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Criminal
Court

Original: **English**

No.: **ICC-01/05-01/13**
Date: **10 February 2015**

TRIAL CHAMBER VII

Before: **Judge Olga Herrera Carbuccia**
Judge Robert Fremr
Judge Chile Eboe-Osuji

SITUATION IN THE CENTRAL AFRICAN REPUBLIC

IN THE CASE OF

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

Public Redacted Document

Public redacted version of "Prosecution Response to the «*Requête de mise en liberté*» of 8 January 2014 (ICC-01/05-01/13-71)", 24 January 2014, ICC-01/05-01/13-127-Conf

Source: **Office of the Prosecutor**

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

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I. Introduction

1. The Office of the Prosecutor (''Prosecution'') hereby opposes Jean-Jacques Mangenda Kabongo's request for provisional release in its entirety ("Request").[1] The Request advances no cogent reasons why provisional release should be granted. *First*, the Defence's contentions as to the illegality of the arrest warrant are of marginal relevance to the issues related to provisional release. *Second*, the same reasons that warranted Mangenda's arrest justify his continued detention, pursuant to Articles 60(2) and 58(1) of the Rome Statute ("Statute"). The circumstances of this case readily establish a clear and substantial risk that Mangenda will neither appear for trial nor abide by any terms and conditions of release the Chamber may consider.

2. The nature of the crimes for which Mangenda has been arrested—offences against the administration of justice—underscores why provisional release here is wholly inappropriate. In his role as case manager in *The Prosecutor v. Jean-Pierre Bemba Gombo* ("*Bemba* case"), Mangenda allegedly directly participated, together with Bemba, his lead counsel Aimé Kilolo and others, in a scheme to pervert the course of justice.

3. Mangenda is a lawyer and member of the Kinshasa bar, subject to commensurate ethical and professional responsibilities. His alleged willing involvement in the *Bemba* witness corruption scheme reflects his contempt for the integrity of proceedings before this Court and its authority. By allegedly participating in the corruption of witnesses and the presentation of false evidence throughout the Defence case in *Bemba*, Mangenda's actions were manifestly aimed at defeating the ends of justice, denying the Court and the victims of the serious crimes alleged the right to a fair adjudication of that case on its merits.

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[1] ICC-01/05-01/13-71, *Requête de mise en liberté*, 8 January 2014.

4. There is no doubt that Mangenda is capable of and willing to disregard the Court's legal framework, and to evade justice. His personal interest in the outcome of these proceedings gives him an even greater incentive to persist in the unlawful conduct for which he was properly arrested concerning the *Bemba* case.

5. As explained below, the continued detention of Mangenda appears necessary[2] because if released, Mangenda would not respect any related terms and conditions, would not appear voluntarily at future proceedings, would interfere with the ongoing investigations, and would likely commit further offences in violation of Article 70 to secure his interests in this case. For these reasons, the Request should be denied and Mangenda should remain in custody.

II. Procedural history

6. On 19 November 2013, the Prosecution filed an application for a warrant of arrest ("Application") against Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse Arido (together, "Suspects") for alleged offences against the administration of justice pursuant to Article 70 of the Statute.[3]

7. The Single Judge issued a warrant of arrest for the Suspects on 20 November,[4] pursuant to which Mangenda was arrested in The Hague on 23 November. He was

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[2] The Appeals Chamber has ruled that "[w]hat may justify arrest (and, in this context, continued detention) under article 58 (1) (b) of the Statute is that it must 'appear' to be necessary. The question revolves around the possibility, not the inevitability, of a future occurrence." ICC-01/04-01/07-572 OA4, 9 June 2008, para. 21; see also ICC-01/05-01/08-323 OA, 16 December 2008, paras. 55, 67.
[3] Prosecution's Application for Warrant of Arrest ("AWA") filed under seal, ICC-01/05-67-US-Exp. The AWA and its supporting materials were reclassified as confidential on 27 November 2013, ICC-01/05-67-Conf, Prosecution's Application for Warrant of Arrest, 19 November 2013.
[4] ICC-01/05-01/13-1-US-Exp-tENG. The warrant of arrest was unsealed on 28 November 2013, ICC-01/05-01/13-1-Red2-tENG, 5 December 2013.

transferred to the Court's Detention Center on 3 December, and his Initial Appearance took place on 5 December.

