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International
Criminal
Court

Original: **English**

No.: **ICC-01/05-01/13**
Date: **5 August 2014**

PRE-TRIAL CHAMBER II

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

SITUATION IN THE CENTRAL AFRICAN REPUBLIC
IN THE CASE OF *THE PROSECUTOR V. JEAN-PIERRE BEMBA GOMBO, AIMÉ KILOLO MUSAMBA, JEAN-JACQUES MANGENDA KABONGO, FIDÈLE BABALA WANDU AND NARCISSE ARIDO*

Public

Decision on the first review of Jean-Jacques Mangenda Kabongo's detention pursuant to article 60(3) of the Statute

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

The Office of the Prosecutor
Fatou Bensouda
James Stewart
Kweku Vanderpuye

Counsel for Jean-Pierre Bemba Gombo
Nicholas Kaufman

Counsel for Aimé Kilolo Musamba
Ghislain Mabanga

Counsel for Jean-Jacques Mangenda Kabongo
Jean Flamme

Counsel for Fidèle Babala Wandu
Jean-Pierre Kilenda Kakengi Basila

Counsel for Narcisse Arido
Göran Sluiter

Unrepresented Victims

Unrepresented Applicants for Participation/Reparation

The Office of Public Counsel for Victims

The Office of Public Counsel for the Defence

States Representatives
Competent authorities of the Kingdom of the Netherlands
Competent authorities of the United Kingdom
Competent authorities of the Kingdom of Belgium

Amicus Curiae

REGISTRY

Registrar
Herman von Hebel, Registrar

Defence Support Section

Victims and Witnesses Unit

Detention Section
Patrick Craig

I, Judge Cuno Tarfusser, having been designated as Single Judge of Pre-Trial Chamber II of the International Criminal Court;

NOTING the "Warrant of arrest for Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidele Babala Wandu and Narcisse Arido" issued on 20 November 2013;[1]

NOTING the "Decision on the 'Requête de mise en liberté' submitted by the Defence for Jean-Jacques Mangenda" dated 17 March 2014 ("17 March 2014 Decision")[2], rejecting Mr Mangenda's request for interim release pursuant to article 60(2) of the Statute;

NOTING the "Order requesting observations for the purposes of the periodic review of the state of detention of Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo and Fidèle Babala Wandu pursuant to rule 118(2) of the Rules of Procedure and Evidence" dated 13 June 2014 ("13 June 2014 Order")[3];

NOTING the "Prosecution observations on the review of the detention of Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, and Fidèle Babala Wandu" dated 30 July 2014 ("Prosecutor's Observations")[4], whereby the Prosecutor submits *inter alia* that "there has been no change in circumstances", "[t]he conditions of article 58(1) of the Statute continue to be met" and that additional evidence collected and made available to the suspects since the 17 March 2014 Decision "militate in favour of … continued detention";

NOTING the "Observations en application de la décision ICC-01/05-01/13-495 13-06-2014 quant à la détention préventive – demande de mise en liberté, en ordre subsidiaire demande de mise en liberté provisoire" dated 30 June 2014[5] ("Defence Observations");

[1] ICC-01/05-01/13-1-Red2-tENG.
[2] ICC-01/05-01/13-261.
[3] ICC-01/05-01/13-495.
[4] ICC-01/05-01/13-529.
[5] ICC-01/05-01/13-523-Conf and Annex A, thereto.

NOTING the "Decision requesting the Kingdom of Belgium to provide its views for the purposes of the review of Aimé Kilolo Musamba's and Jean-Jacques Mangenda's detention pursuant to article 60(3) of the Statute" dated 4 July 2014[6];

NOTING the "Judgment on the appeal of Mr Jean-Jacques Mangenda Kabongo against the decision of Pre-Trial Chamber II of 17 March 2014 entitled 'Decision on the "Requête de mise en liberté" submitted by the Defence for Jean-Jacques Mangenda'" dated 11 July 2014 ("Appeals Judgment") [7], dismissing Mr Mangenda's appeal against the 17 March 2014 Decision;

NOTING the "Registry transmission to the Single Judge of the exchange of letters between the ICC and the Kingdom of Belgium" dated 18 July 2014[8], whereby the Registrar, pursuant to the Single Judge's order, noted that the agreement between the Court and the Kingdom of Belgium was concluded by way of exchanges of letters and filed the said exchange of letters in the record of the case on a confidential, *ex parte* basis;

