

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **French**

No.: **ICC-01/04-02/07**
Date: **13 February 2008**

PRE-TRIAL CHAMBER I

Before: Judge Akua Kuenyehia, Presiding Judge
Judge Anita Ušacka
Judge Sylvia Steiner

Registrar: Mr Bruno Cathala

SITUATION in the democratic republic of the congo
IN THE CASE OF
THE PROSECUTOR *v.* MATHIEU NGUDJOLO CHUI

Public document

Application for Interim Release

The Office of the Prosecutor
Mr Luis Moreno-Ocampo
Ms Fatou Bensouda
Mr Eric MacDonald

Duty Counsel
Mr Jean-Pierre Kilenda Kakengi Basila

1 - PROCEDURAL BACKGROUND

1. On 6 July 2007, Pre-Trial Chamber I of the International Criminal Court issued a warrant of arrest for MATHIEU NGUDJOLO.¹
2. On 7 February 2008, Pre-Trial Chamber I issued a decision to unseal the warrant of arrest issued for MATHIEU NGUDJOLO.²
3. On 7 February 2008, the Pre-Trial Chamber scheduled MATHIEU NGUDJOLO's first appearance for 11 February 2008.³
4. On 11 February 2008, Mr Jean-Pierre KILENDA KAKENGI BASILA, in his capacity as Duty Counsel for MATHIEU NGUDJOLO,⁴ made an oral request to Pre-Trial Chamber I for the release of MATHIEU NGUDJOLO, and stated his intention to file submissions to this end, for which the Chamber set him a deadline of 13 February 2008.

2 - FACTUAL BACKGROUND

5. The Applicant is alleged to have committed various crimes within your Court's jurisdiction. The Prosecution, which requested the warrant of arrest issued for him, contended that there are reasonable grounds to believe that the Applicant is criminally responsible under article 25(3) or, in the alternative, under 25(3)(b) of the Statute, for various crimes against humanity and war crimes.

¹ Case of *The Prosecutor v. Mathieu Ngudjolo Chui*, Warrant of Arrest for Mathieu Ngudjolo Chui, 6 July 2007, ICC-01/04-02/07.

² *Decision to unseal the warrant of arrest against Mathieu Ngudjolo Chui*, 7 February ICC-01/04-02/07-10.

³ *Decision Scheduling the First Appearance of Mathieu Ngudjolo Chui and Authorising Photographs and the Hearing of 11 February 2008*, ICC-01/04-02/07.

⁴ *Enregistrement de la designation et de la déclaration d'acceptation de Maître Jean-Pierre Kilenda Kakengi Basila en qualité de conseil de permanence de M. Mathieu Ngudjolo Chui*, 8 February 2008, ICC-01/04-02/07-16-Anx2 08-02-2008.

6. The Defence formally challenges the charges brought against the Applicant and submits that the warrant of arrest which was issued for the Applicant on 6 July 2007 is legally unwarranted.
7. The Defence points out that MATHIEU NGUDJOLO, a member of the *Forces Armées de la République Démocratique du Congo* [Armed Forces of the Democratic Republic of the Congo], has been aware since 2003, through the national and international media, that the Congolese Head of State, in accordance with the requirements of article 14 of the Statute of your Court, had referred to the Prosecutor the acts for which he is being prosecuted today. Nevertheless, the Applicant never absconded, despite the existence of the Prosecutor's high-profile investigations in relation to this case, and he voluntarily went to Kinshasa in order to undergo training at the *Centre Supérieur Militaire* in Kinshasa.
8. On the very day of his arrest in Kinshasa, the Applicant was returning from the headquarters of the *Forces Armées de la République Démocratique du Congo* where he had gone to collect the pay of his soldiers, with whom he is studying at the *Centre Supérieur Militaire*. On his return to the Centre, he was informed by his Commanding Director that the Minister of Defence was looking for him. The Applicant could have surmised that he was to be arrested and fled the country; however, he remained on the spot until he was brought before the High Military Court, where he was notified of the warrant of arrest issued by your Court.
9. The Defence also indicates that the Applicant has no bank accounts or property, either abroad or in his country of origin, which could arouse fears that he might organise his escape with his family.

