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

Date: **8 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 Document

Application for release

Source: Counsel for the Defence of Jean-Jacques Mangenda Kabongo

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

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1. Background

1. Mr Jean-Jacques Mangenda Kabongo was arrested in The Hague by the Dutch authorities on 23 November 2013 at the request of the International Criminal Court, in execution of the 20 November 2013 warrant of arrest specifically.

He was transferred to the detention centre in Scheveningen on 3 December 2013 and the Single Judge held a first appearance hearing on 5 December 2013.

2. Merits

2.1 Main submission: unlawfulness and nullity of the 20 November 2013 warrant of arrest; unlawful detention; immediate release

3. Article 58(3)(c) of the Rome Statute mandates that the warrant of arrest contain *inter alia* “[a] **concise statement of the facts which are alleged to constitute those crimes**”.

In respect of a request for provisional arrest, article 92(2)(b) of the same Statute prescribes a statement of the facts alleged to constitute those crimes, “including, where possible, the date and location of the crime”.

The Prosecutor has not established that it was impossible for her to specify the locations and dates of the alleged crimes.

The condition accords with article 6(3) of the European Convention on Human Rights (ECHR):

Everyone charged with a criminal offence has the following minimum rights:

(a) to be informed promptly, in a language which he understands and **in detail**, of the nature and cause of the accusation against him;

Hence the “facts” **cannot be stated in vague terms**. The suspect must be privy to the “facts” to which the charges pertain for the purposes of his defence. This corresponds to “**in detail**” in the European Convention Human Rights.

3. This does not hold true for the warrant for the Applicant’s arrest.

The warrant **contains only charges**, not facts. The “narrative” of the “facts” is confined to restating the charges:

- Presentation and filing of false or forged documents (which documents?);

- “Coaching” (how?) of “witnesses” (whom?) to give “false” testimony;
- “Money transfers” (in what amounts?) to “several” Defence witnesses (to whom and when?).

The “narrative” merely ‘notes’ a “criminal scheme”, allegedly headed by Mr Jean-Pierre Bemba.

As regards the Applicant, the Single Judge states himself to be “satisfied” that there are reasonable grounds to believe that he assists Jean-Pierre Bemba and Aimé Kilolo in the furtherance of the criminal scheme since he “frequently” “appears to receive” money transfers via Western Union, particularly when Defence witnesses appear in court, because he “works” very closely with Mr Aimé Kilolo in respect of the coaching of witnesses and the devising of instructions to be issued to them; and he takes part in “certain” privileged conference calls with Jean-Pierre Bemba and Fidèle Babala.

4. Such a nebulous “narrative” precludes discernment of the “facts” referred to in article 58(3)(c).

No mention is made of any date, location, precise amount or specific witness.

What is more, in the 20 November 2013 warrant of arrest the Single Judge was compelled to note the “**the lack of concision**” which “marks the Application” and the “decision to articulate the counts **in generic terms**”.¹

The Single Judge’s remark that “a statement of the **necessary** temporal and geographic circumstances in which the crimes were allegedly committed would have been preferable, even at this early juncture” is contradictory in that “necessary” statements cannot be “preferable”.

As such, the warrant of arrest is **contradictory** in that it enumerates the essential conditions which the statement of the facts must satisfy, yet countenances its absence.

¹ ICC-01/05-01/13-1-Red2-tENG, para. 11.

The statement of the facts is a formal and substantive condition for a warrant of arrest which, furthermore, affects a suspect's fundamental rights (see *supra*). Failure to meet such conditions cannot be concealed by the evidence, of which the Applicant, in any event, remains unapprised.

Yet, this is what the Single Judge does, as explained below.

It is apparent that after over one month of detention, the Applicant is not in a position to ascertain the factual basis for his detention and is therefore unable to mount his defence.