NOTING the "Transmission of the observations submitted by the Belgium authorities on the 'Decision requesting the Kingdom of Belgium to provide its views for the purposes of the review of Aimé Kilolo Musamba's and Jean-Jacques Mangenda's detention pursuant to article 60(3) of the Statute'" dated 1 August 2014[9] and confidential Annex II thereto[10];

NOTING articles 21, 58(1), 60(3) and 67(1) of the Statute, rules 118(1), (2) and (3), 119(1) of the Rules of Procedure and Evidence (Rules);

HEREBY RENDERS THIS DECISION.

Determinations by the Single Judge

A. General principles

1. The Single Judge will review Jean-Jacques Mangenda's detention in light of those principles which are consolidated in the case-law of the Appeals Chamber of the Court, as repeatedly upheld by the Pre-Trial Chambers.

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[6] ICC-01/05-01/13-540.
[7] ICC-01/05-01/13-560.
[8] ICC-01/05-01/13-582-Conf-Exp and confidential ex parte annexes 1 and 2 thereto.
[9] ICC-01/05-01/13-605.
[10] ICC-01/05-01/13-605-Conf-AnxII.

2. Pursuant to article 60(3) of the Statute, in conjunction with rule 118(2) of the Rules, the Chamber is mandated to review its ruling on the release or detention of the person at least every 120 days. Upon such review, the Chamber "may modify its ruling as to detention, release or conditions of release, if it is satisfied that changed circumstances so require". As clarified by the Appeals Chamber, the Chamber shall make its determinations by "revert[ing] to the ruling on detention to determine whether there has been a change in the circumstances underpinning the ruling and whether there are any new circumstances that have a bearing on the conditions under article 58 (1) of the Statute"; "should not restrict itself to only considering the arguments raised by the detained person"; "must weigh the Prosecutor's submissions against the submissions, if any, of the detained person", as well as "consider any other information which has a bearing on the subject"; a decision on periodic review shall "clearly set out reasons for its findings[11].

3. The notion of "changed circumstances" within the meaning of article 60(3) of the Statutes "imports either a change in some or all of the facts underlying a previous decision on detention, or a new fact satisfying a Chamber that a modification of its prior ruling is necessary"[12]; "[i]f there are changed circumstances, the Pre-Trial or Trial Chamber will need to consider their impact on the factors that formed the basis for the decision to keep the person in detention"; otherwise, the "Chamber is not required to further review the ruling on release or detention[13]"; more recently, the Appeals Chamber has further clarified this principle, by stating that "[i]t is first for the Pre-Trial Chamber to determine whether changed circumstances exist to warrant the disturbing of a previous ruling on detention, rather than addressing each factor underpinning detention in a *de novo* manner to determine whether any of these have changed"[14].

4. Because of its specific object, "the scope of the review carried out in reaching a decision under article 60 (3) is potentially much more limited than that to be carried

[11] ICC-01/05-01/08-1019, para. 52.
[12] ICC-01/05-01/08-631-Red, para. 60.
[13] ICC-01/05-01/08-2151-Red, paras 1 and 31.
[14] ICC-02/11-01/11-548-Red, para.1.

out in reaching a decision under article 60 (2) of the Statute"[15]. Furthermore, "[t]he Chamber does not have to enter findings on the circumstances already decided upon in the ruling on detention" and does not have to "entertain submissions by the detained person that merely repeat arguments that the Chamber has already addressed in previous decisions"[16].

5. At the outset, the Single Judge notes that some of the Defence Observations are premised on legal and factual inaccuracies, some of which have already been exposed as such by the Appeals Chamber in its Judgment.

6. First, the Defence for Mr Mangenda submits that the suspect has been in detention for seven months, "sans même qu'ait été communiqué un acte d'accusation permettant au concluant de connaître les raisons détaillées de son arrestation". As repeatedly stated before this Chamber, and recently acknowledged by the Appeals Chamber, the Prosecutor's Application and its annexes have been made available to the Defence as early as on the date of Mr Mangenda's first appearance; the reports of Independent Counsel, on which the Single Judge also relied for the purposes of the issuance of the warrant, were made available early in December.

