct or endanger the court proceedings".[159] For the reasons set out below, the Appeals Chamber considers that it was not unreasonable for the Trial Chamber to conclude that "there is no condition short of detention at the seat of the Court that would be sufficient to mitigate the accused's flight risk". In these circumstances and based on the facts of this case, the Appeals Chamber can discern no error in the Trial Chamber's conclusion that it was not necessary to convene a status conference with State representatives "to discuss the implementation of appropriate conditions and logistical arrangements for an eventual period of provisional release" (footnote omitted).[160] The Appeals Chamber therefore finds that the Trial Chamber did not err in declining to grant conditional release without hearing from the Kingdom of Belgium as to the possibility of conditional release on its territory. The Trial Chamber was convinced that it was necessary to maintain Mr Bemba's detention at the Court and, based on the facts of the case before it, did not consider conditional release to be a realistic possibility.

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[157] *Bemba* OA 8 Judgment, para. 38.
[158] "Judgment on the appeal of Mr Jean-Pierre Bemba Gombo against the decision of Trial Chamber III of 26 September 2011 entitled 'Decision on the accused's application for provisional release in light of the Appeals Chamber's judgment of 19 August 2011'", dated 23 November 2011 and registered on 15 December 2011, ICC-01/05-01/08-1937-Conf-Exp (OA 9); a public redacted version dated 15 December 2011 was registered on 16 December 2011 (ICC-01/05-01/08-1937-Red2 (OA 9)), para. 35.
[159] Impugned Decision, paras 58, 59.
[160] Impugned Decision, para. 61.

91. Mr Bemba also argues that the Trial Chamber erred in merely repeating previous findings in order to determine that "there is no condition short of detention at the seat of the Court that would be sufficient to mitigate the accused's flight risk […]",[161] rather than reaching this "finding on the basis of submissions and evidence before it […]".[162] Mr Bemba submits that "[g]iven that this was the first time that the Trial Chamber had held that no conditions of release could satisfy the criteria set out in [a]rticle 58(1), it was incumbent on the Trial Chamber to make such a finding on the basis of submissions and evidence before it, rather than relying on previous findings that were issued at a different period and under different circumstances".[163] The Appeals Chamber understands these arguments to raise the question of whether the Trial Chamber's conclusion that "there is no condition short of detention at the seat of the Court that would be sufficient to mitigate the accused's flight risk" was reasonable.

92. The Appeals Chamber notes that the Trial Chamber, in the Impugned Decision, refers to two previous occasions when it had considered conditional release in concluding that "there is no condition short of detention at the seat of the Court that would be sufficient to mitigate the accused's flight risk".[164] In the cited decisions, the Trial Chamber, having considered rather comprehensive conditions proposed by [REDACTED] and having assessed those conditions against the background of the identified risks under article 58 (1) (b) of the Statute, concluded that the proposed conditions would not mitigate the risks identified.[165] The Appeals Chamber observes that Mr Bemba's allegation that the prior findings "were not made in context [*sic*] of a decision on conditional release to a designated State that was potentially willing to enforce conditions of release […]"[166] lacks basis as both decisions took into account submissions from a State which had indicated that it would be able to implement certain conditions.[167]

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[161] Document in Support of the Appeal, para. 39.
[162] Document in Support of the Appeal, para. 40.
[163] Document in Support of the Appeal, para. 40.
[164] Impugned Decision, para. 58, referring to the Decision of 26 September 2011, para. 37 and "Decision on the 'Requête de Mise en liberté provisoire de M. Jean-Pierre Bemba Gombo'", 19 December 2011, ICC-01/05-01/08-2022-Conf; a public redacted version was registered on 3 January 2012 (ICC-01/05-01/08-2022-Red) (hereinafter: "Decision of 19 December 2011"), para. 21.
[165] Decision of 26 September 2011, paras 34-42.
[166] Document in Support of the Appeal, para. 39.
[167] Decision of 26 September 2011, paras 11-18, 34-42; Decision of 19 December 2011, paras 11-17.

93. The Appeals Chamber notes that the Trial Chamber did not rely exclusively on these previous decisions in order to support its conclusion that conditional release was not appropriate. It also "paid particular attention to the factual circumstances on which it based its finding that the accused poses a flight risk […]".[168] The Trial Chamber drew a "clear distinction between the two occasions when Mr Bemba was granted provisional release for very limited periods […] and a general request for provisional release either for an extended period or on a regular and frequent basis".[169] It further recalled its finding as to the necessity to detain Mr Bemba also under article 58 (1) (b) (ii) of the Statute and concluded that, in light of the Pre-Trial Chamber's findings relating to the commission or soliciting of offences against the administration of justice in the *Bemba* case, "no condition short of maintaining the accused's detention would be sufficient to mitigate the risk that the accused might obstruct or endanger the court proceedings".[170]

94. It is true that the Trial Chamber could have elaborated further on the reasons for its view that no condition short of detention could mitigate the risks under article 58 (1) (b) of the Statute. Nevertheless, the Appeals Chamber considers that it is clear that an assessment of the possibility of conditional release was carried out in light of the current circumstances of the case, and it can discern no error in the Trial Chamber's reasoning in this regard. The Appeals Chamber considers that it was not an error for the Trial Chamber to refer to its prior findings on whether particular conditions could mitigate the accused's flight risk in the context of this assessment.

95. In view of the foregoing, the Appeals Chamber finds that it was not unreasonable for the Trial Chamber to conclude that "there is no condition short of detention at the seat of the Court that would be sufficient to mitigate the accused's flight risk", and that it was not unreasonable for the Trial Chamber not to seek observations from the Kingdom of Belgium in the circumstances of this case.

VI. APPROPRIATE RELIEF

96. In an appeal pursuant to article 82 (1) (d) of the Statute, the Appeals Chamber may confirm, reverse or amend the decision appealed (rule 158 (1) of the Rules of

[168] Impugned Decision, para. 58.
[169] Impugned Decision, para. 58.
[170] Impugned Decision, para. 59.

Procedure and Evidence). In the present case the Appeals Chamber has rejected all grounds of appeal raised by Mr Bemba and, in consequence, the appeal is dismissed and the Impugned Decision confirmed.

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

Judge Christine Van den Wyngaert
On behalf of the Presiding Judge

Dated this 20th day of May 2015
At The Hague, The Netherlands