A warrant of arrest must set out the factual circumstances on which it rests.²

5. In issuing the warrant of arrest, the Judge cannot refer to evidentiary material to compensate for the absence of the relevant particulars, since this is a formal (and substantive) requirement. However, this is what the Single Judge does.³

Indeed the Single Judge considers himself "... able to navigate the body of evidence tendered by the Prosecutor, relying also on Independent Counsel's work"⁴ and proceeds with general references to the evidence and the work of independent counsel, which purportedly "support[s]" the Prosecutor's claims.⁵

A general reference to evidence cannot cure the aforementioned nullity of the warrant of arrest. From such reference, it is further apparent that the Prosecutor ought to be able to set out the facts in detail ("objective [...] information and details") but did not. From this is clear, all the more so, that the warrant of arrest is unlawful and null.

² Chris Van den Wyngaert, *Strafrecht en strafprocesrecht in hoofdlijnen*, Maklu, p. 1089.

³ ICC-01/05-01/13-1-Red2-tENG, pp. 8, 9, 16.

⁴ ICC-01/05-01/13-1-Red2-tENG, para. 11.

⁵ "Numerous, objective, specific and detailed items of evidence were tendered in relation to each category of alleged conduct or each person whose arrest the Prosecutor seeks. The majority of material evidence appended to the Application consists of tables summarising money transfers effected through international services, particularly Western Union and Express Union, telephone call records, transcripts, translations and summaries of recorded communications, text messages ("SMS"), witness statements and e-mails. Furthermore, Independent Counsel, too, has furnished a wealth of material to support the Prosecutor's claims. In short, the record contains at this stage a considerable and indeed quite remarkable quantity of items of evidence which furnish objective and incriminating information and details pertaining directly and specifically to the Prosecutor's factual allegations." ICC-01/05-01/13-1-Red2-tENG, para. 12.

6. It is null in a further respect.

The Single Judge makes several references to the work of “**Independent Counsel**” to support his being his satisfied as regards the issuance of the warrant of arrest.

Accordingly, it appears that “Independent Counsel” is performing **investigative work** in parallel with the Prosecutor.

However, no instrument provides for the intervention of any “independent counsel”. The regime of the Rome Statute vests powers of investigation solely in the Court’s Prosecutor, who is duty-bound to investigate incriminating and exonerating circumstances equally.⁶

The Prosecutor cannot delegate her powers to any other entity whatsoever.

The Applicant never consented to the intervention of any such “independent counsel”, of whose identity, mission, powers and qualifications he is unapprised.

Moreover, no such procedure concerning this matter exists. Hence we know not the rules which bind such “Independent Counsel” in discharge of his “mission”, which, too, remains unknown.

The Defence must therefore point out that the warrant of arrest is at least partially (see *supra*) based on the investigations of a person who has no legal or judicial mandate.

The right to liberty is the rule and no one shall be deprived of his liberty save in accordance with a procedure prescribed by law.^{7 8}

It emerges therefrom that it is not for the judiciary to create extrajudicial organs which may investigate with a view to the arrest of a person.

In that regard, the warrant of arrest, with its explicit and categorical references to reports by an “independent counsel” is therefore unlawful and null.

⁶ Article 54 of the Rome Statute.

⁷ Article 5 of the European Convention on Human Rights and Fundamental Freedoms.

⁸ Article 9 of the International Covenant on Civil and Political Rights.

Criminal law is of **mandatory application** and subject to **strict construction**: it cannot be “supplemented” by the bench.

7. The mission of “Independent Counsel” most probably incorporates also some aspects of professional ethics of counsel, particularly concerning confidentiality.

“Counsel” cannot be considered “independent”, given his appointment by the Court itself.

In his decision to appoint him, the Single Judge clearly attempted to counterbalance a fundamental flaw in the regime of the Court: the lack of an independent bar association, as envisioned by the United Nations Principles on the Role of Lawyers (Havana, 1990) which mandate the establishment of an independent bar association of courts and tribunals.

