

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

No.: ICC-01/05-01/13  
Date: 17 August 2015

**TRIAL CHAMBER VII**

**Before:** Judge Chile Eboe-Osuji, Presiding Judge  
Judge Olga Herrera Carbuccion  
Judge Bertram Schmitt

**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**

**Decision Regarding Interim Release**

To be notified, in accordance with Regulation 31 of the *Regulations of the Court*, to:

**The Office of the Prosecutor**

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**Legal Representatives of Victims**

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**Unrepresented Victims**

**Unrepresented Applicants for Participation/Reparation**

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**The Office of Public Counsel for the Defence**

**States Representatives**

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**REGISTRY**

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**Registrar**

Mr Herman von Hebel

**Counsel Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations Section**

**Others**

**Trial Chamber VII** (the ‘Chamber’) of the International Criminal Court (the ‘Court’), in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse Arido*, having regard to Articles 21(3), 58(1), 60, 61(11) and 64(6)(a) of the Rome Statute (the ‘Statute’), Rules 118 and 119 of the Rules of Procedure and Evidence (the ‘Rules’), and Regulation 51 of the Regulations of the Court, issues the following ‘Decision Regarding Interim Release’.

## I. Procedural history

1. On 21 October 2014, the Single Judge, acting on behalf of Pre-Trial Chamber II, ordered the immediate release of Mr Kilolo, Mr Mangenda, Mr Babala and Mr Arido (collectively, the ‘Four Accused’).<sup>1</sup> Following practical arrangements of the Court’s Registry, the Four Accused were released from detention.
2. On 23 January 2015, the Single Judge also granted the request of Mr Bemba to be released from detention in the context of the present proceedings, without prejudice to any determination which might be made by Trial Chamber III in respect of the Article 5 proceedings against Mr Bemba before that Chamber (the ‘Main Case’).<sup>2</sup>
3. On 29 May 2015, the Appeals Chamber reversed the two decisions to release the five accused in this case.<sup>3</sup> Determinations under Article 60 of the Statute were remanded to this Chamber as a consequence of these rulings. As to whether the Four Accused who had been released from the detention unit needed to be re-arrested, the Appeals Chamber found that ‘it would not be in the interests of justice

<sup>1</sup> Decision ordering the release of Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse Arido, 21 October 2014 [Pre-Trial Chamber II], ICC-01/05-01/13-703.

<sup>2</sup> Decision on “Mr Bemba’s Request for provisional release”, 23 January 2015 [Pre-Trial Chamber II], ICC-01/05-01/13-798.

<sup>3</sup> 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, 29 May 2015 [Appeals Chamber], ICC-01/05-01/13-969, OA 5 OA 6 OA 7 OA 8 OA 9 (the ‘*Bemba et al.* OA 5-9 Judgment’); 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’”, 29 May 2015 [Appeals Chamber], ICC-01/05-01/13-970, OA 10 (the ‘*Bemba et al.* OA 10 Judgment’).

for the suspects to be re-arrested because of the reversal' and decided, 'in view of the exceptional circumstances, to maintain the relief ordered [in the reversed decision], i.e. the release of the suspects, pending the Trial Chamber's determination on this matter.'<sup>4</sup>

4. On 19 June 2015,<sup>5</sup> all five defence teams filed observations on continued detention or release.<sup>6</sup>
5. On 29 June 2015, the Office of the Prosecutor (the 'Prosecution') responded to these observations.<sup>7</sup>
6. On 6 and 7 July 2015, the defence teams for the Four Accused (the 'Kilolo Defence', 'Mangenda Defence', 'Babala Defence' and 'Arido Defence', respectively) filed further submissions responding to the Prosecution's arguments.<sup>8</sup>
7. On 15 July 2015,<sup>9</sup> the Registry filed observations on continued detention or release received from Belgium, the Democratic Republic of the Congo, the Netherlands and the United Kingdom.<sup>10</sup>

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<sup>4</sup> *Bemba et al.* OA 5-9 Judgment, ICC-01/05-01/13-969, para. 57. The fifth accused, Mr Bemba, remained in the detention unit because he was still detained due to proceedings in the Main Case.