8. On 8 January 2014, Mangenda filed his Request,[5] upon which the Single Judge ordered the Prosecutor and the authorities of the Kingdom of the Netherlands and the United Kingdom to submit their views by 24 January.[6]

III. Confidentiality

9. This filing is classified as "Confidential" as it refers to evidence classified as such. The Prosecution will file a public redacted version as soon as practicable.

IV. Submissions

A. The validity of the arrest warrant is not a dispositive issue regarding provisional release

10. The assertion that the arrest warrant issued for Mangenda is null and illegal, is of marginal relevance to his provisional release, and in any case, completely erroneous. The Request contends, *inter alia*, that the arrest warrant does not contain sufficiently precise information, namely, the specific facts on the basis of which Mangenda was arrested;[7] that the arrest warrant "compensate[s]" for the alleged lack of facts *"en se référant"* to evidence;[8] and that a portion of the evidence, impermissibly, was analysed by the Independent Counsel.[9]

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[5] ICC-01/05-01/13-71.
[6] ICC-01/05-01/13-73, 9 January 2014.
[7] ICC-01/05-01/13-71, paras. 3 [sic]-5.
[8] ICC-01/05-01/13-71, paras. 4, 5.
[9] ICC-01/05-01/13-71, paras. 6-9.

11. These arguments are misplaced. The salient relevant consideration for the Single Judge's determination of the Request is whether the conditions for continued detention set out under Article 58(1) are currently met.[10] If fulfilled, Mangenda's continued detention is mandatory.[11] Whether these conditions were met at the time of the arrest is not the test. This part of the Request should therefore be dismissed on that basis alone.

12. In any event, as explained below, the conditions for Mangenda's continued detention "are met"[12], in accordance with Article 60(2).

B. Mangenda's continued detention is justified

13. The Request advances no compelling reasons for Mangenda's interim release in the circumstances. To the contrary, the conditions underpinning the necessity for his continued detention as provided in Articles 58(1) and 60(2) are fully satisfied. The Prosecution incorporates by reference the applicable law regarding the evaluation of conditions for continued detention set out in its Response to the Request for provisional release of Fidèle Babala.[13]

14. The Single Judge made clear factual findings regarding the basis for the arrest for each of the Suspects,[14] including Mangenda. He properly determined that there existed reasonable grounds to believe that Mangenda had committed crimes against the administration of justice pursuant to Article 70, specifically that he:

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[10] See Article 60(2).
[11] ICC-01/04-169 OA, 13 July 2006, para. 44.
[12] See Article 60(2).
[13] ICC-01/05-01/13-81-Conf-AnxA, Amended and corrected version of the Prosecution response to the «Requête urgente de la Défense sollicitant la mise en liberté provisoire de monsieur Fidèle Babala Wandu» (ICC-01/05-01/13-38), 10 January 2014, paras. 9-10, 12, 14, 16, 19, 32, 38-39.
[14] ICC-01/05-01/13-1-Red2-tENG, paras. 13-20.

i. frequently appears to receive money transfers via Western Union, particularly when Defence witnesses appear in court;

ii. works very closely with Aimé Kilolo in respect of the coaching of witnesses and the devising of instructions to be issued to them; and

iii. takes part in certain privileged conference calls with Bemba and Babala.[15]

15. On the basis of these findings, the Single Judge found reasonable grounds to believe that, in the *Bemba* case, Mangenda aided and abetted in the criminal scheme to provide benefits to Defence witnesses in exchange for false testimony and to present false or forged evidence in violation of Articles 70(1)(b) and(c).[16] Specifically, the Single Judge noted that the "essential facts alleged, as set out in the counts and described in greater detail in the Application" have been proven to the requisite threshold.[17] Further, as elaborated below,[18] the Single Judge found that arrest was necessary under all three prongs of Article 58(1)(b).[19]