The *raison d’être* of the Basic Principles is thus: “**professional associations of lawyers have a vital role to play in upholding professional standards and ethics, protecting their members from persecution and improper restrictions and infringements**”.⁹

These same principles are reflected in the Charter of Core Principles of the European Legal Profession, specifically at Principles (a) and (j):

Principle (a) – the independence of the lawyer, and the freedom of the lawyer to pursue the client’s case:

The lawyer’s membership of a liberal profession and the authority deriving from that membership helps to maintain independence, and bar associations must play an important role in helping to guarantee lawyers’ independence. **Self-regulation** of the profession is seen as **vital** in buttressing the independence of the individual lawyer. It is notable that in unfree societies lawyers are prevented from pursuing their clients’ cases, and may suffer imprisonment or death for attempting to do so.

Principle (j) – the self-regulation of the legal profession:

It is one of the hallmarks of unfree societies that the state, either overtly or covertly, controls the legal profession and the activities of lawyers. Most European legal professions display a combination of state regulation and self-regulation. In many cases the state, recognising the importance of the core principles, uses legislation to **buttress them** – for instance by giving statutory support to confidentiality, **or by giving bar associations statutory power to make professional rules**. The CCBE is convinced that **only a strong element of self-regulation can guarantee lawyers’ professional independence vis-à-vis**

⁹ United Nations, Basic Principles on the Role of Lawyers, Havana 1990.

the state, and without a guarantee of independence it is impossible for lawyers to fulfil their professional and legal role.

Accordingly, the conclusion is that there is a global consensus on such core principles, which must shield lawyers' independence from the State.

In March 2010, the Presidency commented on the lack of an independent bar association and mechanisms for seeking advice on matters of professional ethics, even enjoining the Registry to explore the possibility of establishing such mechanisms.

It remains the case that the ICC regime, where practice of the legal profession is regulated exclusively by the Registry, and hence the Court, breaches such principles and lawyers do not enjoy the independence which is paramount to the practice of their profession.

The Applicant is a member of the Kinshasa Bar and as he practices in Europe, he falls within the core principles of the CCBE.

8. Thus the Single Judge appointed a counsel to undertake work which normally is the preserve and duty of an independent bar association, elected by its members for the purpose of overseeing, *inter alia*, exclusively professional conduct, particularly in matters of confidentiality, another core principle set out at paragraph (b) of the Principles.

Insofar as a counsel was appointed by the Court in a procedure, which, moreover, was marked by *secrecy*, such person can certainly not be described as "independent". The "procedure" followed, not contemplated by the texts, does not therefore meet the conditions which the aforecited Principles prescribe.

9. That the Single Judge is "satisfied", the Defence must further point out, probably owes much to the monitoring of telephone conversations between the client and lawyers. The Defence questions the lawfulness of such monitoring, which is antithetical to every precept of confidentiality. It reserves the right to examine the

motions and decisions which found such monitoring and of which it remains unapprised.

10. The warrant of arrest is null, entailing unlawfulness of the Applicant's pre-trial detention.

The sole remedy thereto is **release of the Applicant**.^{10 11}

The Applicant has the inalienable right to review by a court of the lawfulness of his arrest and detention.¹²

Where found unlawful, the court must order release.¹³

2.2 In the alternative: the conditions of pre-trial detention; application for release

2.2.1 The conditions for issuance of the warrant of arrest were not met

11. Article 66(1) of the Statute upholds the fundamental principle that "[e]veryone shall be presumed innocent until proved guilty before the Court in accordance with the applicable law."

It follows that until a final determination on guilt has been handed down, the judicial authorities must respect the person's fundamental rights.

One such right is the right to liberty:

"Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law."¹⁴

This principle is entwined with the presumption of innocence.

¹⁰ Christophe Paulussen, *"Male captus bene detentus? Surrendering suspects to the International Criminal Court"*, Intersentia, Antwerp, Oxford, Portland, 2010, p. 160.

¹¹ Article 9 (4) of the International Covenant on Civil and Political Rights: "Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his **release** if the detention is not lawful".

¹² C. Paulussen, *op. cit.*, p. 161 and references cited therein.