<sup>5</sup> The briefing schedule for these observations was set by the Chamber. Order requesting the parties' observations under Article 60 of the Statute, 1 June 2015, ICC-01/05-01/13-980 (notified 2 June 2015).

<sup>6</sup> Defence Observations on continued detention or release, 19 June 2015, ICC-01/05-01/13-1016; Submissions on Continuation of Interim Release, 19 June 2015, ICC-01/05-01/13-1017 (with annex) (the 'First Mangenda Defence Observations'); Observations de la Défense de M. Fidèle Babala en exécution de «Order requesting the parties' observations under Article 60 of the Statute» (ICC-01/05-01/13-980), 19 June 2015, ICC-01/05-01/13-1019 (with annex) (the 'First Babala Defence Observations'); Observations de la Défense relative au maintien de la liberté provisoire de M. Aimé Kilolo Musamba, 19 June 2015, ICC-01/05-01/13-1021-Red (with annex; public redacted version notified 22 June 2015) (the 'First Kilolo Defence Observations'); Narcisse Arido's Observations on Review of Release under Article 60(3) (ICC-01/05-01/13-980), 19 June 2015, ICC-01/05-01/13-1022-Conf (the 'First Arido Defence Observations').

<sup>7</sup> Prosecution's Observations on the Accused's detention, 29 June 2015, ICC-01/05-01/13-1044-Red (redacted version notified 20 July 2015) (the 'Prosecution Observations').

<sup>8</sup> Réponse de la Défense de M. Fidèle Babala à «Prosecution's Observations on the Accused's detention» (ICC-01/05-01/13-1044-Conf), 6 July 2015, ICC-01/05-01/13-1058-Conf (the 'Second Babala Defence Observations'); Corrigendum to Reply to "Prosecution's Observations on the Accused's Detention" (ICC-01/05-01/13-1044-Conf), 7 July 2015, ICC-01/05-01/13-1060-Conf-Corr (the 'Second Mangenda Defence Observations'); Narcisse Arido's Response to 'Prosecution's Observations on the Accused's detention' (ICC-01/05-01/13-1044-Conf), 7 July 2015, ICC-01/05-01/13-1064-Conf (with annex; filed 6 July 2015) (the 'Second Arido Defence Observations'); Observations complémentaires de la Défense relatives au maintien de la liberté provisoire de monsieur Aimé Kilolo, 7 July 2015, ICC-01/05-01/13-1066-Conf (filed 6 July 2015) (the 'Second Kilolo Defence Observations').

8. On 5 August 2015, the Registry filed further observations on continued detention or release received from France.<sup>11</sup>

## II. Submissions, Analysis and Conclusions

### A. Release of The Four Accused

#### 1. Submissions

9. The arguments of the Four Accused may be summarised as advancing two common justifications for release, namely: (i) the good conduct of the Four Accused since they have been released<sup>12</sup> and (ii) the length of pre-trial detention already experienced by the Four Accused.<sup>13</sup>
10. The Prosecution responds that, although the conditions warranting the Four Accuseds' detention under Article 58(1) of the Statute continue to exist, and there is no positive change of circumstances since the Pre-Trial Chamber issued the last decision on their detention, the Four Accuseds' 're-arrest and remand to ICC custody is likely not practicable at this stage, given the lapse of time since their erroneous release from custody and the current scheduling of trial'.<sup>14</sup> Indeed, the Appeals Chamber's own refusal to order detention<sup>15</sup> effectively bears out the Prosecution's position. The Prosecution 'defers to the discretion of the Trial Chamber' should it determine that the circumstances warrant the Four Accuseds'

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<sup>9</sup> See Order Requesting Observations from Relevant States on Interim Release, 25 June 2015, ICC-01/05-01/13-1029.

