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APPEALS CHAMBER

Before: **Judge Sanji Mmasenono Monageng**
Judge Sang-Hyun Song
Judge Akua Kuenyehia
Judge Erkki Kourula
Judge Anita Ušacka

SITUATION IN THE CENTRAL AFRICAN REPUBLIC

IN THE CASE OF
THE PROSECUTOR
***v.* Jean-Pierre Bemba Gombo**

Public

Public Redacted Version of Document in support of the Defence appeal against Trial Chamber III's "Decision on 'Defence Urgent Motion for Provisional Release'"

Source: **Defence for Mr. Jean-Pierre Bemba Gombo**

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

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Unrepresented Victims	**Unrepresented Applicants (Participation/Reparation)**
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A. INTRODUCTION

1. Mr. Jean-Pierre Bemba has been incarcerated in The Hague, save for two brief periods of interim release to attend family funerals,[1] since 24 May 2008.

2. Although prevailing international standards oppose any general rule of detention, given that it constitutes an indication of guilt in violation of the presumption of innocence,[2] Mr. Bemba has spent the entirety of the pre-trial period, and the period of evidential hearings, closing brief drafting, and closing arguments, separated from his wife, their five children, and his extended family.

3. In contrast with other political figures accused before the ICC who remain at liberty and are excused from hearings to fulfil their political ambitions and duties in their home countries,[3] Mr. Bemba has been kept from his constituents, his party and his country for a period of six and a half years.

4. Not a single witness has alleged that Mr. Bemba has interfered with, or sought to pose danger or harm the witness or their families, nor is there any indication or basis for a finding that he intends to do so upon release. Accepting that Mr. Bemba poses a flight risk requires an acceptance that he would be willing not only to abandon his responsibilities as head of his extended family and community both in Belgium and the Democratic Republic of Congo, but would also be willing to set aside 20 years of sacrifice as concerns his political work and live

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[1] ICC-01/05-01/08-437-Red; ICC-01/05-01/08-99-Red.

[2] Article 9(3) of the International Covenant on Civil and Political Rights provides that: "anyone arrested or detained on a criminal charge... shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody…" The Human Rights Committee as similarly stated detention should be as short as possible" and "limited to essential reasons, such as danger of absconding… suppression of evidence, witness interference, or repetition of the offence that "detention should be as short as possible" and "limited to essential reasons, such as danger of absconding… suppression of evidence, witness interference, or repetition of the offence".

[3] ICC-01/09-02/11-830; ICC-01/09-01/11-T-72-ENG ET, p.67, lines 20-22.

out his days as a fugitive, unable to engage in the political process.[4] There is no basis upon which to conclude that he would be willing to abandon either, or both, of these aspects of his life.

5. On 13 November 2014, the hearings in the present case finally concluded, having run since 22 November 2010, just shy of four years. Even by international standards, the trial of a single accused charged as a commander should, and could, have been significantly shorter. None of the delays experienced during the trial are attributable to Mr. Bemba. Significant delays were caused by the insistence of certain Prosecution witnesses that they testify at their own convenience,[5] and the failure by the Democratic Republic of Congo to authorise the appearance of Defence witnesses.[6] When two members of the Defence team were arrested, the team was reconstituted within a matter of weeks, and no extensions or delays were requested. The trial was re-opened in October 2014 to hear the testimony of a Prosecution witness, who was recalled by Trial Chamber III ("the Trial Chamber") after indicating that he wished to review his testimony.[7]

6. Following the conclusion of closing arguments, the Presiding Judge declared that the trial had come to an end, and would move into "the next phase of the proceedings", namely the period of deliberations in accordance with Rule 142(1) of the Rules of Procedure and Evidence.[8]

7. Against this backdrop, Mr. Bemba filed a request for provisional release on 5 December 2014 ("the Request").[9] Rather than asking to return to the Congo, Mr. Bemba asked to be with his family, and requested release to either the Kingdom of Belgium or the Portuguese Republic where he could be detained and monitored in a

[4] ICC-01/05-01/08-475, para. 67.
[5] ICC-01/05-01/08-2068-Red; ICC-01/05-01/08-2076-Red; ICC-01/05-01/08-2081.
[6] ICC-01/05-01/08-2891-Red.
[7] ICC-01/05-01/08-T-361-Conf-ENG to ICC-01/05-01/08-T-363-Conf-ENG.
[8] T-365-Red-ENG ET, p.67, lines 24-25; p.68, lines 1-2.
[9] ICC-01/05-01/08-3211.

