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TRIAL CHAMBER VII

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

SITUATION IN THE CENTRAL AFRICAN REPUBLIC

IN THE CASE OF
THE PROSECUTOR v. JEAN-PIERRE BEMBA GOMBO, AIME KILOLO MUSAMBA,
JEAN-JACQUES MANGENDA KABONGO, FIDELE BABALA WANDU AND
NARCISSE ARIDO

Public Redacted Document

**Public redacted version of “Prosecution’s Observations on the Accused’s detention”,
29 June 2015, ICC-01/05-01/13-1044-Conf**

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

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I. Introduction

1. Pursuant to Trial Chamber VII's 1 June 2015 Order¹, the Prosecution provides its observations on the interim release of the Accused Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse Arido.

2. Although the conditions warranting the Accused's detention under article 58(1) of the Rome Statute continue to exist, and there is no positive change of circumstances for the Accused since the Pre-Trial Chamber issued the last decision on their detention,² the Accused's 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.³ The Prosecution thus, defers to the Chamber's discretion, should it determine that the circumstances warrant the Accused's detention.

3. However, should the Chamber continue the Accused's interim release, it should impose meaningful conditions — with enforceable consequences. Such restrictions are minimally required under rule 119 of the Rules of Procedure and Evidence, in view of the clear and extant risks to the integrity of the proceedings that the Accused's continued release poses.

II. Confidentiality

4. This filing is classified as "Confidential" as it refers to evidence classified as such. The Prosecution will file a "Public Redacted" version of its Observations as soon as practicable.

¹ ICC-01/05-01/13-980 (referencing the Appeals Chamber's reversal and remand decisions regarding the Pre-Trial Chamber's interim release of Accused Kilolo, Mangenda, Babala and Arido, ICC-01/05-01/13-969, OA 5 OA 6 OA 7 OA 8 OA 9; and in relation to Accused Bemba, ICC-01/05-01/13-970, OA 10.

² Since the Appeals Chamber overturned the Pre-Trial Chamber's decision on release, the Trial Chamber must now assess, pursuant to article 60(3), whether there is a change of circumstances since the Pre-Trial Chamber issued its last decision on detention of the Accused.

³ See *e.g.*, ICC-01/05-01/13-969, para.57 (noting the Accused's present re-arrest "would not be in the interests of justice", given the time that has passed since their release).

III. Submissions

5. First, the Confirmation Decision⁴ establishes reasonable grounds to believe that the Accused have committed the crimes within the jurisdiction of the Court, as does the evidence supporting it; second, at a minimum, there is a substantial risk that the Accused may obstruct or endanger the investigation or court proceedings through acts comprising the crimes with which they are charged.

6. As noted however, although there is no change in circumstances under article 60(3) since the Pre-Trial Chamber issued its last decision on detention, it is now impracticable to re-arrest the Accused and commit them to the Court's custody. Accordingly, should the Chamber extend their interim release, stringent conditions should be imposed.

7. The conditions of the Accused's interim release are inadequate. The release of Accused Kilolo, Mangenda, Babala and Arido on the basis of providing the address of the place where they would reside, and signing "a personal statement" to appear before the Court, do not accord with the risks to the integrity of the proceedings. The nature of the Accused's alleged criminal conduct, as confirmed by the Pre-Trial Chamber, readily demonstrates this.

8. The Prosecution incorporates its previous filing on the Accused's release as modified⁵, in that it considers: (a) the Accused's, effectively unconditional release carries with it an unacceptable risk of witness interference in this case – which indeed, has materialised; and (b) the Accused's detailed knowledge of the case against them—which remains strong—provides an impetus for them to avoid trial.

A. Interim release without substantive conditions is unjustified

9. Although the passage of time and the schedule of the proceedings render the Accused's arrest and remand to custody logistically impracticable, it does not amount to a changed circumstance under article 60(3).⁶ And, although the proceedings have advanced considerably since the Accused's release, its current stage augments, rather than mitigates the risks.

⁴ ICC-01/05-01/13-749.

⁵ See [REDACTED], paras.3-4.

⁶ See ICC-01/05-01/13-969, para.44.

10. The Pre-Trial Chamber recognised this rudimentary factor early on,⁷ notwithstanding its subsequent actions. Absent any meaningful conditions on the Accused's release, the risk to the integrity of the proceedings in this case has been in no way attenuated by the passage of time. To the contrary, it has grown, and will continue to do so with the prospect of trial coming ever nearer.