<sup>10</sup> Observations from the 5 host States on Interim Release, 15 July 2015, ICC-01/05-01/13-1088 (with five annexes).

<sup>11</sup> Observations from the Republic of France on Interim Release, 5 August 2015, ICC-01/05-01/13-1122 (with annex).

<sup>12</sup> First Kilolo Defence Observations, ICC-01/05-01/13-1021-Red, paras 21-25, 28, 32, 36; First Mangenda Defence Observations, ICC-01/05-01/13-1017, paras 1, 11-17; First Babala Defence Observations, ICC-01/05-01/13-1019, paras 29, 32-34, 44; Second Babala Defence Observations, ICC-01/05-01/13-1058-Conf, para. 7; First Arido Defence Observations, ICC-01/05-01/13-1022-Conf, paras 1, 32-42.

<sup>13</sup> First Kilolo Defence Observations, ICC-01/05-01/13-1021-Red, paras 43-45; First Mangenda Defence Observations, ICC-01/05-01/13-1017, para. 17; First Babala Defence Observations, ICC-01/05-01/13-1019, paras 51-59; Second Babala Defence Observations, ICC-01/05-01/13-1058-Conf, para. 6; First Arido Defence Observations, ICC-01/05-01/13-1022-Conf, paras 43-59.

<sup>14</sup> Prosecution Observations, ICC-01/05-01/13-1044-Red, para. 2.

<sup>15</sup> *Bemba et al.* OA 5-9 Judgment, ICC-01/05-01/13-969, para. 57.

detention, but submits that meaningful conditions should be imposed if interim release is continued.<sup>16</sup> These conditions are discussed in the next sub-section of the present decision.

11. None of the States hosting the Four Accused presented any general objection or impediment to continuing the accuseds' release in their countries.<sup>17</sup>

## *2. Analysis and conclusions*

12. The Chamber recalls that it may exercise any functions of the Pre-Trial Chamber, including that relating to interim release reviews, pursuant to Articles 61(11) and 64(6)(a) of the Statute.
13. The applicable law regarding interim release begins with Article 60(2) of the Statute, but relates back to Article 58(1) of the Statute. A person subject to a warrant of arrest may apply for interim release pending trial, pursuant to Article 60(2) of the Statute. If the Chamber is satisfied that the conditions set forth in Article 58(1) of the Statute are met, the person shall continue to be detained.<sup>18</sup> If the Chamber is not satisfied, it shall release the person, with or without conditions.<sup>19</sup>
14. Article 58(1) of the Statute sets out the conditions for a warrant of arrest, and requires the Pre-Trial Chamber to be satisfied that there are reasonable grounds to believe that the person has committed a crime within the jurisdiction of the Court<sup>20</sup> and that the arrest of the person appears necessary: (i) to ensure the person's appearance at trial; (ii) to ensure that the person does not obstruct or endanger the investigation or the court proceedings; or (iii) where applicable, to prevent the person from continuing with the commission of that crime or a related crime which

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<sup>16</sup> Prosecution Observations, ICC-01/05-01/13-1044-Red, paras 2, 48.

<sup>17</sup> See ICC-01/05-01/13-1088-Conf-AnxI; ICC-01/05-01/13-1088-Conf-AnxII; ICC-01/05-01/13-1088-Conf-AnxIII; ICC-01/05-01/13-1088-Conf-AnxIV; ICC-01/05-01/13-1088-Conf-AnxV; ICC-01/05-01/13-1122-AnxI.

<sup>18</sup> Article 60(2) of the Statute.

<sup>19</sup> Article 60(2) of the Statute.