7. Second, the Defence for Mr Mangenda submits that the Single Judge's initiative for a review of the detention is "tardive", because the 120-day time limit set forth in rule 118(2) of the Rules would have expired on 22 March 2014 and because "rien n'a été fait avant cette date". This assertion is apparently based on the Defence's belief that the 120-day time limit should have run from the day of execution of the warrant of arrest (ie, 23 November 2013). This interpretation, however, is not consistent with rule 118(2), which states that "Pre-Trial Chamber shall review its *ruling* on the release or detention of person… at least every 120 days" (emphasis added). The jurisprudence of the Court is well-established[17] in stating that the relevant ruling within the meaning and for the purposes of this provision is the decision on the suspect's application for interim release. Accordingly, as regards Mr

[15] ICC-02/11-01/11-278-Red, para. 24.
[16] ICC-01/05-01/08-1019, para. 53.
[17] See, for example, ICC-01/04-01/06-586-tEN; ICC-01/04-01/07-694.

Mangenda, the relevant 120-day time limit started to run on 17 March 2014, ie the date of the issuance of the decision on his application for interim release.

8. Third, when maintaining that, before 22 March 2014, "rien n'a été fait", the Defence for Mr Mangenda fails to clarify in what respect something more, or other, than what has been "done" should have been taken care of. The Single Judge notes that this assertion is not only deprived of any specific content or reference (which specific reference would have been critical, especially considering that the Chamber's decisions issued in these proceedings amount to several dozens), but also appears hardly reconcilable with the features of the specific procedures relating to detention matters as enshrined in article 60 of the Statute.

9. Fourth, the Defence for Mr Mangenda unduly overlaps considerations relating to the procedure set forth in article 60(3) with others pertaining rather to the remedy enshrined in article 60(4) of the Statute. The Single Judge notes that, by way of the 13 June 2014 Order, he only requested observations for the purposes of the periodic review under article 60(3) of the Statute; he will therefore abide by the statutory framework, and consider separately the arguments respectively pertaining to each of those procedures. Furthermore, in dismissing Mr Mangenda's appeal against the 17 March 2014 Decision, the Appeals Chamber recently reiterated that the "internationally recognised human right to have the lawfulness of one's arrest and/or detention reviewed … is 'entrenched in article 60 of the Statute'"; accordingly, the remedy of release is not available "except as provided for" in that article, where "the principal consideration is not whether a warrant of arrest has been illegally issued, but whether the conditions for detention under article 58(1) of the statute are presently met"[18].

10. Fifth, the Defence for Mr Mangenda states that "[l]es écoutes téléphoniques sont encore en cours". As clarified by Independent Counsel's Third Report[19], the phone intercepts were concluded on 23 November 2013, ie upon the arrest of the suspects in these proceedings.

[18] ICC-01/05-01/13-560, para 47.
[19] ICC-01/05-01/13-421-Conf, para. 3.

B. Whether there are changed circumstances that would require a modification of the previous ruling on detention

11. The 17 March 2014 Decision stated that the Single Judge was fully persuaded that the information and materials made available to the Chamber both by the Prosecutor's Application under article 58 of the Statute and by Independent Counsel still justified the finding that there were reasonable grounds to believe that Mr Mangenda committed the crimes alleged by the Prosecutor and that, therefore, the requirements of article 58(1)(a) of the Statute continued to be satisfied. In the warrant of arrest, based on the evidence submitted by the Prosecutor, the Single Judge had found that there were reasonable grounds to believe that Mr Mangenda, in his capacity of case-manager for the accused in case *The Prosecutor v. Jean-Pierre Bemba Gombo* ("Main Case"), assisted Jean-Pierre Bemba Gombo and Aimé Kilolo in the furtherance of the criminal scheme alleged by the Prosecutor and, more specifically, that there were reasonable grounds to believe that: "i) he frequently appear[ed] to receive money transfers via Western Union, particularly when Defence witnesses appeare[d] in court; ii) he work[ed] very closely with Aimé Kilolo in respect of the coaching of witnesses and the devising of instructions to be issued to them; iii) he [took] part in certain privileged conference calls with Jean-Pierre Bemba and Fidèle Babala".