family home at no cost to the Court. He gave undertakings including but not limited to: remaining in a residence of the Court's designation; being subject to either Belgium or Portugal's extradition laws; being subject to an order to remain in the country; surrendering his passport to the Court; being subject to 24-hour electronic surveillance by the authorities of the host State; reporting to local police or authorities on a daily basis; receiving unannounced visits by the police or local authorities; not discussing his case with anyone other than his assigned counsel; assuming responsibility for all expenses concerning transport from Schiphol airport to host state and back; and ensuring strict compliance with any order of the Trial Chamber varying the terms of or terminating his provisional release.[10]

8. The Trial Chamber's decision on 23 December 2014 ("the Impugned Decision")[11] was issued quickly. Its reasoning is fundamentally flawed in several respects, with the Trial Chamber reaching conclusions not open to any reasonable Chamber. These errors give rise to the present appeal, on the four grounds set out below.

B. APPLICABLE LAW

9. The provisions of the Rome Statute which govern detention, like every other provision, must be interpreted and applied in accordance with "internationally recognized human rights".[12]

10. Article 58(1)(a) and (b) of the Rome Statute lay down the conditions which need to be met in order for the Chamber to issue or maintain a warrant of arrest: (a) there are reasonable grounds to believe that the person has committed a crime within the jurisdiction of the Court; and (b) the arrest of the person appears

[10] Request, para. 55.
[11] ICC-01/05-01/08-3221.
[12] ICC-01-04-01-06-722, paras. 36-37.

necessary to ensure the person's appearance at trial and to ensure that the person does not obstruct or endanger the investigation or the court proceedings; or, where applicable, to prevent the person from continuing with the commission of that crime or a related crime which is within the jurisdiction of the Court and which arises out of the same circumstances.

11. Article 60(3) of the Rome Statute allows a Chamber to modify an earlier order relating to a person's detention if changed circumstances so require. Changed circumstances are "either a change in some or all of the facts underlying a previous decision on detention, or a new fact satisfying the Chamber that a modification of its prior ruling is necessary."[13] The burden remains with the Prosecution to satisfy the Trial Chamber that the conditions for detention continue to be met, notwithstanding this change in circumstances.[14]

12. Article 82(1)(b) recognises the importance of the presumption of liberty and the right to seek judicial review of ongoing pre-conviction detention by setting an automatic right to appeal decisions on release.

13. As to the standard of appellate review of decisions on interim release, the Appeals Chamber had already considered that it will intervene in the findings of a Chamber where clear errors of law, fact or procedure are shown to exist and vitiate the Impugned Decision.[15]

C. GROUNDS OF APPEAL

14. Mr. Bemba raises the following three grounds of appeal which set out the errors committed by the Trial Chamber in rejecting the Request, and which vitiate

[13] ICC-01/05-01/08-631-Red, para. 47.
[14] ICC-01/05-01/08-1019, para. 51.
[15] ICC-01/05-01/08-631-Red (OA 2), para. 62.

the Impugned Decision. Either severally or cumulatively, these errors warrant a reversal of the Impugned Decision and the release of Mr. Bemba into Portugal or Belgium for the period of deliberations pending the issuance of a Judgement under Article 74 of the Statute or, in the alternative, during the weekends for the duration of the deliberations period.

Ground 1: The Trial Chamber erred in law in finding that given that a "trial" encompasses the deliberations period, the condition of Article 58(b)(i) continues to be met

15. In its Request, the Defence pointed to a changed circumstances arising from "the completion of the proceedings in the present case".[16] As recalled above, the closing arguments were heard on 12-13 November 2014, after which the Presiding Judge indicated that "**this trial has come to an end…**" and now moved into "**the next phase of the proceedings**", namely, the Chamber retiring "in order to **start deliberations**".[17]

16. In the Impugned Decision, the Trial Chamber held that, in contrast to the statement of the Presiding Judge, the trial had not concluded.[18] The Trial Chamber reasoned that the deliberations period, and in fact the sentencing and reparations period, formed part of "the trial".[19] It relied, *inter alia*, upon an earlier *Katanga* Judgement, despite the fact that the Appeals Chamber in that case had specifically limited its finding to the context of a recharcterisation of charges under Regulation 55:[20]

[16] Request, para. 6. See also paras. 35-45.
[17] T-365-Red-ENG ET, p.67, lines 24-25; p.68, lines 1-2.
[18] ICC-01/05-01/08-3221, paras. 27-30.
[19] ICC-01/05-01/08-3221.
[20] ICC-01/04-01/07-3363, para. 17.

