



Original: English

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

Date: 17 March 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 “Requête de mise en liberté”
submitted by the Defence for Jean-Jacques Mangenda**

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

Catherine Mabilie

Counsel for Jean-Jacques Mangenda Kabongo

Jean Flamme

Counsel for Fidèle Babala Wandu

Jean-Pierre Kilenda Kakengi Basila

Legal Representatives of the Victims

Legal Representatives of the Applicants

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

Amicus Curiae

REGISTRY

Registrar

Herman von Hebel, Registrar

Defence Support Section

Victims and Witnesses Unit

Detention Section

Harry Tjonk

Victims Participation and Reparations Section Other

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 2013¹;

NOTING the “ Requête de mise en liberté ” dated 8 January 2014², whereby the Defence for Mr Mangenda requests the Single Judge to (i) “ordonner la mise en liberté immédiate” or (ii) “la mise en liberté provisoire en y associant les conditions que le Juge jugera opportuns”; (iii) “donner acte au requérant qu’il offre de résider au Royaume Uni, en ordre subsidiaire aux Pays Bas”; (iii) “ordonner au Greffe de demander à l’administration pénitentiaire l’inventaire des sommes déposées par le requérant à l’intention de Monsieur Jean-Pierre Bemba ”; (iv) “ordonner au Greffe de clarifier les circonstances des deux voyages effectués par le requérant au Cameroun et en République Centrafricaine, en termes de type de mission et d’emploi du temps” and (v) “ ordonner la tenue d’une audience en application de la règle 118(3)”;

NOTING the “Decision requesting observations on the ‘Requête de mise en liberté’ submitted by the Defence for Mr Jean-Jacques Mangenda Kabongo” dated 9 December 2014³, whereby the Single Judge inter alia (i) dismissed the Defence requests for information on amounts of money allegedly transferred by Jean-Jacques Mangenda to Jean-Pierre Bemba’s Detention Centre account and on circumstances relating to his missions as beyond the scope of a request for interim release and (iii) granted the Prosecutor and the relevant State authorities until 24 January 2014 to submit their views on Mr Mangenda’s Request for Interim Release;

NOTING the “Prosecution Response to the ‘Requête de mise en liberté’ dated 8 January 2014 (ICC-01/05-01/130-71)” filed on 24 January 2014⁴, whereby the Prosecutor opposes the Request for Interim Release on the grounds that “it advances no cogent reasons why provisional release should be granted”;

¹ ICC-01/05-01/13-1-Red2-tENG.

² ICC-01/05-01/13-71 with Confidential Annexes A and B.

³ ICC-01/05-01/13-73.

⁴ ICC-01/05-01/13-127-Conf.

NOTING the “Rapport du Greffe sur la Requête de mise en liberté de Mr Mangenda Kabongo” dated 28 January 2014⁵, whereby the Registrar transmitted to the Chamber the observations received by the Kingdom of the Netherlands and the United Kingdom;

NOTING articles 21, 58(1), 60(1) and (2) and 67(1) of the Rome Statute (“Statute”), rules 118(1), (2) and (3), 119(1) of the Rules of Procedure and Evidence and regulation 51 of the Regulations of the Court;

HEREBY RENDERS THIS DECISION.

Determinations by the Single Judge

A. On the request that immediate, unconditional release be granted on the basis that the warrant of arrest is null and void

1. As a preliminary line of arguing, the Defence for Mr Mangenda challenges the legality of the warrant of arrest on the following grounds:

- (i) contrary to article 58(3)(c) of the Statute, it does not contain any concise statements of the relevant facts but only charges, in which “il n’est fait mention d’aucune date, d’aucun lieu, d’aucun montant précis, d’aucun témoin concret”⁶, the omission of which could not be cured by references made to the materials submitted by the Prosecutor in her Application or to the elements emerging from the work of Independent Counsel⁷;
- (ii) it is contradictory, “dans la mesure où il énumère à la fois des conditions essentielles auxquelles doit répondre l’énoncé des faits et en accepte l’absence en même temps”⁸;
- (iii) it relies on the results of the work carried out by Independent Counsel who “fait un travail d’instruction, parallèlement au Procureur”, “ne dispose d’aucun mandate légal ni judiciaire”⁹ and

⁵ ICC-01/05-01/13-137, with Confidential Annexes 1, 2, 4 and Public Annex 3.

