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No. ICC-01/05-01/13 OA 10

Date: 29 May 2015

THE APPEALS CHAMBER

Before: Judge Sanji Mmasenono Monageng, Presiding Judge
Judge Silvia Fernández de Gurmendi
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,
AIMÉ KILOLO MUSAMBA, JEAN-JACQUES MANGENDA KABONGO,
FIDÈLE BABALA WANDU AND NARCISSE ARIDO**

Public document

Judgment

**on the appeal of the Prosecutor against the decision of Pre-Trial Chamber II of
23 January 2015 entitled “Decision on ‘Mr Bemba’s Request 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 Jean-Pierre Bemba Gombo
Ms Melinda Taylor

Counsel for Aimé Kilolo Musamba
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Counsel for Fidèle Babala Wandu
Mr Jean-Pierre Kilenda Kakengi Basila

Counsel for Jean-Jacques Mangenda Kabongo
Mr Christopher Gosnell

Counsel for Narcisse Arido
Mr Charles Achaleke Taku

REGISTRY

Registrar
Mr Herman von Hebel

The Appeals Chamber of the International Criminal Court,

In the appeal of the Prosecutor against the decision of Pre-Trial Chamber II entitled “Decision on ‘Mr Bemba’s Request for provisional release’” of 23 January 2015 (ICC-01/05-01/13-798),

After deliberation,

Unanimously,

Delivers the following

JUDGMENT

The “Decision on ‘Mr Bemba’s Request for provisional release’” of 23 January 2015 (ICC-01/05-01/13-798) is reversed.

REASONS

I. KEY FINDINGS

1. Article 60 (2) of the Statute must be interpreted and applied consistently with “internationally recognized human rights”, pursuant to article 21 (3) of the Statute.
2. A Chamber may determine that a detained person has been in detention for an unreasonable period, even in the absence of inexcusable delay by the Prosecutor, in its decision pursuant to article 60 (2) of the Statute. This determination requires finding that the condition under article 58 (1) (a) is met and balancing the risks under article 58 (1) (b) of the Statute that are found to be met against the duration of detention, taking into account relevant factors that may have delayed the proceedings and the circumstances of the case as a whole.

II. PROCEDURAL HISTORY

A. Proceedings before the Pre-Trial Chamber

3. On 19 November 2013, the Prosecutor filed an application, seeking a warrant of arrest, *inter alia*, for Mr Jean-Pierre Bemba Gombo (hereinafter: “Mr Bemba”).¹

4. On 22 November 2013, Pre-Trial Chamber II (hereinafter: “Pre-Trial Chamber”), its functions being exercised by a single judge,² issued a warrant of arrest for, *inter alia*, Mr Bemba.³

5. On 11 December 2014, Mr Bemba filed an application for interim release,⁴ in which he requested to be released.⁵ On 2 January 2015, the Prosecutor responded, submitting that the Application for Interim Release should be denied.⁶

6. On 21 October 2014, the Pre-Trial Chamber rendered a decision,⁷ in which it ordered the release of Mr Bemba’s four co-suspects, Mr Aimé Kilolo Musamba, Mr Jean-Jacques Mangenda Kabongo, Mr Fidèle Babala Wandu and Mr Narcisse Arido.⁸

7. On 23 January 2015, the Pre-Trial Chamber rendered its “Decision on ‘Mr Bemba’s Request for provisional release’”⁹ (hereinafter: “Impugned Decision”), in which it ordered that Mr Bemba be released from detention.¹⁰

¹ “Prosecution’s Application for Warrant of Arrest”, ICC-01/05-67-US-Exp, para. 1. A confidential version was registered on 27 November 2013 (*see* ICC-01/05-01/13-19-Conf).

² *See* [Transcript of 27 November 2013](#), ICC-01/05-01/13-T-1-ENG (CT WT), p. 3, line 22, to p. 4, line 2.