3 – AS TO THE LAW

10. On 6 July 2007, Pre-Trial Chamber I of the International Criminal Court based the issuance of a warrant of arrest for MATHIEU NGUDJOLO on the existence of reasonable grounds to believe that MATHIEU NGUDJOLO is criminally responsible for war crimes and crimes against humanity within the jurisdiction of the International Criminal Court, on the one hand, and, on the other hand, on the existence of reasonable grounds to believe that MATHIEU NGUDJOLO's arrest appears necessary at this stage, within the meaning of articles 58(1)(b)(i) and (ii) of the Statute, to ensure his appearance before the Court and to ensure that he will not obstruct or endanger the investigation.
11. The conjunction "*and*" placed between the two conditions of articles 58(1)(a) and (b) requires that these conditions be applied cumulatively. In this case, if one of the conditions is not met, the person concerned cannot be held in detention and must be set free.
12. As its main submission, the Defence asserts that the non-disclosure of the grounds for the issuance of the warrant of arrest justifies the immediate release of MATHIEU NGUDJOLO. In the alternative, the Defence submits that the conditions warranting continued detention under article 58(1) of the Statute are not met, on the one hand, by reason of the lack of a need justifying the detention, which must remain an exceptional measure dictated by the principles of necessity and proportionality, and, on the other hand, because the condition under article 58(1)(b)(i) concerning the need for detention to ensure the person's appearance is not applicable at this stage of the proceedings, and that, lastly, no relevant evidence exists in respect of potential fears about the conduct of the proceedings or the continuation of the commission of the crime in the event of

release. Accordingly, the Defence submits that the conditions for the Applicant's continued detention are not met. Lastly, the Defence submits to the consideration of the Chamber the guarantees to appear which the Applicant proposes to provide to the Chamber in support of his application for release.

Main submission

3.1. The right of the Defence to be informed of the grounds that warranted the issuance of the warrant of arrest

13. Article 67(1)(a) which governs the rights of the accused applies to the entire proceedings and grants the person charged the right "*to be informed promptly and in detail of the nature, cause and content of the charge (...)*".
14. This is an elementary safeguard applicable prior to any deprivation of liberty as set forth, *inter alia*, in article 5(2) of the *European Convention on Human Rights*: everyone who is arrested should know why. This provision is an integral part of the scheme of protection afforded by article 5, which requires that any person arrested must be told, in simple language that he or she can understand, of the legal and factual grounds for being deprived of his or her liberty, so as to be able to challenge its lawfulness before a court under article 5(4). This information must be conveyed "promptly" (...).⁵
15. The Defence also refers to the findings of the European Court of Human Rights to the effect that a State may not invoke confidentiality concerns based, *inter alia*, on national security to justify depriving a person of the procedural justice

⁵ *Fox, Campbell and Hartley v. UK* (Application no. 12244/86; 12245/86; 12383/86), ECHR, 30 August 1990, para. 40; ECHR Judgment, *van der Leer*, 21 February 1990, series A no. 170, p. 13, § 28). <http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=FOX%20%7C%20%22THE%20UNITED%20KINGDOM%22&sessionid=5539318&skin=hudoc-en>.

required to challenge the lawfulness of his or her detention.⁶

16. Accordingly, and as its main submission, the Defence argues that the Applicant should be released immediately by reason of the breach of his right to be informed in detail of the reasons justifying the issuance of the warrant of arrest.

In the alternative

3.2. Detention is an exceptional measure subject to the principles of necessity and proportionality

17. The Defence relies on articles 55(1)(d), 58, 59 and 60 of the *Rome Statute*, which manifestly show that the Court wished to retain the principle of liberty, in accordance with respect for the principle of the presumption of innocence.⁷ The International Criminal Tribunal for the former Yugoslavia, which makes detention the rule – as does the International Criminal Tribunal for Rwanda – has nevertheless established a practice favouring interim pre-trial release.⁸
18. The Defence notes that this is consistent with the law applicable before the Court as provided in article 21(2) of the Statute. Indeed, the application and interpretation of the law before your Court must be consistent with

⁶ *Al-Nashif v. Bulgaria* (Application no. 50963/99) Judgment 20 June 2002, at paras. 94-98.

<http://www.bghelsinki.org/upload/resources/al-nashif-eng.doc>.

See also the UN Report of the Special Rapporteur on the Question of the Human Rights of All Persons Subjected to Any Form of Detention or Imprisonment (Columbia), paras. 70 and 71, which implicitly criticises the use of anonymous witnesses in detention orders. E/CN.4/1998/39/Add.2, 30 March 1998.

