Cour
Pénale
Internationale

International
Criminal
Court

Original: **English**

No.: **ICC-01/05-01/13**

Date: **17 June 2014**

PRE-TRIAL CHAMBER II

Before: **Judge Cuno Tarfusser, Single Judge**

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

URGENT

Public Redacted Version of Narcisse Arido's Request for Interim Release filed on 10 June 2014 (ICC-01/05-01/13-477-Conf)

Source: **Counsel for Narcisse Arido**

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

The Office of the Prosecutor
Fatou Bensouda
James Stewart
Kweku Vanderpuye

Counsel for Jean-Pierre Bemba Gombo
Nicholas Kaufman

Counsel for Aimé Kilolo Musamba
Ghislain Mabanga

Counsel for Jean-Jacques Mangenda Kabongo
Jean Flamme

Counsel for Fidèle Babala Wandu
Jean-Pierre Kilenda Kakangi Basila

Counsel for Narcisse Arido
Göran Sluiter

Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

Unrepresented Applicants (Participation/Reparation)

The Office of Public Counsel for Victims

The Office of Public Counsel for the Defence
Xavier-Jean Keïta

State Representatives
Competent authorities of France

REGISTRY

Registrar
Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Detention Section

Victims Participation and Reparations Section

Other

I. INTRODUCTION

1. The Arido Defence respectfully requests the Single Judge to order the interim release of Mr. Arido under Article 60 (2) of the Rome Statute of the International Criminal Court (hereinafter 'Statute').

2. Alternatively, the Arido Defence requests the Single Judge to grant Mr. Arido conditional temporary release, for the period of 18 to 28 June 2014, to permit him to travel to France and attend a meeting related to his asylum claim in Paris.

II. CONFIDENTIALITY

3. Pursuant to Regulation 23*bis* of the Regulations of the Court ('RoC') and Regulation 24 of the Regulations of the Registry ('RoR'), this request is submitted confidentially as it relates to confidential facts and of the personal situation of Mr. Arido, including his asylum case in France.

III. PROCEDURAL HISTORY

4. On 19 November 2013, the Prosecution requested the Single Judge of Pre-Trial Chamber II to issue an arrest warrant against, amongst others, Narcisse Arido.[1] The Prosecution argued that the arrest of Mr. Arido was necessary to ensure his appearance at trial, to prevent him from obstructing and endangering the investigations and the court proceedings, and to prevent him from continuing with the commission of the crimes.

5. One day after, on 20 November 2013, the Single Judge granted the Prosecution's request and issued a warrant of arrest against Mr. Bemba Gombo, Mr. Kilolo Musamba, Mr. Mangenda Kabongo, Mr. Babala Wandu and Mr. Arido.[2] When deciding to grant the Prosecution's request and issue an arrest warrant, the Single Judge noted that the arrest of all the suspects was "necessary for all of the grounds laid down by Article 58 (1) (b) of the Statute".[3]

---

[1] ICC-01/05-01/13-19-Conf.
[2] ICC-01/05-01/13-1-Red2-tENG.
[3] *Ibid.*, para. 21.

6. On 23 November 2013, Mr. Arido was arrested by the French authorities.[4] He was transferred to the ICC Detention Centre on 18 March 2014,[5] and his initial appearance took place on 20 March 2014.[6]

7. On 12 December 2013, the Babala Defence filed a request for interim release.[7] On 16 December 2013, the Kilolo Defence also filed a request for interim release.[8] The Mangenda Defence filed its request for interim release on 8 January 2014.[9]

8. On 14 March 2014, the requests from the Babala Defence and from the Kilolo Defence were rejected by the Single Judge.[10] The Mangenda Defence's request was similarly rejected on 17 March 2014.[11] The three defence teams appealed the Single Judge's decisions in late March 2014.[12] At the time of writing, the Appeals Chamber has yet to render a decision.