<sup>20</sup> Article 58(1)(a) of the Statute.

is within the jurisdiction of the Court and which arises out of the same circumstances (collectively, the 'Article 58(1) Risks').<sup>21</sup>

15. Under Article 60(3) of the Statute, a Chamber may modify its previous ruling on detention, release or conditions of release if 'it is satisfied that changed circumstances so require'.<sup>22</sup> The previous ruling on detention refers to 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.<sup>23</sup> Changed circumstances mean 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.<sup>24</sup> If there are changed circumstances, a Chamber will need to consider their impact on the factors that formed the basis for the decision to keep the person in detention or order their release.<sup>25</sup>
16. 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 Prosecution, in its decision pursuant to Article 60 (2) or (3) of the Statute.<sup>26</sup> The duration of time in detention pending trial is a factor that needs to be considered along with the risks that are being reviewed, in order to determine whether, all factors being considered, the continued detention 'stops being reasonable' and the individual

<sup>21</sup> Article 58(1)(b) of the Statute.

<sup>22</sup> See for example, *The Prosecutor v. Laurent 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 [Appeals Chamber], ICC-02/11-01/11-278-Red, OA, para. 23.

<sup>23</sup> *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 28 July 2010 entitled "Decision on the review of the detention of Mr Jean-Pierre Bemba Gombo pursuant to Rule 118(2) of the Rules of Procedure and Evidence", 19 November 2010 [Appeals Chamber], ICC-01/05-01/08-1019, OA 4 ('Bemba OA 4 Judgment'), para. 46.

<sup>24</sup> *Bemba OA 4 Judgment*, ICC-01/05-01/08-1019, paras 51-52.

<sup>25</sup> See, for example, *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 [Appeals Chamber], ICC-02/11-01/11-548-Red, OA 4, para. 51; *The Prosecutor v. Jean-Pierre Bemba Gombo*, Public redacted version - 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 [Appeals Chamber], ICC-01/05-01/08-2151-Red, OA 10, para. 31.

<sup>26</sup> *Bemba et al.* OA 5-9 Judgment, ICC-01/05-01/13-969, para. 43; *Bemba et al.* OA 10 Judgment, ICC-01/05-01/13-970, para. 23.

accordingly needs to be released. Such a determination requires balancing the Article 58(1) Risks that were found to still exist 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.<sup>27</sup> The potential penalty for the offence charged may be a factor to take into account in assessing whether the time in detention is reasonable.<sup>28</sup> It cannot be a factor assessed in isolation, but would need to be assessed in light of all of the circumstances of the case.<sup>29</sup>

17. For conducting its Article 60(3) review in these unique circumstances, the Chamber clarifies its reference point at the outset. The relevant rulings on detention being reviewed are those made on 4 July 2014 for Mr Babala,<sup>30</sup> 24 July 2014 for Mr Arido<sup>31</sup> and 5 August 2014 for Mr Kilolo and Mr Mangenda.<sup>32</sup> When assessing changed circumstances from these previous rulings, the Chamber will take into account circumstances between these rulings and now, indicating the present reality of the circumstances. Given the large overlap between the justifications for detaining each of the Four Accused, the Chamber has grouped its assessments for each accused and Article 58(1) Risk.
18. These previous rulings found that, for the Four Accused, detention was warranted on the basis of all three Article 58(1) Risks.<sup>33</sup> The factors relied upon to justify the Four Accuseds' detention included: (i) their ability to travel freely, including to non-States Parties;<sup>34</sup> (ii) their access to the network and resources of Mr Bemba;<sup>35</sup>

<sup>27</sup> *Bemba et al.* OA 5-9 Judgment, ICC-01/05-01/13-969, para. 45.

<sup>28</sup> *Bemba et al.* OA 5-9 Judgment, ICC-01/05-01/13-969, para. 45.

<sup>29</sup> *Bemba et al.* OA 5-9 Judgment, ICC-01/05-01/13-969, para. 45.

<sup>30</sup> Decision on the first review of Fidèle Babala Wandu's detention pursuant to article 60(3) of the Statute, 6 July 2014, ICC-01/05-01/13-538.

<sup>31</sup> Decision on "Narcisse Arido's request for interim release", 26 July 2014, ICC-01/05-01/13-588.