<http://www.unhchr.ch/Huridocda/Huridoca.nsf/TestFrame/e1b44569379d86b080256659005262b3?OpenDocument>, and *Al-Najjar v. Reno*, 97 F. Supp. 2d 1329, 1352-61 (S.D. Fla. 2000) dismissing a detention order against a person suspected of being a terrorist sympathiser, based on *ex parte*, hearsay evidence.

⁷ See also *Draft Statute for an International Criminal Court*, International Law Commission, 1996, article 11.

⁸ *Prosecutor v. Halilovic*, Order of the President on the Renewed Defence Motion Concerning Conditions of Detention During Trial, Case No. IT-01-48-PT, President of the Tribunal, 24 January 2005, para. 14; *Prosecutor v. Jokic*, Order on Miodrag Jokic's Motion for Provisional Release, Case No. IT-01-42-T, T. Ch. II, 20 February 2002, para. 18.

internationally recognised human rights.

19. This principle can thus be linked to various international instruments, such as article 9(3) of the *International Covenant on Civil and Political Rights*, which provides that “[i]t shall not be the general rule that persons awaiting trial shall be detained in custody”, as well as paragraph 6(1) of the *United Nations Standard Minimum Rules for Non-custodial Measures* and paragraph 39 of the *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment* which states that pre-trial detention shall be a means of last resort.⁹ Lastly, with respect to European law, this principle is recognised by article 6 of the *Charter of Fundamental Rights of the European Union*, and by articles 5(1) and 5(3) of the *European Convention on Human Rights*, which also provide that everyone detained during his or her trial “shall be entitled to trial within a reasonable time or to release pending trial”.
20. Moreover, deprivation of liberty must respect the principles of necessity and proportionality. A measure in international law is proportional only if it is suitable, necessary and when its degree and scope remain in a reasonable relationship to its envisaged target. Procedural measures should never be capricious or excessive. If it is sufficient to use a measure more lenient than arbitrary detention, it must be applied.¹⁰ Considering the factual elements set

⁹ *United Nations Standard Minimum Rules for Non-custodial Measures*, UN Off. Doc. AG A/RES/45/110 (14 Dec. 1990) (The Tokyo Rules), Annex, para. 6(1).

Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, UN Off. Doc. AG A/RES/43/173 (9 Dec. 1988) (“Principles on Detention”), Annex, principle 39.

¹⁰ *Prosecutor v. Prlic et al.*, *Order on Provisional Release of Berislav Pušić*, Case No. IT-04-74-PT, T. Ch. I, 30 July 2004, para. 15; *Prosecutor v. Limaj et al.*, *Decision on Fatmir Limaj’s Request for Provisional Release*, Case No. IT-03-66-AR65, Bench of the Appeals Chamber, 31 October 2003, para. 13; *Prosecutor v. Brdjanin and Talic*, *Decision on the Motion for Provisional Release of the Accused Momir Talic*, Case No. IT-99-36-T, T. Ch. II, 20 September 2002, para. 23; *Prosecutor v. Mrdja*, *Decision on Darko Mrdja’s Request for Provisional Release*, Case No. IT-02-59-PT, T. Ch. II, 15 April 2002, para. 31; *Prosecutor v. Blagojevic et al.*, *Decision on Request for Provisional Release of Accused Jokic*, Case No. IT-02-60-PT, T. Ch. II, 28 March 2002, para 18; *Prosecutor v. Hadžihasanovic et al.*, *Decision Granting Provisional Release to Enver Hadžihasanovic*, Case No. IT-01-47-PT, T. Ch. II, 19 December 2001, para. 8.

out above, the Defence maintains that the Applicant was available to respond to and appear before any judicial authority requesting him to do so without any obstruction. Accordingly, the Defence submits that it was sufficient to issue a simple summons to appear to the Applicant and that the Pre-Trial Chamber ought to have preferred such a course of action over the issuance of a warrant of arrest.

