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

Date: **17 June 2015**

THE APPEALS CHAMBER

Before: Judge Sanji Mmasenono Monageng, Presiding Judge
 Judge Silvia Fernández de Gurmendi
 Judge Howard Morrison
 Judge Piotr Hofmański
 Judge Péter Kovács

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
with**

**Confidential, *EX PARTE*, Annex A, only available to the Prosecution and Mr.
 Arido, and Public Annex B**

**Public redacted version of "Prosecution Response to Mr. Narcisse Arido's appeal
 against the "Decision on 'Narcisse Arido's Request for Interim Release'", 11
 August 2014, ICC-01/05-01/13-627-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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Introduction

1. Narcisse Arido's appeal against the decision of the Single Judge of Pre-Trial Chamber II ("Single Judge")¹ denying his request for interim release² should be dismissed. Mr. Arido does not contest that reasonable grounds exist to believe that he committed a crime within the Court's jurisdiction.³ In addition, none of the five arguments presented in the Appeal shows any error in the Single Judge's findings with respect to the reasons necessitating Mr. Arido's detention under Article 58(1)(b).⁴ To the contrary, the Single Judge correctly and reasonably determined that Mr. Arido should continue to be detained pending trial.

Confidentiality

2. This response is filed confidentially in accordance with the status of the Appeal under Regulation 23*bis*(2), and because it makes further reference to confidential materials. A redacted public version will be filed separately.

Procedural Background

3. Mr. Arido, a Central African Republic ("CAR") citizen who lived in Cameroon from 2008 until 2013, is [REDACTED]. He relocated from Cameroon [REDACTED], when he was scheduled—but failed to appear—to testify in case ICC-01/05-01/08 ("*Bemba*"). Mr. Arido was surrendered to the Court [REDACTED] on 18 March 2014, having been arrested pursuant to a warrant issued by the Single Judge on 23 November 2013.

¹ ICC-01/05-01/13-606-Conf ("Appeal"); *see also* ICC-01/05-01/13-592.

² ICC-01/05-01/13-588 ("Decision").

³ The Prosecution understands the reference to "Article 58(1)(a)(i)" in paragraph 17 of the Appeal, read in context, to be a typographic error.

⁴ *See* Appeal, para.10.

4. On 10 June 2014, Mr. Arido applied for interim release,⁵ which was opposed by the Prosecution.⁶ [REDACTED].⁷

5. On 24 July 2014, the Single Judge denied Mr. Arido's application, finding that reasonable grounds exist to believe that Mr. Arido committed a crime within the Court's jurisdiction and that his detention appears necessary in light of each of the three (alternate) justifications in Article 58(1)(b).⁸ The Single Judge ordered Mr. Arido's continued detention pending trial.

Submissions

6. The Single Judge correctly and reasonably determined that Mr. Arido's continued detention appears necessary to ensure his appearance at trial, to ensure that he does not obstruct or endanger the investigation or the Court's proceedings, and to prevent him from committing further crimes. It follows that, in the circumstances of this case, continued pre-trial detention of Mr. Arido is entirely compatible with international human rights law. The Single Judge properly exercised his discretion in declining to order interim release under conditions.

The Single Judge reasonably found that Mr. Arido may be a member of Mr. Bemba's network, and thus may pose a flight risk (Ground 1)

7. Mr. Arido does not contest the relevance of the existence of a network of supporters to assessing flight risk, or the reasonableness of a finding on flight risk on such a basis.⁹ He argues that the Single Judge was unreasonable to determine the possible existence of a flight risk¹⁰ because the Single Judge "misappreciated the

⁵ ICC-01/05-01/13-477-Conf. A public redacted version was also filed.

⁶ ICC-01/05-01/13-525-Conf ("Initial Prosecution Response"). A public redacted version was also filed.

⁷ ICC-01/05-01/13-537. *See also* [REDACTED].

⁸ Decision, paras.10, 13, 15, 20, 24.

⁹ *See* Appeal, paras.11-17. *See further* Decision, para.14 (citing ICC-02/11-01/11-278-Red OA, paras.26, 32; ICC-01/04-02/06-147, para.55).