<sup>32</sup> Decision on the first review of Aimé Kilolo Musamba's detention pursuant to article 60(3) of the Statute, 5 August 2014, ICC-01/05-01/13-611; Decision on the first review of Jean-Jacques Mangenda Kabongo's detention pursuant to article 60(3) of the Statute, 5 August 2014, ICC-01/05-01/13-612.

<sup>33</sup> ICC-01/05-01/13-538, paras 5-7; ICC-01/05-01/13-588, paras 13-14, 18, 21-22, 24; ICC-01/05-01/13-611, paras 7, 17-18; ICC-01/05-01/13-612, paras 12, 14, 35.

<sup>34</sup> This was only relied upon for Mr Kilolo, Mr Mangenda and Mr Babala. ICC-01/05-01/13-538, para. 5; ICC-01/05-01/13-611, para. 7; ICC-01/05-01/13-612, para. 17.

<sup>35</sup> ICC-01/05-01/13-538, paras 5-7; ICC-01/05-01/13-588, paras 13-14; ICC-01/05-01/13-611, para. 7; ICC-01/05-01/13-612, para. 12.



(iii) their role in the alleged offences against the administration of justice<sup>36</sup> and, (iv) with respect to Mr Arido only, an allegation that information relating to witnesses in these proceedings was unduly disseminated by persons close to Mr Arido.<sup>37</sup>

19. In relation to the 'good conduct' argument made by the Four Accused, the Chamber considers that the length of time the Four Accused have been released – nearly ten months - without incident demonstrates that the expectation connected with the interim release previously ordered has been fulfilled. The Prosecution presents no evidence, beyond mere speculation,<sup>38</sup> that any of the Four Accused has done anything while released to suggest they may constitute a flight risk, obstruct investigations, or continue to commit further crimes. The Chamber has only been presented with supporting materials to the contrary, and specifically notes that three of the Four Accused wished to attend the first trial status conference despite not being required to attend, with two ultimately attending.<sup>39</sup>
20. The behaviour of detainees awaiting trial is a relevant factor when considering interim release, though the weight to be attached to this factor must be assessed on a case by case basis.<sup>40</sup> In the present case, the Chamber considers that substantial weight should be given to this factor because the Four Accuseds' pre-trial behaviour **while released** directly informs what risks may be caused by their continued release.

<sup>36</sup> ICC-01/05-01/13-538, paras 5-7 ; ICC-01/05-01/13-588, paras 18, 21-22; ICC-01/05-01/13-611, para. 7; ICC-01/05-01/13-612, para. 14.

<sup>37</sup> ICC-01/05-01/13-588, para. 18.

<sup>38</sup> *E.g.* Prosecution Observations, ICC-01/05-01/13-1044-Red, para. 17 (Emphasis in original: '[i]ndeed, the Accused's lack of flight may reflect no more than confidence in having already successfully corruptly influenced witnesses in **this case**').

<sup>39</sup> Transcript of Hearing, 28 April 2015, ICC-01/05-01/13-T-8-Red-ENG (redacted version notified 29 May 2015; Mr Kilolo and Mr Arido attended). Mr Mangenda ultimately did not attend the status conference due to possible visa difficulties. *See* First Mangenda Defence Observations, ICC-01/05-01/13-1017, para. 13; ICC-01/05-01/13-1017-Conf-Anx.

<sup>40</sup> *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 [Appeals Chamber], ICC-01/05-01/08-631-Red, OA 2 (the '*Bemba* OA 2 Judgment'), para. 80.