³ “Warrant of arrest for Jean-Pierre BEMBA GOMBO, Aimé KILOLO MUSAMBA, Jean-Jacques MANGENDA KABONGO, Fidèle BABALA WANDU and Narcisse ARIDO”, dated 20 November 2013 and registered on 22 November 2013, ICC-01/05-01/13-1-US-Exp-tENG (hereinafter: “Arrest Warrant Decision”), p. 16. A public redacted version of the English version was registered on 5 December 2013 (*see* [ICC-01/05-01/13-1-Red2-tENG, p. 15](#)). The original French public redacted version dated 20 November 2013 was registered on 28 November 2013 (*see* [ICC-01/05-01/13-1-Red2](#)).

⁴ “Mr. Bemba’s Request for Provisional Release”, ICC-01/05-01/13-782-Conf. *See also* “[Public Redacted Version of Mr. Bemba’s Request for Provisional Release \(11.12.14\)](#)”, dated 11 December 2014 and registered on 12 December 2014, ICC-01/05-01/13-782-Red (hereinafter: “Application for Interim Release”).

⁵ [Application for Interim Release](#), para. 26.

⁶ “Prosecution Response to the Bemba Defence Request for Interim Release”, ICC-01/05-01/13-787-Conf, paras 1, 21.

⁷ “[Decision ordering the release of Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse Arido](#)”, ICC-01/05-01/13-703 (hereinafter: “21 October 2014 Decision”).

⁸ [21 October 2014 Decision](#), p. 6.

⁹ [ICC-01/05-01/13-798](#).

B. Proceedings before the Appeals Chamber

8. On 26 January 2015, the Prosecutor filed a notice of appeal against the Impugned Decision.¹¹ On 2 February 2015, she filed the document in support of her appeal,¹² in which she raises two grounds of appeal: (i) the Pre-Trial Chamber “incorrectly and unreasonably analysed article 60(4)”,¹³ failed to conduct a proper analysis of article 60 (2) of the Statute¹⁴ and erred in finding that Mr Bemba has been detained for an unreasonable period;¹⁵ and (ii) the Pre-Trial Chamber erred in law and in fact by releasing Mr Bemba without imposing conditions to offset the risks under article 58 (1) (b) of the Statute.¹⁶ The Prosecutor requests that the Appeals Chamber quash the Impugned Decision or, in the alternative, remand the issue of Mr Bemba’s detention to the Trial Chamber for a review pursuant to article 60 (2) of the Statute.¹⁷

9. On 9 February 2015, Mr Bemba filed his response,¹⁸ submitting that the Prosecutor’s appeal should be rejected.¹⁹

10. On 13 March 2015, following the solemn undertaking of the 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.²⁰

¹⁰ [Impugned Decision](#), p. 5.

¹¹ [“Prosecution’s Notice of Appeal of the ‘Decision on “Mr Bemba’s Request for provisional release””](#), ICC-01/05-01/13-802.

¹² [ICC-01/05-01/13-809](#) (hereinafter: “Document in Support of the Appeal”).

¹³ [Document in Support of the Appeal](#), paras 2, 4-9.

¹⁴ [Document in Support of the Appeal](#), paras 5, 13-14.

¹⁵ [Document in Support of the Appeal](#), paras 6, 17-23.

¹⁶ [Document in Support of the Appeal](#), paras 2, 24-33.

¹⁷ [Document in Support of the Appeal](#), para. 34.

¹⁸ [“Defence Response to Prosecution Appeal against the ‘Decision on Mr. Bemba’s Request for Release’”](#), ICC-01/05-01/13-814 (hereinafter: “Response to the Document in Support of the Appeal”).

¹⁹ [Response to the Document in Support of the Appeal](#), paras 1, 90.

²⁰ [“Decision assigning judges to divisions”](#), ICC-01/05-01/13-844, p. 4.