> The Appeals Chamber therefore concludes that, **<u>for the purposes of regulation 55 of the Regulations of the Court</u>**, the trial is ongoing at the present time.

17. A plain language reading of Article 58(b)(i) indicates that the word "trial" should, in the context of provisional release, be given its plain meaning. Article 58(b)(i) requires that the arrest of a person appears necessary "to ensure the person's appearance at trial". Mr. Bemba does not "appear" at deliberations, nor does his imprisonment during the period of deliberations appear to have any apparent object as opposed to being merely punitive.

18. In any event, the debate over nomenclature obscures the central point: the hearing of evidence has concluded; witnesses are not being heard; the pleadings are over; the courtroom is empty; the proceedings have finished; Mr. Bemba can no longer be said to be needed in The Hague. By placing an emphasis on terminology over substance, the Trial Chamber erroneously failed to consider these factors, or weigh the impact of continuing to detain Mr. Bemba at the seat of the Court in The Hague when he most likely will not be required to be present in the ICC building until the eventual rendering of his Judgement.

19. By focusing only on the technical scope of a "trial", the Trial Chamber also failed to consider or distinguish the Defence submissions on the accepted practice at the ICTY, according to which provisional release during periods of judicial recess, or while waiting for a Judgement to be delivered, is viewed as not creating additional risks, but constituting a positive measure on the part of Chambers to ensure that defendants are not detained for an unreasonable length of time during the proceedings, and compliance with international human rights standards concerning detention.[21] The Impugned Decision ignores, for example, the Defence

[21] *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-T, Decision on Motion for Provisional Release of the Accused Milivoj Petković, 30 November 2011, paras. 37-38 (hereinafter "*Petković* Decision"); *Prosecutor v. Vojislav Šešelj*, IT-03-67-T, Order of the Provisional Release of the Accused Proprio Motu,

submissions on cases such as *Prlić*, where the Trial Chamber held in granting provisional release to Mr. Petković:[22]

> …as the hearings have ended, the presence of the Accused Petković is no longer required in court. Furthermore, the Accused Petković is no longer required to assist his counsel, whose presence is no longer required in The Hague, in the preparation of his defence as the latter, like the other defence cases, has now ended…The complexity and the scope of the case may also result in a lengthy period of deliberation prior to the delivery of the judgement.

20. An insistence that deliberations form part of the "trial" period is no substitute for a reasoned decision as to why a different standard should be applied at the ICC as from other international courts. The Trial Chamber's failure to engage with the Defence submissions on this point lead was an error of law which vitiates the Impugned Decision, and which warrants its reversal.

Ground 2: The Trial Chamber erred in law relying on factual findings from another proceeding

21. The Prosecution's concurrent Article 70 case[23] has given rise a swathe of legal issues never before seen in international criminal proceedings, and arguably unknown to criminal proceedings in any recognisable domestic system. The Prosecution's investigative techniques and its use of Registry organs such as CSS, VWU and the UNDU to collect and access privileged and confidential Defence

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6 November 2014; *Prosecutor v. Mico Stanisić and Stojan Župljanin*, Case No. IT-08-91-T, Decision Granting Mico Stanisić's Request for Provisional Release, 6 June 2012, para. 26; See also *Prosecutor v. Ramush Haradinaj et al.*, Case No. IT-04-84bis-PT, Decision on Ramush Haradinaj's Motion for Provisional Release, 8 December 2010, paras. 25-26.

[22] *Petković* Decision, paras. 37-38.