¹³ C. Paulussen, *op. cit.*, p. 161 and references cited therein.

¹⁴ International Covenant on Civil and Political Rights, New York, 19 December 1996, article 9.

Thus, **detention**, specifically **pre-trial detention**, must be the **exception**.

The right to appear at liberty before a court therefore constitutes a fundamental right.

12. Articles 58 and 60 of the Rome Statute, considered together, make clear that the conditions laid down by article 58 for the arrest and pre-trial detention of a suspect must be met for the duration of such detention.

The Defence will consider hereunder whether the conditions were and are met, which nonetheless presupposes that the arrest was lawful, which it was not (*see supra*).

2.2.1.1. Reasonable grounds to believe that the Applicant committed a crime

13. The Defence notes in this regard that the warrant of arrest errs by misappraisal. Said warrant specifically reads:

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

14. In this respect, it must be recalled that the Applicant is alleged to “frequently [...] receive” money transfers, described as essentially continuous and therefore not solely or mainly coinciding with the appearance of witnesses in court. Hence, the transfer of money *per se* in no way proves the accusation brought by the Prosecutor. At no point does the warrant of arrest mention any proof whatsoever of the Applicant transferring such sums to witnesses, in all likelihood in The Hague – the Prosecutor’s application, the Judge notes, fails to specify the locations or dates of the crimes alleged (*see supra*) – on a date unspecified.

15. Further, it must be recalled or pointed out that the sums received by the Applicant in his capacity as Case Manager were on every occasion transferred to the detention centre administration in Scheveningen for payment to Mr Jean-Pierre Bemba’s account to cover his needs in prison. The Prosecutor, who is, nonetheless duty-bound to investigate incriminating and exonerating circumstances equally, therefore failed to request that the detention centre administration list the amounts

deposited by the Applicant from 2011 until 2013. The Prosecutor thereby misled the Single Judge, who manifestly was not informed of the purpose of the money, impelling the conclusion that the existence of money transfers *per se* to the Applicant in no way proves the particularly serious count of corruptly influencing witnesses.

Furthermore the question arises as to how it would have been possible to corruptly influence witnesses with an account which the detention centre administration manages.

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

16. That this ground is stated in such nebulous terms astounds the Defence.

That the Applicant worked “closely” with Mr Kilolo, his supervisor in Mr Jean-Pierre Bemba’s Defence team, is self-evident.

It is worth recalling that the Applicant was the team’s Case Manager, and as such, performed the role of **executor**, taking instructions from Lead Counsel, Mr Kilolo, and Co-Counsel, Mr Haynes.

Attention must also be drawn to the fact that the litigation strategy was, as is appropriate, determined by those two persons, and not the Applicant, who had no part in the interviews with witnesses, and therefore could not have influenced them in any way.

Lead Counsel, Co-Counsel and the Legal Assistant, Ms Kate Gibson, but not the Applicant, travelled to meet the witnesses.

The Registry of the Court is very well aware that the Applicant took part in only two trips: to Cameroon and the CAR (see visas) and strictly for the purpose of the “hand-over” of witnesses. On that occasion, he had no personal contact with any of the witnesses. The Defence requests that the Registry be ordered to provide further information in this regard.

Since the warrant of arrest does not spell out his purported role in “coaching” witnesses “to provide false testimony”, it is impossible to fathom how an executor such as the Applicant could have “influenc[ed]” witness, let alone ascertain the alleged means he employed to do so.

Coaching would perforce have taken place in The Hague, which the warrant of arrest fails to state, despite the crucial importance of such information.

17. As to the first count – “presenting evidence that the party knows is false or forged” by aiding, abetting or otherwise assisting therewith – the Defence must note that the warrant of arrest makes no mention of any “fact”, adverting to nothing more than a charge. For this reason the warrant is null.

In this respect, the Defence would point out that the discussion on the purported “forgery” of a certain number of exhibits, which mainly come from one witness, was pending before the Chamber and that no decision had hitherto been taken on this issue critical to the “second level” instituted artificially by the Prosecutor.