¹⁰ *See* Decision, para.11 (referring to "the possibility, not the inevitability", that Mr. Arido would flee the Court's jurisdiction, based on "specific and concrete elements", citing ICC-01/04-01/07-572 OA4, para.21).

facts” and “gave weight to extraneous factors.”¹¹ However, a proper reading of the Decision does not support this contention. Ground 1 of the Appeal shows no error, lacks sufficient impact on the Decision, and must be rejected.

8. The Single Judge reasonably found the existence of a “concrete flight risk”,¹² based on the links between Mr. Arido and Mr. Bemba’s network. He concluded that these links suggest that Mr. Arido was “actively involved with the other suspects in the implementation of the criminal plan alleged by the Prosecutor” and that he may “potentially” be “able to claim and obtain economic support, if and when required.”¹³ Mr. Arido fails to show that this assessment was unreasonable. His arguments cannot succeed because they oversimplify the evidence upon which the Single Judge reasonably relied,¹⁴ which included:

- evidence of links between Mr. Arido and members of Mr. Bemba’s network, such as the other suspects detained in this case,¹⁵ based on, *inter alia*, conversations between network members concerning Mr. Arido¹⁶ and conduct by Mr Arido which specifically served the interests of Mr. Bemba;¹⁷
- evidence that Mr. Arido received funds from members of Mr. Bemba’s network,¹⁸ and

¹¹ See Appeal, para.16. Mr. Arido incorrectly applies the test for errors of fact as requiring the Appeals Chamber to consider whether a “reasonable Judge *would* have reached the same conclusion” (emphasis added). Rather, consistent with the deference or margin of appreciation owed by the Appeals Chamber to the primary finder of fact, the test is whether a reasonable Judge *could* have reached the same conclusion, as Mr. Arido properly submits earlier in his brief: see Appeal, para.9. See further e.g. ICC-01/05-01/13-559 OA3, para.19 (citing ICC-01/04-02/06-271-Red OA, para.31).

¹² Decision, paras.13, 15.

¹³ Decision, para.13.

¹⁴ *Contra* Appeal, paras.12-16.

¹⁵ *Contra* Appeal, para.14 (alleging absence of “any evidence of communication between Mr. Bemba, Mr. Mangenda, Mr. Babala and Mr. Arido”); see also para.15.

¹⁶ See e.g. Decision, para.7.

¹⁷ See e.g. Decision, para.8 (noting conduct by Mr. Arido such as briefing witnesses on answers to give, and soliciting false testimony, in the *Bemba* case).

¹⁸ See Decision, para.7; see also paras.6, 9. *Contra* Appeal, para.15 (suggesting there is “no evidence that Mr. Arido had financial means at his disposal”). See further ICC-01/05-67-Conf, para.111 ([REDACTED]).

- evidence that Mr. Arido disbursed funds to other members of Mr. Bemba's network.¹⁹

9. Mr. Arido's complaint that the Decision is insufficiently reasoned must fail.²⁰ Not only may a "general statement" referring to relevant factors be sufficient as a matter of law in circumstances such as these,²¹ the Single Judge clarified that his reasoning concerning Article 58(1)(b)(i) drew upon the evidence he had previously considered for the purpose of Article 58(1)(a).²²

10. Mr Arido's contention that all the relevant members of Mr. Bemba's network are presently detained, and therefore not in a position to assist Mr. Arido if he sought to flee, is contradicted both by the evidence and his own submissions.²³ In the confirmation proceedings, based on substantially the same body of evidence underlying the Decision, Mr. Arido argues that [REDACTED].²⁴ Such persons are precisely those who may assist or encourage Mr. Arido in any attempted flight from justice. If it is reasonable to infer the existence and role of these persons from the Prosecution's evidence for the purpose of confirmation proceedings, it is reasonable to do so for the purpose of interim release. Mr. Arido fails to show that the Single Judge was unreasonable in his conclusions about Mr. Bemba's network and its potential effect on his flight risk.

The Single Judge correctly and reasonably rejected Mr. Arido's arguments purportedly countering any flight risk (Ground 2)

¹⁹ See Decision, para.7; see also paras.6, 9.

²⁰ *Contra* Appeal, paras.13, 16.

²¹ See ICC-01/05-01/13-560 OA4, paras.116-117. *Contra* Appeal, para.16.

²² See e.g. Decision, para.13 ("As the recently disclosed evidence demonstrates"). See also para.8 (discussing the recently disclosed evidence, and noting that it provides "additional support" for the material discussed in paragraph 7). *Contra* Appeal, paras.13-14.