B. There is a genuine risk that the Accused will interfere with the integrity of the proceedings

11. The Chamber should not lose sight of the fact that the Confirmation Decision found substantial grounds to believe that all of the Accused committed offences under Article 70.⁸ In terms of a risk assessment under article 60(3), each has a track record for perverting the course of justice before this very Court. Bemba, Kilolo and Mangenda have further shattered a number of obligations owed to the Court in the course of the proceedings in *The Prosecutor v. Jean-Pierre Bemba Gombo*, ICC-01/05-01/08 ("Main Case").⁹

12. Prosecution witnesses in this case have been interfered with during its pendency. Maintaining the Accused's interim release without any conditions ignores this reality, and grossly underestimates their resources, tenacity and craftiness, particularly as trial approaches. The charged offences readily demonstrate this, and the likelihood that such conduct will continue.

C. The Accused's have a personal stake in the outcome of this case

13. The Accused's direct stake in the outcome of this case should not be downplayed. Rather it is a well-recognised factor when determining the propriety of an accused's release in

⁷ See also e.g. ICC-01/05-01/13-611, para.14 ("As regards the fact that the Prosecutor's investigation is now completed, the Single Judge [...] reiterates that, whilst many pieces of evidence might by this stage be beyond the suspects' reach, it cannot yet be excluded that action be taken in respect of other evidentiary items which might still be outstanding. The seriousness and concreteness of this risk should also be appreciated in light of article 83(1) and (2) of the Statute, vesting in the Appeals Chamber 'all the powers of the Trial Chamber', including, most critically, the power to 'call evidence'.").

⁸ ICC-01/05-01/13-749, pp.47-55.

⁹ See e.g., ICC-01/05-01/13-261, para.25 (noting that this is even more serious when allegedly committed by persons with a professional obligation to serve justice).

any criminal case; and one this Chamber should seriously consider to realistically assess the risks associated with the Accused's continued release on the prevailing terms.

14. Other than Accused Bemba, none of the other Accused had a personal stake in the outcome of the Main Case. Given their alleged conduct in that case, wherein they were not interested parties, the Chamber should consider that their motivation to engage in similar behaviour here is not likely diminished, but enhanced.

15. Further, bearing in mind that each face multiple counts of article 70 violations, the maximum sentence they face if convicted is uncertain.¹⁰ Irrespective of whatever sentence they could receive, the cost of conviction in this case is high for each Accused, and includes collateral consequences to their respective careers, livelihoods and, for Bemba, may mean facing the prospect of cumulative sentences. In Mangenda's and Arido's cases, a conviction may substantially damage their respective immigration status in the countries in which they presently reside.

D. There are no built-in safeguards ensuring the integrity of the proceedings

16. The document-intensive nature of the case does not immunise it from potential interference. As the Chamber is aware, the Prosecution intends to call witnesses at trial who contextualise and explain the events underlying the charged offences. Some of these individuals are clearly at risk of interference by the Accused, given their participation in the offences and the highly incriminating nature of their evidence. The circumstances of the Accused's interim release in this case—especially in view of the manner in which they allegedly corruptly influenced witnesses in the Main Case¹¹, must meaningfully address this risk.

17. That the Accused have not fled — excluding Bemba, who remains detained — no more indicates a reduced risk to the integrity of these proceedings than the pretences of Accused, Bemba, Kilolo and Mangenda before Trial Chamber III. Indeed, the Accused's lack of flight may reflect no more than confidence in having already successfully corruptly

¹⁰ ICC-01/05-01/13-538, para.14; ICC-01/05-01/13-259, para.31; ICC-01/05-01/13-258, para.22. *See also* ICC-01/05-01/13-588, para.17, that "it remain[s] to be decided how the statutory limit" to sentencing under Article 70 "may apply in case [of] multiple offences".

¹¹ ICC-01/05-01/13-749, pp.19-46.

influenced witnesses in *this case*. Given the confirmed facts and circumstances concerning the conduct underlying the charges, this is hardly unrealistic.

E. Specific limited responses to the Accused's submissions

i. The Bemba Defence

18. The Bemba Defence's withdrawal of Bemba's request for interim release is noted. However, Bemba's insinuation that the Prosecution has in any way caused delay or even inefficiency in these proceedings is rejected. The claim that "that the detention order in Case no. ICC-01/05/01/08 prevents Mr. Bemba from being released as a remedy for inexcusable delays in Case No. ICC-01/05-01/13 ... These delays can be avoided by ensuring, *inter alia*, that the Prosecution fulfils its disclosure duties towards the Defence in a timely and effective manner"—is misguided.¹² As the Decision releasing the other four suspects makes clear, "the duration of the detention of the [s]uspects is not due to the Prosecutor's inexcusable delay" – but "a number of procedural developments"¹³ within the purview of the Court and/or the Registry.

