

ANNEX IV



Le Greffe
The Registry

Reference: NV/2014/3404/AB

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The Registry of the International Criminal Court presents its compliments to the Central Authority for Judicial Cooperation with the International Criminal Courts and has the honour to notify, for forwarding to the competent authorities, the *Decision requesting observations from States for the purposes of the review of the detention of the suspects pursuant to regulation 51 of the regulations of the Court* (ICC-01/05-01/13-683) of 26 September 2014 in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse Arido*

The aforementioned Chamber decision invites the competent authorities of the Kingdom of Belgium to submit their observations on the possible conditional release of Mr Jean-Jacques Mangenda and Mr Aimé Kilolo Musamba to Belgian territory and their ability to enforce the conditions restricting liberty listed in rule 119(1) of the Rules of Procedure and Evidence and regulation 51 of the Regulations of the Court, no later than Friday, 10 October 2014.

The Belgian authorities were also invited to specify in their observations, the level of classification to be applied and the justification for it.

Should they have any questions in relation to this matter or require further information, the Belgian authorities are invited to contact [REDACTED] by e-mail at [REDACTED] or by telephone on [REDACTED]

The Registry of the International Criminal Court avails itself of this opportunity to renew to the Central Authority for Judicial Cooperation with the International Criminal Courts the assurances of its highest consideration.

[signed] [stamped]

The Hague, 2 October 2014

The Central Authority for Judicial Cooperation with the International Criminal Courts

Kingdom of Belgium

**Cour
Pénale
Internationale**

**International
Criminal
Court**



RECORD OF NOTIFICATION

Record of notification

Title	Dated	Registration Number
Note verbale (<i>The Prosecutor v. Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse Arido</i>)	2 October 2014	NV/2014/3404/AB
<i>Decision requesting observations from States for the purposes of the review of the detention of the suspects pursuant to regulation 51 of the Regulations of the Court</i>	26 September 2014	ICC-01/05-01/13-683
<i>Décision invitant des États à présenter des observations aux fins du réexamen de la détention des suspects en application de la norme 51 du Règlement de la Cour</i>	29 September 2014	ICC-01/05-01/03-683-tFRA

Address of recipient:

Address: Direction Générale de la Législation, des Libertés et Droits fondamentaux
Direction du Droit pénale
Coordination Belgian Task Force ICC-ICT
115 boulevard de Waterloo, 10000 Brussels, Kingdom of Belgium

To be completed by the person responsible for notification

I, the undersigned _____ on 02/10/2014 at: _____

At: _____

Have notified the above-mentioned documents to the aforementioned recipient.

Comments:

This record of notification was prepared by:

First name(s) and surname: _____

Function/Title: _____

Signature: [signed]

Signature of recipient: _____

[signed]

Official Court Translation

**Federal Public Service
Justice**

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1000 Brussels
Tel. +32 2 542 65 11
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info@just.fgov.be**

CONTACT:

TEL.:

FAX:

E-MAIL:

ADDRESS: 115 boulevard de Waterloo, 1000 Brussels

DATE: 3 October 2014

OUR REF. WL35/ICT/135-28 and ICT-140-
02/5220/GD/2014/76

COPY

Directorate-General for Legislation and
Fundamental Rights and Freedoms
Department of Criminal Law
International Humanitarian Law Service
*Belgian Task Force for International Criminal
Justice*

**International Criminal Court
Attn: Mr Herman von Hebel, Registrar
Maanweg, 174
2516 AB The Hague
The Netherlands**

YOUR REF.

NV/2014/3404/AB

**Subject: Request for judicial cooperation
International Criminal Court
The case of *The Prosecutor v. Jean-Pierre Bemba, Aimé Kilolo Musamba, Jean-Jacques
Mangenda Kabongo, Fidèle Babala Wandu and Narcisse Arido*
Request to Belgium for an opinion in respect of an application for provisional release**

Dear Sir,

Pursuant to article 2 (4th dash) and article 5 of the Law of 29 March 2004 on cooperation with the International Criminal Court and International Criminal Tribunals, article 60 of the Rome Statute, rule 119(3) of the Rules of Procedure and Evidence and regulation 51 of the Regulations of the Court, I have the honour to acknowledge receipt of your request for judicial cooperation contained in the note verbale of 2 October 2014 transmitting the 26 September 2014 *Decision requesting observations from States for the purposes of the review of the detention of the suspects pursuant to regulation 51 of the Regulations of the Court*.