²³ Appeal, para.13.

²⁴ See [REDACTED].

11. Mr. Arido mischaracterises the Decision as “summarily dismiss[ing]” his arguments concerning his lack of resistance on arrest, his purported security fears, and his status as [REDACTED].²⁵ However, the Single Judge did not summarily dismiss these arguments, in the sense of striking them out *in limine* without giving them substantive consideration. Rather, the Single Judge found that they did not “outweigh the elements considered [...] as determining the existence of a concrete flight risk.”²⁶ Indeed, these circumstances, considered in context, heighten his flight risk rather than diminish it. Contrary to Mr. Arido’s claim, the Single Judge erred neither in fact nor law in this assessment and, therefore, Ground 2 must be rejected.²⁷

12. Beyond disagreeing with the Single Judge’s evaluation of the evidence, Mr. Arido fails to explain how his “personal situation,” “namely [REDACTED], should have been given more weight.”²⁸ Furthermore, Mr. Arido omits mentioning—[REDACTED]—[REDACTED].²⁹ Given his self-serving actions when called as a witness before the Court—[REDACTED]³⁰—there is a serious risk that Mr. Arido could resort to similar manipulations and dissimulations to avoid standing trial. The argument that Mr. Arido’s status [REDACTED] lessens his flight risk strains credulity. The Single Judge was not only reasonable but correct to reject it, together with the claims that Mr. Arido’s conduct was motivated solely by legitimate fear.

13. Mr. Arido’s reliance on his failure to offer physical resistance [REDACTED] on his arrest can be, at most, a neutral factor on the question of interim release. Certainly, it cannot weigh positively in his favour. The Single Judge’s approach reveals no error.

²⁵ *Contra* Appeal, paras.18-19.

²⁶ Decision, para.15. *See also* para.13 (“these submissions are not suitable to weaken the persuasiveness of the factors supporting the existence of a flight risk”).

²⁷ *Contra* Appeal, paras.18-20.

²⁸ *See* Appeal, para.19.

²⁹ *See* Initial Prosecution Response, para.13 [REDACTED]. *See also* [REDACTED].

³⁰ *See* [REDACTED].

14. As the Single Judge clearly referred to Mr. Arido's arguments (including those pertaining to his [REDACTED] status),³¹ Mr. Arido fails to show that the Decision was not made on the individualised basis that the law requires.³² Mr. Arido fails to articulate how the Single Judge's approach was wrong in law.

The Single Judge correctly rejected Mr. Arido's argument concerning the alleged disproportionality of his time in detention (Ground 3)

15. Mr. Arido misapprehends the requirements of international human rights law in asserting that the Single Judge erred by failing to find that Mr. Arido's interim detention is unreasonably long. To the contrary, the Single Judge correctly applied the law, both under Article 60(2) and 60(4) of the Statute, which proscribes detention "for an unreasonable period prior to trial due to inexcusable delay by the Prosecutor."³³ Ground 3 must thus be rejected. Indeed, the general approach of the Decision is consistent with the recent affirmation by the Appeals Chamber—not cited by Mr. Arido—that "the thrust" of international human rights jurisprudence on pre-trial detention:

is the concrete assessment of whether 'reasonable grounds to believe' the suspect committed the alleged crimes continue[] to exist and that the requirements under article 58(1)(b) of the Statute are met. Therefore, if the conditions underpinning article 58(1) are satisfied, detention of a suspect will be justifiable and consonant with internationally recognised human rights principles.³⁴

16. The European authorities cited by Mr. Arido are not inconsistent with the Appeals Chamber's jurisprudence.³⁵ Consistent with the express terms of Article 60(4), international human rights law mandates that the detention of a suspect or

³¹ Decision, paras.12, 15.

³² *Contra* Appeal, para.20.

³³ *See* Decision, para.17.

³⁴ ICC-01/05-01/13-559 OA3, para.66.

