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**International
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PRE-TRIAL CHAMBER II

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

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

Public Document

**Prosecution's Response to "Defence challenge to the warrant for the arrest of
Walter Osapiri Barasa" (ICC-01/09-01/13-31, 21 August 2015)**

Source: The Office of the Prosecutor

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

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I. Introduction

1. The Office of the Prosecutor (“Prosecution”) opposes the Defence request to revoke the arrest warrant issued for Mr Walter Osapiri Barasa (“Barasa”) and replace it with a summons to appear, with or without conditions.¹ The Defence Challenge does not dispute that the warrant of arrest for Barasa was properly issued by the Single Judge of the Pre-Trial Chamber II (“PTC II” or “Chamber”) of the International Criminal Court (“Court” or “ICC”) in accordance with article 58(1) and (3) of the Rome Statute (“Statute”).² Rather, it argues that in light of the alleged changed circumstances, the warrant of arrest should be revoked and replaced with a summons to appear. In these circumstances, reliance on rule 117(3) of the Rules of Procedure and Evidence (“Rules”) is inapposite, since this provision provides only for a challenge to the *validity of issuing* the warrant. Thus, the appropriate legal recourse is to request interim release pursuant to article 60(2) of the Statute after Barasa has surrendered to the Court.³

2. Furthermore, a summons to appear is inadequate in the circumstances to assure Barasa’s appearance at trial, ensure the safety of investigations and court proceedings, and prevent the continued commission of crimes arising out of the same circumstances in accordance with article 58(1) of the Statute.⁴

3. Moreover, the Chamber has no discretion to replace the Barasa Arrest Warrant with a summons to appear (with or without conditions). The Appeals Chamber has

¹ ICC-01/09-01/13-31, Defence challenge to the warrant for the arrest of Walter Osapiri Barasa, 21 August 2015 (“Defence Challenge”).

² ICC-01/09-01/13-1-Red2, Warrant of arrest for Walter Osapiri Barasa, 2 October 2013.

³ See, article 60(2) of the Statute: “A person subject to a warrant of arrest may apply for interim release pending trial. If 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. If it is not so satisfied, the Pre-Trial Chamber shall release the person, with or without conditions.”

⁴ See, for example, ICC-01/04-01/10-50, Decision on the Defence Challenge to the Validity of the Arrest Warrant, 28 January 2011, para.7 wherein PTC I rejected the Defence application considering, *inter alia*, that “the warrant of arrest has been issued by the competent organ of the Court and contains all the elements required under article 58(3) of the Statute.”

held that, within the context of arrest warrant proceedings, a summons to appear is not an alternative.⁵ In light of the validity of the Barasa Arrest Warrant, the appropriate legal recourse is for Barasa to surrender to the ICC and, thereafter, request interim release.

4. Even if the Chamber were to consider the Defence Challenge as a request for reconsideration in light of new facts or evidence, there are no exceptional circumstances that justify reconsideration of the Barasa Arrest Warrant. Alternatively, the Barasa Arrest Warrant remains valid as the reasons necessitating its issuance continue to exist. Therefore, the request for revocation is unjustified.

II. Statement of Facts

5. On 2 August 2013, the Single Judge of PTC II (“Single Judge”) issued, under seal, an arrest warrant for Barasa for three counts of corruptly influencing witnesses and attempting to corruptly influence witnesses in *The Prosecutor v. William Samoei Ruto and Joshua Arap Sang* (“RUTO and SANG Case”) in contravention of article 70(1)(c) of the Statute.⁶ The Barasa Arrest Warrant was unsealed on 2 October 2013.⁷

6. On 8 October 2013, Barasa initiated a constitutional petition in The High Court of Kenya against the ICC Arrest Warrant issued for him to prevent the authorities of the Republic of Kenya from arresting and surrendering him to the ICC.⁸ Barasa sought judicial orders, *inter alia*, declaring that the procedure of arrest and surrender of persons to the ICC is fundamentally flawed and invalid;⁹ and refusing to enforce the Barasa Arrest Warrant in view of “the existing exceptional circumstances that

⁵ ICC-01/04-01/07-572, para.13.

⁶ ICC-01/09-01/13-1-US-Exp, Warrant of arrest for Walter Osapiri Barasa, 2 August 2013.