11. On 19 March 2015, the Presidency granted Judge Christine Van den Wyngaert's request for excusal in the present appeal and temporarily attached, on 20 March 2015, Judge Péter Kovács to the Appeals Chamber for the purpose of this appeal.²¹

12. On 29 May 2015, the Appeals Chamber rendered its judgment on the Prosecutor's appeal against the 21 October 2014 Decision (hereinafter: "*Bemba et al.* OA 5, 6, 7, 8, 9 Judgment").²²

III. STANDARD OF REVIEW

13. In appeals on decisions granting or denying interim release, the Appeals Chamber "will not review the findings of the Pre-Trial Chamber *de novo*, instead it will intervene in the findings of the Pre-Trial Chamber only where clear errors of law, fact or procedure are shown to exist and vitiate the [i]mpugned [d]ecision".²³

14. Regarding alleged errors of law, the Appeals Chamber will not defer to the relevant 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".²⁴

²¹ "[Decision replacing a judge in the Appeals Chamber](#)", 20 March 2015, ICC-01/05-01/13-863 (OA 5) (OA 6) (OA 7) (OA 8) (OA 9) (OA 10) with public annex, [ICC-01/05-01/13-863-AnxI](#) (OA 5) (OA 6) (OA 7) (OA 8) (OA 9) (OA 10).

²² "Judgment on the appeals against Pre-Trial Chamber II's decisions regarding interim release in relation to Aimé Kilolo Musamba, Jean-Jacques Mangenda, Fidèle Babala Wandu, and Narcisse Arido and order for reclassification", ICC-01/05-01/13-969 (OA 5) (OA 6) (OA 7) (OA 8) (OA 9).

²³ *Prosecutor v. Bosco Ntaganda*, "[Judgment on the appeal of Mr Bosco Ntaganda against the decision of Pre-Trial Chamber II of 18 November 2013 entitled 'Decision on the Defence's Application for Interim Release'](#)", 5 March 2014, ICC-01/04-02/06-271-Red (OA), para. 29, quoting *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-Red (OA 2), para. 62, cited in *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), para. 15.

²⁴ *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.

IV. MERITS

A. The Impugned Decision

15. In the Impugned Decision, the Pre-Trial Chamber recalled that Mr Bemba's four co-suspects were released following the implementation of the 21 October 2014 Decision.²⁵ The Pre-Trial Chamber then considered the following:

CONSIDERING that the 21 October 2014 Decision was premised on the paramount need to avoid that the duration of pre-trial detention – as enshrined *inter alia* in article 60(4) of the Statute – become[s] unreasonable, which need made it necessary for the Chamber to review such detention *motu proprio*, also in light of the stage reached by the proceedings, the documentary nature of the relevant evidence and the fact that such evidence had by then already been acquired in the record, all of which also resulted in reducing the risks that the proceedings or the investigations might be obstructed or endangered, as well as that the alleged crimes be continued or related offences be committed;

CONSIDERING, more specifically, that - as stated in the 21 October 2014 Decision – the reasonableness of the duration of the detention has to be balanced *inter alia* against the statutory penalties applicable to the offences at stake in these proceedings and that, accordingly, the further extension of the period of the pre-trial detention would have resulted in making its duration disproportionate;

CONSIDERING that, as far as proceedings in case 01/05-01/13 are concerned [in relation to the article 70 offences against Mr Bemba], the same reasoning applies to [Mr] Bemba's situation and that, accordingly, it is necessary and appropriate to grant his release;

CONSIDERING that the nature of the reasons warranting Mr Bemba's release for the purposes of these proceedings makes it unnecessary for the Chamber to obtain additional submissions from the Defence for Mr Bemba;

CONSIDERING, by the same token, that at the time of his arrest pursuant to the [Arrest Warrant Decision] [Mr] Bemba was already detained at the Detention Centre of the Court in connection with ongoing proceedings in case ICC-01/05-01/08 before Trial Chamber III;

CONSIDERING that, in light of the fact that the granting of the [Application for Interim Release] in respect of these proceedings cannot result in Mr Bemba being actually released absent a decision to the same effect to be taken by Trial Chamber III, requesting and obtaining observations from the relevant States at this stage would serve no practical or meaningful purpose;²⁶

²⁵ [Impugned Decision](#), p. 3.

²⁶ [Impugned Decision](#), p. 4.