⁶ ICC-01/05-01/13-71, paras 3-4.

⁷ ICC-01/05-01/13-71, para. 5.

⁸ ICC-01/05-01/13-71, para. 4.

⁹ ICC-01/05-01/13-71, para. 6.

cannot be considered as "independent" having been appointed by the Court¹⁰;

- (iv) it is based on a conviction reached by the Single Judge, "en grande partie", in light of intercepts of phone communications between a lawyer and his client, as such privileged.

2. The Single Judge observes, as also done by the Prosecutor¹¹, that the validity of the arrest warrant is not "a dispositive issue regarding provisional release". The validity of the warrant is not listed among the factors to be considered for the purposes of a decision under article 60(2) of the Statute. By putting forward arguments questioning its validity, the Defence for Jean-Jacques Mangenda is actually seeking an "appeal" of the warrant, a remedy for which there is no provision in the statutory texts of the Court and which, even if it existed, could not obviously be brought before and decided by the same Chamber as the one having issued the warrant. As clarified by this Chamber, "the legal texts of the Court do not provide the person named in the Prosecutor's application under article 58 with any procedural instrument before the Pre-trial Chamber allowing him to challenge the evidence presented by the Prosecutor other than ... through the procedural remedies expressly provided for and within the context and for the purposes of ... the confirmation of the charges pursuant to article 61(1) of the Statute"¹². Furthermore, where arrest and or detention are shown to be unlawful, the Statute provides for the right to compensation as enshrined in article 85, for which rules 173 and 174 establish a specific procedure triggered by a request addressed to the presidency of the Court.

3. For the sole sake of clarity, the Single Judge wishes to add that, contrary to what stated by the Defence for Mr Mangenda, both the Prosecutor's Application and the warrant do contain extensive and specific references to the facts, and their circumstances of time and space, which underpin the counts formulated by the Prosecutor. The lack of specific references to individual materials is due to the

¹⁰ ICC-01/05-01/13-71, paras 7-8.

¹¹ ICC-01/05-01/13-127-Conf, page 5.

¹² ICC-01/09-42, para. 19.

warrant's nature as an operative document, as duly mirrored by the fact that the Statute, most appropriately, only requires this document to contain "a concise statement of the facts which are alleged to constitute" the relevant crimes.

4. The Single Judge clarifies further that no "contradiction" can be detected between his determination that the Prosecutor's Application allowed him to establish reasonable grounds to believe that the alleged crimes had been committed, on the one hand, and his criticism to the Prosecutor's decision "to articulate the *counts* in generic terms" (emphasis added), thereby making it necessary for the reader to refer to the Application as a whole and its supporting materials to identify the relevant factual circumstances of conduct, time and place, on the other hand. Nowhere it is stated that the Prosecutor failed to detail such circumstances; to the contrary, the Single Judge noted that "numerous, objective and detailed items of evidence were tendered in relation to each category of alleged conduct" and each person whose arrest was sought, which tendered items pertained "directly and specifically to the Prosecutor's factual allegations"¹³.

5. Finally, as regards the arguments against the overall validity and legitimacy of the mandate vested in Independent Counsel, and the ensuing admissibility of the materials unearthed by him as evidence in the case, the Single Judge observes that these issues will be duly addressed in the context of the determinations to be made for the purposes of deciding whether the charges will have to be confirmed and that the parties will eventually have the opportunity to submit those determinations to the scrutiny of the Appeals Chamber.

B. General principles

6. These preliminary issues addressed, the Single Judge will now decide Jean-Jacques Mangenda's request for interim release in light of those principles which are consolidated in the case-law of the Appeals Chamber of the Court and have constantly been upheld by this Chamber.

7. Pursuant to article 60(2) of the Statute, upon an application for interim release, the Chamber has to determine whether "the conditions set forth in article 58,

¹³ ICC-01/05-01/13-1-Red2-tENG, para. 12.

paragraph 1, are met". In the affirmative, "the person shall continue to be detained; in the negative, the person shall be released, "with or without conditions". This assessment requires the Chamber to "inquire anew into the existence of facts justifying detention"¹⁴, but can be based on the same materials as those looked at for the purposes of the warrant and on the same factors underpinning it¹⁵.