12. The 17 March 2014 Decision also found that Mr Mangenda's detention still appeared necessary for all the reasons listed in article 58(1)(b) of the Statute. As to the risk of flight, it noted *inter alia* that Jean-Jacques Mangenda not only possessed identity documents entitling him to travel freely to non-States parties to the Statute, but could also benefit, as part of the network revolving around Jean-Pierre Bemba, and in spite of having ceased his functions as case manager in the Main Case, from the substantial means and resources being available to Jean-Pierre Bemba and his network, which resources might well be used with a view to allowing him to evade prosecution. It also found that the ongoing process of disclosure might also be relevant in assessing the risk of flight. As to the risks that proceedings (whether pertaining to this case or to the Main Case) be obstructed or endangered, the 17

March 2014 Decision noted that such risk did exist in respect of items of evidence which might be still outstanding, in particular in light of elements emerging from the material brought to the attention of the Single Judge signalling Mr Mangenda's readiness to take action in respect of the ongoing investigation which would lead to these proceedings, and that the detention centre was the only environment allowing the effective management of such risks.

13. The Appeals Chamber did not find these determinations unreasonable, or otherwise flawed.

14. The Single Judge takes the view that, since the 17 March 2014 Decision, no change in the circumstances underpinning that ruling has occurred, and that no new circumstances having a bearing on the conditions under article 58(1) of the Statute have arisen. Rather, as highlighted by the Prosecutor, additional elements pointing to the role played by Jean-Jaques Mangenda in the implementation of the alleged scheme aimed at perverting the course of justice, and to initiatives taken by him in that context, have emerged, notably from Independent Counsel's Third Report[20].

15. The Single Judge notes that the Defence "renvoie à son mémoire d'appel du 24 mars 2014 dans la procédure de la requête de mise en liberté" and that "tous les arguments avancés dans cette procédure restent bien entendu d'actualité et sont à considérer comme étant répétés dans la procédure actuelle". The Single Judge notes that, as clarified by the Appeals Chamber, the object and purpose of a procedure of review under article 60(3) of the Statute is very specific. As such, it can certainly not be considered as the same as, or overlap with, the object and purpose of an appeal procedure against a decision on interim release pursuant to article 82(1)(b). It is the professional duty of counsel, when requested to provide submissions for the purposes of a review under article 60(3) of the Statute, to identify what, in his or her view, amounts to "changed circumstances" for the purposes of that provision; those circumstances, by their very nature, cannot be the same as those which might be of relevance for the purposes of identifying legal or factual errors within the context of an appeal procedure against a decision on interim release. Furthermore, as recalled

[20] ICC-01/05-01/13-421-Conf-Anx, *passim*.

above, the Appeals Chamber has clarified that submissions merely repeating arguments already addressed in previous decisions are of no relevance to – and must therefore not be considered in the context of - a review pursuant to article 60(3) of the Statute; nor are expressions of mere disagreements with previous findings by the Chamber in the context of its decision on the interim release (which disagreements, on the basis of which the Defence for Mr Mangenda laments the Single Judge's "erreurs d'appréciation", have been adequately addressed by the Appeals Chamber in its decision dismissing the appeal).

16. Most of the submissions made by the Defence relate to circumstances that were already existing and known at the time of the issuance of the 17 March 2014 Decision. This is the case for the submissions relating to the relevance of the inventory of sums deposited on the account pertaining to Jean-Pierre Bemba at the detention centre, as well as for the allegedly subordinated and minor role played by Jean-Jacques Mangenda in his capacity as case-manager in the Main Case;

17. Other circumstances identified by the Defence for Mr Mangenda, being chronologically subsequent to the issuance of the 17 March 2014 Decision, might instead potentially qualify as "changed circumstances" for the purposes of article 60(3) of the Statute. First, reference is made to two decisions adopted by Trial Chamber III on 2 and 7 April 2014 (respectively, "Trial Chamber III's 2 April 2014 Decision"[21] and "Trial Chamber III's 7 April 2014 Decision"[22]), the first rejecting a Prosecutor's application to submit additional evidence arising from this case and the second deciding on the closure of evidence in the Main Case. According to the Defence, this closure would determine that there is no longer a possibility to "commettre un quelconque délit qui se rapporterait à cette affaire".