³⁵ *Contra* Appeal, paras.22, 27-28.

accused person pending trial must not be prolonged beyond a reasonable time.³⁶ What is reasonable “cannot be assessed *in abstracto*”; justification for pre-trial detention under Article 5(3) of the European Convention on Human Rights may continue to exist, depending on the “special features” of the case and even for lengthy periods, “if there are specific indications of a genuine requirement of public interest which, notwithstanding the presumption of innocence, outweighs the rule of respect for individual liberty”.³⁷ The touchstone for this analysis is not an abstract ratio between the length of any period of pre-trial detention and the estimated quantum of any sentence ultimately imposed—which, as Mr. Arido correctly observes, must not be pre-judged³⁸—but, rather, the question as to whether the facts truly disclose a legitimate interest in continuing detention pending trial. This is precisely the analysis compelled by Articles 60(2), (3) and (4), and undertaken in relevant part in the Decision.

17. Neither of the authorities cited by Mr. Arido supports any departure from this approach.

- Whereas Mr. Arido seeks to rely on *Ladent* for a requirement of “proportionality” under Article 5(1)(c),³⁹ the European Court of Human Rights in that case made clear that, notwithstanding its use of the term, it did not consider itself to depart from the “similar test” applied by the Court under Article 5(3).⁴⁰

³⁶ See ECtHR, *Wemhoff v. Federal Republic of Germany*, 2122/64, 27 June 1968, para.5.

³⁷ ECtHR, *Chraidi v. Germany*, 65655/01, 26 October 2006, para.35. See e.g. paras.46-48 (upholding a period of detention on remand exceeding five years in a case which concerned “a particularly complex investigation and trial concerning serious offences of international terrorism which caused the death of three victims and serious suffering to more than a hundred”). See further ICC-01/04-01/06-824 OA7, paras.122 (“the unreasonableness of any period of detention prior to trial cannot be determined in the abstract”), 123-124; ICTY, *Prosecutor v. Delali et al*, IT-96-21-T, Decision on Motion for Provisional Release filed by the accused Zejnil Delali, 25 September 1996, para.26 (citing seven factors enumerated by the European Commission on Human Rights).

³⁸ See Appeal, para.23.

³⁹ See Appeal, para.22, fn.28.

⁴⁰ ECtHR, *Ladent v. Poland*, 11036/03, 18 March 2008, para.55. In support of this conclusion, the European Court cited authorities setting out the test applied in *Chraidi*: compare above, fn.37, with *McKay v. the United Kingdom* [GC], 543/03, 3 October 2006, para.42; *Kudla v. Poland* [GC], 30210/96, 26 October 2000, para.110.

- Likewise, the requirement in *Khodorkovskiy* that detention is not “arbitrary”⁴¹ under Article 5(1)(b) referred to the different principle that arrest or detention “to secure the fulfilment of any obligation prescribed by law” would not be compatible with the European Convention if the obligation can be fulfilled by “milder means”⁴²—otherwise, with regard to interim detention under Article 5(3), *Khodorkovskiy* again adheres to the established test.⁴³

18. No matter what term is used, Mr. Arido’s continued detention pending trial is in any event not disproportionate, arbitrary, or unreasonable. Mr. Arido has been in the Court’s custody since 18 March 2014.⁴⁴ Even including any relevant time in the custody of [REDACTED], his period of detention has neither been unreasonable, nor has there been any delay in pre-trial proceedings—much less an inexcusable one—caused by the Prosecution or indeed the Court generally.⁴⁵ Mr. Arido’s speculation as to the possible length of any sentence he might receive does not show otherwise.⁴⁶ To the contrary, pre-trial proceedings are advancing expeditiously,⁴⁷ as contemplated in the Statute, and the Single Judge has properly discharged his obligations under Articles 60(2) and (4). Mr. Arido shows no error.

In determining that Mr. Arido’s continued detention appears necessary both to protect the integrity of the investigation or Court proceedings and to prevent further crimes, the Single Judge did not procedurally err (Ground 4)

⁴¹ See Appeal, para.22, fn.28.

⁴² ECtHR, *Khodorkovskiy v. Russia*, 5829/04, 31 May 2011 (“*Khodorkovskiy v. Russia*”), para.136.

⁴³ *Khodorkovskiy v. Russia*, para.183.

⁴⁴ The Appeals Chamber has, however, considered that “issues regarding prior detention are relevant where they are part of the ‘process of bringing the Appellant to justice for the crimes that form the subject-matter of the proceedings before the Court’ and may therefore be taken into account under Article 60(4): ICC-01/04-01/06-824 OA7, para.121 (citing ICC-01/04-01/06-772 OA4, paras.42, 44).