21. While released, there is no evidence that the Four Accused attempted to flee the jurisdiction of the Court, seek improper assistance from Mr Bemba's alleged network of supporters, intimidate witnesses or otherwise commit any offences against the administration of justice. In the Chamber's view, the Four Accused's behaviour thus far while on release significantly reduces the Article 58(1) Risks previously identified. This is so even after considering other factors which might militate in favour of detention, such as charges being confirmed by the Pre-Trial Chamber, the advancing state of incriminating evidence disclosure or the provision of the Prosecution's witness list.<sup>41</sup> The Chamber has balanced these reduced risks against the totality of the circumstances, including the potential penalty for the offences confirmed,<sup>42</sup> the absence of any delay attributable to the Four Accused and the nearly 11 months they already spent in pre-trial detention relevant to this case.
22. On balance, the Chamber concludes that continued detention of the Four Accused in this case is not necessary, noting that conditions can be imposed to further reduce the Article 58(1) Risks.<sup>43</sup> The Appeals Chamber's pronouncements against detention and the Prosecution's own acknowledgement that the passage of time and the schedule of the proceedings render re-arrest 'not practicable' are consistent with this assessment.
23. For the above reasons, the Chamber considers that the Four Accused will remain released. That said, the Chamber considers that continuing what approximately amounts to unconditional release, at least as judicially ordered,<sup>44</sup> is insufficient. The

<sup>41</sup> See Decision pursuant to Article 61(7)(a) and (b) of the Rome Statute, 14 November 2014, ICC-01/05-01/13-749; Prosecution's List of Witnesses and Evidence, 30 June 2015, ICC-01/05-01/13-1048 (with two annexes).

<sup>42</sup> Article 70(3) of the Statute ('In the event of conviction, the Court may impose a term of imprisonment not exceeding five years, or a fine in accordance with the Rules of Procedure and Evidence, or both'); Rule 166 of the Rules.

<sup>43</sup> See para. 24 below.

<sup>44</sup> The Pre-Trial Chamber II Single Judge only required the Four Accused to sign an individual declaration (i) stating their commitment to appear at trial, or whenever summoned by the Court, and (ii) indicating the address at which they will be staying. See ICC-01/05-01/13-703, page 6. In the declarations signed by the Four Accused, they acceded to certain additional conditions. See Annexes 7-10 to the Registry's Report on the Implementation of the "Decision ordering the release of Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse Arido" (ICC-01/05-01/13-703), 27 October 2014, ICC-01/05-01/13-722-Conf-Anx7, ICC-01/05-01/13-722-Conf-Anx8, ICC-01/05-01/13-722-Conf-Anx9, ICC-01/05-01/13-722-Conf-Anx10.

Four Accuseds' alleged conduct in this case goes to the integrity of the Court's judicial process, and the Chamber considers that ordering some regulatory framework governing their release is appropriate. The Chamber therefore releases the Four Accused subject to the conditions set out in the next sub-section.

## **B. Conditions of release**

### *1. Submissions*

24. The Prosecution submits that, if the Chamber determines that continued interim release is appropriate, the Chamber should impose certain conditions pursuant to Rule 119 of the Rules. The Prosecution enumerates nine 'minimally necessary' conditions in paragraph 47 of its observations.<sup>45</sup> The proposed conditions in paragraph 47 are:

- (a) The Four Accused must appear for trial and whenever required by the Chamber;
- (b) The Four Accused must post a bond or provide real or personal security or surety in an amount sufficient to ensure their future appearance before the Court as directed, to be determined by the Chamber;
- (c) The Four Accused must not commit new offences in the jurisdictions to which they are released, or under the Statute;
- (d) The Four Accused must refrain from harassing, intimidating, threatening, or otherwise interfering with witnesses in this case, or in the Main Case;
- (e) Other than contacts with their respective Counsel, the Four Accuseds' communications must be monitored by the relevant State authorities, and the Four Accused must provide the necessary contacts information required for that purpose to the authorities;

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<sup>45</sup> Prosecution Observations, ICC-01/05-01/13-1044-Red, paras 47-48.