8. The Single Judge agrees that "tant qu'une personne n'ait pas été définitivement reconnue coupable, les autorités judiciaires sont tenues à respecter ses droits fondamentaux"¹⁶, among which the right to liberty features prominently. By the same token, he highlights that the presumption of innocence does not *per se* prevent detention, provided it is justifiable and justified. Detention is indeed an exception, as stated by the Defence¹⁷, but one which is necessary, and shall therefore unfailingly apply, when the relevant statutory requirements are satisfied. As stated by the Appeals Chamber, "the decision on continued detention or release pursuant to article 60(2) read with article 58(1) of the Statute, is not of a discretionary nature. Depending upon whether or not the conditions of article 58(1) of the Statute continue to be met, the detained person shall be continued to be detained or shall be released"¹⁸.

9. The Single Judge is mindful of a recent "recommendation" issued by the Appeals Chamber, by way of criticism to a Pre-Trial Chamber's decision under article 60(2) of the Statute, to the effect that such decisions must contain a "full reasoning"¹⁹. Whilst believing that more than one doubt could be raised as to the actual existence of such a need, he will nevertheless specifically refer to some of the materials relied upon in issuing the warrant (as well as to their contents), all of which have been reconsidered and assessed *ex novo* for the purposes of this decision.

10. By referring to "article 58, paragraph 1", article 60(2) of the Statute seems to require the Pre-Trial Chamber to proceed anew to an assessment of both the

¹⁴ ICC-02/11-01/11-278-Red, para. 23.

¹⁵ ICC-02/11-01/11-278-Red, para. 27.

¹⁶ ICC-01/05-01/13-71, para. 11.

¹⁷ ICC-01/05-01/13-71, para. 11.

¹⁸ ICC-01/04-01/06-824, para. 134.

¹⁹ ICC-02/11-01/11-278-Red, para. 49. See also ICC-01/04-01/06-824, para. 124.

existence of reasonable grounds to believe that the crimes alleged by the Prosecutor have been committed by the arrested person (article 58(1)(a)), and of the existence of one or more of the risks listed under article 58(1)(b). It is debatable, however, to what extent a Pre-Trial Chamber (namely, the same Pre-Trial Chamber who has issued the warrant of arrest) can be meaningfully called upon reassessing the existence of reasonable grounds to believe that a crime has been committed in the context of an application for interim release. It is also worth noting that the practice developed so far by the Chambers of the Court in their decisions on requests for interim release seems, most appropriately, to have rather focussed on the determination as to whether one or more of the risks listed under letter b of article 58(1) still exist. Be it as it may, the Single Judge will also briefly proceed to assess the persisting existence of reasonable grounds to believe that the crimes alleged by the Prosecutor in the application have been committed.

C. First limb of the assessment: article 58(1)(a) (whether there are reasonable grounds to believe that the person committed the crimes alleged by the Prosecutor)

11. On the basis of material attached to the Prosecutor's Application, the Single Judge found that there were reasonable grounds to believe that Jean-Jacques Mangenda assisted Jean-Pierre Bemba and Aimé Kilolo in the furtherance of a criminal scheme aimed at obstructing the course of justice in the case *The Prosecutor v. Jean-Pierre Bemba Gombo* ("Main Case") and, more specifically, that he i) frequently appeared to "receive money transfers via Western Union, particularly when Defence witnesses appear in court"; ii) worked "very closely with Aimé Kilolo in respect of the coaching of witnesses and the devising of instructions to be issued to them"; iii) took part "in certain privileged conference calls with Jean-Pierre Bemba and Fidèle Babala"²⁰.

12. As regards Jean-Jacques Mangenda, the material on which the Chamber based its findings – which was made available to all the suspects in this case as of 27 November 2013 - included the following: a) translated excerpts of phone calls

²⁰ ICC-01/05-01/13-1-Red2-tENG, para. 17.

intercepts between Jean-Pierre Bemba and Fidèle Babala, where Jean-Jacques Mangenda is mentioned in connection with money transfers requested by or made to him²¹ (and to Aimé Kilolo); b) tables containing amounts of money transferred to Jean-Jacques Mangenda by persons including Fidèle Babala and other persons connected to Jean-Pierre Bemba²² as well as transferred by him.