⁴⁵ See Decision, para.17.

⁴⁶ *Contra* Appeal, paras.23-26.

⁴⁷ See Decision, para.17 (citing ICC-01/05-01/13/255; ICC-01/05-01/13-443).

19. In asserting that “the Single Judge relie[d] heavily” on a recent security incident concerning a protected witness, Mr. Arido does not accurately reflect the reasoning in the Decision.⁴⁸ This incident was not the sole or primary basis for the Single Judge to conclude that Mr. Arido’s continued detention appears necessary to ensure that he does not obstruct or endanger the investigation or the Court’s proceedings, or to prevent his commission of further crimes. Nor did the Single Judge err in his reference to the recent security incident to support his conclusions. Ground 4 should be rejected.

20. The Single Judge expressly found that “the materials attached to the Prosecutor’s Application and those disclosed during this pre-trial phase and referred to in the Prosecutor’s Response” provided the requisite “specific and concrete elements” to conclude that there is a risk that Mr. Arido will obstruct or endanger the investigation or the Court’s proceedings if he is released.⁴⁹ This evidence is relevant in particular, as the Single Judge observed, because it shows “the willingness and the ability of the Suspect to interfere with witnesses.”⁵⁰ He considered this risk to be “far from [...] an abstract, distant or theoretical one.”⁵¹ The Single Judge also acknowledged the relevance to this assessment of the fact that the charges against Mr. Arido arose from alleged offences against the administration of justice committed when some—but, crucially, not all—key members of Mr. Bemba’s network were detained.⁵² Mr. Arido does not challenge the Single Judge’s assessment in any of these respects.⁵³ This assessment, and the evidence upon which it was based, is sufficient in itself to justify his continued detention under Article 58(1)(b)(ii).

⁴⁸ *Contra* Appeal, para.29.

⁴⁹ Decision, para.18.

⁵⁰ Decision, para.18.

⁵¹ Decision, para.19.

⁵² Decision, para.21.

⁵³ *See* Appeal, paras.29-32.

21. The Single Judge took a similar approach in separately determining the risk that Mr. Arido would commit further crimes if released, which also justified his continued detention under Article 58(1)(b)(iii).⁵⁴

22. As a *supplement* to his assessment, the Single Judge noted the existence of “information” that confidential information related to a protected witness was recently disseminated by a person close to Mr. Arido.⁵⁵ This information was contained in [REDACTED].⁵⁶ Although Mr. Arido has not been granted access to [REDACTED], his assertion that he “is deprived of basic information such as the time, date or location of the alleged incident” is not correct.⁵⁷ The basis for this assertion is set out in *ex parte* Annex A to this response.⁵⁸

23. Mr. Arido has not, therefore, been “deprived of his right to defend himself”,⁵⁹ and is in a position to conduct such Defence investigations as may be appropriate and suitable. The Single Judge’s reference to this incident in the Decision was made *proprio motu*, without hearing either the Prosecution or Mr. Arido in that context. The Single Judge had, however, heard from both the Prosecution and Mr. Arido in connection with the security incident itself, and the remedial measures necessary.⁶⁰ In the circumstances, for the limited purpose to which the Single Judge referred to the incident, Mr. Arido both fails to show any procedural error and, in any event, that any error materially affects the Decision.

24. Mr. Arido’s further assertions that “there is no evidence that Mr. Arido was the source of such ‘leak’” and no [REDACTED] are, respectively, wrong and

⁵⁴ Decision, paras.22, 24.

⁵⁵ See Decision, paras.18 (prefixing reference to this incident with “Furthermore”), 19 (accepting the various Prosecution arguments “*also* when seen in light of the most recent incident”, emphasis added).

⁵⁶ [REDACTED].

⁵⁷ *Contra* Appeal, para.30.

⁵⁸ See Annex A, para.i).

⁵⁹ *Contra* Appeal, paras.30, 32. See further ICC-01/05-01/13-559 OA3, paras.60-64.

⁶⁰ See e.g. Annex A, para.ii).

irrelevant.⁶¹ The inference that Mr. Arido is possibly connected to the leak, if not its source, was relevant and reasonable, [REDACTED]. The question of [REDACTED] is, on the other hand, irrelevant, and thus did not need to be considered by the Single Judge. The harmful conduct in Article 58(1)(b)(ii) (obstruction or endangerment of the investigation or the Court's proceedings) need not necessarily even be intentional, much less need a suspect possess specific intent either for the purpose of Article 58(1)(b)(ii) or (iii).