CONSIDERING that this decision is obviously without prejudice to any determination which might be made by Trial Chamber III in respect of the proceedings in case 01/05-01/08;²⁷

16. Accordingly, the Pre-Trial Chamber granted the Application for Interim Release and ordered that Mr Bemba “be released from the Detention Centre of the Court, unless his detention is otherwise required”.²⁸

B. First ground of appeal

1. Submissions of the parties

17. The Prosecutor submits that the Pre-Trial Chamber erred in interpreting and applying article 60 (4) of the Statute,²⁹ arguing that release pursuant to article 60 (4) requires a finding of inexcusable delay by the Prosecutor³⁰ and that, in any event, the Pre-Trial Chamber erred in law and in fact by concluding that Mr Bemba has been detained for an unreasonable period of time.³¹ She contends further that the Impugned Decision appears to be based only on article 60 (4) of the Statute.³² In that regard, she argues that the Pre-Trial Chamber failed to “make the necessary findings, to provide adequate reasoning, or to meet the specific requirements of article 60 (2)”, in particular in failing to find that the conditions listed in article 58 (1) of the Statute are no longer met.³³

18. Mr Bemba submits that the Prosecutor fails to identify any error in the Pre-Trial Chamber’s application of article 60 (4) of the Statute.³⁴ He argues that article 60 (4) of the Statute “empowered the [Pre-Trial Chamber] to release [him] in order to avoid an unreasonable protraction of his pre-trial detention”.³⁵ He avers that “[t]he phrase ‘due to inexcusable delay by the Prosecutor’ [...] does not require *male fides*” by the Prosecutor³⁶ and that this wording “is not exhaustive, and in no way precludes either

²⁷ [Impugned Decision](#), pp. 4-5.

²⁸ [Impugned Decision](#), p. 5.

²⁹ [Document in Support of the Appeal](#), paras 2, 4-16.

³⁰ [Document in Support of the Appeal](#), paras 7-9.

³¹ [Document in Support of the Appeal](#), paras 17-23.

³² [Document in Support of the Appeal](#), paras 5, 10, 13-14.

³³ [Document in Support of the Appeal](#), paras 5, 13.

³⁴ [Response to the Document in Support of the Appeal](#), paras 9-20.

³⁵ [Response to the Document in Support of the Appeal](#), para. 6.

³⁶ [Response to the Document in Support of the Appeal](#), para. 14.

the duty or the power of the Chamber to release the defendant in other circumstances”.³⁷

19. Mr Bemba submits further that the Impugned Decision is not based solely on article 60 (4) of the Statute, arguing that the Pre-Trial Chamber considered the criteria set out in article 58 (1) (b) of the Statute³⁸ and that the Prosecutor’s challenge to the Pre-Trial Chamber’s manner in which it assessed these criteria amounts to a mere disagreement.³⁹ Accordingly, Mr Bemba argues that the Pre-Trial Chamber “found that on the information put before [it], Mr Bemba’s [detention] was not necessary”.⁴⁰

2. *Determination by the Appeals Chamber*

20. At the outset, the Appeals Chamber observes that the Impugned Decision in the present appeal is almost identical to the 21 October 2014 Decision, which relates to the release from detention of Mr Bemba’s four co-suspects. In this regard, the Pre-Trial Chamber repeated almost verbatim its findings from the 21 October 2014 Decision with respect to article 58 (1) (b) (ii) and (iii) of the Statute, i.e. the risk of obstructing the proceedings or the investigations and the risk of the commission of related crimes in the future,⁴¹ and, with respect to the legal analysis of the reasonableness of the duration of detention, held that “the same reasoning [of the 21 October 2014 Decision] applies to [Mr] Bemba’s situation”.⁴²

21. The Appeals Chamber also notes that, in the *Bemba et al.* OA 5, 6, 7, 8, 9 Judgment rendered earlier today, it held that the Pre-Trial Chamber committed three errors in the 21 October 2014 Decision, namely that it: (i) incorrectly interpreted article 60 (4) of the Statute; (ii) failed to properly balance the duration of detention against the risks set out in article 58 (1) (b) of the Statute; and (iii) failed to conduct a proper assessment of the risks set out in article 58 (1) (b) of the Statute.⁴³ Given that the Impugned Decision is premised on the reasoning and findings of the 21 October

³⁷ [Response to the Document in Support of the Appeal](#), para. 19.