16. The concise factual findings in the arrest warrant were based on the detailed and precise evidence the Prosecution presented in its Application, and disclosed to the Suspects in a timely fashion.[20] In fact, in issuing the arrest warrant, the Single Judge referred to "numerous, objective, specific and detailed items of evidence" concerning the Suspects' alleged criminal conduct, amounting to a record consisting of a "considerable and indeed quite a remarkable quantity of items of evidence which furnish objective and incriminating information and details pertaining directly

[15] See ICC-01/05-01/13-1-Red2-tENG, para. 17. *See* also ICC-01/05-67-Conf, esp. paras. 4-5, 23, 31, 35-36, 49, 51, 59-62.
[16] ICC-01/05-01/13-1-Red2-tENG, para. 13.
[17] See ICC-01/05-01/13-1-Red2-tENG, para. 20.
[18] See below paras. 18-49.
[19] See ICC-01/05-01/13-1-Red2-tENG, paras. 17, 21-23.
[20] Contrary to the Defence assertions that the evidence is "*à ce jour d'ailleurs inconnu[s]*". See ICC-01/05-01/13-71, para. 4.

and specifically to the Prosecutor's factual allegations."[21] These facts continue to be true today. Further, in light of the disclosure it has received by now, the Defence cannot reasonably claim the absence of a sufficient factual basis to establish reasonable grounds to believe that Mangenda has committed a crime within the jurisdiction of the Court.

17. Similarly to requests made by other Suspects in this case,[22] this Request also relies selectively on the fact that under human rights law suspects are presumed innocent and their detention considered an exceptional measure that should be necessary and proportionate to the circumstances.[23] The Request ignores the fact that there is ample evidence in this case establishing that these conditions have been, and continue to be, met for all three purposes under Article 58(1)(b).[24]

C. Mangenda's continued detention is required under the Statute

1. Article 58(1)(b)(i) - continued detention is necessary to ensure Mangenda's appearance at trial

a. Mangenda is likely to abscond if released from detention

18. Mangenda is unlikely to appear for trial voluntarily if released. He has an objective and compelling personal interest in avoiding justice in this case. *First*, Mangenda's personal liberty is at stake and he faces a serious sentence, if convicted. *Second*, because the evidence demonstrating his involvement in the crimes is strong, direct and compelling, there is a substantial likelihood of his conviction. *Third*,

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[21] ICC-01/05-01/13-1-Red2-tENG, para. 12 (emphasis added). See ICC-01/05-67-Conf and corresponding annexes.
[22] ICC-01/05-01/13-38-Corr, paras. 9-16 (Babala), ICC-01/05-01/13-42, paras. 45-49 (Kilolo).
[23] ICC-01/05-01/13-71, para. 11.
[24] ICC-01/05-01/13-1-Red2-tENG, paras. 21-23.

Mangenda has demonstrated his propensity to subvert the course of justice in the *Bemba* case, and is likely to do so again here.

(i) Mangenda faces a serious sentence if convicted

19. Mangenda has reason to abscond. His conduct comprises numerous discrete violations of Article 70, and the Statute prescribes a penalty of up to five years imprisonment for each such crime. Further, Article 78 provides that when a person is convicted of more than one crime the Court shall pronounce a sentence for each crime and a joint sentence,[25] to reflect the extent of the culpability of a given accused.[26] In determining a sentence, the Statute further requires a Trial Chamber to take into account a number of factors. These include the gravity of the crime, the individual circumstances of the convicted person,[27] the extent of the damage caused, the degree of the participation of the convicted person, the degree of his intent to commit such crime[28] and the abuse of an official capacity when doing so[29].

20. When examining the extent of Mangenda's culpability, a Trial Chamber will consider his abuse of his position as a member of the Bemba Defence team before this Court to corrupt Defence witnesses in the *Bemba* case. In fact, had the scheme been successful, the impact on the victims and/or their families in the *Bemba* case, but also on the very integrity and authority of the Court would have been devastating.