The Belgian authorities note the Court's invitation to submit their observations on the applications of Mr Jean-Jacques Mangenda and Mr Aimé Kilolo Musamba no later than Friday, 10 October 2014.

However, in order to draft a detailed response to the Court's request, a large number of services at both federal and local level involved in assessing and preparing a response to the request must be consulted.

The Central Authority is unable, within the five working day deadline set by the Court, to organise the aforementioned consultations and transmit coordinated observations concerning the applications for provisional release made by the parties concerned.

Accordingly, the Central Authority respectfully requests the Court, through you, to grant it an **extension of time until 31 October 2014 to consider the request** so that it may respond as comprehensively as possible.

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To ensure optimal follow-up of this request, the Belgian authorities respectfully request the Court, through you, to inform them of its response to the request made herein by close of business on Tuesday, 7 October 2014.

I look forward to the Court's decision and remain yours sincerely,

ON BEHALF OF THE KINGDOM OF BELGIUM

For the Central Authority:

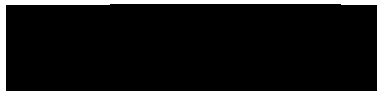
[signed]

A black rectangular box redacting the signature of the Head of the Central Authority.

Head, Central Authority

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E MAIL

ADDRESS: 115 boulevard de Waterloo, 1000 Brussels

DATE: 9 October 2014

OUR REF. WL35/ICT/135-28 and ICT-140-
02/5220/JdH/2014/327

COPY

Directorate-General for Legislation and
Fundamental Rights and Freedoms
Department of Criminal Law
International Humanitarian Law Service
Coordination de la Belgian Task Force ICC-ICT

International Criminal Court
Attn: Mr Herman von Hebel, Registrar
Maanweg, 174
2516 AB The Hague
The Netherlands

YOUR REF.

NV/2014/3404/AB

Subject: **Request for judicial cooperation**
International Criminal Court

The case of The Prosecutor v. Jean-Pierre Bemba, Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse Arido

Request to Belgium concerning an application for the provisional release of Mr Aimé Kilolo Musamba and Mr Jean-Jacques Mangenda Kabongo

Dear Sir,

Pursuant to article 2, (4th dash) and article 5 of the Law of 29 March 2004 on cooperation with the International Criminal Court and the International Criminal Tribunals, article 60 of the Rome Statute, rule 119(3) of the Rules of Procedure and Evidence, regulation 51 of the Regulations of the Court, and the agreement concluded by the exchange of letters of 2 and 8 April 2014 between Belgium and the Court in relation to interim release, I have the honour to refer to your request for observations contained in the *note verbale* of **2 October 2014** transmitting the 26 September 2014 *Decision requesting observations from States for the purposes of the review of the detention of the suspects pursuant to regulation 51 of the Regulations of the Court*. I also have the honour to acknowledge receipt of your note verbale of **8 October last** in connection with this case, whereby the Court's Registry informed the Belgian authorities that "[TRANSLATION] the Single Judge is not in a position to grant the extension of time" requested by Belgium in which to transmit the requested observations.

The Central Authority would first like to express its surprise at the Single Judge's decision to refuse to grant an extension of time to consider the request. The decision requesting Belgium's observations was dated Friday, 26 September 2014, but was not communicated to Belgium until Thursday, 2 October at 5.40 p.m. As a result, the ten working day deadline granted to Belgium by the Single Judge was effectively reduced to six working days. The Central Authority was, within that timeframe, supposed to consider the request, liaise with all the authorities concerned, draft coordinated observations and transmit them to the Court.

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However, in similar previous requests requiring a detailed response from the Belgian authorities, which they have always provided, the Court has always granted the Central Authority at least 15 days in which to prepare and transmit its observations.

Furthermore, while the Central Authority understands the importance of the fundamental rights of the accused at stake as a result of the request, it is crucial that the requested authorities be granted a reasonable time in which to respond meaningfully to such a request, given the importance of the rights at stake.

The Central Authority is particularly surprised since Belgium has systematically demonstrated its readiness to cooperate closely with the Court as regards this kind of request, which involves voluntary cooperation. That readiness has been demonstrated both by the submission of detailed observations whenever so requested by the Court and by conclusion of the aforementioned enhanced cooperation agreement. It is further demonstrated by the fact that recently, in concluding their observations regarding such a request, the Belgian authorities raised no objection in principle to the Court's potential choice of the Kingdom of Belgium as the place of execution of a decision on interim release, were the Court to grant the Defence's application.