[23] ICC-01/05-01/13 (hereinafter "Article 70 Case").

information has prompted extensive litigation in the Main Case which will likely plague the current proceedings well into any appeal phase, and arguably beyond.[24]

22. The Trial Chamber was improperly seized with Prosecution requests for judicial assistance concerning its Article 70 investigation for a period of five months while the Defence case was being presented, exposing the bench to details of unproven allegations against both Defence witnesses and the Defence team to which it should never have been exposed.[25] After having acknowledged that it had "no competence" to deal with the Prosecution's requests and should never have been seized,[26] the Trial Chamber went one step further. In April 2014, the Trial Chamber explicitly rejected a Prosecution request to admit Article 70 material in the Main Case.[27] The Chamber found, *inter alia*, that the material in question concerned matters being litigated by Pre-Trial Chamber II in the Article 70 Case, and that it was not appropriate for matters to be litigated in parallel in the Main Case.[28]

23. In marked contrast to the delineation in April 2014, the Impugned Decision adopts, accepts, and relies upon factual findings made by Pre-Trial Chamber II in the Article 70 Case. Indeed, at the heart of the Trial Chamber's finding that Mr. Bemba posed a flight risk was the fact that the charges against Mr. Bemba in the Article 70 case had now been confirmed. The Chamber was explicit that it considered:[29]

> the existence of a finding by Pre-Trial Chamber II that there are "substantial grounds to believe" that the accused committed or solicited offences against the administration of justice related to the Bemba case, as a matter of fact and strictly for the purposes of its assessment under Article 58(1)(b)(i), clearly satisfies the

[24] See generally ICC-01/05-01/08-3217-Conf-Exp.
[25] ICC-01/05-01/08-2548-Conf-Red; ICC-01/05-01/08-3217-Conf-Exp, paras. 96-100.
[26] ICC-01/05-01/08-T-303-Conf-Red3-ENG, pp.26-27.
[27] ICC-01/05-01/08-3029.
[28] Ibid., para. 26.
[29] ICC-01/05-01/08-3221, para. 49.

> standard set by the Appeals Chamber that there must be "possibility" that the arrest of the person appears necessary to ensure that the person does not obstruct or endanger the court proceedings.

24. By virtue of the Trial Chamber's ruling of April 2014, there is no evidence in the Main Case on the matter of whether Mr. Bemba committed or solicited offences against the administration of justice. A Chamber has a duty to draw its own reasonable conclusions **<u>on the evidence admitted</u>** in the case before it.[30] It cannot simply pick and choose findings from other Pre-Trial or Trial Chambers without itself scrutinising the evidence underpinning these findings and affording the parties an opportunity to challenge the evidence and make submissions as to its weight and impact on the case at hand, particularly vis-à-vis the other evidence in the casefile unknown to the first Chamber.

25. The Appeals Chamber has previously overturned a finding concerning the possibility that Ngudjolo's would obstruct or endanger investigations or court proceedings on this basis. The Appeals Chamber held that the Single Judge's finding was not well-founded, given that it was:[31]

> based on the appreciation of facts, be it facts relevant to the issue before the Pre-Trial Chamber, **<u>made by another member of the Pre-Trial Chamber</u>** acting as a Single Judge in proceedings unrelated to the warrant of arrest of the appellant. The Single Judge in that case found that from the facts laid before her, it appeared that the appellant had the capacity to interfere with ongoing or further investigations, or Prosecution witnesses, victims, or members of their families. What these facts are is not explained. **<u>What is missing is the evaluation of the relevant facts by the Single Judge in the present proceedings. In this</u>**

[30] See, for example, *The Prosecutor v. Stakić*, IT-97-24-A, Judgement, 22 March 2006, para. 346: "The Appeals Chamber reiterates that a Trial Chamber may draw its own reasonable conclusions based on the facts of the case before it, and is not bound by the factual findings of another case."; *Karemera & Ngirumpatse v. The Prosecutor*, ICTR-98-44-A, Judgement, 29 September 2014, fn. 1288. "reliance on factual findings in other proceedings is unfounded".
[31] ICC-01/04-01/07-572, para. 26.

> **case the Single Judge adopted the findings made by another Single Judge in other proceedings; this is impermissible**. A judge, the Single Judge in this case, is duty-bound to appraise facts bearing on *sub judice* matters, determine their cogency and weight and come to his/her findings, as the Single Judge was bound to do in this case but failed to do.