⁷ ICC-01/09-01/13-1-Red2, Warrant of arrest for Walter Osapiri Barasa, 2 October 2013.

⁸ See, Petition No. 288 of 2013, Judgment of Principal Judge R. M. Mwongo, 31 January 2014, para.4. (“Kenyan High Court Judgment”): <http://kenyalaw.org/caselaw/cases/view/93955/>.

⁹ Kenyan High Court Judgment, para.10(a).

make it unjust and oppressive” to arrest and surrender Barasa to the ICC for prosecution.¹⁰ Furthermore, Barasa filed supplementary affidavits to demonstrate that he is “unlikely to obtain a fair hearing by the ICC”.¹¹

7. On 31 January 2014, the Honourable Justice Mwongo of The High Court of Kenya issued his judgment rejecting Barasa’s constitutional petition against his arrest and surrender to the ICC, with the exception of the order relating to security.¹²

8. As stipulated in the Defence Challenge, “[a]ppeals litigation continues to this date with the Suspect exhausting, as is his constitutional right, all legal recourses available to him under Kenyan law.”¹³

III. Submissions

9. The Defence Challenge relies on four main grounds to argue that changed circumstances necessitate a modification of the Barasa Arrest Warrant:

- i. article 58(1)(a) of the Statute – an alleged deterioration of the evidence in the case against Barasa to the extent that it may no longer even satisfy the reasonable grounds standard of proof;¹⁴
- ii. article 58(1)(b)(i) of the Statute – Barasa is not a flight risk as evidenced by his “resolute and eager attendance at the Kenyan court sessions” and his alleged inability to seek the assistance of an “international network of supporters”;¹⁵
- iii. article 58(1)(b)(ii) of the Statute – Barasa cannot obstruct or endanger the investigation or court proceedings as investigations should be complete,

¹⁰ Kenyan High Court Judgment, para.10(d).

¹¹ Kenyan High Court Judgment, 31 January 2014, para.12.

¹² Kenyan High Court Judgment, 31 January 2014, paras.133-135.

¹³ ICC-01/09-01/13-31, para.5.

¹⁴ ICC-01/09-01/13-31, paras.9-13.

¹⁵ ICC-01/09-01/13-31, paras.14-16.

and the current whereabouts of the principal witnesses are unknown to him;¹⁶

- iv. article 58(1)(b)(iii) of the Statute – Barasa does not present an ongoing threat to the RUTO and SANG Case because, since the Prosecution’s investigation and presentation of evidence is essentially complete, he cannot commit a related crime that arises out of the same circumstances.¹⁷

A. Rule 117(3) of the Rules is inapplicable to the Defence Challenge

10. The Defence Challenge incorrectly relies on rule 117(3) of the Rules to request revocation of the Barasa Arrest Warrant by arguing that the conditions under article 58(1) of the Statute are no longer met.¹⁸ However, rule 117(3) is inapposite. That provision is limited in scope and only allows challenges as to whether the warrant of arrest was *properly issued* in accordance with article 58(1)(a) and (b) of the Statute,¹⁹ and to do so *after* arrest has taken place.²⁰

11. The Defence Challenge fails to advance any compelling arguments showing that, *at the time of issuance*, the Barasa Arrest Warrant was invalid for failing to meet the cumulative requirements of article 58(1)(a) and any one of the alternatives under article 58(1)(b) of the Statute. Without pointing to any discernible error in the issuance of the Barasa Arrest Warrant, neither the Statute nor the Rules make any provision for the PTC II to review the decision of its Single Judge.²¹

¹⁶ ICC-01/09-01/13-31, para.17.

¹⁷ ICC-01/09-01/13-31, paras.18-19.

¹⁸ ICC-01/09-01/13-31, para.8.

¹⁹ ICC-01/04-01/10-50, para.8. [Emphasis added].

²⁰ See, rule 117(1) of the Rules, which refers to a person having been arrested pursuant to articles 89 or 92; and rule 117(2) similarly states “At any time after arrest ...”.

²¹ The Prosecution notes that the Defence makes this request to the PTC II, which issued the Barasa Arrest Warrant.