13. The Single Judge was also able to rely on two reports submitted by Independent Counsel, respectively on 25 October 2013 (“First Report”)²³ and on 14 November 2013 (“Second Report”)²⁴, stating inter alia that the conversations between Aimé Kilolo and Jean-Jacques Mangenda showed that both “ont vraisemblablement, directement ou indirectement, donné des instructions à des témoins sur les propos qu’ils devraient tenir lors de leur deposition”²⁵, as well as including transcripts of telephone calls between Aimé Kilolo and Jean-Jacques Mangenda in the course of which they discussed about what the witnesses had said during their testimony²⁶, or what future witnesses should say²⁷, the amount of “soutien financier”²⁸ to be given to the witnesses’ families²⁹, or money transfers which should be made to them, including by Fidèle Babala³⁰. Money transfers were also discussed by Jean-Jacques Mangenda with other members of the network of Jean-Pierre Bemba³¹. Telephone calls to witnesses were also made by Aimé Kilolo by using Jean-Jacques Mangenda’s telephone³².

²¹ ICC-01/05-67-Conf-Anx I.1, page 12, 12 December 2012, 2013/000035648.

²² ICC-01/05-67-Conf-AnxC.5. See also ICC-01/05-67-Conf-AnxB.3, B.4 and B.6.

²³ ICC-01/05-64-Conf-Red.

²⁴ ICC-01/05-66-Conf-Red.

²⁵ ICC-01/05-64-Conf-Red, paragraph 19.a.ii.2.

²⁶ See, for example, transcripts of phone conversations held on 26 August 2013 (ICC-01/05-64-Conf-Anx, page 17); on 27 August 2013 (ICC-01/05-64-Conf-Anx, page 18); on 28 August 2013 (ICC-01/05-64-Conf-Anx, page 19); on 30 August 2013 (ICC-01/05-64-Conf-Anx, pages 21-22); on 29 August 2013 (ICC-01/05-66-Conf-Anx, pages 6-10);

²⁷ ICC-01/05-66-Conf-Anx, page 15.

²⁸ ICC-01/05-66-Conf-Anx, page 10.

²⁹ ICC-01/05-66-Conf-Anx-Corr, pages 6-13.

³⁰ ICC-01/05-66-Conf-Anx, page 33.

³¹ ICC-01/05-66-Conf-Anx, pages 34-36.

³² ICC-01/05-64-Conf-Anx, page 4.

14. Confidential redacted version of both these reports (and their unredacted annexes) were made available to the Defence teams of the suspects on 16 December 2013³³.

15. None of the material contained either in the Prosecutor's Application or in Independent Counsel Reports is addressed by the Defense for Jean-Jacques Mangenda. As said earlier, the Prosecutor's Application and its annexes were reclassified as confidential on 27 November 2013. Accordingly, as of 8 January 2014, when the request for interim release was submitted, the Defence had had more than a full month to analyse such material and was therefore definitely in a position to know "sur base de quel faits il est détenu". His submission to the effect that "après plus d'un mois de détention le requérant ... ne peut donc se défendre"³⁴ is therefore inaccurate.

16. The Defence asserts that the warrant "contient des erreurs d'appréciation", in particular as regards the fact that Jean-Jacques Mangenda was the beneficiary of Western Union money transfers, including upon the appearance in court of witnesses in the Main Case, on the basis of the assumption (incorrect, as shown above) that the Prosecutor's Application "ne contient ni lieux, ni dates des prétendus délits"³⁵. The Defence also submits that Jean-Jacques Mangenda would each time transfer money he received in his capacity of case-manager to the ICC detention unit "aux fins d'être versées au compte de Monsieur Jean-Jacques Bemba, afin de subvenir à ses besoins en prison"³⁶.

17. The Single Judge takes the view that, at this stage and for the purposes of this decision, there is no need for him to gather additional information as to the accuracy of this particular submission. The fact that Mr Mangenda might have forwarded funds to Jean-Pierre Bemba, even if ascertained as true, is not suitable to weaken the fact that, in light of the material submitted by both the Prosecutor and Independent Counsel, Jean-Jacques Mangenda appears as the author (or the intermediary) of

³³ ICC-01/05-64-Conf-Red; ICC-01/05-66-Conf-Red.

