Cour
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International
Criminal
Court

Original: **English**

No.: **ICC-01-05/01/13**
Date: **21 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, AIME KILOLO MUSAMBA, JEAN-JACQUES MANGENDA KABONGO, FIDELE BABALA WANDU AND NARCISSE ARIDO***

**Public Redacted document**

**Public redacted version of the Prosecution Response to the «Demande de mise en liberté provisoire de Maître Aimé Kilolo Musamba » of 16 December 2013 and its Addendum of 7 January 2014 (ICC-01/05-01/13-42 and ICC-01/05-01/13-69)**

**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 Aimé Kilolo Musamba's ("Kilolo") request for provisional release in its entirety ("Request").[1] The Request advances no cogent reasons why provisional release should be granted. The same reasons that warranted Kilolo's arrest justify his continued detention, pursuant to Articles 60(2) and 58(1) of the Rome Statute ("Statute"). Further, the circumstances of this case readily establish a clear and substantial risk that Kilolo will neither appear for trial nor abide by any terms and conditions of release the Chamber may consider.

2. Briefly, the nature of the crimes for which Kilolo has been arrested—offences against the administration of justice—underscores why provisional release here is wholly inappropriate. Kilolo's principal role in the scheme dedicated to corrupting witnesses in presenting a false and contrived Defence case as lead counsel in *Prosecutor v. Jean-Pierre Bemba Gombo* ("*Bemba* case"), should remove any doubt about the propriety of his detention pending trial.

3. As a member of the Brussels Bar, and having been admitted to practice before this Court, Kilolo's alleged conduct additionally flaunts his professional and ethical responsibilities. Kilolo's principal involvement in the witness corruption scheme reflects his utter contempt not only for the integrity of proceedings before this Court, but also for its authority. By corrupting witnesses and falsifying evidence throughout the defence case in *Bemba*, Kilolo's actions were manifestly aimed at defeating the

[1] ICC-01/05-01/13-42, Demande de mise en liberté provisoire de maître Aimé Kilolo Musamba, 16 December 2013, and the Addendum ICC-01/05-01/13-69, Addendum à la demande de mise en liberté provisoire de maître Aimé Kilolo Musamba introduite le 16 décembre 2013 (ICC-01/05-01/13-42), 7 January 2014. For the ease of reference, the Prosecution will throughout this Response refer to these two submissions jointly as "Request".

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.

4. There is no doubt that Kilolo 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 arrested concerning the *Bemba* case, where he ostensibly had no such interest.

5. As explained below, there are reasonable grounds to believe that, if released, Kilolo 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 of the Statute to secure his interests in this case. For these reasons, the Request should be denied and Kilolo 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, the "Suspects") for alleged offences against the administration of justice pursuant to Article 70 of the Statute.[2]

7. The Single Judge issued a warrant of arrest for the Suspects on 20 November,[3]

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[2] 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.
[3] 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.

pursuant to which Kilolo was arrested in Brussels on 23 November. He was transferred to the Court's Detention Center on 25 November.

8. On 16 December, Kilolo filed his Request,[4] upon which the Single Judge initially ordered the Prosecutor and the relevant authorities of the Kingdom of Belgium and of the Netherlands to submit their views by 3 January 2014.[5] The Chamber subsequently extended the deadline to 13 January.[6]

9. On 7 January, Kilolo submitted an Addendum to his Request.[7]

## III. Confidentiality

10. 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

11. The Request advances no compelling reasons for Kilolo's interim release in the circumstances. To the contrary, the conditions underpinning the necessity for his continued detention as provided in Articles 58 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

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[4] ICC-01/05-01/13-42.
[5] ICC-01/05-01/13-46, Decisions requesting observations on the "Demande de mise en liberté provisoire de Maître Aimé Kilolo Musamba", 17 December 2013.
[6] ICC-01/05-01/13-60, Decision granting an extension of time for submitting observations on the "Demande de mise en liberté provisoire de Maître Aimé Kilolo Musamba", 20 December 2013.
[7] ICC-01/05-01/13-69.

provisional release of Fidèle Babala.[8]

12. The Request selectively relies 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.[9] However, the Request ignores two important and salient facts in this case: (1) both the Statute and the Court's jurisprudence establish specific conditions that, when satisfied, require a suspect's detention[10]; and (2) there is ample evidence in this case establishing that these conditions have been, and continue to be, met.