- (f) The Four Accused must report to the Registrar in advance any change of address or contact information from that currently on record with the Registrar;
- (g) The Four Accused must report to the Registry prior to any overnight travel from the location where they are presently residing, and must give notice of the destination, contact information, and duration of the travel in advance to the Registrar;
- (h) The Four Accused must not contact any witness in this case or those in the Main Case, either directly or indirectly, except through counsel authorised to represent them before this Court; and
- (i) The Four Accused must report to the Registry any contact with such witnesses in this case, or those in the Main Case.

25. The Kilolo Defence submits that the Prosecution has not justified the fixation of any conditions, and alternatively that the conditions set out in Paragraph 47(b) and (e) be rejected.<sup>46</sup> The Mangenda Defence submits that none of these conditions are reasonable, appropriate or necessary,<sup>47</sup> while the Babala Defence similarly submits that they are 'unjustified, unnecessary and illegal'.<sup>48</sup> The Arido Defence submits that the proposed conditions are unreasonable, contending that the Prosecution does not outline why these conditions will reduce the Article 58(1)(b) Risks, nor why they are the least intrusive conditions required by the circumstances.<sup>49</sup>

## 2. *Analysis and conclusions*

26. When setting out conditions of release pursuant to Rule 119 of the Rules, appropriate conditions may be examined with a view to mitigating or negating the

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<sup>46</sup> Second Kilolo Defence Observations, ICC-01/05-01/13-1066-Conf, paras 17-28. *See also* First Kilolo Defence Observations, ICC-01/05-01/13-1021-Red, page 20.

<sup>47</sup> Second Mangenda Defence Observations, ICC-01/05-01/13-1060-Conf-Corr, paras 2, 10, 14-22.

<sup>48</sup> Second Babala Defence Observations, ICC-01/05-01/13-1058-Conf, paras 42-53.

<sup>49</sup> Second Arido Defence Observations, ICC-01/05-01/13-1064-Conf, paras 7, 34-49.

Article 58(1) Risks. The Chamber may also, in appropriate circumstances, impose conditions that do not, *per se*, mitigate these risks.<sup>50</sup>

27. The Chamber considers many of the Prosecution's proposed conditions to be unnecessary and/or disproportionate. As to the condition proposed in paragraph 47(b), an order has already been made in the warrants of arrest to freeze the Four Accused's assets,<sup>51</sup> and the Chamber does not consider that any bond, security or surety is required. The conditions set out in paragraph 47(c)-(d) are unnecessary to order because it is self-evident that committing additional offences in the jurisdictions where they are released or under the Statute would be grounds for further detention. As to the part of the condition in paragraph 47(e), whereby all of the Four Accused's communications must be monitored by the relevant State authorities, the Chamber considers this to be a disproportionate intrusion into the Four Accused's privacy and notes that one State has made it clear that such monitoring of released individuals would be contrary to national law.<sup>52</sup> As to the condition in paragraph 47(i), the Chamber considers that a clear condition prohibiting Prosecution witness contacts is sufficient and that no affirmative reporting requirement is necessary.

28. The Chamber considers that the remainder of the Prosecution's proposals are appropriate conditions on the Four Accused's release. In order to ensure that nothing happens which would be prejudicial to the ongoing proceedings or bring the Court into disrepute, the Chamber also considers that a condition prohibiting the Four Accused from making public statements directly or indirectly about the case is warranted. The Chamber has consolidated these into the following list – as conditions on their release, the Four Accused are to:

<sup>50</sup> *Bemba* OA 2 Judgment, ICC-01/05-01/08-631-Red, para. 105.

<sup>51</sup> Warrant of arrest for Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse Arido, 20 November 2013 [Pre-Trial Chamber II], ICC-01/05-01/13-1-Red2-tENG, page 16.

<sup>52</sup> ICC-01/05-01/13-1088-Conf-AnxIV, page 13.