9. On 28 May 2014, the Single Judge amended the calendar for the confirmation of charges, scheduling the filing of the written submissions in lieu of oral hearing for 30 July 2014.[13]

10. As of today, Mr. Arido has been in pre-trial detention for more than 6 months (194 days). By the time the Pre-Trial Chamber renders a decision related to the confirmation (or not) of the charges, assuming the current schedule is kept, Mr. Arido would have spent almost 11 months in pre-trial detention (326 days). That is 1/5 of the maximum sentence for Article 70's crimes.[14]

IV. APPLICABLE LAW

11. Article 66 (1) of the Statute stipulates that "everyone shall be presumed innocent until proven guilty".[15] Article 58 (1) of the Statute provides that a warrant of arrest will be issued if there are "reasonable grounds to believe" that the person has committed a crime within the

---

[4] ICC-01/05-01/13-25-Conf.
[5] ICC-01/05-01/13-T-4-Conf.
[6] *Ibid.*
[7] ICC-01/05-01/13-38-Corr.
[8] ICC-01/05-01/13-42.
[9] ICC-01/05-01/13-71.
[10] ICC-01/05-01/13-258; ICC-01/05-01/13-259.
[11] ICC-01/05-01/13-261.
[12] ICC-01/05-01/13-260; ICC-01/05-01/13-276; ICC-01/05-01/13-277.
[13] ICC-01/05-01/13-443.
[14] Article 70 (3) of the Statute.
[15] Article 66 (1) of the Statute ; *see also* article 14 of the International Covenant on Civil and Political Rights ('ICCPR').

jurisdiction of the Court[16] and if the arrest of the person appears necessary to either ensure the person's appearance at trial, that the person does not obstruct or endanger the investigation or the court proceedings, and/or, to prevent the person from continuing with the commission of the charged crime(s) or a related crime which is within the jurisdiction of the Court and which arises out of the same circumstances.[17]

12. Under Article 21 (3) of the Statute, the "application and interpretation of law pursuant to this article must be consistent with internationally recognized human rights".

13. The right to liberty is a fundamental human right, and it is unequivocally accepted that pre-trial detention is an exception thereto.[18] Under human rights law, there is a presumption that a person charged with a criminal offence will not be detained awaiting trial.[19]

14. Circumstances where pre-trial detention may be permitted include where there is a likelihood that the suspect/accused would abscond or destroy evidence, influence witnesses or flee from the jurisdiction of the State party,[20] or would further commit crimes.[21] In addition, pre-

---

[16] Article 58 (1) (a) of the Statute.
[17] *Ibid.*, Article 58 (1) (b).
[18] ICC-01/05-01/13-261, para. 8; *see also* Article 3 of the Universal Declaration on Human Rights, Article 9 (1) ICCPR; *see also* Communication No. 702/1996, *C. McLawrence v. Jamaica*, UN Human Rights Committee, 18 July 1997, para. 5.5, available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2f60%2fD%2f702%2f1996&Lang=en; Article 9 (3) ICCPR; Human Rights Committee General Comment 8 on Article 9 of the ICCPR, HRI/GEN/1/Rev.1, 1994, para. 3, available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=HRI%2fGEN%2f1%2fRev.9%20(Vol.%20I)&Lang=en.
[19] Article 9 (3) of the ICCPR; Principle 39 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted by the UN General Assembly on 9 December 1998, A/RES/43/173, available at http://www.un.org/documents/ga/res/43/a43r173.htm; Rule 6 of the United Nations Standard Minimum Rules for Non-Custodial Measures, A/RES/45/110, available at http://www.un.org/documents/ga/res/45/a45r110.htm; Section M(1)(e) of the Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, adopted by the African Commission on Human and People's Rights, 2003, available at http://www.achpr.org/instruments/principles-guidelines-right-fair-trial/; Principle III (2) of the Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas, adopted by the Inter-American Commission on Human Rights, 2008, available at http://www.cidh.org/basicos/english/Basic21.a.Principles%20and%20Best%20Practices%20PDL.htm; Rule 3 of the Recommendation of the Committee of Ministers to Member States of the Council of Europe on the Use of Remand in Custody, Rec(2006)13, 2006, available at https://wcd.coe.int/ViewDoc.jsp?id=1041281.
[20] Communication No. 526/1993, M. and B. Hill v. Spain, UN Human Rights Committee, 2 April 1997, UN doc. GAOR, A/52/40 (vol. II), p. 5, para. 12.3, available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2f59%2fD%2f526%2f1993&Lang=en; *see also* Communication 305/1988, UN Human Rights Committee, 23 July 1990, para. 5.8, available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2f39%2fD%2f305%2f1988&Lang=en; *see also* the UN principles on pre-trial detention established at the 8th UN congress on the prevention of crime and treatment of offenders, p. 157 & f, available at http://www.asc41.com/UN_congress/8th%20UN%20Congress%20on%20the%20Prevention%20of%20Crime/02