The Single Judge correctly considered Mr. Arido's release upon conditions (Ground 5)

25. Mr. Arido neglects the law of this Court concerning interim release upon conditions, and hence incorrectly asserts that the Single Judge erred in law in this respect.⁶² Ground 5 should be rejected.

26. Although the Pre-Trial Chamber's duty to order interim release is not discretionary when the criteria in Article 58(1)(b) are not met,⁶³ it possesses a further discretion to order interim release subject to conditions, even where it identifies a risk of the conduct enumerated in Article 58(1)(b).⁶⁴ However, the Appeals Chamber has recently affirmed its prior holding that:

[I]n circumstances where a State has offered to accept a detained person and to enforce conditions, it is incumbent upon the Pre-Trial Chamber to consider conditional release. On the other hand, where no such proposals for conditional release are presented and none are self-evident the Pre-Trial Chamber's discretion to consider conditional release is unfettered.⁶⁵

⁶¹ *Contra* Appeal, para.31.

⁶² *Contra* Appeal, paras.35, 39.

⁶³ See ICC-02/11-01/11-278-Red OA, para.76; ICC-01/05-01/08-631-Red OA2, paras.59, 105.

⁶⁴ See ICC-02/11-01/11-278-Red OA, paras.79, 87; ICC-01/05-01/08-1626-Red OA7, para.55. Cf. Appeal, paras.7, 39.

⁶⁵ ICC-01/05-01/13-559, para.116 (citing ICC-02/11-01/11-278-Red OA, para.79).

27. The Appeals Chamber further clarified that, where “[n]o State” has expressly offered to accept a suspect or accused “and to enforce conditions”, the Pre-Trial Chamber is “not duty-bound to consider conditional release”; it is “within its discretion not to consider conditional release.”⁶⁶ This is consistent with the consistent emphasis in international criminal procedure upon State guarantees for the enforcement of interim release conditions;⁶⁷ without such guarantees, given the limited enforcement powers of an international court or tribunal, none of the conditions to which Mr. Arido refers⁶⁸ could be reliable or effective.⁶⁹ This Court has already recognised this challenge.⁷⁰ Mr. Arido is thus wrong to imply that the position taken by the State who will receive a suspect or accused “should not be relevant [...] to whether or not conditional release is granted”,⁷¹ or to suggest that the Court has the power to order a State to amend domestic law in order to enforce interim release conditions.⁷²

⁶⁶ ICC-01/05-01/13-559, para.117.

⁶⁷ See e.g. ICTY, *Prosecutor v. Boškoski and Tar ulovski*, IT-04-82-AR65.2, Decision on Ljube Boškoski’s Interlocutory Appeal on Provisional Release, 28 September 2005, paras.18, 23 (State guarantees may not be sufficient to ensure that a person will appear for trial; depending on the circumstances, “the lack of government guarantees” may “weigh heavily” against interim release); ICTY, *Prosecutor v. Šainovi and Ojdani*, IC-99-37-AR65, Decision on Provisional Release, 30 October 2002, paras.6 (a reasonable Chamber considering interim release must consider *inter alia* the existence of any State guarantees, the weight to be given to those guarantees, and the likelihood that the accused will return for trial in the light of factors including those guarantees; noting also at fn.4 that under ICTY Rule 65 “the production of a guarantee from the relevant governmental body is advisable but not a prerequisite for provisional release”), 7 (“weight to be attributed to guarantees given by a government may depend a great deal upon the personal circumstances of the applicant”), 9 (finding an error of law where the Chamber failed to consider “the effect of the senior position of the two co-accused so far as it relied upon the [State] guarantees”); ICTY, *Prosecutor v. Mrkši*, IT-95-13/1-AR65, Decision on Appeal Against Refusal to Grant Provisional Release, 8 October 2002, paras.9-12; ICTY, *Prosecutor v. Blagojevi et al*, IT-02-53-AR65, Decision on Application by Dragan Joki for Provisional Release, 28 May 2002, p.2 (under ICTY Rule 65 “a guarantee from the relevant governmental body is advisable but not a prerequisite”). See also De Meester, Pitcher, Rastan, and Sluiter, ‘Investigation, Coercive Measures, Arrest, and Surrender,’ in Sluiter et al. (eds.), *International Criminal Procedure: Principles and Rules* (Oxford: OUP, 2013), p.326 (characterising guarantees by national authorities as “essential for obtaining provisional release” in the practice of the ICTY, ICTR and SCSL).