19. The Prosecution has not caused delay in this case. By contrast, Bemba has now for the second time withdrawn the same application for interim release¹⁴; this time, only after the Court's resources at the Pre-Trial and Appeal level have already expended considerable resources and time in consideration of the matter.

ii. The Kilolo Defence

20. Accused Kilolo contends that because the risks identified by the Pre-Trial Chamber have not been realised since his release, this somehow constitutes a changed circumstance.¹⁵ It does not. Nor, does it refute the previously assessed risk. Kilolo's contention that "[i]l est aussi important de noter que lors de cette même audience [first Status Conference], le Procureur n'a pas soulevé la nécessité de remettre les co-accusés en détention dans le cadre

¹² ICC-01/05-01/13-1016, para.16.

¹³ ICC-01/05-01/13-703, pp.4, 5.

¹⁴ See, ICC-01/05-01/13-779, in reference to ICC-01/05-01/13-770.

¹⁵ ICC-01/05-01/13-1021-Red, paras.19-21.

du procès»¹⁶, is equally flawed. As the Chamber is aware, the question of the Accused's interim release was subjudice before the Appeals Chamber when the Status Conference took place. Further, the matter was not part of the specific agenda set by the Chamber.¹⁷

21. Although Kilolo submits that his conduct since October 2014 indicates “*sa volonté non ambiguë de tenir ses engagements et de comparaître à son procès* »¹⁸, this alone is insufficient to mitigate the risks of his release without sufficient conditions. Kilolo is not entitled to be taken at his word where a Chamber of this Court has found substantial grounds to believe that he is responsible for 42 counts of offences against the administration of justice.¹⁹ The nature of his alleged conduct is antithetical to the orders and directives of Trial Chamber III, and indeed, contrary to the Code of Professional Conduct for counsel.²⁰

22. Counsel for Kilolo's claim that, in respect of the risk of Kilolo's interference with the investigation and process in this case, “*depuis sa mise en liberté, son client a adopté un comportement on ne peut plus transparent* »²¹ and that Kilolo's comportment has been “*irréprochable*”²² is presumably not within Counsel's actual knowledge. It is also not objectively substantiated, and cannot be taken by this Chamber at face value in the circumstances. Kilolo's claimed self-imposed avoidance of certain countries where Prosecution witnesses may potentially be found does not mitigate any risk to his ability to corruptly influence them. The Chamber will recall that much of the incriminating evidence in this case reflects the corruption of witnesses at a distance, *i.e.*, over the phone and/or *via* wire transfers of money. The Confirmation Decision and the evidence supporting it stands in stark contrast to Kilolo's unsupported contentions in terms of this Chamber's assessment of the *risk* of his continued release, even with the conditions Kilolo proposes.²³

23. Kilolo's claim that since his release he has not attempted to contact or meet any witness, or to influence or pressure them directly or indirectly, and that he is not implicated in any

¹⁶ ICC-01/05-01/13-1021-Red, para.23.

¹⁷ ICC-01/05-01/13-912, pp.4, 5.

¹⁸ ICC-01/05-01/13-1021-Red, para.24.

¹⁹ ICC-01/05-01/13-749, pp.48, 49.

²⁰ See ICC-ASP/4/Res.1, particularly, articles 4 and 5 of the Statute.

²¹ ICC-01/05-01/13-1021-Red, para.27.

²² ICC-01/05-01/13-1021-Red, para.29.

²³ ICC-01/05-01/13-1021-Red, p.20.

incident involving a witness,²⁴ is rhetorical. The nature of the case against him clearly establishes the risks associated with his effectively unconditional release.

24. Kilolo points to the five year maximum sentence for an article 70 offence as a factor favouring his continued release under the terms he proposes. However, his observations omit that this maximum penalty potentially applies severally to each of the 42 counts that he faces. As such, it is not a factor favouring lax conditions of release.

25. On the above, if the Chamber is inclined to continue Kilolo's interim release, this should only be done under stringent and effective conditions, as set out in section F below.

iii. The Mangenda Defence

26. Despite the Mangenda Defence's averment that Mangenda "strongly wished to attend the Status Conference held on 24 April 2015, he has not yet appeared before the Chamber since his release. The explanation provided—that his appearance was not possible "because the United Kingdom ("UK") authorities informed the ICC Registry that his departure from their territory could result in the automatic rejection of his appeal requesting a family reunification visa"²⁵—rather than mitigate the risk of his future non-appearance at trial, raises it.