trial detention must be necessary and proportionate, and the European Court of Human Rights has held that pre-trial detention would be acceptable when certain conditions are met and **only** where there is **no possibility that alternative measures would address those concerns**.[22] Less restricting alternatives to detention must first be considered – including bail, sureties, prohibition on leaving the country, electronic tagging, house arrest and restraining orders.[23] Alternatives to detention must be based on the individual situation of the suspect,[24] and reasons should be provided if alternatives are not applicable.[25]

15. According to the international principles on pre-trial detention adopted during the Eighth UN congress on the prevention of crime and the treatment of offenders, in considering whether pre-trial detention should be ordered, account should also be taken of the **circumstances of the individual case**, in particular the nature and seriousness of the alleged offence, the strength of the evidence, the penalty likely to be incurred, **and the conduct, personal and social circumstances of the person concerned**, including his or her community ties.[26]

16. Human Rights law also provides for the fundamental principle of equality before the Courts and Tribunals.[27] This right means that every accused person is entitled to be treated equally with other similarly placed accused persons.[28]

17. At the ICC, the right for a detainee to apply for interim release pending trial is provided for by Article 60 (2) of the Statute. It states that the Pre-Trial Chamber shall release a person with or without conditions, if the criterion in Article 58 (1) of the Statute are not met.[29] The Pre-Trial

---

6%20ACONF.144.28.Rev.1%20Eighth%20United%20Nations%20Congress%20on%20the%20Prevention%20of%20Crime%20and%20the%20Treatment%20of%20Offenders.pdf

[21] Principles on pre-trial detention adopted by the Eighth UN congress on the prevention of crime and the treatment of offenders, *supra* fn 20, p. 157, para. 2 (e).

[22] *Patsuria v Georgia* (30779/04), European Court of Human Rights (2007), paras 75-76, available at http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-83070. (Emphasis added)

[23] *See Kaszczyniec v Poland* (59526/00), European Court of Human Rights (2007), para. 57, available at http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-80577 ; United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), A/RES/65-229, para. 5. and rules 57, 58 and 62, available at http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/65/229.

[24] *Mangouras v Spain* (12050/04), Grand Chamber, European Court on Human Rights, 2010, paras 78-3, available at http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-100686; *Hristova v Bulgaria* (60859/00), European Court on Human Rights, 2006, para. 111, available at http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-78368.

[25] Principles on pre-trial detention adopted by the Eighth UN congress on the prevention of crime and the treatment of offenders, *supra*, fn 20, p. 157, para. 2 (e).

[26] *Ibid.*, para. 2 (c).

[27] Article 14 ICCPR.

[28] Principle (value) 5 of the Bangalore Principles of Judicial Conduct, adopted by the UN Economic and Social Council, ECOSOC/2006/23, available at http://www.unodc.org/pdf/corruption/corruption_judicial_res_e.pdf.

[29] Article 60 (2) of the Statute.

Chamber may set one or more of the conditions provided for in Rule 119 (1) of the Rules of Procedure and Evidence ('RPE').[30] These conditions range from setting travel restrictions to placing limits upon mouvements and communications.[31]

18. Rule 118 (1) of the RPE requires the Pre-Trial Chamber to decide upon requests for interim release without delay, after seeking the views of the Prosecutor. Paragraph 3 of this same rule states that an application for interim release must be made in writing, and that notice of it shall be given to the Prosecution, who can submit its observations. The Pre-Trial Chamber may decide to hold a hearing, on its own initiative or at the request for the Prosecution or the detained person.[32]

19. When deciding on an application for interim release, the Chamber must determine whether the conditions set forth in Article 58 (1) of the Statute are met. If they are, the person should be detained; if they are not, the person shall be released, with or without conditions.[33] In order to decide on this, the Chamber must "inquire anew into the existence of facts justifying detention".[34]