12. The Defence Challenge, instead, principally argues that the conditions underlying article 58(1) of the Statute are not *presently* met. Upon arrest or surrender to the ICC, article 60(2) of the Statute stipulates that a person subject to an arrest warrant may be granted interim release, with or without conditions, if the PTC is not satisfied that the conditions of article 58(1) of the Statute are met.²² This provision answers the crux of the Defence Challenge. The Court's legal regime provides that, in such circumstances, the proper procedure is to apply for interim release following surrender to the Court. To succeed, the PTC II would need to be satisfied that the conditions, which existed at the time of the issuance of the Barasa Arrest Warrant, no longer persist.

B. A summons to appear is not an alternative to the Barasa Arrest Warrant

13. The PTC II has no discretion to replace the Barasa Arrest Warrant with a summons to appear (with or without conditions). The Appeals Chamber has ruled that, within the context of arrest warrant proceedings, a summons to appear is not an alternative:

“A summons to appear is not at issue in proceedings for the arrest of the person. Nor is a summons to appear an alternative open to the Chamber, upon application of the Prosecutor, for the issuance of a warrant of arrest. A summons to appear is an alternative only when the Prosecutor seeks to secure the attendance of the person before the Court through that process. A summons to appear can only be issued on the application of the Prosecutor before the Pre-Trial Chamber, as provided for in article 58 (7) of the Statute; such a measure may be authorised if the Pre-Trial Chamber is satisfied that this is "sufficient to ensure the person's appearance". In proceedings for the issuance of a warrant of arrest, the question the Chamber has to

²² ICC-01/04-01/07-572, para.12: “Article 60(2) of the Statute aims to provide the detainee with an early opportunity to contest his or her arrest and sequential detention. This he may do by reference to article 58 of the Statute, which defines the legal framework within which justification of his detention may be examined. Thereupon, the Chamber must address anew the issue of detention in light of the material placed before it.”

address is whether arrest is necessary for any of the reasons specified in article 58 (1) (b) of the Statute.”²³

14. Since the Prosecution has not sought to secure Barasa’s appearance through a summons to appear, there is no legal basis for the Chamber to consider the Defence request. Thus, considering the validity and continued necessity of the Barasa Arrest Warrant, the appropriate legal recourse is for Barasa to surrender to the ICC and then request interim release.

C. No exceptional circumstances to justify reconsideration of the Barasa Arrest Warrant

15. The Prosecution acknowledges that, in exceptional circumstances, it may be within a Chamber’s powers to reconsider its own orders. With regard to an arrest warrant, however, such powers are limited to determining its necessity based on whether the conditions underlying article 58(1) of the Statute persist.²⁴ Thus, should the Chamber entertain the Defence Challenge as a request for reconsideration, it nevertheless fails to sufficiently justify the exceptional circumstances that would require reconsideration of the Barasa Arrest Warrant.²⁵ As a result, the Defence Challenge should be dismissed.

²³ ICC-01/04-01/07-572, para.13.

²⁴ ICC-01/04-01/07-572, Judgment in the Appeal by Mathieu Ngudjolo Chui of 27 March 2008 against the Decision of Pre-Trial Chamber I on the Application of the Appellant for Interim Release, 9 June 2008, para.13: “In proceedings for the issuance of a warrant of arrest, the question the Chamber has to address is whether arrest is necessary for any of the reasons specified in article 58(1)(b) of the Statute.”

²⁵ The Prosecution notes the PTC II’s position, as previously constituted, against its power to reconsider prior decisions, such as ICC-01/04-02/06-207, “Decision on the Defence Request for Leave to Appeal”, para.23; and ICC-01/09-01/11-301, “Decision on the ‘Defence Request for Leave to Appeal the Urgent Decision on the Urgent Defence Application for Postponement of the Confirmation Hearing and Extension of Time to Disclose and List Evidence (ICC-01/09-01/11-260)’”, 29 August 2011, para.18. However, the Court’s jurisprudence regarding a Chamber’s power to reconsider its previous decisions is contradictory. The Prosecution’s position supports the possibility of reconsideration in exceptional circumstances in line with, for example, Trial Chamber V, ICC-01/09-02/11-863, “Decision on the Prosecution’s motion for reconsideration of the decision excusing Mr Kenyatta from continuous presence at trial”, para.11, in support of the jurisprudence from the *Lubanga* case, ICC-01/04-01/06-2705: The Statute does not provide guidance on reconsideration, but the Chamber agrees with the observation made by Trial Chamber I in *The Prosecutor v. Thomas Lubanga Dyilo* that it would be incorrect to state that decisions can only be varied “if permitted by an express provision in the Rome Statute framework”. The Chamber considers that the powers of a Chamber allow it to reconsider its own decisions, prompted by (one