It is striking that the challenge raised against the lack of authenticity of the exhibits concerned was first and foremost written by Co-Counsel, Mr Peter Haynes, who had also cross-examined the witness in question on the matter. Said witness then confirmed the content of his or her written statements, thereby contradicting in factual terms the purported “lack of authenticity”. The problem nonetheless lay in the witness’s self-incrimination in writing.

In any event, the Applicant’s role in this issue was purely “passive”, as befits a case manager, who merely introduces documents given by counsel into the system.

The Defence must note that it is, to say the least, bizarre to cast the Case Manager as an accomplice to the purported “forgery” of documents **coming from a witness**, whereas those who went on mission to interview the witness and wrote the submissions concerning the exhibits’ apparent lack of authenticity raised by the Prosecutor, Mr Haynes and Ms Gibson, have not been pursued.

Further, where an issue at bar has been not adjudged, the Defence cannot countenance the Prosecutor's "pre-emptive action" by bringing criminal charges and thereby "forcing the hand" of the Chamber, which has yet to dispose of this delicate matter.

Manifestly, the ensuing risk is that the Chamber may no longer be able to adjudicate the matter objectively.

(iii) He takes part in certain privileged conference calls with Jean-Pierre Bemba and Fidèle Babala.

18. Participation, if any, by the Applicant in telephone conversations is not in and of itself "suspicious". Yet the Single Judge couches his ground in such terms.

That he does so is astonishing as telephone conversations are sometimes an unavoidable (although, as is now the case, an increasingly less secure) means of communication between a defence team and client.

Equally noteworthy is the reference in the warrant of arrest to "*privileged*" as being incriminating.

Their privileged nature is, however, a **legal obligation** which binds the defence team in its entirety and cannot be viewed as "suspicious", since it is mandatory.

Ultimately, the warrant of arrest does not specify any "reasonable grounds" to allow the Applicant to duly mount his defence.

As matters now stand, it cannot be claimed that the purported "grounds" exist. A statement that the Judge is "satisfied" does not suffice: it must be grounded.

The Applicant repeats: he did not "assist" anyone in any "criminal scheme".

2.2.1.2 Condition of necessity for the arrest

(a) to ensure the person's appearance

19. The warrant of arrest claims that the Applicant possesses “identity documents” which entitle him to travel freely “not only throughout the Schengen area, but also to non-States parties to [the] Statute”.

Even if that were the case prior to arrest, and only in respect of the Schengen area, it no longer holds true.

Not only does the Registry have custody of the Applicant's sole residence permit – the MFA card issued by the Ministry of Foreign Affairs of the Netherlands, which is the only valid document connected to his passport, enabling him to move freely in the Schengen area – but it also has his passport, such that he can no longer travel, not even to visit his family, consisting of his wife and two infant children, in the United Kingdom.

It must also be noted that the visa for Cameroon obtained by the Registry expired several months ago.

It is therefore incorrect to claim that the Applicant could travel to non-States Parties, as the warrant of arrest so states.

The fact is that since his arrest, the Applicant has been unable to leave the Netherlands as a result of the Registry's seizure of the documents.

Hence, pre-trial detention is no longer necessary, assuming that it ever had been, which is not so.

20. The same holds true for the accusation that the Applicant “[is]” part of a “network” which could provide him with the financial resources to “abscond the jurisdiction of the Court”.

As argued above, membership of a “network” is unestablished. The funds which the Applicant received were done so entirely legally and he has accounted for their equally legal use. To establish the truth, he requested on 9 December 2013 the detention centre administration to list and disclose the money deposited with it.

It replied by letter of 11 December 2013 that it was necessary for the Defence to request the Registry to this effect.

The Defence hereby invites the Registry to do the necessary to this end.

Moreover, it is submitted as a final alternative that the existence of any such “network” would not allow the Applicant to leave the country without travel documents.