26. The Appeals Chamber went on to find that the Single Judge was not relieved of that duty because another judge within the context of the proceedings made an appraisal of the facts, nor was any evaluation made in such proceedings binding on the Chamber charged with the determination of a *sub judice.* It held "[i]t was the responsibility of the judge in this case to assess the facts pertinent to her decision, and found her judgment thereupon."[32]

27. In adopting the findings from Pre-Trial Chamber II, the Trial Chamber in the present case falls foul of this appellate precedent. Moreover, the unfairness and prejudice to the fairness of the proceedings is patent. Mr. Bemba has been given no chance to defend against the Article 70 allegations and charges in the Main Case, yet he is being detained on this basis in these proceedings. Moreover, Mr. Bemba has sought leave to appeal the very findings upon which the Trial Chamber relies.[33] Should these findings be overturned on appeal, this in turn would undermine the Impugned Decision, and the basis for the ongoing deprivation of his liberty.

28. The prejudice finds further illustration in a decision in the *Katanga & Ngudjolo* case. Following the closure of evidence in that case, the Defence sought the admission of portions of the *Lubanga* judgement concerning the improper behaviour of certain Prosecution intermediaries who were common to both cases.[34] In rejecting the Defence request, the Trial Chamber correctly observed that the admission of fresh evidence (namely findings from another Trial Chamber) after the closure of

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[32] *Ibid*., para. 27.
[33] ICC-01/05-01/13-768.
[34] ICC-01/04-01/07-3266-Conf-Corr2, paras. 465-475.

the evidence would automatically entail "the reopening of oral proceedings to hear adversarial submissions as to the appropriate weight to be attached in the light of the whole casefile, in accordance with article 74(2) of the Statute."[35] This can be contrasted with the approach in the Impugned Decision, where the Trial Chamber simply cut and pasted helpful factual findings of another Chamber into its own decision.

29. Notably, the Trial Chamber in *Katanga & Ngudjolo* correctly held that:[36]

> even were the Chamber to consider the findings of Trial Chamber I reliable, scrutinising them in the light of the evidence adduced in this case will be difficult in the absence of the entire *Lubanga* record. For all these reasons, the Chamber considers that the admission of the relevant excerpts of the *Lubanga* judgment as evidence will not make such a significant contribution to the determination of the truth as to warrant fresh hearings.

30. In the Impugned Decision, the Trial Chamber employed none of the "scrutiny" or safeguards to which the *Katanga* Chamber refers. In sanctioning the adoption of factual findings of other Chambers in the absence of any submissions from the parties, the Impugned Decision sets a troubling precedent in undermining the right of an accused to challenge the evidence against him. It also simply dispenses with the entire process of the admission of evidence. The reliance by the Trial Chamber on findings of Pre-Trial Chamber II in the Article 70 Case to justify Mr. Bemba's detention in the Main Case is a legal error which warrants the reversal of the Impugned Decision.

Ground 3: The Trial Chamber erred in denying provisional release on the basis that it was not clear that Belgium offered to accept the accused and enforce conditions

[35] ICC-01/04-01/07-3279-tENG, para. 14.
[36] ICC-01/04-01/07-3279-tENG, para. 18.

31. The Impugned Decision puts Mr. Bemba in an impossible position, rendering his right to seek provisional release illusory.

32. [REDACTED].[37]

33. [REDACTED].

34. [REDACTED].

35. The Defence request was dismissed by the Trial Chamber as being "premature" in the absence of a legally and factually substantiated request for provisional release.[38]

36. Accordingly, once the trial had drawn to a close and changed conditions arose warranting a modification of the orders governing his detention, Mr. Bemba again came before the Trial Chamber with a legally and factually substantiated request for provisional release. In particular, the Defence informed the Chamber that:[39]

> As in the past, the Defence has been informed that Belgium remains willing to accommodate any request from the Court concerning Mr. Bemba's provisional release. In the absence of any indication that the Trial Chamber has solicited the views of either Belgium or Portugal in its determination of the Request, the Defence requests that a status conference be called, with representatives from both states being invited to attend to discuss the implementation of appropriate conditions and logistical arrangements for any eventual period of provisional release.

[37] [REDACTED].
[38] ICC-01/05-01/08-3087, paras. 3-4.
[39] ICC-01/05-01/08-3216, para. 10.

37. The Trial Chamber was therefore [REDACTED], and was also directly seized with a request to solicit observations from Belgium in both June and December 2014. Declining to do so, and yet finding that "it is not clear that Belgium has offered to accept [Mr. Bemba] and enforce conditions" makes the Trial Chamber complicit in the catch-22 which renders Mr. Bemba's right to provisional release illusory.