13. Kilolo's arrest was based on evidence clearly satisfying Article 58(1)(a) and (b). The Single Judge properly determined that there existed reasonable grounds to believe that Kilolo had committed crimes against the administration of justice pursuant to Article 70, specifically that Kilolo:

i. made payments to Defence witnesses with funds made available by the Accused [Bemba];
ii. attempted to tender into the record of the *Bemba* case at least 14 documents which he knew to be false or forged;
iii. contacted several Defence witnesses, immediately before or after their appearance before the Trial Chamber, and, in some instances, during recesses between two phases of their in-court testimony; and
iv. during such contact, he explained to the witnesses which questions would be put to them and the responses they should give in court.[11]

[8] ICC-01/05-01/13-67-Conf, 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), 3 January 2014, paras. 9-10, 12, 14, 16, 19, 32, 38-39.
[9] ICC-01/05-01/13-42, paras. 45-49.
[10] See Article 60(2) (noting, if the conditions of Article 58(1) are satisfied, the suspect "shall continue to be detained.") [emphasis added].
[11] See ICC-01/05-01/13-1-Red2-tENG, para. 16. *See* also ICC-01/05-67-Conf, esp. paras. 9-10, 12-16, 23-24, 45-52.

14. The Single Judge also found reasonable grounds to believe that, in the *Bemba* case, Kilolo was one of the main implementers of 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).[12]

15. When issuing the warrant of arrest against the Suspects, the Single Judge was satisfied that their arrests were necessary for all three purposes under Article 58(1)(b).[13] The Single Judge specifically noted the "numerous, objective, specific and detailed items of evidence" concerning the Suspects' alleged criminal conduct, amounting to a "considerable and indeed quite a remarkable quantity of items of evidence which furnish objective and incriminating information and details pertaining directly and specifically to the Prosecutor's factual allegations."[14]

## A. Kilolo's continued detention is required under the Statute

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

*a. Kilolo is likely to abscond if released from detention*

16. Kilolo is unlikely to appear for trial voluntarily if released. He has an objective and compelling personal interest in avoiding justice in this case. *First*, Kilolo's personal liberty is at stake and he faces a serious sentence, if convicted. *Second*, because the evidence against him is strong, direct and compelling, there is a

[12] ICC-01/05-01/13-1-Red2-tENG, para. 13.
[13] ICC-01/05-01/13-1-Red2-tENG, paras. 21-23.
[14] ICC-01/05-01/13-1-Red2-tENG, para. 12. See ICC-01/05-67-Conf and corresponding annexes.

substantial likelihood of conviction. *Third*, Kilolo has demonstrated his propensity to subvert the course of justice in the *Bemba* case, and is likely to do so here.

i. Kilolo faces a serious sentence, if convicted

17. *First*, in characterising the prescribed sanctions for an Article 70 offence as "*au maximum*" a fine and five years' imprisonment, the Request implies that the nature of the alleged offences are not serious enough to justify Kilolo's continued detention.[15] However, the Request ignores the fact that Kilolo's conduct comprises numerous discrete violations of Article 70, and that the Statute prescribes a penalty of up to five years imprisonment for each such crime.

18. 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,[16] to reflect the extent of the culpability of a given accused.[17] In determining a sentence the Statute requires a Trial Chamber to take into account a number of factors, such as the gravity of the crime and the individual circumstances of the convicted person.[18] A Chamber may consider additional factors, including the extent of the damage caused, the degree of the participation of the convicted person, the degree of his intent to commit such crime[19] and the abuse of his official capacity when doing so[20].

19. When examining the extent of Kilolo's culpability, a Trial Chamber will consider Kilolo's abuse of his position as counsel before this Court to corrupt Defence witnesses in the *Bemba* case. In fact, had the scheme been successful, the impact on

[15] ICC-01/05-01/13-42, para. 22.
[16] See Article 78(3).
[17] See Rule 145(1)(a).
[18] See Article 78(1).
[19] See Rule 145(1)(c).
[20] See Rule 145(2)(b)(ii).

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.