³⁴ ICC-01/05-01/13-71, para. 4.

³⁵ ICC-01/05-01/13-71, para. 14.

³⁶ ICC-01/05-01/13-71, para. 15.

money transfers to the benefit of witnesses in connection with their appearance in the Main Case.

18. The Defence further submits that Jean-Jacques Mangenda, as case manager to Jean-Pierre Bemba in the Main Case, only had a “rôle d’exécutant”³⁷ within the defence team for Mr Bemba, acting upon instructions of both Aimé Kilolo and Peter Haynes; since he did not participate in interviews with witnesses, he was not in a position to influence them.

19. The Single Judge recalls the materials before him at the time of the issuance of the warrant, and notes that no generic statement as to the purportedly neutral, or passive, role of Jean-Jacques Mangenda’s as a case manager is suitable to contradict the numerous elements showing not only his full awareness of the scheme being implemented, but also his instrumental role in its implementation, and even his appreciation of its efficient outcome.

20. The Defence for Mr Mangenda further submits that Count 1 as formulated by the Prosecutor, alleging Jean-Jacques Mangenda’s criminal responsibility for “Presenting evidence that the party knows is false or forged under Article 70(1)(b) read with Article 25 (3)(c) by aiding, abetting, or otherwise assisting in the crime of presenting evidence that he knows is false or forged”, unduly pre-empts Trial Chamber III’s decision as to the authenticity of a number of documents submitted in the context of the Main Case, since “il est évident que la Chambre concernée risque de ce fait de ne plus pouvoir juger d’une façon objective dans cette question”³⁸. In so doing, it seems to hold the view that no charge consisting of falsification of documents presented before a Chamber can be formulated in the absence of, or before, a decision of that Chamber determining that such documents were indeed falsified.

21. The Single Judge finds that this argument is based on an undue overlapping of the standards of proof respectively applying at the stage of the issuance of a warrant of arrest under article 58 and at the time of the judgment, and is therefore

³⁷ ICC-01/05-01/13-71, para. 16.

³⁸ ICC-01/05-01/13-71, para. 17.

misplaced. All that is required, at the article 58 stage, for the purposes of issuing a warrant (or summons) for the offence of presenting false evidence under article 70(1)(b) of the Statute, is that the Pre-trial Chamber be satisfied that there are reasonable grounds to believe that conducts suitable to amount to the falsification of documents have occurred and that such conducts may be linked to the person whose arrest (or summons) is sought by the Prosecutor. Accordingly, the Single Judge finds that this argument does not detract from his finding that reasonable grounds that the crimes alleged under Count 1 for Jean-Jacques Mangenda were established.

22. Under these circumstances, the Single Judge is still persuaded that the information and materials made available to the Chamber by the Prosecutor at the time of her Application under article 58 of the Statute and by Independent Counsel, all of which have been assessed *ex novo* in light of Jean-Jacques Mangenda's Request for Interim Release, still justifies the finding that there are reasonable grounds to believe that Jean-Jacques Mangenda committed the crimes alleged by the Prosecutor and that, therefore, the requirement of article 58(1)(a) of the Statute continues to be satisfied.

D. Second limb of the assessment: article 58(1)(b) (whether the arrest appears necessary for one or more of the reasons listed therein)

23. As regards the requirements set forth under article 58(1)(b), the Single Judge notes that – as clarified by the Appeals Chamber³⁹ and also recently reiterated by this Chamber⁴⁰ – the three conditions listed in the provision are “in the alternative”, thereby making “the fulfilment of one of them sufficient to negate the need to address the remaining conditions”. Nevertheless, the Single Judge deems it appropriate to consider all of them. By the same token, he will also strictly follow the guidance provided by the Appeals Chamber to the effect that, when it comes to determine the existence of one or more of the risks set forth in article 58(1)(b), the “question revolves around the possibility, not the inevitability, of a future

³⁹ ICC-01/04-01/06-824, para. 139.

⁴⁰ ICC-01/04-02/06-147, para. 39.

occurrence"⁴¹, provided only that such risk is established on the basis of specific and concrete elements.