Lastly, the Central Authority notes that the Single Judge's request is based on the applications for release made by Mr Aimé Kilolo Musamba (ICC-01/05-01/13-42; ICC-01/05-01/13-528-Conf-Exp) and Mr Jean-Jacques Mangenda Kabongo (ICC-01/05-01/13-523-Conf), in respect of which Belgium provided detailed observations on 23 July 2014 (transmitted in our letter referenced WL35/ICT-135-25 and ICT-140-01-5220/AV/2014/063). Since the Central Authority was able to consider the request within the time granted, those observations remain valid having regard to the fact that the circumstances remain unchanged.

To conclude, the Central Authority once again transmits to the Court its observations of 23 July 2014 in response to the applications for release made to the Court by Mr Kilolo Musamba and Mr Mangenda Kabongo, and reiterates its suggestion to the Court that it participate in a hearing in closed session allowing for a more in-depth discussion of the conditions that might be imposed on the interim release of either of the parties concerned, were the Court to decide to release them. It also confirms its agreement for this letter and the aforementioned observations to be made public.

Yours sincerely,

ON BEHALF OF THE KINGDOM OF BELGIUM

For the Central Authority:



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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***

**DECISION REQUESTING THE KINGDOM OF BELGIUM TO PROVIDE ITS VIEWS FOR THE
PURPOSES OF THE REVIEW OF Aimé KILOLO MUSAMBA'S AND Jean-Jacques MANGENDA'S
DETENTION PURSUANT TO ARTICLE 60(3) OF THE STATUTE
of 4 July 2014**

***OBSERVATIONS OF THE KINGDOM OF BELGIUM ON THE PERIODIC REVIEW OF THE
DETENTION of Aimé KILOLO MUSAMBA
23 July 2014***

Noting articles 21, 58(1), 60(3) and 67(1) of the Rome Statute, rules 118, 119 and 185 of the Rules of Procedure and Evidence, and regulation 51 of the Regulations of the Court;

Noting the declaration made by the Kingdom of Belgium pursuant to article 87(1) of the Rome Statute (hereinafter referred to as "the Statute"), stipulating that "the Kingdom of Belgium declares that the Ministry of Justice is the authority competent to receive requests for cooperation";

Noting the declaration made by the Kingdom of Belgium pursuant to article 87(2) of the Statute stipulating that "the Kingdom of Belgium declares that requests by the Court for cooperation and any documents supporting the request shall be in an official language of the Kingdom";

Noting Article 2, indent 4, and Article 5 of the Belgian Law on Cooperation with the International Criminal Court and International Criminal Tribunals of 29 March 2004, designating the International Humanitarian Law Section (Ministry of Justice) as the Belgian Central Authority for Judicial Cooperation with the International Criminal Court;

Noting the decision of the Presidency of the International Criminal Court, dated 19 March 2009, assigning the situation in the Central African Republic to Pre-Trial Chamber II of the International Criminal Court;

Noting the arrest warrant issued under seal on 20 November 2013 by the Single Judge designated by Pre-Trial Chamber II of the International Criminal Court in the case against Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse Arido;

Noting the charges in that decision against Aimé Kilolo Musamba, namely:

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- i. Presenting evidence that the party knows is false or forged (Charge 1), within the meaning of article 70(1)(b) of the Statute, read with article 25(3)(a), by presenting false or forged documents to the Court in the Case; and
- ii. Corruptly influencing witnesses, within the meaning of article 70(1)(c) of the Statute, read with article 25(3)(a), by bribing witnesses and coaching them to provide false testimony in the Case;

Noting that on 23 November 2013 the Belgian authorities executed the said arrest warrant for Aimé Kilolo Musamba;

Noting that on 25 November 2013 Aimé Kilolo Musamba was surrendered to the International Criminal Court, at the seat of the Court;

Noting that on 27 November 2013 Aimé Kilolo Musamba made his first appearance before the Single Judge of Pre-Trial Chamber II;