20. 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 many national jurisdictions a five-year sentence is attributed to serious offences.[21] Thus, the comparative argument set out in the Request is of no relevance.[22] Further, the prospect of a suspect being sentenced to a term of imprisonment makes the risk of flight greater.

ii. Kilolo is likely to be convicted given the strength of the evidence against him

20. *Second*, the evidence against Kilolo, of which he is now aware, is compelling and likely to result in a conviction. As such, he is all the more likely to flee from justice.

21. Kilolo received at least [REDACTED].[23] He personally disbursed at least

[21] 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].

[22] See ICC-01/05-01/13-42, para. 22, when comparing Kilolo's situation with that of Kenyatta and Ruto, accused of crimes against humanity before the Court: « ….*n'est rien comparable avec le requérant qui, si les faits venaient à être établis, encourrait une amende ou une peine d'emprisoment de cinq ans* au maximum.» [emphasis added].

[23] [REDACTED].

[REDACTED].[24] Together with Bemba, Kilolo conspired to circumvent the Registry's monitoring system, allowing Bemba to give instructions to third parties regarding the bribery scheme, including, *inter alia*, Babala, and to influence witnesses directly[25] through the privileged telephone line.[26]

22. Finally, both the call data records (CDR) and the reports of the Independent Counsel reflect Kilolo's repeated contact with Defence witnesses while they were already under the care of the Victims and Witnesses Unit. These contacts occurred immediately prior to, and during their testimony.[27] For example, Kilolo spoke with [REDACTED] immediately preceding and during the witness's testimony. He provided the witness with specific details on how to testify and what to say, in particular with respect to dates, names of locations, identity of persons and their respective positions.[28] Strikingly, in one recorded conversation, Kilolo stated:

> [REDACTED][29]

23. [REDACTED] testified precisely to this coached evidence.[30]

24. In light of the well-substantiated and direct evidence of Kilolo's involvement in the criminal scheme, the letters supplied by colleagues and neighbours who know little or nothing of the facts surrounding the case to establish his allegedly "good character", are no more than empty words.[31]

25. Kilolo systematically abused his role as counsel in the *Bemba* case in shirking his

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[24] [REDACTED].
[25] [REDACTED].
[26] Kilolo also knowingly presented false documents in the case. *See* paras. 13 above and 27 below.
[27] [REDACTED].
[28] [REDACTED].
[29] [REDACTED].
[30] [REDACTED].
[31] *Ibid*., paras. 19-20, Annexes 1-5; ICC-01/05-01/13-69, paras. 5-6, Annexes 19-20.

professional and ethical responsibilities to defraud the Court. As Kilolo 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.

iii. Kilolo's demonstrated contempt for the administration of justice is extant

26. Kilolo demonstrated his contempt for the administration of justice before this Court in the Bemba case. His principal role in the criminal scheme to corrupt witnesses[32] is evidenced by his involvement in the systematic and persistent corruption of Defence witnesses through bribery and manipulation to provide perjured testimony, and in presenting documentary evidence he knew to be false.[33] Significantly, all of these acts reflect Kilolo's dishonesty. Unlike Article 5 offences generally, the Article 70 offences with which Kilolo is charged relate to the commission of a fraud upon the Court itself. As such, they bear directly upon this Chamber's assessment of Kilolo's trustworthiness in assessing whether a risk exists that he would evade justice if released, or would abide by any attendant terms and conditions. On the evidence of the crimes alleged and Kilolo's role in them, it is clear the risk is substantial.

27. The potential of the offences with which Kilolo is charged to have undermined the Court's mandate in adjudicating the crimes under Article 5 of the Statute crimes with which Bemba is charged, is a factor for the Chamber's consideration. Effectively, Kilolo's conduct assisted Bemba's attempt to evade justice. The fact that the Request does not consider such acts as serious, only further evidences Kilolo's continued lack of respect for the integrity of the Court and its processes — which should be

[32] [REDACTED].
[33] [REDACTED].

considered when assessing Kilolo's propensity to abide by the direction of the Chamber and his propensity to abscond.