21. The Applicant is a member of the Kinshasa Bar and as such has dedicated his career to justice and the International Criminal Court in particular, where he has worked continuously since the time of the arrest of the first person to stand accused, Mr Thomas Lubanga Dyilo, in 2006.

His professional integrity is beyond reproach and court proceedings have never been brought against him. He dearly wishes his professional integrity to remain untarnished.¹⁵

Hence, it is inconceivable that the Applicant would not appear at proceedings brought against him, when from the outset he has claimed his innocence.

Reference in the warrant of arrest to the “possibility” of the Applicant’s absconding from justice disregards this fact.

Thus, the Applicant finds it regrettable that Prosecutor, who is very well acquainted with him, was not content to simply issue the summons to appear contemplated in article 58(7) of the Rome Statute.

22. In the alternative, it is submitted that the warrant of arrest mentions only a “possibility” of the Applicant’s absconding from justice.

Such possibility, which disregards the Applicant’s personality, is insufficient in law to meet the condition of **necessity** of an arrest to ensure the Applicant’s appearance.

Appraisal of the condition of necessity entails an element of prognosis and hence conjecture, admittedly.

Yet such “conjecture” must respond to specific and verifiable criteria concerning essentially the “means and motivation”.¹⁶

As regards the “**means**”, the Applicant has already stated categorically: they are non-existent. The Movant’s sole source of income was his earnings from the International Criminal Court – clearly insufficient to arrange an “absconsion”. Further still, the whereabouts of that income remains unclear. It would be expedient to enjoin the Registry to state its position on the matter.

It is also certain that the Applicant will not, as the Prosecutor postulates, receive any external “assistance”, since the assets of Mr Jean-Pierre Bemba Gombo and Fidèle Babala Wandu were frozen after issuance of the warrant of arrest.

It must be further underscored that the Applicant’s bank account and bank cards were also seized.

In addition, it must be considered that the Applicant is a lawyer, not a politician, and as such is isolated, with no “network” to potentially “take [him] in” or offer him any “succour” whatsoever.

As to the “**motivation**”, the Applicant was equally categorical: he has every interest in seeing all suspicion cast on him in this matter dispelled and therefore in defending himself. The future of his career lies at stake.

Therefore there can be no such “motivation” to abscond justice and the jurisdiction of the Court.

In any event, the warrant of arrest makes no mention of any motivation and is therefore in this sense ill-grounded.

23. Attention must also be drawn to the following. The Applicant’s travel in the Schengen area, almost exclusively to the United Kingdom, where his wife and two infant children live, can, under no circumstances, were it still possible, constitute an attempt at “absconding” for the simple reason that all the States concerned are States

¹⁶ ICC-01/04-01/10-283 OA.

Parties and duty-bound to cooperate with the Court: the particularly prompt arrests so attest.

His family's presence in Europe is precisely a guarantee of his prompt appearance when called.

(b) To ensure that the person does not obstruct or endanger the investigation or the court proceedings

24. What holds true for the first condition applies to the statement of the ground concerning this criterion. The Defence therefore refers to the foregoing.

It is expedient here to also underscore the Prosecutor's statement at the 5 December 2013 status conference that the investigation was almost complete.

Reference must also be had to the seizures at the Applicant's home and his offices at the court.

With the content of telephone conversations between lawyers and within the Defence team now before the Court in the ongoing case of *The Prosecutor v. Bemba*, it is difficult to see how the Applicant could – supposing that he so desired, which is not so – endanger court proceedings which have virtually reached an end.

In any event, the warrant of arrest makes no such allegation and is therefore insufficiently grounded as regards this condition.

(c) Where applicable, to prevent the person from continuing with the commission of that crime or a related crime which is within the jurisdiction of the Court and which arises out of the same circumstances

25. The Applicant must reiterate that no crime was committed to his knowledge.

The warrant of arrest mentions that "in all likelihood" the crimes continue to date.

The ground thus stated astonishes.