Noting the application for interim release filed by the Defence for Aimé Kilolo Musamba on 16 December 2013, pursuant to article 60 of the Statute; the Single Judge's decision of 17 December 2013 requesting Belgium to file its observations; Belgium's observations dated 10 January 2014; and the Single Judge's decision rejecting the Defence's application, rendered on 14 March 2014 and confirmed on appeal on 11 July 2014;

Noting the "Order requesting observations for the purposes of the periodic review of the state of detention of Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo and Fidèle Babala Wandu pursuant to rule 118(2) of the Rules of Procedure and Evidence" rendered by the Single Judge on 13 June 2014;

Noting the "Defence Observations on the Continued Detention of Aimé Kilolo Musamba" dated 30 June 2014 and communicated to the Central Authority in French in a *note verbale* by the Registry on 11 July 2014, in which the Defence requests the organisation of a "status conference" [sic] with, in particular, the Belgian authorities "as regards the practical questions and conditions associated with ... conditional release".

Noting the Single Judge's Decision of 4 July 2014 requesting the Kingdom of Belgium to provide its views no later than Friday 25 July for the purposes of the review of Aimé Kilolo Musamba's and Jean-Jacques Mangenda's detention pursuant to article 60(3) of the Statute, communicated to the Central Authority in French in a *note verbale* from the Registry on 11 July 2014;

On behalf of the Kingdom of Belgium, the Belgian Central Authority for Judicial Cooperation with the International Criminal Court hereby makes the following observations, bearing in mind the arguments set out by the Defence of Aimé Kilolo Musamba in its application for interim release.

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These observations are to be reviewed solely in relation to the issue of the Court's potential choice of the Kingdom of Belgium as the location for interim release and not in relation to the issue of the appropriateness of granting the application for interim release itself, an issue which comes under the sovereign jurisdiction of the Court.

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A. General observations by the Belgian authorities on a hypothetical interim release in the Kingdom of Belgium

Considering that Aimé Kilolo Musamba may find himself on Belgian soil if a decision by the International Criminal Court to grant interim release were to be implemented, it is incumbent upon the Belgian authorities to make the following general observations:

- 1) *Concerns whether the Statute and the Rules of Procedure and Evidence relating to interim release are adequate in the event it becomes necessary to respond quickly if the conditions of release are flagrantly violated*

Neither the Rome Statute nor the Rules of Procedure and Evidence provide an appropriate solution in the event that it is necessary to respond on an emergency basis to a flagrant violation of the conditions for interim release.

For example, if Mr Kilolo decided to leave the country without the Court's permission, the country's geography would allow him to do so very quickly. [REDACTED]

However, Article 20bis(2) of the Law on Cooperation with the International Criminal Court and International Criminal Tribunals of 29 March 2004, inserted through an amendment law of 26 March 2014, allows a Belgian investigating judge, on the instructions of the Public Prosecutor's Office, acting *proprio motu* or at the request of the Central Authority, to issue a Belgian arrest warrant for a person who has been conditionally released if the latter does not respect the conditions in question. This arrest warrant is valid for a non-renewable period of 15 days. If within that period the Central Authority does not receive a request from the Court for the person's interim arrest or a request for the person to be arrested and transferred, the latter is to be released on the same conditions as previously decided.

- 2) *Framework agreement between the International Criminal Court and the Kingdom of Belgium relating to interim release on Belgian territory*

A framework agreement containing the provisions agreed by the Court and Belgium on detainees' interim release on Belgian territory, in implementation of decisions by the competent chambers, was concluded by exchange of letters dated 2 and 8 April 2014 issued by the Kingdom of Belgium and the Court respectively. Although the existence of this agreement has been made public, its content is confidential.

This framework agreement on interim release regulates the procedure for the interim release of an ICC detainee on Belgian territory and, in particular, formalises the Court Registrar's necessary

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consultations with the Belgian authorities, who will examine the Court's requests on a case-by-case basis. However, this agreement in no way alters the rules applicable in this matter, in particular article 60(3) of the Rome Statute and rules 118, 119 and 185 of the Rules of Procedure and Evidence.

Hence, the agreement does not in itself have a specific impact on a decision granting interim release in Belgium which may be rendered on a given application for conditional release. It simplifies the procedure for implementing the applicable provisions, without prejudging the case-by-case decision taken by Belgium on a specific request for observations issued in the context of a specific application for conditional interim release.