21. Even if a Trial Chamber were to impose a single sentence of five years imprisonment upon conviction, this remains a substantial amount of time in absolute terms. It does not mean that the alleged offences are not serious. To the contrary, in

[25] See Article 78(3).
[26] See Rule 145(1)(a).
[27] See Article 78(1).
[28] See Rule 145(1)(c).
[29] See Rule 145(2)(b)(ii).

many national jurisdictions a five-year sentence denotes a serious offence.[30] Further, the prospect of a suspect being sentenced to a term of imprisonment makes the risk of flight greater.

(ii) Mangenda is likely to be convicted given the strength of the evidence against him

22. *Second*, the evidence against Mangenda, of which he is now aware but the Request ignores,[31] is direct, compelling and likely to result in a conviction. As such, he is all the more likely to flee from justice.

23. In his capacity as case manager on the *Bemba* case, Mangenda participated in the criminal scheme orchestrated by Bemba to suborn and corrupt witnesses and present false evidence to the Court. He aided and abetted or otherwise assisted Bemba, Kilolo and others in the implementation of the scheme by lending his physical and moral support, advice and technical assistance for the various actions aimed toward bribery and corruption of witnesses.

24. The most compelling evidence against Mangenda from his recorded telephone conversations with Kilolo, reveals that Mangenda: (i) knew about Bemba, Kilolo and

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[30] In the United Kingdom, prison sentences range from five days to life imprisonment. The suggested minimum sentence for a rape is five years for a *single* rape committed by a single offender. See the Crown Prosecution Service Sentencing Manual, available at http://www.cps.gov.uk/legal/s_to_u/sentencing_manual/s1_rape/ [page retrieved on 10 January 2014]; AGs Reference No. 86 of 2005 (Christopher James S.) (2006) 2 Cr App R (S) 270; also *see* the UK Criminal Justice Act of 2003, available at http://www.legislation.gov.uk/ukpga/2003/44/contents [page retrieved on 12 January 2014]. In Denmark, five years is the minimum mandatory sentence for murder. See Danish Penal Code (Straffeloven), Section 237, available at https://www.retsinformation.dk/Forms/R0710.aspx?id=142912#Kap25/, [page retrieved on 12 January, 2014]. In Australia, the minimum mandatory sentence for people smuggling is five years. See Anti-People Smuggling and Other Measures Act, Section 236B, available at http://www.comlaw.gov.au/Details/C2010A00050 [page retrieved on 10 January 2014].

[31] ICC-01/05-01/13-71, see esp. paras. 3-5, 16-17.

others' ongoing corruption of witnesses; including the details of these activities and how they fit into the overall scheme; (ii) actively participated in the scheme by providing concrete advice, serving as a go-between between Bemba and Kilolo, and passing to them information relevant to furthering the scheme. While Mangenda worked closely with Kilolo as a case manager in the *Bemba* case, these conversations reveal that part of that interaction was aimed at witness bribery and corruption.[32]

25. For example, in one conversation on 26 August 2013, Kilolo and Mangenda discussed whether in his testimony, witness D-25 had followed the story that they provided him.[33] The next day, Mangenda reported to Kilolo that Bemba was satisfied since he (Bemba) had noticed that" [REDACTED]."[34] In another conversation on 9 September 2013, Mangenda discussed with Kilolo the preparation of witness D-54. In this conversation, Mangenda suggested how the witness should testify to be consistent with a letter authored by Bemba: [REDACTED].[35]

26. There are other examples of Mangenda's alleged participation in the criminal scheme orchestrated by Bemba. For example, Mangenda allegedly facilitated Kilolo's unlawful communications with Defence witnesses by providing him the use of his mobile telephone for that purpose. Kilolo used Mangenda's mobile telephone to contact Defence witness D-26 on the morning of D-26's start of testimony on 20 August 2013.[36] This evidence, when considered in conjunction with other evidence, further goes to prove Mangenda's knowledge and participation in the criminal scheme.

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[32] ICC-01/05-01/13-71, para. 16.
[33] ICC-01/05-64-Conf-Anx, calls on 26 August 2013.
[34] ICC-01/05-64-Conf-Anx, calls on 27 August 2013.
[35] ICC-01/05-66-Conf-Anx, calls on 9 September 2013.
[36] ICC-01/05-64-Conf-Anx, calls on 20 August 2013.