20. The assessment of the necessity of arrest is twofold: first, the Single Judge must determine whether there still exists reasonable grounds to believe that the crimes alleged by the Prosecution have been committed; then, it will assess the existence of one or more of the risks listed under Article 58 (1) (b) of the Statute.[35] The Appeals Chamber has stated that, in the determination of the existence of these risks, the question is about the "possibility", not the "inevitability" of a future occurrence.[36] The Single Judge in the present case has held that such risk must be established "on the basis of specific and concrete elements".[37]

21. The burden of establishing the continuing existence of the conditions set forth in Article 58 (1) of the Statute during the time a person is under pre-trial detention lies with the Prosecution.[38]

---

[30] Rule 119 (1) of the RPE.
[31] *Ibid.*
[32] Rule 118 (3) of the RPE.
[33] ICC-01/05-01/13-261, para. 7.
[34] *Ibid.*
[35] *Ibid.*, para. 10.
[36] ICC-01/04-02/06-271-Red (OA), para. 35, citing to ICC-01/04-01/07-572 (OA 4), para. 21.
[37] ICC-01/05-01/13-261, para. 23.
[38] ICC-01/04-01/07-330, p. 6.

22. Finally, Article 60 (4) of the Statute obliges the Court to ensure that no person is detained for an unreasonable period of time. While reference is made in this context to an "inexcusable delay by the Prosecutor", Article 60 (4), read together with Article 21 (3), contains an overall obligation to avoid an unreasonable period of pre-trial detention.

V. SUBMISSIONS

23. The Arido Defence submits that the arguments provided for by the Prosecution in support of its request for an arrest warrant and adopted by the Single Judge do not in fact provide "specific and concrete" elements justifying keeping Mr. Arido in pre-trial detention for such a lengthy period of time. Each of the elements listed in Article 58 (b) of the Statute are discussed separately below.

24. In addition, it is submitted that in light of the accusations against Mr. Arido and bearing in mind the sentencing practice in respect of "contempt of Court cases" at, for example, the ICTY, further detention of Mr. Arido would be unreasonable and in violation of Article 60 (4) of the Statute.

25. Finally and alternatively, the Arido Defence requests the Single Judge to order the temporary release of Mr. Arido in order to permit him to attend an interview with the French authorities on 27 June 2014, related to his asylum claim in France.

A. Detention is Not Necessary to Ensure Mr. Arido's Appearance at Trial

26. In its request for issuance of an arrest warrant, the Prosecution argued that there were "reasonable grounds" that Mr. Arido would not appear for trial unless "compelled to do so", as he was scheduled to testify in The Hague to testify but did not broad the plane.[39] The Prosecution added that Mr. Arido "misused the visa obtained with the Court's assistance to travel **secretly** to France"[40] and concluded that Mr. Arido was a "flight risk" and that "the prospects of him voluntarily attending court [were] slim".[41]

[39] ICC-01/05-01/13-19-Conf, para. 111.
[40] *Ibid.* (Emphasis added)
[41] *Ibid.*

27. The Prosecution further argued that Mr. Arido was able to "freely travel anywhere he [wanted] to", without facing administrative formalities through the European Union Schengen area, and to non-state parties, [REDACTED], which have no obligation to cooperate with the Court.[42]

28. Finally, the Prosecution argued that Mr. Arido had "access to significant funds", which he received from [REDACTED], in order to pursue the criminal purpose which forms the subject of the present criminal procedure, on the orders of Mr. Bemba.[43] The Prosecution argued that it was "likely" that any one of these individuals would continue to provide funds to Mr. Arido to enable him to avoid arrest.[44]

29. In the decision issuing the arrest warrant, the Single Judge relied on the Prosecution's argument that Mr. Arido "failed to materialise before the Trial Chamber for his schedule testimony" and "misused" the visa, which had been secured for him to come to The Hague to go to France instead.[45] He adopted the wording used by the Prosecution and found that "the likelihood of [Mr. Arido's] voluntary appearance before the Court is slim, if not non-existent".[46] Notably, the Single Judge did not adopt the Prosecution's arguments that Mr. Arido had the financial resources available to readily abscond from the Court's jurisdiction.