21. The Defence also notes that, unlike the procedure before the International Criminal Tribunal for the former Yugoslavia, which gives the judges sole discretion to grant or deny interim release, in the case of the International Criminal Court, under article 60(2) of the *Rome Statute*, the onus is on the Prosecutor to prove the need for detention. This is supported by the case law of the European Court of Human Rights.¹¹ Indeed, article 60(2) states that the Pre-Trial Chamber must be *satisfied* that the conditions set forth in article 58(1) are met in order to continue to maintain the person in detention. It is after the Prosecutor has established that the conditions are met in order to satisfy the Chamber of the need for such a measure that the Defence bears the onus to prove the contrary.
22. Lastly, the Defence calls the Chamber's attention to the fact that MATHIEU NGUDJOLO is married and a father of two children, and that his right to family life, as provided for under international standards, must be respected.¹²

3.3. The absence of a need to detain the Applicant

3.3.1. The condition requiring the appearance of the person charged before the International Criminal Court does not apply at the pre-trial phase

¹¹ See, *inter alia*, *Hutchinson Reid v. UK* – ECHR, 20 February 2003.

¹² Article 8 of the *European Convention on Human Rights*, article 17 of the *International Covenant on Civil and Political Rights*, United Nations General Assembly, 16 December 1966.

23. The Defence submits that the French version of article 58(1)(b), which provides that “(b) [...] *l’arrestation de cette personne apparaît nécessaire pour garantir : i) Que la personne comparaitra*”, is not applicable to the case at bar. In fact, article 63 of the Statute does provide that the suspect shall be present during his or her trial, a requirement which, by contrast, is not applicable at the pre-trial phase in light of rules 124, 125 and 126 of the *Rules of Procedure and Evidence*. This phase may be conducted in absentia. In fact, the English version expressly states that “(b) *the arrest of the person appears necessary: i) to ensure the person’s appearance at trial*.” The word “trial” must be given its full meaning, i.e., it does not include the pre-trial phase. This interpretation is in fact supported by some writers who state that “*The main reason to detain a suspect is to make sure that the trial can take place with the accused present.*”¹³
24. Accordingly, and in keeping with the principle of the presumption of innocence, it does not appear necessary to arrest the suspect and keep him in custody at this stage of the proceedings for the purpose of ensuring his appearance at his prospective trial.
24. Furthermore, in practice, in order to ensure the appearance of the charged person, the Pre-Trial Chamber may apply article 60(5) of the Statute, under which it may issue a warrant of arrest or a simple summons to appear, and may also require the Defence to provide a guarantee to appear. However, on the latter point, it should be noted that in *Dragan Jokic*, the Appeals Chamber of the International Criminal Tribunal for the former Yugoslavia pointed out that neither the provision of guarantees by a State or any other person for the purpose of securing the appearance of the accused at his trial nor the absence of threats, intimidation or endangerment of witnesses are a prerequisite for

¹³ *Commentary on the Rome Statute of the International Criminal Court*, Otto Triffterer, commentary on article 58(b)(i), p. 757.

securing his interim release.¹⁴

25. In addition, in the case of a warrant of arrest under seal, such as was the case for MATHIEU NGUDJOLO, the fact that the person charged failed to voluntarily surrender to the authorities cannot be grounds for a decision to place him in custody, considering that his warrant of arrest was *ex parte*.¹⁵

26. It should be further noted that, as repeatedly held by the Appeals Court of the International Criminal Tribunal for the former Yugoslavia, detention on remand cannot be justified solely on the basis of the seriousness of the crimes charged.¹⁶

3.3.2. *The condition that the person will not obstruct or endanger the investigation or the court proceedings has not been met*

27. The Defence submits that there is no relevant information to suggest that the charged person might, were his interim release to be ordered, obstruct or endanger the proceedings.

27. In fact, detention on remand cannot be predicated on unsubstantiated fears. The Defence submits that the reasons for detention must be exhaustive and

¹⁴ *Prosecutor v. Blagojevic et al.*, Decision on Application by Dragan Jokic for Leave to Appeal, IT-02-53-AR65, 18 April 2002, paras. 7-8, "There is no reference in Rule 65(B), or elsewhere in Rule 65, to an obligation upon the accused, as a prerequisite to obtaining provisional release, to provide guarantees from that State, or from anyone else, that he will appear for trial." See also, *Prosecutor v. Beqaj*, Order for Provisional Release, Case No. IT-03-66-R/77, 4 March 2005, p. 4.

¹⁵ *Prosecutor v. Sesay et al.*, Decision on Appeal Against Refusal of Bail, Case No. SCSL-04-15-AR65, App. Ch., 14 December 2004, para. 31; *Prosecutor v. Brdjanin and Talic*, Decision on Motions Radoslav Brdjanin for Provisional Release, Case No. IT-99-36-PT, T. Ch. II, 25 July 2000, para. 17.