16. Alternatively, the Prosecution submits that the conditions underlying article 58(1) of the Statute, which necessitated the Barasa Arrest Warrant, continue to exist.²⁶

D. The conditions necessitating the Barasa Arrest Warrant remain valid

17. The Defence Challenge fails to demonstrate that not one of the three counts in the Barasa Arrest Warrant continues to meet the reasonable grounds to believe threshold in article 58(1)(a) of the Statute. Furthermore, Barasa has not provided *any* compelling reasons or supporting evidence to assure the Court of his appearance at the ICC, the safety of investigations and court proceedings, and the prevention of the continued commission of that crime or a related crime arising out of the same circumstances in accordance with article 58(1) of the Statute. Any one of those conditions is sufficient to justify the continued necessity of the Barasa Arrest Warrant.²⁷ On the contrary, all three conditions are still satisfied.²⁸ Barasa simply exhibits his willingness to now engage the Court through long-distance negotiations and without submitting to its jurisdiction in any meaningful way.

i. The Barasa Arrest Warrant demonstrates reasonable grounds to believe that Barasa has committed one or more crime(s) within the Court's jurisdiction

of) the parties or *proprio motu*. In reference to Trial Chamber I's practice, Trial Chamber V acknowledged that "it may reconsider past decisions when they are 'manifestly unsound and their consequences are manifestly unsatisfactory'". Reconsideration should only be done in exceptional circumstances. The Chamber finds support, as was also done by Trial Chamber I, in the relevant jurisprudence of the International Criminal Tribunals for the former Yugoslavia ("ICTY") and Rwanda ("ICTR") whose statutory provisions are equally silent as to the power of reconsideration, that those circumstances can include "new facts or new arguments".

²⁶ ICC-01/04-01/07-572, para.21: "[w]hat may justify arrest ... under article 58(1)(b) of the Statute is that it must 'appear' to be necessary. The question revolves around the possibility, not the inevitability, of a future occurrence."

²⁷ ICC-01/04-169, Judgment on the Prosecutor's appeal against the decision of Pre-Trial Chamber I entitled "Decision on the Prosecutor's Application for Warrants of Arrest, Article 58", 13 July 2006, para.44: "If the two prerequisites listed in article 58 (1) of the Statute are met, the opening sentence of article 58 (1) of the Statute gives the Pre-Trial Chamber clear and unambiguous instructions as to what the Chamber should do: 'the Pre-Trial Chamber shall [...] issue a warrant of arrest'. The use of the word 'shall' indicates that the Pre-Trial Chamber is under an obligation to issue a warrant of arrest, provided that the prerequisites listed in article 58 (1) of the Statute are met."

²⁸ ICC-01/09-01/13-1-Red2, para.24.

18. With regard to article 58(1)(a) of the Statute, the Barasa Arrest Warrant was properly issued based on supporting evidence, which demonstrated reasonable grounds to believe that Barasa committed three counts of offences against the administration of justice in violation of article 70(1)(c) of the Statute.²⁹ The Defence Challenge fails to establish the contrary. It inappropriately engages the merits of the case by raising contested issues that are irrelevant at the arrest warrant stage. The appropriate forum for Barasa to litigate the issues raised in the Defence Challenge is at the confirmation of charges hearing.³⁰

19. The Defence challenge advances concerns about the Prosecution's conduct of investigations, Barasa's degree of participation, and states that "it is not unreasonable to presume that P-336, whose evidence is central to Counts 1 and 3 of the charges against the Suspect, will be deemed an unreliable witness at confirmation."³¹ On the basis of these unsubstantiated and conclusory statements, the Defence concludes that the evidence against Barasa "has now deteriorated to the extent that even the 'reasonable grounds' standard may no longer be satisfied."³² These arguments are premature and irrelevant to the arrest warrant proceedings. They should be dismissed *in limine*.

ii. The Barasa Arrest Warrant remains necessary to ensure Barasa's appearance

20. In relation to article 58(1)(b)(i) of the Statute, the Barasa Arrest Warrant remains necessary to ensure his presence at trial. The Prosecution submitted sufficient

²⁹ ICC-01/09-01/13-1-Red2, para.21 and p.17. *See*, also, ICC-01/09-01/13-1-Red2, para.12: The Single Judge considered that "available evidentiary record provides a sizeable amount of specific, objective elements, details and circumstances of direct and precise relevance to the Prosecutor's factual allegations and as such appears reliable."