1. Mr. Arido is not a flight risk

30. The arrest warrant regarding Mr. Arido is based solely on the fact that Mr. Arido failed to testify before the Court.[47] As explained [REDACTED][48] [REDACTED],[49] [REDACTED]. The basis for the arrest warrant is factually incorrect and therefore, the Prosecution's argument upon which the Single Judge relied to issue the arrest warrant is no longer valid.

31. Moreover, it appears that at the time of the issuance of the arrest warrant the Single Judge was not aware of the fact that Mr. Arido applied for asylum in France. An asylum application is a

---

[42] *Ibid.*
[43] *Ibid.*
[44] *Ibid.*
[45] ICC-01/05-01/13-1-Red2-tENG, para. 22.
[46] *Ibid.*
[47] *Ibid.*
[48] [REDACTED].
[49] [REDACTED].

further guarantee that Mr. Arido will appear for trial, since "fleeing", or otherwise leaving his residence in France, would jeopardise his asylum application.

32. In addition, it is obvious that Mr. Arido was not trying to "hide" from the ICC's jurisdiction since [REDACTED].[50]

33. The Arido Defence further notes that Mr. Arido was not given the option to voluntary surrender to the French authorities, as it was decided that he would be arrested in light of the Arrest Warrant issued by the Single Judge. However, the Arido Defence wishes to point out that the French authorities have stated that Mr. Arido did not resist arrest in France,[51] and further notes that Mr. Arido cooperated with the French and ICC authorities, [REDACTED][52] [REDACTED], on a voluntary basis.[53] Mr. Arido's behaviour demonstrates that he did not attempt to abscond from the Court's jurisdiction and is willing to cooperate with the Court in the current proceedings.

2. <u>Mr. Arido is unwilling and unable to travel</u>

34. Mr. Arido has been living as a refugee, registered with the UN High Commissioner for Refugees [REDACTED], and is currently being considered for asylum in France. In other words, Mr. Arido's status is dependent upon the French national asylum authorities. Mr. Arido has no interest in absconding from the jurisdiction of the Court, as this would negatively impact his ability to seek refugee status in France or elsewhere.

35. In addition, there is no risk that Mr. Arido would go back to [REDACTED]. Further, his travel document (refugee's passport) is currently in the possession of with the French Office for the Protection of Refugees and Stateless Persons ("Office français de protection des réfugiés et apatrides", hereinafter 'OFPRA').

36. Finally, the Prosecution's argument – which, the Defence recalls, was not relied upon by the Single Judge in his decision issuing the arrest warrant - that if released, Mr. Arido could "travel freely" is a mere speculation and is not relevant as to whether he is a "flight risk". The

---

50 [REDACTED].
51 [REDACTED].
52 [REDACTED].
53 [REDACTED].

Defence reiterates that the burden of proof for detention is upon the Prosecution.[54] In the present case, the Prosecution failed to provide any concrete and specific evidence supporting this allegation, and therefore did not show that it is necessary for Mr. Arido to be kept in detention. Moreover, the Prosecutor fully ignores the negative consequences of her assumptions for Mr. Arido's asylum application. Again, any travel movement by Mr. Arido is, in various respects, directly against his own interests, not the least his interest in a successful asylum application.

3. <u>Mr. Arido does not have a network or access to significant funds that would permit him to abscond</u>

37. The Arido Defence recalls that, when deciding to issue an arrest warrant against Mr. Arido, the Single Judge made no reference to the Prosecution's argument that Mr. Arido had "access to significant funds".[55]

38. [REDACTED].

39. The Arido Defence further notes that the Court's Registry has undertaken an investigation regarding the financial situation of Mr. Arido and found that he was indigent for the purpose of legal aid.[56]

40. Lastly, Mr. Arido was never part of the so-called "Bemba's network", the network upon which the Single Judge relied to dismiss the interim release requests by the co-suspects.[57] The Arrest Warrant itself does not contain such finding regarding Mr. Arido. He never had any contact with Mr. Bemba or any member of his defence team other than with Mr. Kilolo, who is currently being held in detention at the ICC. There is no support for the Prosecution's allegation that Mr. Arido has a "network of supporters" that could provide him with the means necessary to abscond.