¹⁶ *Prosecutor v. Stanišić*, Decision on Provisional Release, 28 July 2004, para. 22.
<http://www.un.org/icty/simatovic/trialc/decision-e/040728-2.htm>. *Prosecutor v. Delic*, Decision on Defence Request for Provisional Release, Case No. IT-04-83-PT, 6 May 2005, pp. 3-4; *Prosecutor v. Lazarevic*, Decision on Defence Request for Provisional Release, Case No. IT-03-70-PT, T. Ch. III, 14 April 2005, pp.2-3; *Prosecutor v. Simatovic*, Decision on Prosecution's Appeal against Decision Granting Provisional Release, Case No. IT-03-69-AR65.2, App. Ch., 3 December 2004, para. 15; *Prosecutor v. Stanišić*, Decision on Prosecution's Appeal against Decision Granting Provisional Release, Case No. IT-03-69-AR65.1, App. Ch., 3 December 2004, para.27.

interpreted strictly.¹⁷ The question of whether a person applying for release may endanger the proceedings cannot be gauged solely in the abstract; a specific danger must be identified.¹⁸

28. In this regard, the use of general factors such as the general security situation, the gravity of the crimes charged, the existence of contacts at the national or international level, or the fact that confidential information has been disclosed to the charged person¹⁹ cannot, on their own, justify the detention.
29. In fact, the International Criminal Tribunal for the former Yugoslavia has granted interim release to members of government or high-ranking military officers prosecuted for crimes of genocide, crimes against humanity and/or war crimes, even though the persons in question maintained some influence and numerous contacts at both the national and international levels.²⁰
30. The Trial Chamber of the International Criminal Tribunal for the former Yugoslavia pointed out in *Prlic et al.* that “even if the Accused continues to enjoy influence, it does not necessarily follow that he will exercise it unlawfully”.²¹
30. Such a determination was also made in *Mico Stanisic*, where it was held that the existence of contacts is not in itself proof that the person will use them and that

¹⁷ European Court of Human Rights, *Smirnova v. Russia*, Judgment of 24 July 2003, paras. 58 and 59; see also *McKay v. The United Kingdom*, Judgment of 3 October 2006, paras. 30 and 41, from the same court.

¹⁸ *Prosecutor v. Talic*, Decision on the Motion for Provisional Release, 20 September 2002.

<http://www.un.org/icty/brdjanin/trialc/decision-e/20155759.htm>

¹⁹ See, in particular, the decision on appeal in *Prosecutor v. Mico Stanisic*, 17 October 2005, para. 28.

<http://www.un.org/icty/stanisic/appeal/decision-e/051017.htm>.

²⁰ Decision on Ramush Haradinaj's Motion for Provisional Release, 7 June 2005. Trial Chamber III granted Momcilo Perisic's motion for provisional release, 9 June 2005; *Prosecutor v. Milutinovic*, Case No. IT-99-37-PT, Decision on Second Application for Provisional Release, 14 April 2005; *Prosecutor v. Ojdanic*, Case No. IT-99-37-PT, Decision on General Ojdanic's Fourth Application for Provisional Release, 14 April 2005; *Prosecutor v. Sainovic*, Case No. IT-99-37-PT, Decision on Third Defence Request for Provisional Release, 14 April 2005, *Prosecutor v. Talic*, Case No. IT-99-36-1, Decision on the Motion for Provisional Release, 20 September 2002.

²¹ *Prosecutor v. Prlic et al.*, Case No. IT-04-74-PT, Order on Provisional Release of Jadranko Prlic (“Prlic Trial Chamber Decision”), 30 July 2004, para. 28.

accordingly, it could not serve as a basis for a decision to deny interim release.²²

31. The Defence also submits that the reasons for the detention must be exhaustive and be interpreted strictly, and that the Prosecution must provide concrete evidence to suggest that the charged person could obstruct or endanger the proceedings, and, in particular, of the fears that witnesses could be intimidated if the person is released. The Defence submits, as implicitly required in *Simatovic*,²³ that providing such proof involves a high threshold.