27. Mangenda's current status in the UK is unclear, given the denial of his application for a family reunification visa.²⁶ Equally unclear is whether any related restrictions may affect his ability to meet his obligations to the Court. There is no present guarantee that he could appear for trial in this case without consequence to his status in the UK and that, therefore, he would simply not appear rather than jeopardise his immigration prospects. Mangenda's observations do not address his present status, or this eventuality.

28. Mangenda's contention that no one has alleged his interference with ongoing investigations since his release²⁷ is meaningless. Given the nature of the criminal conduct with

²⁴ ICC-01/05-01/13-1021-Red, paras.30-32.

²⁵ Cf. ICC-01/05-01/13-1017, para.13.

²⁶ [REDACTED].

²⁷ ICC-01/05-01/13-1017, paras.14, 21.

which he has been charged and the surreptitious manner in which the Accused allegedly carried out the offences, that his interfering with witnesses or evidence is not yet apparent does not mean that: (a) that he is not doing so, or (b) that there is no *risk* that might.

29. Further, Mangenda's assertion that the Prosecution's not having requested monitoring of his communications suggests that "it does not consider that there are reasonable grounds to suspect that he is obstructing or endangering investigations or proceedings"²⁸, is erroneous and illogical. Mangenda was released over the Prosecution's objection on terms set by the Pre-Trial Chamber. Mangenda's argument is built upon a fundamental fallacy. For the Prosecution to have requested the monitoring of the Accused's communications by the authorities of the country to which they were released would have circumvented the Pre-Trial Chamber's Order.²⁹

30. Mangenda's further contention that his post-release conduct "has been unimpeachable"³⁰ is, firstly, unsubstantiated. Counsel's claim that "[Mangenda] has not attempted to continue any offence with which he has been charged" is an assertion presumably outside his direct knowledge. Secondly, it is unsupported by any statement of Mangenda himself to which he can be held to account. Even if it were, this would not mitigate the risks arising from his conduct forming the basis of the offences with which he is charged, and which the Confirmation Decision amply substantiates. Like the Kilolo Defence, Mangenda's argument is built on the false premise which conflates the presumption of innocence and a presumption of *trustworthiness*. The latter, simply does not exist under the Statute's framework.³¹ It is also untenable in the face of the Confirmation Decision.

31. On the above, should the Chamber be inclined to continue Mangenda's interim release, this should only be done under stringent and effective conditions, as set out in section F below.

iv. The Babala Defence

²⁸ ICC-01/05-01/13-1017, para.14.

²⁹ ICC-01/05-01/13-703, pp.6-7.

³⁰ ICC-01/05-01/13-1017, para.11.

³¹ See article 60(2) "[i]f the Pre-Trial Chamber is satisfied that the conditions set forth in article 58, paragraph 1, are met, the person shall continue to be detained."

32. The Babala Defence argues that in the eight months since Babala's release, *"l'Accusation n a jamais saisi la Chambre d'un quelconque comportement de M. Babala ou circonstance qui justifierait son retour en détention."*³² The argument is fallacious and ignores the continuing *risk* to the integrity of the proceedings and evidence that Babala's release presents, particularly absent meaningful conditions. As noted, the Accused's cunning in corruptly influencing witnesses in the Main Case undermines Babala's contention. Like Mangenda and Kilolo, Babala argues, in essence, that his trustworthiness is demonstrated by his post-release conduct. However, for Babala's assertions concerning his word of *"honneur"*³³ to have meaning here relies on blind faith. He is entitled to no such presumption. Rather, the "substantial grounds" found by the Pre-Trial Chamber showing Babala's complicity in the overall strategy through which the Accused allegedly perpetrated a fraud on the Court, places the onus on him to dispel the reasonableness of considering those facts in assessing the *risk* arising from his continued interim release and the conditions required to address them.

33. The Babala Defence contends that he *"comparaîtra chaque fois que la Cour exigera sa présence [and] Aucune preuve ne peut ou n'a pu être apportée pour démontrer le contraire"*.³⁴ However, again, Babala ignores the significance of the Confirmation Decision in terms of this Chamber's assessment of *risk*—i.e., consideration of the substantiated criminal conduct of an Accused in contravention of the Court's processes. The Chamber should not lose sight of the fact that like Kilolo, Mangenda and Arido, Babala too is a lawyer by training.³⁵ His alleged conduct contrary to the administration of justice, like theirs, must be viewed in that light.