- (i) Abide by all instructions and orders from the Court, including an order from this Chamber for them to be present in The Hague at their trial, scheduled to commence on 29 September 2015;<sup>53</sup>
- (ii) Ensure that: (a) their most recent addresses and contact information are provided to the Court and the State authorities where they are released and (b) they do not change their address without prior notice to the Court, considering that a change in address may amount to a material change in circumstances of continuing interim release;<sup>54</sup>
- (iii) Provide advance notice to the Court of any overnight travel from the locations where they presently reside, including the destination, contact information, and duration of such travel;<sup>55</sup>
- (iv) Not contact any Prosecution witness in this case or the Main Case, either directly or indirectly, except through counsel authorised to represent them before this Court;<sup>56</sup> and
- (v) Refrain from making any public statements, directly or indirectly, about the case.

### C. Mr Bemba

29. The defence team for Mr Bemba (the 'Bemba Defence') withdraws its request for Mr Bemba's release, and requests the Chamber to suspend any determination of Mr Bemba's detention or release until there is a change in Mr Bemba's detention status in the Main Case.<sup>57</sup>

<sup>53</sup> See Prosecution Observations, ICC-01/05-01/13-1044-Red, para. 47(a).

<sup>54</sup> See Prosecution Observations, ICC-01/05-01/13-1044-Red, para. 47(e) (in part) and (f).

<sup>55</sup> See Prosecution Observations, ICC-01/05-01/13-1044-Red, para. 47(g).

<sup>56</sup> See Prosecution Observations, ICC-01/05-01/13-1044-Red, para. 47(h)-(i).

<sup>57</sup> ICC-01/05-01/13-1016, para. 18.

30. The Chamber is not conducting an Article 60(3) periodic review of Mr Bemba's detention,<sup>58</sup> but rather an Article 60(2) inquiry predicated upon a previous application by Mr Bemba for interim release.<sup>59</sup> This follows from the Appeals Chamber's *Bemba et al.* OA 10 Judgment, which is to the effect of requiring this Chamber to conduct an Article 60(2) inquiry. Without prejudice to any future ruling as to whether and when a Chamber should assess an accused's detention in the absence of a release request, the Chamber will not conduct any further assessment of Mr Bemba's detention at this time given that he has affirmatively withdrawn the request which led to the decision reversed and remanded by the Appeals Chamber.

**FOR THE FOREGOING REASONS, THE CHAMBER HEREBY**

**ORDERS** the continued release of Mr Kilolo to the Kingdom of Belgium;

**ORDERS** the continued release of Mr Mangenda to the United Kingdom of Great Britain and Northern Ireland;

**ORDERS** the continued release of Mr Babala to the Democratic Republic of the Congo;

**ORDERS** the continued release of Mr Arido to the Republic of France; and

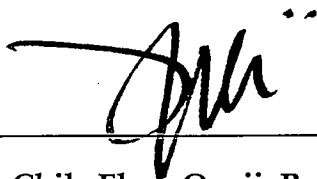
**ORDERS** the Four Accused to abide by the conditions of their release set out at paragraph 28 above.

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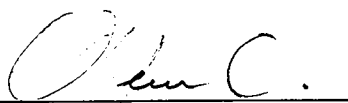
<sup>58</sup> See Rule 118(2) of the Rules.

<sup>59</sup> See generally *The Prosecutor v. Thomas Lubanga Dyilo*, Judgment on the appeal of Mr. Thomas Lubanga Dyilo against the decision of Pre-Trial Chamber I entitled "Décision sur la demande de mise en liberté provisoire de Thomas Lubanga Dyilo", 13 February 2007 [Appeals Chamber], ICC-01/04-01/06-824, OA 7, paras 94-102.

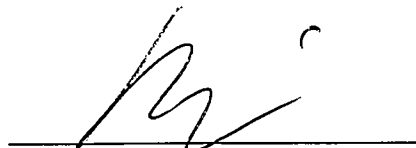
Done in both English and French, the English version being authoritative.



Judge Chile Eboe-Osuji, Presiding



Judge Olga Herrera Carbuccia



Judge Bertram Schmitt

Dated 17 August 2015

At The Hague, The Netherlands