³⁰ Article 61(6) of the Statute: At the hearing, the person may: (a) object to the charges; (b) challenge the evidence presented by the Prosecutor; and (c) present evidence.

³¹ ICC-01/09-01/13-31, paras.10 and 19.

³² ICC-01/09-01/13-31, para.9.

evidence to satisfy the Chamber that an arrest warrant is necessary to ensure Barasa's appearance at trial.³³ Thus the issues regarding Barasa's network of supporters, wealth, or ability to flee, which are referenced in the Defence Challenge,³⁴ are contested matters.

21. It is indisputable that Barasa's constitutional petition in Kenyan courts demonstrates his unwillingness to voluntarily submit to the ICC's jurisdiction. The Chamber should consider Barasa's actions as effectively demonstrating a desire to evade the ICC's jurisdiction. Alternatively, it shows his unwillingness to submit to the Court's jurisdiction, which is a significant factor in assessing the sincerity of his belated claim of willingness to cooperate with the ICC. The Court should exercise extreme caution when engaging with a suspect who has failed to submit to its jurisdiction for a prolonged period.

22. Between October 2013 and August 2015, Barasa refused to surrender to the ICC by engaging in a lengthy legal process in which he raised, *inter alia*, concerns about the impartiality of the Court.³⁵ This is a relevant factor in assessing the sincerity of his willingness to cooperate with the Court. The Defence Challenge emphasises that Barasa's "enthusiastic pursuit of domestic litigation" should not be interpreted as an attempt to evade justice.³⁶ Furthermore, the Defence Challenge accepts that, "the essence of the Suspect's present application is, for all intents and purposes, a waiver of a contested ICC surrender process under Kenyan law ...".³⁷ However, at an earlier point over the last two years, Barasa could have directly engaged the Court either in parallel, or by terminating his constitutional petition under Kenyan law against the ICC's jurisdiction. He did not. In fact, Barasa's "resolute and eager attendance at the

³³ ICC-01/09-01/13-1-Red2, paras.22-24.

³⁴ ICC-01/09-01/13-31, paras.14-15.

³⁵ Kenyan High Court Judgment, 31 January 2014, para.12.

³⁶ ICC-01/09-01/13-31, paras. 3, 5, and 14.

³⁷ ICC-01/09-01/13-31, para 6.

Kenyan Court sessions”³⁸ evidences his commitment to pursue his domestic petition and thereby prevent his surrender to the Court, and nothing more.

23. While Barasa may resort to Kenyan national law in relation to the Barasa Arrest Warrant, the nature and scope of such proceedings envisaged under article 59 of the Statute are strictly limited to ensuring that Barasa is in Kenya and that there are reasonable grounds to believe that he is the person to whom the ICC request for arrest and surrender relates.³⁹ Those proceedings do not entitle Barasa to adduce evidence to contradict the allegations in the Barasa Arrest Warrant.⁴⁰ Considering Barasa’s documented distrust of the ICC proceedings,⁴¹ the Court should be skeptical about the sincerity of his sudden desire to cooperate with the Court and submit to its jurisdiction.

24. Barasa has various options open to him, short of seeking the revocation of the Barasa Arrest Warrant, if he does genuinely intend to cooperate with the Court. He could surrender himself, without the need for arrest, either directly to the Court or through various authorities anywhere that could facilitate his transfer to the Court (including the Kenyan authorities). For example, Bosco Ntaganda surrendered to the ICC’s jurisdiction through the United States embassy in Kigali, Rwanda.⁴²

³⁸ ICC-01/09-01/13-31, para.14.