B. Detention is Not Necessary to Ensure that Mr. Arido Does Not Obstruct or Endanger the Investigation or the Court Proceedings

41. In its request for the issuance of an arrest warrant, the Prosecution argued that Mr. Arido,

---

[54] *See supra*, para. 21.
[55] ICC-01/05-01/13-1-Red2-tENG, paras 22-23.
[56] [REDACTED].
[57] ICC-01/05-01/13-259, para. 22; ICC-01/05-01/13-261, para. 29.

thanks to the funds and assistance of [REDACTED], had the means and the opportunity to obstruct and endanger the investigations and court proceedings;[58] In particular, the Prosecution stated that Mr. Arido has "already demonstrated his willingness to unlawfully interfere with witnesses" and argued that he would do so again if his personal liberty were at stake.[59]

42. In his decision on the arrest warrant, the Single Judge did not enter into details regarding the Prosecution's arguments concerning Mr. Arido regarding the risks listed in Article 58 (b) (ii) of the Statute. He rendered a general decision related to all the suspects in the case, stating that the alleged criminal conduct which forms the subject of the present proceedings "has continued from at least early 2012" and that it "in all likelihood continues to date",[60] and concluded that the arrest of all suspects was necessary to prevent the suspects from further obstructing or endangering the investigation or the trial.[61] No further detail or reasoning was provided.

43. The Single Judge himself noted that the risks referred to in Article 58 (1) (b) of the Statute must be based on specific and concrete elements.[62] The risks referred to in the arrest warrant are only based on allegations by the Prosecution – mostly indirect and circumstantial ones in the case of Mr. Arido, allegedly supported by Western Union and Express Union money transfers sheets. Those sheets only contain dates, names and amounts; the purpose of the transfers is not indicated. Their "relevance" is only illustrated by the Prosecution's interpretation of such documents and not by any specific and concrete facts. As the Defence will explain in its final submissions during the Confirmation of Charges, there is a logical explanation for every single operation that is totally unrelated to the commission of crimes under Article 70 of the Statute.

44. As stated earlier, the Arido Defence rejects the Prosecution's arguments that the money received by Mr. Arido was in any way related to any criminal activities. [REDACTED]. [REDACTED].[63]

45. The allegations of the Prosecution, while found to be sufficient for the purpose of instigating proceedings before the Court under Article 70, are in fact mere assumptions and

[58] ICC-01/05-01/13-19-Conf, para. 112.
[59] *Ibid.*
[60] ICC-01/05-01/13-1-Red2-tENG, para. 23.
[61] *Ibid.*
[62] ICC-01/05-01/13-261, para. 23.
[63] [REDACTED].

presumptions, and therefore do not constitute a "specific and concrete elements"[64] showing that Mr. Arido could obstruct the Prosecution's investigations or the Court proceedings.

46. It must be borne in mind that in respect of every crime within the jurisdiction of the Court, detention should remain exceptional and liberty the rule.[65] The reasoning on the part of the Prosecution and the Single Judge is tantamount to assuming a risk of interfering with witnesses when an individual is suspected of influencing witnesses. As a result, from the Prosecution's perspective, detention should be automatic in case of suspicion of the aforementioned offences. This is inconsistent with the Statute and with human rights law, as described in paragraphs 14-15 above.

47. The Arido Defence also expresses its surprise at the Single Judge's statement, when rendering a decision on the interim release request filed by co-suspect Mr. Babala, that the very nature of the crimes at stake makes it "obvious" that "**detention is the only context allowing the effective management of these risks**".[66] Such statement, in effect, amounts to preventing interim release in any situation where offences against the administration of justice are alleged – even at the stage when the charges are not even confirmed - and appears violates the fundamental right to liberty of any suspect in criminal proceedings, as it creates a presumption of detention. The absence of any provision in the Court's documents or *travaux préparatoires* putting Article 70's offences under a different "scheme" insofar as interim release is concerned shows that this is not the case.

48. Moreover, the Single Judge underestimates the impact of the investigative methods deployed in the present proceedings. Intercepting telecommunications and accessing a suspect's e-mail account(s) are far-reaching and invasive investigative measures, which will reduce any risk of contacting/interfering with potential witnesses or with the Court's proceedings.