(iii) Mangenda's demonstrated contempt for the administration of justice is extant

27. Mangenda's alleged conduct in the *Bemba* case demonstrates his contempt for the administration of justice before this Court. Further, his alleged full participation in the criminal scheme to corrupt witnesses[37] is amply demonstrated by the evidence supporting the issuance of the arrest warrant, as noted above.[38]

28. Between February 2011 and April 2013, Mangenda received at least USD 30,774.66 from Babala, Caroline Bemba (Bemba's sister), and Bemba's close associates Roger Nginamau and Jean-Pierre Singo.[39] As the Prosecution has argued before, the evidence shows that these payments coincided with the dates of testimony of several Defence witnesses.[40]

29. The Defence singles out these payments to argue that all the money Mangenda received was transferred to Bemba's account in the Detention Centre.[41] Even if true, for whatever the purpose, Mangenda admits transferring a substantial amount of money to Bemba, undoubtedly aware that the Defence (of which he was a significant part) was being advanced by the Registry on the basis of Bemba's purported inability to access his funds. Such an action, which is inconsistent with Mangenda's professional responsibilities and contrary to his obligations to the Court, bodes unfavourably in respect of his requested release.

30. The participants in the alleged witness corruption scheme sought to avoid detection by using coded language in their exchanges. For example, in a conversation on 20 November 2012, Bemba spoke in coded language to instruct Babala to contact

[37] ICC-01/05-67-Conf, paras. 3-9.
[38] ICC-01/05-67-Conf, paras. 59-62.
[39] ICC-01/05-67-Conf, paras. 5, 59.
[40] ICC-01/05-67-Conf, para. 59.
[41] ICC-01/05-01/13-71, para. 15.

the "little sister" to get 2 kg (which the Prosecution believes signifies USD 2,000), and that that money be sent to "the child over here for the issue you know".[42] That same day, Mangenda received USD 1,866 from Babala.[43] In conversations between Bemba and Mangenda, careful language is used in order to conceal their discussions, particularly concerning money.[44] Mangenda's participation in the scheme demonstrates at the minimum his willingness to disregard his professional obligations, duty to the Court, and his duplicity.

31. Significantly, all of the acts for which he has been arrested reflect Mangenda's dishonesty. Unlike Article 5 offences generally, the Article 70 offences with which he is charged relate to the commission of a fraud upon the Court itself. As such, they bear directly upon this Chamber's assessment of Mangenda's trustworthiness in assessing the risk of his evading justice or disregarding any attendant terms and conditions, if released. On the evidence of the crimes alleged and Mangenda's role in them, it is clear the risk is substantial.

32. The potential of the offences with which Mangenda is charged to have undermined the Court's mandate in adjudicating the crimes under Article 5 with which Bemba is charged, is a factor for the Chamber's consideration. Effectively, Mangenda's conduct assisted Bemba's attempt to evade justice.

33. In light of the evidence against him, Mangenda's claims, both in the Request[45] and in his statement to the Dutch authorities,[46] that he only followed the instructions

[42] ICC-01/05-67-Conf, para. 31, and Annex I.1, telephone conversation 2013/000035152 on 20 November 2012.
[43] ICC-01/05-67-Conf, para. 31, and Annex B. The Prosecution believes that USD 1,866 is the amount obtained after subtracting the Western Union fees (USD 134,00) from the amount of USD 2,000 (two kg).
[44] ICC-01/05-01/13-66-Conf, conversations on 15-17 September 2013.
[45] ICC-01/05-01/13-71, para. 16.
[46] CAR-OTP-0072-0163.

he received as case manager and knew nothing of any crimes are not capable of belief and self-serving. Mangenda's alleged conduct shows that he systematically abused his role as case manager in the *Bemba* case. As a lawyer, he shirked his professional and ethical responsibilities to defraud the Court, showing that he was a willing participant and active contributor to the corruption scheme, along with Bemba and Kilolo.

34. As Mangenda was prepared to risk his career, his reputation, his livelihood and that of his family, in a case where he had no personal interest, he can hardly be trusted to respect any conditions upon which the Chamber may consider his release - let alone appear for trial - now that his own liberty is at stake.