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

*b. Kilolo has the means to abscond if released from detention*

29. 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.[34]

30. The Request contends that Kilolo is not a flight risk. The Defence argue that he is not likely to travel since: (a) he has handed over his Belgian passport to the Registry;[35] (b) he has family in Belgium[36] and residences in Belgium and the Netherlands;[37] (c) he has no financial means to support his flight, partly because he is no longer Bemba's chief counsel.[38] However, these arguments are not dispositive, persuasive, or comprise "new" facts since the arrest warrant's issuance. Kilolo handed his passport over to the Registry after undertaking to do so through his Request on 16 December.[39] Clearly, this gesture was calculated to bolster his chances of success in relation to his Request. However, objectively Kilolo can still travel throughout the Schengen region without his passport.[40] Further, given his established connections with Bemba's wider support network, the surrender of his passport in reality makes no difference in assessing his risk of flight.

[34] ICC-02/11-01/11-278-Red (OA), para. 56.
[35] ICC-01/05-01/13-69, para. 8.
[36] ICC-01/05-01/13-42, para. 50.
[37] *Ibid.*, para. 38.
[38] *Ibid.*, paras. 35-37.
[39] *Ibid.*, para. 69.
[40] See below para. 29.

31. Similarly, the fact that Kilolo is no longer Bemba's lead counsel,[41] or allegedly has no "personal" ties with him,[42] does not nullify his previous ties with Bemba and the international contacts comprising his support network. During his two years as counsel in the *Bemba* case, Kilolo maintained ties with [REDACTED] and Babala. Each has provided illicit funds to Kilolo on Bemba's orders.[43] It is likely that either they or others in Bemba's network of supporters may continue to provide Kilolo with funds to enable him to flee and avoid arrest. Further, such funds could also be used to falsify travel documents. The Chamber should bear in mind that the falsification of official documents is alleged among the charges against Kilolo in this case.

32. Based on the above, Kilolo likely has access to substantial funds even if his personal accounts and that of Bemba and Babala have been frozen.[44] The fact that there exists a *possibility* – let alone a strong likelihood – that Kilolo has access to the financial means to abscond is sufficient to reject his application.[45]

33. As noted, if released, Kilolo can travel undetected within the Schengen area of the European Union.[46] In reality there are no restrictions on movements within that area."[47] 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

[41] ICC-01/05-01/13-42, paras. 27-33.
[42] *Ibid.*, para. 37.
[43] [REDACTED].
[44] ICC-01/05-01/13-42, paras. 35-36.
[45] 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").
[46] 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*.
[47] ICC-01/04-01/10-163, para. 57.

parties.[48] Kilolo could possibly travel even outside of the Schengen area, especially if aided by the Bemba support network.

iv. Kilolo's promises of cooperation and personal guarantees are insufficient

34. Kilolo's personal undertakings[49] are insufficient to mitigate the risks arising under Article 58(1)(b). Personal guarantees cannot be determinative in assessing provisional release; in the *Bemba* case the Defence advanced a list of personal guarantees, which the Pre-Trial Chamber "consider[ed]," but ultimately did not use in its determination on interim release.[50] Nor does his representation that he would stay in Belgium with his family[51] provide any additional assurance against his flight.

35. Kilolo's apparent present willingness to cooperate with the Prosecution is conveniently timed. While he claims to wonder why the Prosecution has not yet interviewed him,[52] the Request fails to mention that he expressly declined to be interviewed on 25 November 2013, in the presence of his lawyers (including current Defence Counsel), the Prosecution Senior Trial Lawyer and the Belgian *juge d'instruction*.[53] Further, Kilolo failed to respond to the Prosecution's 1 and 6 December inquiries regarding his amenability to be interviewed. His ostensible willingness to be interviewed was communicated to the Prosecution for the first time on 9 January 2014, during the pendency of his Request.[54]

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[48] ICC-01/05-01/13-42, para. 40.

[49] *Ibid.*, paras. 65-69.

[50] ICC-01/05-01/08-475, para. 82; see also ICC-01/05-01/08-631-Red (OA 2), para. 10; ICC-01/05-01/08-321, para. 37; ICC-01/05-01/08-403, para. 50; and ICC-02/11-01/11-180-Red, para. 55.

[51] This is seemingly contradicted by his own statement that he would continue residing in his second residence in The Hague. See ICC-01/05-01/13-42, para. 38.