⁶⁸ See Appeal, paras.34-35.

⁶⁹ See ICTY, *Prosecutor v. Blagojevi et al*, IT-02-53-AR65, Decision on Application by Dragan Joki for Leave to Appeal, 18 April 2002, para.8. See also ICTY, *Prosecutor v. Prli et al*, IT-04-74-PT, Order on Provisional Release of Jadranko Prli, 30 July 2004, para.17.

⁷⁰ See e.g. ICC-01/05-01/08-403, para.49.

⁷¹ *Contra* Appeal, para.36. Furthermore, as discussed above, the appropriate imposition of pre-trial detention is not inconsistent with the protection of the “fundamental human rights of the suspect”: see above paras.15-18.

⁷² *Contra* Appeal, para.36. See Statute, Arts.86, 88.

28. Mr. Arido concedes that [REDACTED] has indicated that it will not be able to enforce any conditions imposed upon him for the purpose of interim release,⁷³ which was the question material to the Single Judge's exercise of discretion.⁷⁴ Consequently, even if the Single Judge had simply declined to consider Mr. Arido's release upon conditions, this fell within the appropriate exercise of his discretion and shows no error.

29. In any event, the Single Judge did consider the possibility of conditional release and explained why, in the circumstances (including the absence of State guarantees), he declined to make such an order.⁷⁵ His decision was entirely consistent with Article 21(3) of the Statute.⁷⁶ Not only is Mr. Arido's complaint a mere disagreement with the Single Judge's decision,⁷⁷ the key premises on which he relies—"the far less gravity of Article 70 charges" and "the very limited criminal responsibility" with which he is supposedly charged—are incorrect in both law and fact.⁷⁸ Offences under Article 70 are "certainly serious in nature" and may have "specific and serious ramifications on the [Bemba] case as well as on the administration of justice more broadly".⁷⁹ Further, the Prosecution is seeking the confirmation of charges against Mr. Arido for directly and/or indirectly co-perpetrating these offences; soliciting them; aiding, abetting or otherwise assisting in their commission; and contributing to the their commission by a group of persons acting with a common purpose.⁸⁰ Mr. Arido's attempt to downplay the

⁷³ See Appeal, para.37 ([REDACTED]). Mr. Arido's subsequent assertion that "in case of any established violation of conditions [...] he can be re-arrested [REDACTED]" appears to be manifestly contradictory and incorrect: see Appeal, para.39.

⁷⁴ *Contra* Appeal, para.37 ([REDACTED]).

⁷⁵ See Decision, para.26 (taking into account the nature of the allegations, the fact that most of the alleged criminal conduct occurred in conjunction with other suspects of witnesses, the risks associated with the suspect's free communication with the outside world and concluding, in the circumstances, "the detention centre is the only environment providing adequate guarantees for the effective management of those risks").

⁷⁶ *Contra* Appeal, paras.34-35, 41.

⁷⁷ See Appeal, paras.38-40.

⁷⁸ *Contra* Appeal, para.38.

⁷⁹ ICC-01/05-01/13-559 OA3, paras.88-89.

⁸⁰ See ICC-01/05-01/13-597-Conf-AnxB, paras.408-432.

seriousness of the allegations against him or his role therein shows no error in the Single Judge's appreciation of the situation, or his exercise of discretion.

Relief Sought

30. For these reasons, the Appeal should be dismissed. Mr. Arido should continue to be detained pending trial.

Word count: 5,008⁸¹



Fatou Bensouda, Prosecutor

Dated this 17th day of June 2015

At The Hague, The Netherlands

⁸¹ It is hereby certified that this document (including Annex A) contains the number of words specified and complies in all respects with the requirements of Regulation 36 of the Regulations of the Court. This statement (67 words), not itself included in the word count, is made in accord with the recent direction of the Appeals Chamber to "all parties" appearing before it: ICC-01/11-01/11-565, para.32.