18. The Single Judge is not persuaded of the correctness of this argument. The Defence for Mr Mangenda crucially omits to consider that, notwithstanding the adoption of Trial Chamber III's 2 April and 7 April 2014 Decisions, or the fact that final oral pleadings in the Main Case have now been scheduled for 13 October 2014,

[21] ICC-01/05-01/08-3029.
[22] ICC-01/05-01/08-3035.

there remains that today, as it was the case on 17 March 2014, the outcome of the trial of the Main Case is still open and the impact of these proceedings on that trial is yet to be determined. As already observed, it cannot be excluded that the Main Case is reopened even following the filing of the parties' final submissions, or the submission of final oral pleadings (as has occurred in the case of *The Prosecutor v. Germain Katanga*). Second, whilst some pieces of evidence relating to these proceedings might indeed at this stage be beyond the suspects' reach, neither can it be excluded that action be taken in respect of other evidentiary items which might still be outstanding, also 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". Third, future and related crimes, the risk of which the Single Judge is called to assess, might also be committed by the Suspect in respect of these proceedings. If many pieces of evidence might by this stage indeed be in the hands of the relevant authorities and as such beyond the suspects' reach , it cannot yet be excluded that action be taken in respect of other evidentiary items which might be still outstanding.

19. This conclusion is strengthened by the statements made by Trial Chamber III in its 2 April 2014 Decision. The Defence for Mr Mangenda submits that, in this decision, "la Chambre de Première Instance ne donne aucun crédit aux accusations du Procureur, qui n'ont été avancées qu'afin d'essayer d'influencer le procès principal en sa faveur". The Single Judge is unable to find, in Trial Chamber's III's 2 April 2014 Decision, a statement to this effect. Rather, what Trial Chamber III did state was that it "retain[ed] its discretion under Article 69(3) of the Statute to, at any stage, request *submission of additional relevant evidence, including that relating to the ongoing proceedings in case ICC-01/05-01/13,* where it considers it appropriate and necessary for the determination of the truth"[23] (emphasis added). Accordingly, Mr Mangenda's statements as to the contents and implications of the Trial Chamber III's Decision are to be regarded as the result of his personal appraisal of that decision, as such unsuitable to qualify as "changed circumstances" within the meaning and for

[23] ICC-01/05-01/08-3029, para. 33.

the purposes of a review pursuant to article 60(3) of the Statute. It appears rather of significance that Trial Chamber III explicitly evoked a scenario whereby it might require the submission of additional evidence, including the one relating to this case; in so doing, Trial Chamber's III's Decision certainly qualifies as a "changed circumstance" *vis-à-vis* the 17 March 2014 Decision, not only suitable but bound to reinforce the Chamber's conviction about the persisting existence of a risk that both proceedings in the Main Case and these proceedings might be obstructed or endangered.

20. The Defence for Mr Mangenda further asserts that the Prosecutor's allegations on the criminal responsibility "sont fausses, de telle sorte que l'accusation principale du Procureur ne tient plus debout". The Single Judge notes that this statement does nothing more than mirror the general (and generic) view taken by the Defence for Mr Mangenda on the charges formulated by the Prosecutor, as such unsuitable to have an impact on the assessment required by the Chamber by article 60(3) of the Statute.

21. As regards the existence of a flight risk, the Defence refers to the "impossibility" for Mr Mangenda to leave the Schengen area; to Mr Mangenda's interest to appear and to defend himself in the proceedings, in light of his profession; to the "[i]mpossibilité et manque d'intérêt de fuir vu la présence de son très jeune ménage comptant une épouse, un nourrisson et deux petits enfants au Royaume Uni".

22. The Single Judge notes that all of these factors had already been brought forward in the context of Mr Mangenda's initial request for interim release and that, accordingly, none of them amounts to a "changed circumstance" suitable to affect the Chamber's previous assessment as to the existence of a flight risk, as enshrined in the 17 March 2014 Decision. As regards, in particular, l'"impossibilité de quitter l'espace Schengen", the Single Judge recalls that, as clarified by the Appeals Judgment, "the pertinent issue is not whether Mr Mangenda was legally required to be in possession of a travel document when travelling within the Schengen area, but whether he would likely be able to do so without such documents". A flight

occurring within the Schengen area would be as serious as one occurring by way of leaving that area.