³⁸ [Response to the Document in Support of the Appeal](#), para. 38.

³⁹ [Response to the Document in Support of the Appeal](#), para. 45.

⁴⁰ [Response to the Document in Support of the Appeal](#), para. 38.

⁴¹ [Impugned Decision](#), pp. 3-4. *See also* [21 October 2014 Decision](#), p. 4.

⁴² [Impugned Decision](#), p. 4.

⁴³ *Bemba et al.* OA 5, 6, 7, 8, 9 Judgment, para. 39.

2014 Decision, the Appeals Chamber finds that the Pre-Trial Chamber committed the same errors in the Impugned Decision.

22. With respect to the Pre-Trial Chamber's reliance on article 60 (4) of the Statute, the Appeals Chamber finds that the Pre-Trial Chamber erred in law because, as set out in the *Bemba et al.* OA 5, 6, 7, 8, 9 Judgment,⁴⁴ this provision addresses a very specific and narrow situation of an unreasonable period of detention prior to trial due to inexcusable delay by the Prosecutor. However, in this respect the Appeals Chamber notes that, in that judgment, it went on to state that "a Chamber may determine that a detained person has been in detention for an unreasonable period, even in the absence of inexcusable delay by the Prosecutor, pursuant to article 60 (3) of the Statute".⁴⁵ The Appeals Chamber notes that this finding was made within the context of that appeal, which dealt with a decision under article 60 (3) of the Statute and that it qualified this finding by stating that it does not preclude a Chamber from considering the reasonableness of the duration of detention "in other relevant contexts, including in relation to article 60 (2) of the Statute".⁴⁶

23. The Appeals Chamber notes that the Impugned Decision was a decision on Mr Bemba's Application for Interim Release, which was brought, *inter alia*, pursuant to article 60 (2) of the Statute.⁴⁷ In this regard, the Appeals Chamber notes that an article 60 (2) assessment does not automatically occur within a set period of time following the person's detention pursuant to a warrant of arrest and indeed may only occur after a substantial period of time has elapsed. Given this, the Appeals Chamber considers that article 60 (2) of the Statute "must be interpreted and applied consistently with 'internationally recognized human rights', pursuant to article 21 (3) of the Statute".⁴⁸ Accordingly, a Chamber may also determine that a detained person has been in detention for an unreasonable period, even in the absence of inexcusable delay by the Prosecutor, in its decision pursuant to article 60 (2) of the Statute. This determination requires finding that the condition under article 58 (1) (a) is met and

⁴⁴ *Bemba et al.* OA 5, 6, 7, 8, 9 Judgment, paras 40-42.

⁴⁵ *Bemba et al.* OA 5, 6, 7, 8, 9 Judgment, para. 43.

⁴⁶ *Bemba et al.* OA 5, 6, 7, 8, 9 Judgment, footnote 78.

⁴⁷ See [Application for Interim Release](#), paras 10-18. Mr Bemba also requested to be released on the basis of article 60 (4) of the Statute. See [Application for Interim Release](#), paras 19-24.

⁴⁸ See *Bemba et al.* OA 5, 6, 7, 8, 9 Judgment, para. 43.

balancing the risks under article 58 (1) (b) of the Statute that are found to be met against the duration of detention, “taking into account relevant factors that may have delayed the proceedings and the circumstances of the case as a whole”.⁴⁹

24. The Appeals Chamber recalls that, with respect to an assessment pursuant to article 60 (2) of the Statute, it has held that

in reaching a decision under article 60 (2) of the Statute, the Pre-Trial Chamber has to “inquire anew into the existence of facts justifying detention”; the Pre-Trial Chamber’s power is “not conditioned by its previous decision to direct the issuance of a warrant of arrest”. The Pre-Trial-Chamber’s decision must be taken “in light of the material placed before it”. Thus, the decision under article 60 (2) of the Statute is a decision *de novo*, in the course of which the Pre-Trial Chamber has to determine whether the conditions of article 58 (1) are met.⁵⁰ [Footnotes omitted.]