D.1 Appearance at trial

24. The Defence submits that Jean-Jacques Mangenda “est d’une intégrité irréprochable et n’a jamais eu à sa défendre en justice” and that “il n’est pas imaginable que le requérant ne se présenterait pas à un procès intenté contre lui, où, dès le début il s’est réclamé de son innocence”⁴².

25. The Single Judge notes that the personality of a suspect is not one of the reasons on the basis of which the Chamber can or should determine whether detention is necessary. Rather, it has to determine whether the arrest is necessary “to ensure that the person appears at trial”. Personal circumstances of education, professional or social status – as those referred to by Mr Mangenda’s Defence⁴³ – are *per se* neutral and inconclusive in respect of the need to assess the existence of flight risks. Furthermore, the Single Judge notes that offences against the administration of justice are of the utmost gravity, even more so when proceedings relating to crimes as grave as those within the jurisdiction of the Court are at stake. They may not only threaten or disrupt the overall fair and efficient functioning of the justice in the specific case to which they refer, but also ultimately undermine the public trust in the administration of justice and the judiciary. Such seriousness is only enhanced by the fact that this effect is bound to be even more significant and strong when committed by highly educated individuals, particularly when – such as in the case of Jean-Jacques Mangenda, who chose to serve the Court as a case manager in one of its trials – their professional mission is to serve, rather than disrupt, justice.

26. Similarly, a suspect’s commitment to appear cannot be considered as *per se* decisive for the purposes of determining whether one or more of the conditions listed in article 58(1)(b) are met. At the time of the issuance of the warrant, the Single Judge had found that Jean-Jacques Mangenda (i) possessed identity documents which entitled him to travel freely not only throughout the Schengen area, but also

⁴¹ ICC-01/04-01/07-572, para. 21.

⁴² ICC-01/05-01/13-71, para. 21.

⁴³ ICC-01/05-01/13-71, para. 21.

to non-States parties to the Statute and (ii) as case manager within the defence team for Jean-Pierre Bemba, he was “part of a network ...which could provide him with the financial resources to readily abscond the jurisdiction of the Court”.⁴⁴

27. The Defence submits that, since Jean-Jacques Mangenda’s identity documents have been handed over to the Registry, under whose custody they have been held since his arrest, “le requérant ne pourrait même plus voyager”⁴⁵. The Single Judge takes the view that this does not detract from the persisting existence of a risk of flight not suitable to be effectively mitigated by conditions, most notably in light of the fact that circulation within the Schengen area can by large occur without the need that any document be shown.

28. As to the possibility for Jean-Jacques Mangenda to rely on a network which could make available to him the means to abscond, the Defence opines that the suspect “ne pourrait bénéficier d’aucun aide externe”, in light of the following facts (i) he had “comme seule source de revenus ce qu’il gagne à la Cour Pénale Internationale; (ii) Mr Bemba’s and Mr Babala’s financial means, as well as his bank accounts and his credit cards, were frozen pursuant to the arrest warrant; (iii) as a lawyer, as opposed to a politician, “il est isolé et ne dispose pas d’aucun ‘réseau’ lui permettant éventuellement de retrouver quelque ‘accueil’ ou ‘prise en charge’ que ce soit”⁴⁶.

29. None of these elements appears suitable to weaken or otherwise affect the conclusion reached by the Single Judge upon the issuance of the warrant, critically based on the fact that Jean-Jacques Mangenda’s role within the defence team for Mr Bemba would make him part of the latter’s broad network and hence the possible beneficiary of the resources available to the network as a whole. Moreover, weight had been given to the fact that transfer of money had been the subject of several telephone calls between Jean-Jacques Mangenda and Aimé Kilolo and that, through the implementation of those transfers, he had been able to connect with other members of the Bemba network. The Single Judge is not persuaded that the links

⁴⁴ ICC-01/05-01/13-1-Red2-tENG, para. 22.

⁴⁵ ICC-01/05-01/13-71-para. 19.

⁴⁶ ICC-01/05-01/13-71-para. 22.

that Jean-Jacques Mangenda was able to establish with various members of that network over the years are now severed by the mere fact of his arrest, or his ensuing withdrawal from the defence team of Mr Bemba's in the Main Case.