35. To ensure his appearance at trial, Mangenda must remain in custody; no less stringent measure is available or appropriate in the circumstances.

b. Magenda has the means to abscond if released from detention

36. To find that continued detention is necessary, a Chamber need only establish that it is possible that a suspect has the necessary financial means to abscond, if that risk is established on the basis of concrete evidence.[47]

37. The Request contends that Mangenda is not a flight risk since: (a) he has handed over his ID and his passport to the Registry, and his visa for Cameroon has expired, making him unable to leave the Netherlands;[48] (b) he has no financial means to support his flight, as he is not part of any network and has received all his funds by legal means;[49] (c) he is a member of the Kinshasa Bar, is of "irreproachable"

[47] ICC-02/11-01/11-278-Red (OA), para. 56.
[48] ICC-01/05-01/13-71, para. 19.
[49] ICC-01/05-01/13-71, para. 20.

integrity, and wishes to defend his reputation before the Court; and (d) he has a young family in the United Kingdom.[50] These arguments are not dispositive, or persuasive.

38. Objectively, if released, Mangenda can travel undetected within the Schengen area of the European Union.[51] In reality, there are no restrictions on movements within that area.[52] In light of the funds that are likely accessible to him, the absence of travel documents does not prevent him from reaching other countries, including non-States parties.[53] Mangenda could possibly travel even outside of the Schengen area, especially if aided by the Bemba support network.

39. Given his established connections with Bemba's wider support network, the surrender of his identification papers in reality makes no difference in assessing his risk of flight. Mangenda has long-standing ties with Bemba and the international contacts comprising his support network, including Caroline Bemba, Nginamau and Babala, all of whom provided funds to Mangenda on Bemba's orders.[54] It is likely that either they or others in Bemba's network of supporters may continue to provide Mangenda with funds to enable him to flee and avoid arrest or falsify travel documents. The Chamber should bear in mind that assisting in the falsification and/or presentation of false documents is alleged among the charges against the Suspects in this case. Based on the above, Mangenda likely has access to substantial

[50] ICC-01/05-01/13-71, paras. 21, 27.
[51] Comprising 26 countries: European Commission, "Schengen Area", http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/borders-and-visas/schengen/. Schengen Agreement of 1985 on Schengen cooperation, as incorporated into the EU legal framework by the 1997 Treaty of Amsterdam: *http://europa.eu/legislation_summaries/justice_freedom_security/free_movement_of_persons_asylum_immigration*.
[52] ICC-01/04-01/10-163, para. 57.
[53] ICC-01/05-01/13-71, para. 19.
[54] See ICC-01/-05-67-Conf, para. 5, 7, and Annex C.5, MANGENDA Summary WU, tab "M IN". See also Annex B.3 under tab "Kabongo" and Annex B.6 under tab "Jean K Mangenda" containing original Western Union spreadsheets.

funds to flee, even if Bemba's and Babala's funds have been frozen.[55] The fact that there exists a *possibility* – let alone a strong likelihood, as in the instant case – that Mangenda has access to the financial means to abscond is sufficient to reject the Request.[56]

40. Mangenda's statements regarding his integrity and professional reputation ring hollow in the face of the compelling evidence indicating his readiness to break the rules to assist Bemba to evade justice. This willingness is a factor for the Chamber to consider when assessing Mangenda's propensity to abscond.

41. Finally, Mangenda's right to family life is hardly a guarantee against his absconding. In any event, it is heavily outweighed in this case by all the factors that militate in favour of his continued detention.

42. An "analysis of all relevant factors taken together"[57] shows that Mangenda is likely to abscond if provisionally released. He has access to the means and objective motivations to do so, and his continued detention is therefore necessary and appropriate to ensure his future appearance at trial.

2. <u>Article 58(1)(b)(ii) - continued detention is necessary to ensure that Mangenda does not obstruct or endanger the investigation or the Court proceedings</u>

43. There is a high risk that, if released, Mangenda would obstruct and endanger the investigation of the crimes for which he has been arrested.