25. Bearing this jurisprudence in mind, the Appeals Chamber notes that the Pre-Trial Chamber went directly to consider Mr Bemba’s Application for Interim Release under article 60 (4) of the Statute instead of making a proper assessment under article 60 (2) of the Statute, which entails a determination of whether the conditions under article 58 (1) (a) and (b) are met. By doing so, the Appeals Chamber finds that the Pre-Trial Chamber’s approach was erroneous in law.

26. Turning to the legal error in relation to article 58 (1) (a) of the Statute, the Appeals Chamber finds that this error does not materially affect the Impugned Decision. The Appeals Chamber notes that the charges against Mr Bemba in the present case were confirmed by the Pre-Trial Chamber on 11 November 2014,⁵¹ which established that there were “substantial grounds to believe” that Mr Bemba had

⁴⁹ See *Bemba et al.* OA 5, 6, 7, 8, 9 Judgment, para. 45.

⁵⁰ *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-Red, para. 23. See also *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 Appellant for Interim Release](#)”, 9 June 2008, ICC-01/04-01/07-572 (OA 4), paras 10, 12.

⁵¹ “[Decision pursuant to Article 61\(7\)\(a\) and \(b\) of the Rome Statute](#)”, 11 November 2014, ICC-01/05-01/13-749 (hereinafter: “Decision Confirming the Charges”).

committed offences pursuant to article 61 (7) of the Statute,⁵² which is a higher standard than the “reasonable grounds” standard of article 58 (1) (a) of the Statute.

27. However, the Appeals Chamber considers that the Pre-Trial Chamber erred in not carrying out a proper determination of the risks set out in article 58 (1) (b) of the Statute, which is also required for an article 60 (2) assessment, and that this error materially affected the Impugned Decision. The Appeals Chamber notes that the Impugned Decision does not contain any analysis of these risks, or any reference to this provision. In this regard, the Appeals Chamber recalls that, in the Impugned Decision, the Pre-Trial Chamber repeated its findings made in the 21 October 2014 Decision that the risks of obstructing the proceedings or the investigations and the risk of commission of related crimes in the future were reduced, findings which related to Mr Bemba’s four co-suspects, without explaining how these findings were also applicable to Mr Bemba and without conducting a proper assessment of the specific circumstances of Mr Bemba. The Appeals Chamber considers that the Pre-Trial Chamber should have carried out an assessment of the risks as required under article 60 (2) of the Statute, with regard to all the relevant circumstances related to Mr Bemba. Moreover, given that a proper assessment of the risks listed in article 58 (1) (b) of the Statute was not undertaken in the Impugned Decision, the Pre-Trial Chamber also erred in failing to appropriately balance the duration of detention against those risks.

28. In light of the foregoing, the Appeals Chamber does not find it necessary to address the Prosecutor’s second ground of appeal related to the Pre-Trial Chamber’s alleged error of not imposing any conditions on Mr Bemba’s release.

V. APPROPRIATE RELIEF

29. On an appeal pursuant to article 82 (1) (b) of the Statute, the Appeals Chamber may confirm, reverse or amend the decision appealed (rule 158 (1) of the Rules of Procedure and Evidence). In view of the findings of the Appeals Chamber under the first ground of appeal, it is appropriate to reverse the Impugned Decision. The Appeals Chamber notes that the article 70 proceedings are no longer at the

⁵² [Decision Confirming the Charges](#), para. 25.

pre-trial stage and that Trial Chamber VII has now been seized of the case.⁵³
Accordingly, the matter is remanded to the Trial Chamber.

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



Judge Silvia Fernández de Gurmendi
On behalf of the Presiding Judge

Dated this 29th day of May 2015

At The Hague, The Netherlands

⁵³ See Presidency, "[Decision constituting Trial Chamber VII and referring to it the case of *The Prosecutor v. Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse Arido*](#)", 30 January 2015, ICC-01/05-01/13-805.