38. [REDACTED], and the Trial Chamber refuses to ask for its observations, there will forever be a stalemate. In circumstances in which a State has indicated that it will submit observations concerning its willingness to enforce specific conditions upon order of a Chamber, the Chamber's discretion to seek such observation does not apply. In contrast to the situation where no proposal for conditional release has been presented, a concrete proposal has been introduced. The Defence has requested to be released to Belgium, which has both entered into an agreement with the Court concerning provisional release of accused into its territory, [REDACTED].[40] This scenario thus falls squarely within the parameters of the Appeals Chamber's judgment in *Bemba* to the effect that the Chamber has no discretion <u>not</u> to request observations in such circumstances.[41] To hold otherwise would deprive the initial *Bemba* ruling of any force, and create an unfair distinction between countries which will respond to Defence co-operation requests directly, and those (mainly civil law countries) which require such requests to be routed through an order of the Chamber.

39. As such, the Trial Chamber's conclusion that "there is no condition short of detention at the seat of the Court that would be sufficient to mitigate the accused's flight risk"[42] was taken in the absence of relevant information from Belgium concerning the conditions able to be put in place, after the Chamber had actively

[40] [REDACTED].
[41] ICC-01/05-01/08-1626-Conf, para. 55.
[42] ICC-01/05-01/08-3221, para. 58.

shut its eyes to receiving information directly relevant to its consideration of this question. This error is underscored by the fact that in finding that no conditions could mitigate the risk firstly, the Trial Chamber rehearses prior findings that were not made in context of a decision on conditional release to a designated State that was potentially willing to enforce conditions of release[43] and secondly, the Trial Chamber relies on findings from the Pre-Trial Chamber in the Article 70 case.[44] In terms of the latter, the views of Belgium could have had a decisive impact on the Trial Chamber's decision regarding the existence of such a risk, given that Belgium has demonstrated itself both willing and able to enforce the conditions of release in relation to Mr. Bemba's co-defendant in the Article 70 case.

40. The Trial Chamber's approach can therefore be contrasted with that of the Pre-Trial Chamber in *Gbagbo*, upheld on appeal, where the Pre-Trial Chamber's finding that no conditions could mitigate the risks of release was based on evidence and submissions that addressed this point, as well as the submissions of the state concerned.[45] Unlike the Pre-Trial Chamber in *Gbagbo*, the Trial Chamber in the Impugned Decision merely repeated previous findings.[46] Given that this was the first time that the Trial Chamber had held that no conditions of release could satisfy the criteria set out in Article 58(1), it was incumbent on the Trial Chamber to make such a finding on the basis of submissions and evidence before it, rather than relying on previous findings that were issued at a different period and under different circumstances.

41. As such, the Trial Chamber's approach was both legally and procedurally erroneous, and vitiates the outcome of the Impugned Decision.

D. CONCLUSION

[43] ICC-01/05-01/08-3221, paras. 49, 58.
[44] ICC-01/05-01/08-3221, para. 49.
[45] ICC-02/11-01/11-278-Red, para. 80.
[46] ICC-01/05-01/08-3221, paras. 49, 58.

42. Incarceration is a measure of an exceptional nature. Excessively long periods of detention are detrimental to the individual, with consequences to the prisoner's mental and physical health, and a concurrent detrimental effect on the families of accused persons. It should be applied only when all other options are judged to be insufficient.

43. Now approaching seven years in detention, Mr. Bemba was entitled to a sufficiently founded and legally sound decision justifying his ongoing detention. The Trial Chamber's disregard for the realities of the present phase of the case and relevant precedent; its impermissible adoption of factual findings from Pre-Trial Chamber II; and its deliberate steps to insulate itself from relevant submissions from Belgium – a state where not only Mr. Bemba's wife and children reside, but which has indicated its willingness to receive provisionally released ICC-accused – has meant that the Impugned Decision suffers from both legal and procedural errors which warrant appellate intervention.

E. RELIEF SOUGHT

44. For the reasons set out above, the Defence for Mr. Bemba respectfully requests the Honourable Appeals Chamber to:

QUASH the Impugned Decision; and

REMIT the matter to the Trial Chamber for fixing conditions of release into either Belgium or Portugal for the period of deliberations pending the issuance of a Judgement under Article 74 of the Statute or, in the alternative, during the weekends for the duration of the deliberations period.

The whole respectfully submitted.

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12 January 2014