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[55] ICC-01/05-01/13-71, para. 22.

[56] See ICC-01/04-01/10-283 (OA), para. 25. (noting that, a Pre-Trial Chamber may find the potential provision of funds to flee justice "[e]ven if there was no evidence that funds had been or definitely would be used for such purposes").

[57] ICC-01/05-01/08-323 (OA), para. 55.

44. The Single Judge determined that each Suspect's arrest was necessary to prevent them from further obstructing or endangering the investigation or trial, and also to ensure that the commission of crimes did not continue.[58] If released, there is absolutely no reason to believe that Mangenda would refrain from the conduct which resulted in his arrest, particularly as his personal interests, including his liberty are now directly at stake.

45. While the possibility for Mangenda to influence and corrupt witnesses in these proceedings exists from the Detention Centre even in a monitored environment, there is no means of curtailing his communications and ability to act against witnesses if released.[59] Admittedly, Mangenda, as former case manager in the *Bemba* case is likely to know the identity of most of the potential witnesses and the evidence in this case. However, the precise information disclosed to him now provides him the additional means and opportunity to undermine the investigation and eventual trial against him. Mangenda's release would provide him unrestricted access to potential witnesses via telephone, email and internet, regardless of the country in which he is located. Contrary to the Request,[60] the fact that the Single Judge lifted restrictions on Mangenda's contacts, exceptionally imposed to ensure his and the other Suspects' successful arrests, is hardly a vote of confidence in him. Rather, the fact that such restrictions were imposed in the first place underscores how critically important the Single Judge considered the arrest of each Suspect, based on the compelling evidence of culpability before the Judge. That evidence is at least as compelling now as it was when the Suspects were arrested, if not more so.

[58] ICC-01/05-01/13-1-Red2-tENG, para. 23.
[59] See ICC-01/04-01/06-586-tENG, p.6 where PTCI denied a request for provisional release based in part on the risk posed by unmonitored communications.
[60] ICC-01/05-01/13-71, para. 25.

46. Whether the Prosecution's investigations are almost completed is irrelevant for the analysis of Mangenda's continued detention.[61] As long as there is some investigative activity left to conduct, or a witness left to interview, the risk of corruption and interference with the investigation remains. Mangenda is also able to infer on the basis of what has been disclosed to him what evidence is left uncollected, and is susceptible to interference or destruction.

47. For these reasons, it is necessary that Mangenda remains in custody since he has a strong and direct motive and means to interfere with the investigations and proceedings before this Court.

3. <u>Article 58(1)(b)(iii) - continued detention is necessary to prevent the commission of crimes</u>

48. Mangenda has the ability and the means to commit crimes, particularly given his proximity to Bemba's supporters' network.[62] The fact that he is no longer a member of Bemba's Defence team makes no difference.[63] As previously argued, the Prosecution need not establish exactly what crimes Mangenda may commit. However, the potential crimes he could commit in the context of this investigation can be anticipated, given the nature of the crimes for which he has been arrested.[64]

49. During the past two years, Mangenda has allegedly participated in a scheme to present false evidence and corrupt witnesses and to present them to the Trial

[61] ICC-01/05-01/13-71, para. 24.
[62] See above paras. 28 and 39.
[63] ICC-01/05-01/13-71, para. 25.
[64] See ICC-01/05-01-13-81-Conf-AnxA.

Chamber III as legitimate evidence.[65] His alleged actions comprise blatant violations of the Article 70, and show his ability and willingness to act in complete disregard of his professional responsibilities to this Court, and in violation of the law, all factors which strongly militate against his release.

V. Relief Requested

50. For the foregoing reasons, the Prosecution respectfully requests that the Chamber deny the Request in its entirety and order Mangenda's continued detention.

Fatou Bensouda, Prosecutor

Dated this 10th day of February 2015
At The Hague, The Netherlands

[65] ICC-01/05-01/08-2301-Conf, Request to Reject Admission into Evidence of Several Fraudulent Documents Disclosed by the Defence on 12 July 2012 and submitted on 16 August 2012, 6 September 2012, and ICC-01/05-64-Conf-Exp.