3.3.3. *The existence of fears regarding the continued commission of crimes within the jurisdiction of the Court has not been established*

32. The Defence submits that there is no relevant information to suggest that the person charged could, if his interim release were ordered, continue to commit crimes within the jurisdiction of the Court.
33. The Defence maintains that the reasons justifying detention must be exhaustive and interpreted strictly and that the Prosecution must provide concrete proof of such fears.
34. The Defence points out, on the one hand, that MATHIEU NGUDJOLO is a member of the *Forces Armées de la République Démocratique du Congo* undergoing training in Kinshasa, and that there is no information to suggest that he will continue to commit crimes within the jurisdiction of the Court. Furthermore, the Defence is not requesting to be released in the territory of the Democratic Republic of the Congo. In fact, if the Applicant were granted interim release, he would wish to reside in one of the following three countries: Belgium, France or England. As to the issue of the host country, in light of the procedural

²² <http://www.un.org/icty/stanasic/appeal/decision-e/051017.htm>

²³ In *Simatovic*, provisional release was granted in the absence of credible proof of intimidation of Prosecution witnesses by the accused. <http://www.un.org/icty/simatovic/trialc/decision-e/040728-2.htm>

complexity, the Defence respectfully submits that it is for the Registry to conduct the necessary negotiations with potential host States.

35. Accordingly, the Defence submits, in the alternative, that the conditions justifying continued detention set out in article 58(1) of the Statute have not been met, and that the Applicant should therefore be released.

4 - Guarantees that may be provided by the Applicant in support of his application for interim release

36. The Defence respectfully informs the Chamber that MATHIEU NGODJOLO is willing to comply with any conditions that may be imposed by the Chamber in regard to his interim release.
37. MATHIEU NGUDJOLO is willing to comply with any decision by the Chamber ordering him to appear before it in connection with the proceedings instituted against him and states that he will not obstruct such proceedings. The Applicant did not put up any resistance during his arrest by the authorities of the Democratic Republic of the Congo or during his transfer to the International Criminal Court. The Pre-Trial Chamber may be certain that if he were to be released, he would appear for trial.
38. If the Applicant were released pending his trial, he would not object to desisting from any activity in his capacity as a member of the *Forces Armées de la République Démocratique du Congo*.²⁴

²⁴ The Pre-Trial Chamber may be guided by the *Ramush Haradinaj* case before the International Criminal Tribunal for the former Yugoslavia. The Trial Chamber of the Tribunal for the former Yugoslavia granted the person concerned, who was the former Prime Minister of Kosovo, interim release, *inter alia*, on the condition that he “will not be allowed to make any public appearance or in any way get involved in any public political activity”. *Decision on Ramush Haradinaj’s Motion for Provisional Release*, 6 June 2005, para. 53(5). <http://www.un.org/icty/haradinaj/trialc/decision-e/050606.htm>.

39. MATHIEU NGUDJOLO would, if his application for interim release were granted by the Chamber, wish to reside in one of the following three countries: Belgium, France or England. These three countries are close to the Netherlands and this, in the Applicant's view, would reassure the Chamber concerning his appearance in court as promptly as possible.
40. MATHIEU NGUDJOLO would not object to providing the Chamber with any travel document in his possession and to obtaining a valid open return ticket from the host country to the Netherlands.
41. MATHIEU NGUDJOLO would also not object to the imposition of a fixed residential address and to compliance with any order requiring him to report to the national authorities of the host country at regular intervals.²⁵
42. MATHIEU NGUDJOLO points out that he has never attempted to threaten or intimidate any of the persons involved in the judicial proceedings instituted against him, either at the national level or before the Court.
43. MATHIEU NGUDJOLO further submits that the confirmation hearing will not be held until May 2008 and may well be postponed for various reasons, and that this argues for his interim release in the meantime.

For these reasons

44. Respectfully requests Pre-Trial Chamber I:

²⁵ The Pre-Trial Chamber may be guided by the practice at the Tribunal for the former Yugoslavia in the *Momir Talic* case, in which the indictee was granted interim release and restricted to residence in Belgrade, which was far from the place initially applied for (Banja Luka in Bosnia-Herzegovina, where his family was located), which fell within part of the territory covered by the indictment. *Prosecutor v. Talic, Decision on the Motion for Provisional Release of the Accused Momir Talic*, 20 September 2002. <http://www.un.org/icty/brdjanin/trialc/decision-e/20155759.htm>.

- i. to grant interim release to the Applicant;
- ii. to designate a host country for him from the three listed below:
 1. Belgium
 2. France
 3. England
- iii. to impose on him any other conditions that the Court may deem appropriate.

AND JUSTICE WILL BE DONE

/signed/

Mr Jean-Pierre Kilenda Kakengi Basila
Duty Counsel

Dated this 13 February 2008
Brussels, Belgium