30. Both the Appeals Chamber and Pre-Trial Chambers of the Court have previously found the existence of a network of supporters behind a suspect to be a relevant factor in the determination of the existence of a risk of flight⁴⁷, because it might indeed facilitate absconding; in particular, the availability of financial means, "whether directly or indirectly" through a network, has been likewise found relevant by this Chamber in the case of *The Prosecutor v. Bosco Ntaganda* case⁴⁸.

31. The Single Judge is persuaded that the reasons supporting his assessment as to the existence of a flight risk are still outstanding and that the submissions brought forward by the Defence for Jean-Jacques Mangenda in this respect are not suitable to weaken their persuasiveness. Rather, it must be noted that the process of disclosure, which had yet to start at the time of the issuance of the Warrant, has by now reached an advanced stage, a factor that may also be relevant in weighing the likelihood of the risk of flight, due to its resulting in enhancing the suspect's knowledge of the Prosecutor's case.

32. Finally, the prejudices allegedly entailed by the continued detention of Jean-Jacques Mangenda⁴⁹ to his family are not a factor relevant for the purposes of the determination under article 60(2) of the Statute.

D.2 Obstructing or endangering the investigation of the Court proceedings

33. The Defence submits that, if released, Jean-Jacques Mangenda will not obstruct or endanger the investigation or court proceedings, in light of the following:

- (i) the Prosecutor's statement, on 5 December 2013 to the effect that "l'instruction était pratiquement terminée";
- (ii) the seizures implemented upon the arrest of the suspect and

⁴⁷ ICC-02/11-01/11-278-Red, para. 26.

⁴⁸ ICC-01/04-02/06-147, para. 55 .

⁴⁹ ICC-01/05-01/13-71, para. 27.

(iii) the fact that the Court is in possession “du contenu des conversations téléphoniques entre avocats et au sein de l’équipe de défense dans l’Affaire en cours *Le Procureur c/ Bemba*”⁵⁰.

34. The Single Judge recalls that both the material attached to the Prosecutor’s Application and the reports submitted by Independent Counsel reveal that Jean-Jacques Mangenda was involved in Jean-Pierre Bemba’s and Aimé Kilolo’s ongoing witness corruption scheme and that money transfers to witnesses were specifically discussed together with and in the context of comments on the developments in the trial of *the Prosecutor v. Jean-Pierre Bemba Gombo*. Furthermore, he notes that these objective elements, as gathered by both the Prosecutor and Independent Counsel, are still suitable to ground his assessment of the persisting existence of a risk that obstruction or endangerment of the proceedings does exist, in respect of both this case and the Main Case. As stated by the Prosecutor, Mangenda’s former role as case manager for Jean-Pierre Bemba entails that he is likely to know the identity of most of the potential witnesses; moreover, given the precise information disclosed to him, now he is even in a better position to obstruct or endanger the investigations⁵¹. As regards the fact that the Prosecutor’s investigation is close to completion, it cannot be reasonably excluded that additional action might be taken, in respect of other evidentiary items which might still be outstanding, whether in relation to the Main Case or to these proceedings, in spite of the fact that some pieces of evidence are indeed in the possession of the Court or of the relevant national authorities and as such beyond the suspects’ reach. Article 58(1)(b)(ii) explicitly states that detention might be necessary with a view to ensuring that the person does not obstruct or endanger not only the investigation, but also the “court proceedings”.

35. Furthermore, the Second Report contains elements suitable to signal Jean-Jacques Mangenda’s readiness to take action in respect of the ongoing investigation and these proceedings. On 11 October 2013, he informs Aimé Kilolo having received

⁵⁰ ICC-01/05-01/13-71, para. 24.

⁵¹ ICC-01/05-01/13-127-Conf, para. 45.

information about the existence of an ICC investigation on them both⁵²; on 16 October 2013, he seems to state some concerns about this and receives reassurance from Aimé Kilolo that he might have “a solution”⁵³.