34. The confirmation of charges is a key changed circumstance disfavouring the Accused in terms of risk assessment. Babala's claim that he had no knowledge of any defence witness or the theme of their testimony in the Main Case, contradicts substantiated charges against him. For example, the Pre-Trial Chamber found:

³² ICC-01/05-01/13-1019, para.29, 48.

³³ ICC-01/05-01/13-1019, para.33, 35.

³⁴ ICC-01/05-01/13-1019, para.32.

³⁵ [REDACTED], para.14.

“[t]he evidence before the Chamber shows that Mr Babala personally transferred money to some of the Witnesses”³⁶, as did his chauffeur, Robert Nginamau³⁷; or that “on 17 October 2013 [Babala and Kilolo] refer to the case of Walter Barasa before the Court and the fact that he is being targeted by a warrant of arrest ‘tout simplement parce que ... il est soupçonné d’avoir fait pression sur des témoins. Mr Babala says he will transfer Mr Kilolo about EUR 2,000 and notes with regret that they failed to ensure “*le service après-vente*”, which resulted in “them” (i.e., the Witnesses) being vulnerable and therefore “*à la merci de ... tous les vautours*.”³⁸

35. The Pre-Trial Chamber further found that “Mr Babala knew about the steps taken for the commission of the charged offences, on the basis of the conversations held on a regular basis with Mr Bemba about the payments to be made to the Witnesses.”³⁹

36. As with the other Accused, Babala’s contentions regarding the gravity of the charged offences and the proportionality of his pre-trial detention to the “*pénalité maximum*”⁴⁰, ignores the possible consequences of his conviction on the multiple counts with which he is charged in this case.

37. On the above, should the Chamber be inclined to continue Babala’s interim release, this should only be done under stringent and effective conditions, as set out in section F below.

v. *The Arido Defence*

38. Although Arido recognises that [REDACTED]⁴¹, he fails to acknowledge that the confirmation of charges, to any extent, militates against his continued release. Like the other Accused (save Bemba), Arido was released before the Confirmation Decision was rendered, which found substantial grounds to believe that he committed and aided and abetted article 70 offences.⁴²

³⁶ ICC-01/05-01/13-749, para.77.

³⁷ ICC-01/05-01/13-749, para.77.

³⁸ ICC-01/05-01/13-749, para.82.

³⁹ ICC-01/05-01/13-749, para.84.

⁴⁰ ICC-01/05-01/13-1019, para.56.

⁴¹ [REDACTED], paras.20-25.

⁴² ICC-01/05-01/13-749, pp.38-42.

39. The Arido Defence’s claim that the Pre-Trial Chamber [REDACTED] is incorrect, and contradicts the Confirmation Decision. The Confirmation Decision expressly found that “the *involvement* of . . . Mr Arido is more limited”⁴³, as compared to the essential role in the overall strategy played by Bemba, Kilolo and Mangenda. That he was found to be “involved” in the “overall strategy of defending Mr Bemba against the charges in the Main Case by means which included the commission of offences against the administration of justice...”⁴⁴ is not arguable, given the plain wording of the Confirmation Decision.

40. Arido’s contentions concerning the risk of his fleeing the Court’s jurisdiction ignore his calculated misuse of the visa obtained for him by the Court to facilitate his testimony in the Main Case in order to abscond to France.⁴⁵ His duplicity, particularly in dealings with the Court, and bearing in mind that he is a lawyer by training, should not be discounted in assessing the appropriate terms of his release.

41. Notwithstanding his strategic attendance of the 24 April 2015 Status Conference⁴⁶, Arido did not appear in the proceedings in this case voluntarily. Instead, he fought transfer to the Court from his November 2013 arrest through March 2014. There is no reason why the Chamber should refrain from considering this fact in assessing the likelihood of Arido’s abiding by the Chamber’s terms and conditions on interim release. Unsurprisingly, Arido counts the period in which he contested his lawful transfer to the Court among the 333 days he claims was [REDACTED].⁴⁷ Even if this was the case—which it is not—Arido’s prior flagrant abuse of the Court’s process remains a valid factor for the Chamber’s assessment of risk.

42. Arido’s submissions on the risk of his endangering the investigation or Court proceedings minimise his responsibility in the interference with witnesses that has occurred during the pendency of this case. The Arido Defence [REDACTED] as it must, that Arido [REDACTED] engaged in such activity.⁴⁸ Further, [REDACTED] actions were only possible

⁴³ ICC-01/05-01/13-749, para.52.