[52] ICC-01/05-01/13-42, paras. 21-22.

[53] [REDACTED].

[54] On 9 January 2014, Defence Counsel for the first time indicated to the Prosecution that Kilolo was willing to be interviewed.

36. An "analysis of all relevant factors taken together"[55] shows that Kilolo 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 Kilolo does not obstruct or endanger the investigation or the Court proceedings</u>

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

38. In order to disrupt the continuation of crimes, the Single Judge reasonably determined that the Suspect's arrests were necessary to prevent them from further obstructing or endangering the investigation or the trial, and so that the commission of the crime does not continue.[56] If released, there is absolutely no reason to believe that Kilolo would refrain from the conduct which resulted in his arrest, particularly as his personal interests, including his liberty are now directly at stake.

39. While the possibility for Kilolo 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.[57] Admittedly, as former lead counsel in the *Bemba* case, Kilolo 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

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[55] ICC-01/05-01/08-323 (OA), para. 55.
[56] ICC-01/05-01/13-1-Red2-tENG, para. 23.
[57] 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.

against him.

40. Notably in *Gbagbo*, the Appeals Chamber confirmed that the disclosure of evidence to a suspect "amplified" the risk to the investigation and the proceedings in case of release, noting that "[d]isclosure enhances the detainee's knowledge of the Prosecutor's investigation. Therefore, under article 58(1)(b)(ii) of the Statute it may be a relevant factor."[58]

41. Whether the Prosecution's investigations are almost completed or not is irrelevant for the analysis of Kilolo's continued detention.[59] As long as there is a single investigative activity left to conduct, or a single witness left to interview, the risk of corruption and interference with the investigation remains. Kilolo 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.

42. Kilolo'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, the fact that the Single Judge lifted restrictions on Kilolo'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 that each Suspect be arrested, based on the compelling evidence of culpability before him. That evidence is at least as compelling now as it was when the Suspects were arrested, if not more so.

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[58] ICC-02/11-01/11-278-Red, para. 65.

[59] ICC-01/05-01/13-42, para. 44. The Defence incorrectly asserts the date of the Status Conference was 27 November. The Status Conference in question that took place before Trial Chamber III was on 28 November. See ICC-01/05-01/08-T-359-ENG ET, p. 7.

43. For these reasons, it is necessary Kilolo should remain in custody since he has a strong and direct motive and means to interfere with the investigations and proceedings before this Court.

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

44. Kilolo has the ability and the means to commit crimes and influence the Prosecution's on-going investigation, particularly given his proximity to Bemba's supporters' network.[60] The Prosecution need not establish exactly what crimes Kilolo may commit. The Appeals Chamber has held that, "[t]he reason for detention under article 58(1)(b)(iii) of the Statute is the risk that further crimes may be committed – therefore the issue is future crimes, which by their nature cannot be specified in detail."[61] The Appeals Chamber has confirmed that the Chamber may take into account the nature of the crimes with which a suspect has been already charged in its determination.[62] The potential crimes that Kilolo could commit in the context of this investigation can be anticipated, nonetheless, given the nature of the crimes for which he has been arrested.

45. As the Appeals Chamber confirms, "it is not an unreasonable prediction that phone calls or e-mails may be used to continue to contribute to the commission of crimes."[63] Given the evidence in this case, it is clear that even the restrictions and limited facilities available in the Detention Centre will not necessarily impede a large-scale scheme to bribe and corrupt witnesses.[64]

[60] See above paras. 30-31.
[61] ICC-02/11-01/11-278-Red (OA), para. 70 [original emphasis].
[62] ICC-02/11-01/11-278-Red (OA), para. 70.
[63] ICC-01/04-01/10-283 (OA), para. 60.
[64] ICC-01/05-67-Conf.

46. During the past two years, Kilolo has allegedly presented false evidence and corrupted witnesses and presented them to Trial Chamber III as reliable sources.[65] His committed, sustained and blatant violations of the Article 70 show his ability and willingness to act in complete disregard of his professional responsibilities to this Court, and in violation of the law, both of which strongly militate against his release.

## V. Relief Requested

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

Fatou Bensouda,
Prosecutor

Dated this 21st day of January 2014

At The Hague, The Netherlands

[65] [REDACTED].