³⁹ International Crimes Act (“ICA”), 2008, sections 30 and 39(3), authorise the High Court of Kenya to issue an arrest warrant and limits the relevant judicial inquiry to two questions: (1) is the Barasa in Kenya or may come to Kenya and (2), are there reasonable grounds to believe that Barasa is the person to whom the Barasa Arrest Warrant relates. Furthermore, although the ICA vests discretion in the High Court to determine whether a warrant should issue even when the two conditions have been met, the High Court’s exercise of discretion must take into account article 89(1) of the Statute, which is part of Kenyan law, obliges national courts to comply with requests for arrest and surrender.

⁴⁰ Section 39(6) of ICA stipulates, in relevant part, that “the person to whom the proceedings relate is not entitled to adduce, and the High Court is not entitled to receive, evidence to contradict an allegation that the person has engaged in conduct that constitutes the offence for which the surrender is sought.”

⁴¹ Kenyan High Court Judgment, para.12.

⁴² See, for example, <http://www.bbc.com/news/world-africa-21835345> ; <http://www.aljazeera.com/news/africa/2013/03/2013318163159939611.html> ; <https://www.amnesty.org/en/press-releases/2013/03/drc-bosco-ntaganda-must-be-surrendered-icc/> (last visited on 28 August 2015).

- iii. The Barasa Arrest Warrant remains necessary to prevent Barasa from obstructing or endangering the investigations or court proceedings, and from continuing with that crime or a related crime arising out of the same circumstances

25. In relation to article 58(1)(b)(ii) and (iii) of the Statute, the Defence Challenge incorrectly speculates that Barasa does not pose a risk to the Prosecution's investigations of the case against him. It claims that the Prosecution's investigations should be complete, and that the whereabouts of the principal witnesses are unknown to Barasa.⁴³ It further alleges that the impact of the Prosecution's case coming to a close in the RUTO and SANG Case is that Barasa cannot commit the same crimes or related crimes arising out of the same circumstances.⁴⁴ Firstly, the threshold of a risk revolves around possibility, rather than inevitability of a future occurrence.⁴⁵ Furthermore, the Prosecution is entitled to continue its investigations *even beyond* the confirmation stage.⁴⁶ In addition, Barasa is not apprised of the totality of the evidence against him, including all the relevant witnesses and/or their whereabouts.⁴⁷

26. Moreover, the fact that the Prosecution's evidence is coming to a close does not prevent Barasa from continuing to corruptly influence the witnesses, either in his own case, or in the RUTO and SANG Case. The fact that the Prosecution case in the RUTO and SANG Case is drawing to a close does not preclude further witness interference. For instance, Barasa could corruptly influence Defence witnesses or even possible rebuttal witnesses for the Prosecution.

⁴³ ICC-01/09-01/13-31, paras.17-18.

⁴⁴ ICC-01/09-01/13-31, paras.17-18.

⁴⁵ ICC-01/04-01/07-572, para.21.

⁴⁶ ICC-01/04-01/06-568 OA3, Judgment on the Prosecutor's appeal against the decision of Pre-Trial Chamber I entitled "Decision Establishing General Principles Governing Applications to Restrict Disclosure pursuant to Rule 81 (2) and (4) of the Rules of Procedure and Evidence", 13 October 2006, para.52: "the Prosecutor's duty to establish the truth is not explicitly limited to the time before the confirmation hearing. Therefore, the Prosecutor must be allowed to continue his investigation beyond the confirmation hearing, if this is necessary in order to establish the truth."

⁴⁷ ICC-01/09-01/13-31, para.10, the Defence accepts that the PTC may resolve alleged inconsistencies in P-0336's evidence in favour of the Prosecution at the confirmation stage.

27. Moreover, the Barasa Arrest Warrant was issued, *inter alia*, on the basis that Barasa's arrest is necessary pursuant to article 58(1)(b)(ii) and (iii) of the Statute.⁴⁸ The Chamber should dismiss the Defence arguments in this regard as speculative and unsubstantiated.

IV. Relief Sought

28. The Prosecution requests that the Chamber dismiss the Defence Challenge in its entirety.



Fatou Bensouda, Prosecutor

Dated this 10th September 2015
At The Hague, The Netherlands

⁴⁸ ICC-01/09-01/13-1-Red2, paras.22-24.