D.3 *The risk relating to future crimes*

36. Again, the Single Judge will be guided by the Appeals Chamber in making his assessment under this heading. The risk relating to the possible commission of related crimes, by its very nature, is such as to make it impossible to specify in detail what the nature of such crimes might be, or the context in which they might be committed⁵⁴. Furthermore, the nature of the crimes at stake in these proceedings (i.e., offences against the administration of justice) is such as to create a great degree of overlapping between the risk that the investigation be obstructed or endangered and the risk that the commission of the crimes be continued or that related crimes be committed. Accordingly, the observations contained in paragraph D.2 above, to the effect that the risks that the investigation relevant to these proceedings be obstructed or endangered is ground in the very conducts carried out by Jean-Jacques Mangenda prior to his arrest, are also of relevance for the purposes of assessing the third element listed under article 58(1)(b) of the Statute.

37. The Defence denies that a risk that future crimes be committed exists, given that the testimonies of the witnesses in the Main Case were completed on the eve of the suspects’ arrest and that Jean-Jacques Mangenda is no longer part of Mr Bemba’s defence team⁵⁵.

38. The Single Judge notes, as regards the Main Case, that it cannot be excluded that the case is reopened, as has occurred in the case of *The Prosecutor v. Germain Katanga*. Second, future and related crimes, the risk for which the Single Judge is called to assess, might also be committed by the suspect in respect of these proceedings.

E. **As to the issue of conditional release as an alternative to detention**

⁵² ICC-01/05-66-Conf-Anx, pages 42-3.

⁵³ ICC-01/05-66-Conf-Anx, page 47.

⁵⁴ ICC-02/11-01/11-278-Red, para. 70.

⁵⁵ ICC-01/05-01/13-71, para. 25.

39. Finally, the Single Judge notes that Jean-Jacques Mangenda has not submitted any specific proposal for release subject to conditions, as an alternative to his detention. He simply requests the Single Judge to grant his interim release, “éventuellement en y associant les conditions que le Juge unique jugera opportuns [sic]”⁵⁶.

40. The Appeals Chamber has stated that, where no proposals for conditional release have been submitted and none are self-evident, “the Pre-Trial Chamber’s discretion is unfettered”⁵⁷.

41. The Single Judge notes that most of the conducts related to the alleged crimes have occurred by way of communications with the other suspects, or with third parties connected to them by reason of personal or professional links, at least partly committed in spite of the fact that one of the suspects was already in the custody of the detention unit of the Court, and by means of an abuse of the communication system set up within it. Today, as upon the issuance of the warrant, he remains persuaded that it is 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.

42. Moreover, the Single Judge notes that no availability to accept Jean-Jacques Mangenda on their territory in the event of his release, with or without conditions, has been shown by either the Netherlands or the United Kingdom, that is the State to which he requests to be released. The Dutch authorities stated that “[t]here are at present no conditions under which the Netherlands would be in a position to accept the interim release of Mr Mangenda onto its territory”⁵⁸. The British authorities stated that the fact that Mr Mangenda is suspected of offences against the administration of justice allegedly committed in connection with the case *The Prosecutor v. Jean-Pierre Bemba* “will be taken into account by the competent UK authorities when considering any application for entry clearance or leave to enter the

⁵⁶ ICC-01/05-01/13-71, page 24.

⁵⁷ ICC-02/11-01/11-278-Red, para. 79.

⁵⁸ ICC-01/05-01/13-137-AnxIV.

UK (notwithstanding any pre-existing for of entry clearance Mr Mangenda currently holds)”⁵⁹. The Single Judge finds that this statement can hardly be read as signalling willingness and availability on the part of the United Kingdom to accept the suspect in the event that he were to be released.

43. Accordingly, the Single Judge finds that the interim release is not only not justified in light of all relevant factors, but also practically unfeasible.

F. On the request for a hearing under rule 118(3) of the Rules

44. The Single Judge takes the view that the abundance of the material available to him, a great amount of which has been referred to in this decision, makes it not necessary or appropriate to hold a hearing at this stage for the purposes of the determination of Jean-Jacques Mangenda’s request for interim release.

FOR THESE REASONS, THE SINGLE JUDGE

REJECTS Jean-Jacques Mangenda’s request for a hearing under rule 118(3) of the Rules;

REJECTS Jean-Jacques Mangenda’s request for interim release.

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



Judge Cuno Tarfusser
Single Judge

Dated this Monday, 17 March 2014

At The Hague, The Netherlands

⁵⁹ ICC-01/05-01/13-137-AnxIII, page 2.