49. The Arido Defence further notes that at the moment, [REDACTED]. As a result, he is left without any way to contact any alleged contact he may have [REDACTED].

50. As a result, the Arido Defence submits that there is no specific or concrete reason why the detention of Mr. Arido would be necessary in order to ensure that he does not obstruct or

---

[64] ICC-01/05-01/13-261, para. 23.
[65] *Supra*, paras 11 & 13.
[66] ICC-01/05-01/13-258, para. 27.

endanger the investigations or the Court's proceedings.

C. Detention is Not Necessary to Prevent the Continuation of the Alleged Crimes

51. As noted by the Single Judge, the nature of the crimes at stake in these proceedings (i.e., offences against the administration of justice) is such as to create a great degree of overlapping between the risk that the investigation be obstructed or endangered and the risk that the commission of the crimes be continued or that related crimes be committed.[67] As a result, the arguments contained in part B above apply *mutatis mutandis* to the present part.

52. While a risk relating to the possible commission of related crime, by its very nature, is such as to make it impossible to specify in detail what the nature of such crimes might be, or the context in which they might be committed,[68] the Prosecution is still required to provide specific and concrete elements in support of his request for the arrest of Mr. Arido in order to prevent the further commission of crimes. As things stand, there is an assumption that Mr. Arido has committed crimes and will continue to commit them – illustrating in fact both a presumption of guilt and of future guilt. These presumptions are so strong that even the fact that the presentation of evidence in the Bemba case is now over - the submission of evidence was closed on 7 April 2014,[69] the Prosecution's closing brief was due 2 June 2014[70] and oral closing arguments are scheduled for 13 October 2014[71] - does not make the Prosecution and the Single Judge conclude that detention is no longer necessary to prevent Mr. Arido from continuing to commit the alleged crimes.

53. References to the fact that the case may be "re-opened" and to "future and related crimes […] [that] might also be committed by the suspect in respect of these proceedings",[72] constitute, it is submitted, mere speculation and cannot be said to constitute a specific and concrete element justifying the exceptional restriction on the fundamental right to liberty that is pre-trial detention.

54. Again, the aforementioned reasoning makes the imposition of pre-trial detention as good as automatic for any suspicion of Article 70's violation. It can always be claimed that the

---

[67] ICC-01/05-01/13-261, para. 36; ICC-01/05-01/13-258, para. 31.
[68] *Ibid.*
[69] ICC-01/05-01/08-3071, para. 2.
[70] *Ibid.*, para. 8.
[71] *Ibid.*, para. 18.
[72] ICC-01/05-01/13-258, para. 32.; ICC-01/05-01/13-261, para. 38.

suspicion of bribing/influencing witnesses will be repeated, because cases can always be re-opened. Such reasoning is inconsistent with the fundamental right to liberty.

D. Interim Release is Necessary to Prevent an Unreasonable Period of Detention

55. It is self-evident that the suspicions in this case cannot be compared with the "core business" of the ICC, that is crimes under Article 5 of the Statute. It is submitted that the allegations against Mr. Arido are limited in scope and content, in comparison to charges brought under Article 5 of the Statute. Moreover, the charges in the Arrest Warrant are brought under Article 25 (3) (c) of the Statute, that is under accomplice – thus reduced – liability,[73] a mode of liability which is widely recognised as justifying a lesser sentence than direct liability.

56. It is submitted that even if the allegations against Mr. Arido would be confirmed and if he were eventually convicted, it is unlikely that the maximum sentence planned for by Article 70 (3) would be imposed, as the "totality of any sentence of imprisonment […] must reflect the culpability of the convicted person"[74] and include the "degree of participation".[75] Therefore, the statement that the fear of a long sentence could lead Mr. Arido to flee constitute mere speculation.

57. In this light, it is submitted that the pre-trial detention of Mr. Arido, which has been lasting for more than six months now, is at present unreasonably long and therefore violates Article 60 (4) of the Statute.

E. Mr. Arido Will Abide by Any Conditions that Could be Imposed

58. The Arido Defence submits that none of the risks listed in Article 58 (b) exist insofar as Mr. Arido is concerned. However, should the Single Judge find it necessary to impose conditions under Rule 119 of the RPE, Mr. Arido will undertake to respect any and all conditions that the Single Judge would find necessary to impose.