23. Both Mr Mangenda's profession and family situation, including his being father to small children, were considered by the Single Judge for the purposes of the 17 March 2014 Decision. The birth of one child[24] cannot per se alter the considerations expressed in that decision as to the fact that the impact of detention on the suspect's family is not a factor suitable to alter or nullify the existence of risks under article 58(1)(b); whilst possibly qualifying as a "changed circumstance" within the meaning of article 60(3) of the Statute (and irrespective of the fact that the nowhere does the Defence for Mr Mangenda refer to it as being one such circumstance), it does not in itself outweigh the Single Judge's persisting conviction as to the existence of such risks.

24. Similarly, weight had already been given by the 17 March 2014 Decision to Mr Mangenda's submissions relating to the statutory sanctions for the type of crimes at stake in these proceedings. No factors suitable to constitute "changed circumstances" for the purposes of the periodic review have been brought under this heading either.

C. The argument brought by the Defence for Mr Mangenda under the heading of article 60(4) of the Statute

25. The Defence submits that the length of Mr Mangenda's detention in these proceedings "est contraire à la presumption d'innocence et au principe fondamental du droit à la liberté", also in light of the fact that the time limits originally decided by the Chamber have been twice extended.

26. Article 60(4) does require the Pre-Trial Chamber to "ensure that a person is not detained for an unreasonable period prior to trial due to inexcusable delay by the Prosecutor". It seems hardly necessary to recall that the duration of these proceedings (more specifically, their protraction beyond the time limits originally envisaged in the context of the initial appearance of the suspects back in November 2013) is certainly not ascribable to the Prosecutor: if a "delay" there was, this

[24] See ICC-01/05-01/13-523-Conf-AnxA, page 2.

originated exclusively from the need that the Dutch judicial authorities comply with their own domestic procedures prior to the transmission to the Court of Independent Counsel's third and final report, and from the timing required by such procedures following the arrest of the suspects. The relevant circumstances are explained in detail both the "Decision on the Prosecution's request for variation of time limits pursuant to regulation 35 of the Regulations of the Court concerning the confirmation of charges" [25] dated 14 March 2014 and the "Decision amending the calendar for the confirmation of the charges" dated 28 May 2014[26].

D. Conditional release

27. Release with conditions is one of the possible outcomes of a review of a previous ruling on detention, unless the "Chamber, although satisfied that the conditions under article 58 (1) (b) are not met, nevertheless considers it appropriate to release the person subject to conditions"; or "where risks enumerated in article 58 (1) (b) exist, but the Chamber considers that these can be mitigated by the imposition of certain conditions of release"[27]. The Pre-Trial Chamber enjoys discretion when deciding on conditional release[28].

28. The Single Judge recalls his finding that the nature of the crimes alleged in these proceedings and the alleged modalities of their commission (ie, by way of communications with the other suspects, or with third parties connected to them by reason of personal or professional links) are such as to make it difficult to conceive of measures which might effectively counteract the risks associated with the suspect's communications with the external world and that, accordingly, the detention centre is the only environment providing adequate guarantees for the effective management of those risks. The Defence for Mr Mangenda fails to specifically challenge this conclusion, or to submit specific elements which might require its revision.

D.1 As to the request for conditional release in the United Kingdom

[25] ICC-01/05-01/13-255.
[26] ICC-01/05-01/13-443.
[27] ICC-01/05-01/08-1626-Red, para. 55.
[28] ICC-02/11-01/11-278-Red, para 87.

29. The Single Judge notes that, in the view of Mr Mangenda's, the United Kingdom would be under an obligation to accept him in the event that he were to be released, in light of his personal and family links to that country. However, the Defence for Mr Mangenda is silent both as regards the identification of any conditions which might assist a release in the United Kingdom and, even more significantly, as to the way in which such conditions might be suitable to effectively neutralise the risks listed in article 58(1)(b) of the Statute. Furthermore, the Single Judge recalls that the observations sent by the British authorities within the ambit of the interim release proceedings[29] could hardly be read as signalling their willingness and availability to accept Mr Mangenda in the event that he were to be conditionally released[30]. In light of this, the Single Judge is still of the view that conditional release in the United Kingdom is both unwarranted and unfeasible.