⁴⁴ ICC-01/05-01/13-749, para.52.

⁴⁵ CAR-OTP-0073-0551, p. 1-2

⁴⁶ [REDACTED], paras.34.

⁴⁷ [REDACTED], para.45.

⁴⁸ [REDACTED], para.42.

because of a breach of the confidentiality of documents and information disclosed to the Defence. Contrary to Arido's contentions⁴⁹, while the Prosecution did not seek action against Arido [REDACTED].⁵⁰

43. On the above, should the Chamber be inclined to continue Arido's interim release, this should only be done under stringent and effective conditions, as set out in section F below.

F. Stringent conditions of interim release are required

44. While article 70 offences are not intrinsically as serious as article 5 crimes under the Statute, intentionally obstructing the administration of justice in proceedings involving "the most serious crimes of concern"⁵¹ is obviously very serious. The Accused's continued interim relief requires the imposition of stringent, meaningful and effective conditions — much more than the "personal declaration"⁵² thus far required of them. These declarations have no reasonable effect on the continuing risks posed, or provide for any consequence if breached.

45. Contrary to the contentions of the Accused, the Single Judge's previous assessments that the Accused's release risks obstruction or endangerment of the investigation, court proceedings or commit related crimes⁵³ have not abated. As noted, Prosecution witnesses in this case have been interfered with during its pendency.

46. Further, the Single Judge has previously and appropriately recognised the importance of monitoring the Accused's "communications with the external world."⁵⁴ The effective management of communication is crucial to the viability of their continued interim release.

⁴⁹ [REDACTED], para.42.

⁵⁰ [REDACTED].

⁵¹ See article 1 of the Statute.

⁵² ICC-01/05-01/13-969, para. 51.

⁵³ See *e.g.* ICC-01/05-01/13-612, paras.14-16, 19, 28; ICC-01/05-01/13-611, paras.7-10, 16-18; ICC-01/05-01/13-588, paras.18-24; ICC-01/05-01/13-538, paras.5-7, 12-13, 16, 21; ICC-01/05-01/13-261, paras.33-38; ICC-01/05-01/13-259, paras.33-40; ICC-01/05-01/13-258, paras.24-33.

⁵⁴ See *e.g.* ICC-01/05-01/13-612, para.28; ICC-01/05-01/13-611, para.20; ICC-01/05-01/13-588, para.26; ICC-01/05-01/13-538, para.18; ICC-01/05-01/13-259, para.43; ICC-01/05-01/13-258, para.36. See *further* ICC-01/05-01/13-612, para.34; ICC-01/05-01/13-611, para.22 ("the availability of a thorough system of monitoring of all forms of communication available to the suspect is critical [...] In the complete absence of such a system [...] conditional release [...] is not only unwarranted, but also practically unfeasible").

47. In the circumstances of this case, particularly given the nature of the charged offences against the Court itself—for which there is now a judicial determination that there are substantial grounds to believe the Accused are responsible - the Prosecution considers that the below conditions are minimally necessary. And, the failure to abide by any of these conditions should warrant the immediate revocation of the Accused's interim release, and their re-arrest and detention:

- a. The Accused must appear for trial *and* whenever required by the Trial Chamber;
- b. The 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 Trial Chamber;
- c. The Accused must not commit new offences in the jurisdictions to which they are released, or under the Statute;
- d. The Accused must refrain from harassing, intimidating, threatening, or otherwise interfering with witnesses in this case, or in Case ICC-01/05-01/08;
- e. Other than contacts with their respective Counsel, the Accused's communications must be monitored by the relevant State authorities, and the Accused must provide the necessary contacts information required for that purpose to the authorities;
- f. The 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 Accused must report to the Registrar 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 Accused must not contact any witness in this case or those in Case ICC-01/05-01/08, either directly or indirectly, except through Counsel authorised to represent them before this Court; and

- i. The Accused must report to the Registrar any contact with such witnesses in this case, or those in Case ICC-01/05-01/08.

IV. Requested Relief

48. On the foregoing, the Prosecution defers to the discretion of the Trial Chamber, should it determine that the continuing risks to the integrity of the proceedings warrant the Accused's detention during trial. However, if the Chamber determines that continued interim release is appropriate, the Prosecution requests that the Chamber impose conditions pursuant to rule 119, including, *inter alia*, all of the conditions set out above.



Fatou Bensouda, Prosecutor

Dated this 20th Day of July 2015
At The Hague, The Netherlands