

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 9 January 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 requesting observations on the “Requête de mise en liberté”
submitted by the Defence for Jean-Jacques Mangenda Kabongo**

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

Florence Darques Lane

Counsel for Jean-Pierre Bemba Gombo

Nicholas Kaufman

Counsel for Aimé Kilolo Musamba

Jean-Pierre Kilenda Kakengi Basila

Counsel for Jean-Jacques Mangenda Kabongo

Jean Flamme

Counsel for Fidèle Babala Wandu

Prof Jean-Pierre Fofé Djofia Malewa

Legal Representatives of Victims

Legal Representatives of Applicants

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

REGISTRY

Registrar

Herman von Hebel

Detention Section

I, Judge Cuno Tarfusser, having been designated ¹ as Single Judge of Pre-Trial Chamber II (“Chamber”) of the International Criminal Court;

NOTING the “Warrant of arrest for Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse Arido” issued on 20 November 2013² ;

NOTING the “Requête de mise en liberté” dated 8 January 2014 (“Mr Mangenda’s Defence Application”)³, whereby the Defence for Mr Mangenda, *inter alia*, submits that:

- I) the Warrant of arrest is null and void, on the grounds that
 - a. “le ‘narratif’ des «faits»” in the Warrant “se limite à ‘constater’ un «projet criminel» à la tête duquel se trouverait Monsieur Jean-Pierre BEMBA” and the Warrant refers “d’une manière générale à des éléments de preuve”;⁴
 - b. the Single Judge partially based his decision on the reports of an Independent Counsel, whose independence is questionable, “qui ne dispose d’aucun mandat légal ni judiciaire”⁵, and whose appointment occurred on the basis of a procedure not provided for in the Statute;
- II) the requirements for Mr Mangenda’s arrest set under article 58 of the Statute were not, or are no longer, met;

¹ ICC-01/05-45-Conf-Exp.

² ICC-01/05-01/13-1-Red2-tENG.

³ ICC-01/05-01/13-71.

⁴ ICC-01/05-01/13-71, p. 5.

⁵ ICC-01/05-01/13-71, p. 8.

NOTING that, accordingly, the Defence for Mr Mangenda's requests that the Single Judge order "la mise en liberté immédiate" or "la mise en liberté provisoire, éventuellement en y associant les conditions que le Juge unique jugera opportuns [sic]";

NOTING that the Defence for Mr Mangenda further requests the Single Judge to order the Registry (i) "de demander à l'administration pénitentiaire l'inventaire des sommes déposées par le requérant à l'intention de Monsieur Jean-Pierre BEMBA" and (ii) "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";⁶

NOTING Mr Mangenda's Defence request for a hearing⁷, pursuant to rule 118(3) of the Rules of Procedure and Evidence;

NOTING article 60(2) of the Statute, rule 118 of the Rules of Procedure and Evidence and regulation 51 of the Regulations of the Court;

NOTING, in particular, that regulation 51 provides that "for the purposes of a decision on interim release, the Pre-Trial Chamber shall seek observations from the host State and from the State to which the person seeks to be released";

CONSIDERING that, accordingly, no decision on the request for interim release can be taken prior to having received said observations;

CONSIDERING that it is also appropriate to postpone the decision on the Defence request for a hearing after said observations will have been submitted;

CONSIDERING, as regards the request that the Single Judge order the Registrar to provide "l'inventaire des sommes déposées par le requérant à l'intention de

⁶ ICC-01/05-01/13-71, p. 24.

⁷ ICC-01/05-01/13-71, p. 23.

Monsieur Jean-Pierre BEMBA", as well as details on Mr Mangenda's missions in the context of the main case, that they both appear to be instrumental to the determination of issues pertaining to the merit of the case, rather than to the determination that the conditions set forth in paragraph 58(1) of the Statute are met, and, as such, fall beyond the scope of a request for interim release;

CONSIDERING that it is nevertheless appropriate to highlight that the Defence submission to the effect that "la requête du Procureur, tel que constaté par le Juge unique lui-même, ne contient ni lieu, ni dates des prétendus délits"⁸ is obviously incorrect, since abundant and precise circumstances of time, place and fact are included in the Prosecutor's Application for the Warrant (to which the Defence for Mr Mangenda has had access since at least 5 December 2013)⁹, and the Warrant only contains a warning to the effect that it would have been preferable for the Prosecutor to include those specific references of place and time in the counts;

NOTING that Mr Mangenda requests either to be released to the United Kingdom, where his family resides, or to two alternative addresses in the Netherlands;¹⁰

FOR THESE REASONS, THE SINGLE JUDGE HEREBY

DECIDES that the Prosecutor, the relevant authorities of the Kingdom of the Netherlands and the relevant authorities of the United Kingdom shall submit their views on Mr Mangenda's Defence Application no later than **Friday 24 January 2014**;

⁸ ICC-01/05-01/13-71, p. 13.

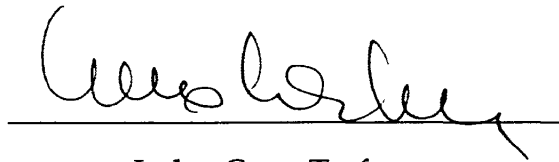
⁹ ICC-01/05-01/13-T-3-Red-ENG, p. 19.

¹⁰ ICC-01/05-01/13-71, p. 24.

DECIDES to postpone the determination of the Defence's request for a hearing until after the views of the Kingdom of the Netherlands and the United Kingdom will have been submitted;

DISMISSES all other requests made in Mr Mangenda's Defence Application.

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

A handwritten signature in black ink, appearing to read 'Cuno Tarfusser', is written over a horizontal line.

Judge Cuno Tarfusser
Single Judge

Dated this Thursday, 9 January 2014

The Hague, The Netherlands