D.2 As to the request for conditional release in Belgium

30. The Defence for Mr Mangenda notes that, since the 17 March 2014 Decision, a framework agreement has been concluded between the Court and the Kingdom of Belgium concerning the latter's availability to accept on their territory detainees provisionally released by the Court ("Framework Agreement" or "Agreement"). He submits that the Agreement is suitable to provide "une garantie étatique permettant d'anéantir tous les risques prévus à l'art. 58 du Statut de Rome" and, accordingly, requests to be allowed to reside at the Belgian domicile of a family member of his and lists a number of conditions which he is ready to accept if they were to be associated to his release.

31. The Single Judge concurs with the Defence for Mr Mangenda in considering that the Framework Agreement could indeed represent a "changed circumstance" suitable to influence the outcome of a periodic review under article 60(3) of the Statute.

32. By the same token, it is to be noted that the Agreement, far from witnessing to an unconditional availability and willingness on the part of the Kingdom of Belgium

[29] ICC-01/05-01/13-137-AnxIII.
[30] ICC-01/05-01/13-261, para 42.

to accept that detainees from the Court be released on its territory or, even less, establishing an obligation on their part to do so, makes such acceptance explicitly conditional upon an assessment to be made "*au cas-par-cas*" on the basis of the specific appreciation that the Belgian authorities may make of a given case. As stated by the Belgian authorities, in explicit response to the claim by the Defence for Mr Mangenda that the Agreement might "anéantir" any relevant risk, the Framework Agreement "ne peut toutefois nullement modifier les règles applicables en la matière, soit notamment l'article 60-3 du Statut de Rome".

33. The conditions proposed by the Defence for Mr Mangenda as possibly assisting his conditional release are not suitable to effectively neutralise the risks listed in article 58(1)(b) of the Statute. This conclusion is strengthened by the observations submitted by the Kingdom of Belgium : as to the risk of flight, the Belgian authorities stated that "si l'intéressé décidait de quitter le pays sans l'accord de la Cour, la configuration du pays lui permettrait de le quitter en très peu de temps, sans compter la présence de l'aéroport national à proximité de la résidence de l'intéressé" ; as to the risks of the commission of future crimes, they noted that, were Jean-Jacques Mangenda to be conditionally released on their territory, Belgian law does not allow "de procéder à des écoutes téléphoniques ou au contrôle de la correspondence postale ou électronique des personnes libérées sous condition"; this since "[d]e tels actes de surveillance décidés par l'autorité compétente pour se prononcer sur une demande de libération sous condition démontreraient que cette autorité craindrait la poursuite de la commission des infractions considérées ou constaterait l'existence d'un risque élevé de fuite ou de non comparution", which risks "justifieraient à eux seuls le maintien en détention".

34. The Single Judge takes the view that, indeed, the availability of a thorough system of monitoring of all forms of communication available to the suspect is critical so as to make it possible to consider if, in principle and in light of all relevant circumstances, such monitoring would be suitable to counteract the relevant risks, and in particular the risks that proceedings be interfered with or that future crimes be committed. In the complete absence of such system, and in the presence of such

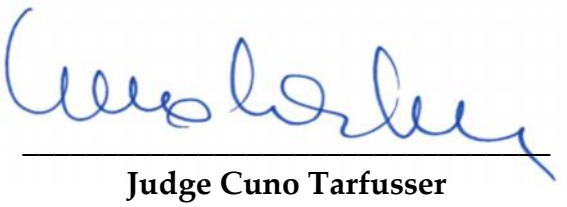
risks, conditional release to the territory of Belgium is not only unwarranted, but also practically unfeasible. This conclusion makes it unnecessary for the Single Judge to address the concerns voiced by the Belgian authorities in noting that, at this stage, "ni le lien familial supposé avec ladite personne, ni l'accord de celle-ci à accueillir l'intéressé ne sont établi".

35. Following the above analysis, the Chamber is of the view that there has been no change in the relevant circumstances concerning the necessity of Mr Mangenda's detention to ensure his appearance before the Court, and to ensure that he does not commit further crimes, or obstruct or endanger the investigation or the court proceedings. The grounds justifying detention under article 58(1)(b)(i), (ii) and (iii) of the Statute continue to exist, and interim release cannot be granted.

FOR THESE REASONS, THE SINGLE JUDGE

DECIDES that Jean-Jacques Mangenda Kabongo shall remain in detention.

Done in both English and French, the English version being authoritative.



Judge Cuno Tarfusser
Single Judge

Dated this Tuesday, 5 August 2014

The Hague, The Netherlands