59. In particular, Mr. Arido is prepared to accept and comply with any of the following measures, whether alternatively or cumulatively:

---

[73] ICC-01/05-01/13-1-Red2-tENG, pp. 5-6.
[74] Rule 145 (1) (a) RPE.
[75] *Ibid.*, Rule 145 (1) (c).

a. That upon arrival in France, Mr. Arido surrenders his passport and other travel documents to the French authorities;
b. That Mr. Arido reports to the French police authorities every day or once a week on a specific time arranged between the Court and the French authorities;
c. That Mr. Arido informs the Court about his whereabouts within France;
d. Periodical reporting of the French authorities to the Chamber regarding the status of the interim release;
e. That a "security bracelet" be put on him to ensure that he does not leave France.

60. In addition, Mr. Arido undertakes to abide by any additional measures that the Single Judge would find necessary.

F. Alternative Request for Temporary Release for the Sole Purpose of Asylum Proceedings

61. Should the Single Judge refuse to grant interim release, the Arido Defence respectfully requests that a temporary release be granted, so as to permit Mr. Arido to attend a meeting in France related to his asylum claim, scheduled for 27 June 2014. This temporary release could be subjected to the conditions referred to in part D above.

62. Mr. Arido has applied to be given the status of refugee in France back in 2012. The French Office for the Protection of Refugees and Stateless Persons (*Office français de protection des réfugiés et apatrides*, hereinafter 'OFPRA'), which is charged with assessing such requests, has requested Mr. Arido to come to an interview on 27 June 2014, at 9h, in Paris.[76] It notes that if Mr. Arido does not come, his asylum request may be rejected.

63. The Court has recognised the fundamental character of the right to seek asylum.[77] Article 21 (3) of the Statute further stipulates that the application and interpretation of the Statute must be consistent with internationally recognized human rights but that customary law provides everyone with the right to seek asylum. For Mr. Arido, seeking asylum is the only avenue to [REDACTED].[78]

[76] *See* Confidential Annex A.
[77] ICC-01/04-01/07-3003, para. 67.
[78] [REDACTED].

64. Mr. Arido benefits from the presumption of innocence, and as such, the impact of the proceedings before the ICC on his personal life – particularly at such an early stage of the proceedings – should be kept to a minimum. Should his asylum claim in France be rejected on the basis of his failure to appear for the 27 June interview, he would face serious security risks upon the conclusion of the proceedings. Such risks have been recognised by the Bemba Pre-Trial and Trial Chambers, who granted protective measures to potential Defence witnesses.

65. Further, should Mr. Arido be prevented, as a result of the present proceedings, to pursue his asylum request in France, seeking asylum in The Netherlands would be the only option left for Mr. Arido.

66. In addition, [REDACTED].[79] [REDACTED]. As a result, the Arido Defence requests the Single Judge to permit Mr. Arido to travel to France sufficiently in advance of the interview, in order to arrange for the renewal of his temporary residence permit with the French authorities.

67. Therefore, the Arido Defence respectfully requests the Single Judge, should interim release not be granted, that Mr. Arido be temporarily released between 18 and 28 June 2014 so that he is able to renew his temporary residence permit and attend the interview with OFPRA.

VI. CONCLUSION

68. In light of the above, the Defence for Mr. Arido respectfully request the Single Judge to:

a. Render his decision before 18 June 2014, in order to ensure that Mr. Arido is able to renew his temporary residence permit and attend the 27 June 2014 interview related to his asylum claim;
b. Grant Mr. Arido interim release;
c. Declare that the interim release is effective immediately;
d. Order the Registry and the Detention Unit to take all necessary measures to ensure Mr. Arido's release and departure for France.

Alternatively,

[79] *See* Confidential Annex A.

e. To grant a temporary interim release to permit Mr. Arido to renew his temporary residence permit and attend the 27 June 2014 interview with OPFRA, related to his asylum claim in Paris, France.

Göran Sluiter, Counsel for Mr. Arido

Dated this 17th Day of June 2014
At Amsterdam, The Netherlands