The Defence must note that the main trial was coming to a close and that all the Defence witnesses had been heard. The last witness finished giving evidence on 22 November 2013, shortly before the Applicant's arrest.

The Prosecutor's "timing" in this case is therefore most astounding.

Of further note is that the Pre-Trial Chamber lifted the restrictions, in clear contradiction with a scenario of continuing criminality.

Further still, continuation of the main trial seems unfeasible, whilst the current proceedings brought by the Prosecutor have not been disposed of in their entirety.

Indeed, how can a trial proceed in which the validity of certain evidence is the subject of other proceedings?

It must be further underscored that by virtue of his arrest, the Applicant is, at least *de facto*, no longer part of Mr J.P. Bemba's Defence team. How, then could he "continue" to "influence" witnesses, assuming that some remain to be heard, which is not so.

It is therefore clear that there is no risk of continuation of the crimes in question, had they been established, which is not the case.

26. Accordingly, the Defence maintains that the conditions prescribed by article 58 for a person's arrest were not met at the time of his arrest on account of its lack of necessity.

The Applicant therefore has no hesitation in requesting his immediate release.

2.2.2. In the final alternative: application for interim release

27. The Defence submits that, at the very least, the mandatory conditions for continued pre-trial detention, as set forth in article 58 of the Rome Statute, are **no longer** met (see *supra*).

In this sense, article 60(2) of the Statute ordains interim release of a suspect.

The Defence contends that in the Applicant's case, additional reasons argue for such release.

The Applicant is the father of two infant children, little boys who need him to be around, particularly since his wife is expecting a third child in the spring.

The Applicant's young family has a pressing need for his presence and help. The disproportionate pre-trial detention measure puts much pressure on that young family, both emotionally and financially.

2.2.3. Request for a hearing (rule 118(3))

28. The Defence requests that a hearing be held in accordance with rule 118(3).

In matters of pre-trial detention, a hearing is the absolute rule and rule 118(3) mandates an annual hearing.

It follows that a hearing must also be held at the very least at the outset of pre-trial detention, when the weighty matters of validity and lawfulness first and foremost arise. It is inconceivable that the first hearing on arrest and pre-trial detention be held one year after the suspect's arrest, particularly since the arrest itself raises discrete and very specific issues which must be canvassed there and then and not one year down the line.

The hearing, further, safeguards the immediacy of adversariality and allows parties to orally expound their written submissions, which may be incomplete, particularly following replies from the other party, often within a very short timeframe.

The proceedings engaging the parties are most demanding in terms of time pressure and are at different stages. This is particularly so in that Defence Counsel is acting alone, the Registry having provisionally refused to provide any legal or computing assistance, which Counsel has challenged.

Hence it is quite possible that Defence Counsel has overlooked certain important aspects.

The hearing would be an opportunity for him to remedy such oversights, if any. Thus the Defence must press for a hearing to be held.

FOR THESE REASONS,

MAY IT PLEASE THE SINGLE JUDGE TO

Order the immediate release of the suspect, Jean-Jacques Mangenda Kabongo.

In the alternative, order the interim release of said suspect, attaching thereto any conditions which the Single Judge considers expedient.

Take formal note that the Applicant proposes to stay in the United Kingdom, at 25 Radcliffe Street, Manchester, with his family, and in the alternative, in the Netherlands, at his official address, that is Troelstraat 218, Delft with a member of his family or at Diamanthorst, 47, The Hague with a friend, his place of residence until the time of his arrest.

Order the Registry to request the detention centre administration to list the sums deposited by the Applicant for Mr Jean-Pierre Bemba.

Order the Registry to clarify the circumstances of the Applicant's two trips to Cameroon and the Central African Republic, as regards the type of mission and schedule.

Order a hearing in accordance with rule 118(3).

[signed]

**Jean Flamme, Counsel for the Defence
of
Jean-Jacques Mangenda Kabongo**

Dated this 7 January 2014
At Ghent, Belgium

Annex A conf: birth certificates

Annex B: conf: proof of pregnancy