

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/09-01/13
Date: 10 September 2015

PRE-TRIAL CHAMBER II

Before: Judge Cuno Tarfusser, Presiding Judge
Judge Marc Perrin de Brichambaut
Judge Chang-ho Chung

**SITUATION IN THE REPUBLIC OF KENYA
IN THE CASE OF *THE PROSECUTOR V. WALTER OSAPIRI BARASA***

Public

**Decision on the "Defence challenge to the warrant for the arrest of Walter
Osapiri Barasa"**

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

The Office of the Prosecutor

Fatou Bensouda

James Stewart

Jean-Jacques Badibanga

Counsel for the Defence

Nicholas Kaufman

Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

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

States Representatives

Amicus Curiae

REGISTRY

Registrar

Herman von Hebel

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

Pre-Trial Chamber II issues this decision on the “Defence challenge to the warrant for the arrest of Walter Osapiri Barasa” submitted by Nicholas Kaufman as counsel for Walter Osapiri Barasa on 21 August 2015 (ICC-01/09-01/13-31).

1. A warrant of arrest for Walter Osapiri Barasa (ICC-01/09-01/13-1-US-Exp and -Red2) was issued on 2 August 2013. Despite the request for arrest and surrender sent by the Court to the Republic of Kenya and the suspect’s being within the reach of Kenyan authorities, his arrest and surrender have not yet taken place.

2. Walter Osapiri Barasa requests that the warrant of arrest issued against him be withdrawn and replaced with a summons to appear. However, he frames his request by relying, as a legal basis, on rule 117(3) of the Rules of Procedure and Evidence (“Rules”), which provides for a challenge as to whether the warrant of arrest was properly issued in accordance with article 58(1)(a) and (b) of the Rome Statute (“Statute”). Irrespective of the question of whether challenges under rule 117(3) of the Rules are inadmissible as such in proceedings with respect to offences under article 70 of the Statute by virtue of rule 165(2) of the Rules, which makes article 59 of the Statute and any rules thereunder inapplicable to such proceedings, the Chamber considers it dispositive that, in any case, rule 117 does not become applicable until the person for whom a warrant of arrest has been issued is arrested by the requested State, *i.e.* until the person is detained in the custodial State. This is, however, not the case with Walter Osapiri Barasa.

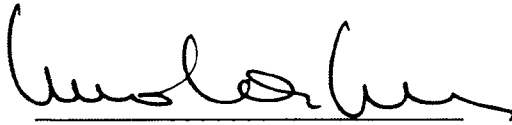
3. Following his surrender and first appearance under article 60(1) of the Statute, Walter Osapiri Barasa will have the right to apply for interim release. Also, should he genuinely wish to appear before the Court as he maintains, Walter Osapiri Barasa, who is not currently in detention in Kenya, may travel

to the seat of the Court to voluntarily appear, as envisaged in article 60(1) of the Statute. In accordance with the warrant of the arrest issued against him, he will then be detained unless and until any interim release is granted.

FOR THESE REASONS, THE CHAMBER

DISMISSES the request.

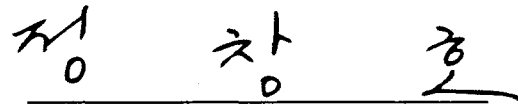
Done in both English and French, the English version being authoritative.



Judge Cuno Tarfusser
Presiding Judge



Judge Marc Perrin de Brichambaut



Judge Chang-ho Chung

Dated this 10 September 2015

At The Hague, The Netherlands