3) Observations on the Defence argument that the Kingdom of Belgium is duty-bound to receive Mr Kilolo in the event of interim release

At paragraph 17 of the Defence observations, the latter states that Aimé Kilolo Musamba "is seeking interim release to his own country, which is obliged – even absent a State cooperation framework agreement – to receive him." It goes on to say that "the interim release of Mr Kilolo to Belgium is necessary not only pursuant to international human rights standards but also to ensure the provisions of the Framework Agreement does not prove illusory and prodigal".

While acknowledging that it cannot, under international law, refuse entry to a national who is conditionally released by the Court and authorised by the latter to return to Belgium, a circumstance which is, in particular, covered by rule 185 of the Rules of Procedure and Evidence, the Central Authority wishes to clarify that such a right does not arise from the framework agreement.

4) Observations on Jean-Jacques Mangenda Kabongo's concomitant application for conditional release

The Central Authority respectfully directs the Court's attention to Jean-Jacques Mangenda Kabongo's concomitant application for interim release, "[TRANSLATION] in the alternative"¹, on Belgian territory.

Simultaneous enforcement in Belgium of a decision to conditionally release the two co-accused persons would mean that they would be living within a few dozen kilometres of each other.

¹ICC-01/05-01/13-523-Conf, page 10, para. 15.

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B. Observations of the Belgian authorities on the guarantees offered by the Defence in its application for interim release

1. First proposed guarantee: Mr Kilolo's undertaking to remain in the territory of Belgium (paragraph 40(a) of the Observations)

We make no specific observations on this point, save that the Central Authority notes that Mr Kilolo would not leave Belgian territory unless ordered by the competent chamber for purposes connected with the proceedings.

2. Second proposed guarantee: Mr Kilolo's undertaking to reside at his home address (paragraph 40(b) of the Observations)

We make no specific observations on this point.

3. Third proposed guarantee: Mr Kilolo's undertaking to hand over his passport to the Registry (paragraph 40(c) of the Observations)

The Central Authority wishes to respectfully draw the Court's attention to the difficulties that may arise if Mr Kilolo is left without any identification papers, should he be granted interim release on Belgian territory, particularly given the possibility that he may be stopped for identification on the street.

Consequently, the Central Authority suggests that Mr Kilolo's national identity card be returned to him, if this has not already been done, in order to avoid any such inconveniences. Indeed, the Central Authority learned in the context of the previous request for observations that Mr Kilolo's identity card had been handed over to the Registry.

Furthermore, except the Court's decision for interim release includes a condition barring Mr Kilolo from driving a vehicle, it may also be proper to return Mr Kilolo's national driving licence to him.

Finally, confirmation should be sought that Mr Kilolo does not possess and is not entitled to possess a Congolese passport or other identity document.

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4. Fourth proposed guarantee: Mr Kilolo's undertaking to present himself at regular intervals to the police station located in his neighbourhood to confirm his presence (paragraphs 40 (d) and (e) of the Observations)

We make no specific observations on this point, except to indicate that the Central Authority defers to the wisdom of the Court in determining the frequency of proposed controls should the Court make interim release conditional on such controls and were the Defence application to prosper.

5. Fifth proposed guarantee: Mr Kilolo's undertaking not to leave his residence between 10:00 pm and 7:00 am each day (paragraph 40(f) of the Observations)

We make no specific observations on this point, except that the Central Authority defers to the wisdom of the Court in deciding whether to grant Mr Kilolo the right to leave his home between these times in the event of *force majeure* and in that case, to stipulate that he is obliged to immediately telephone a contact person designated by the Belgian authorities.

6. Sixth proposed guarantee: Mr Kilolo's undertaking to refrain from any contact with Jean-Pierre Bemba Gombo, the other suspects, or any persons close or related to the above, and willingness to allow monitoring of his telephone conversations (paragraph 40(g) of the Observations)

We make no specific observations on this point, except as regards the monitoring of telephone conversations.

Belgian law does not allow monitoring of the telephone calls, postal mail or e-mails of persons released conditionally. Were such surveillance to be ordered by the competent authority when ruling on an application for interim release, it would mean that the authority feared the continued commission of the offences in question or believed there was an elevated risk of flight or non-appearance. Indeed, under Belgian law and the Rome Statute (articles 58(1) and 60(2) read jointly), such grounds would by themselves justify a decision to continue detention.

In contrast, if during the interim release, the Office of the Prosecutor, as part of its investigations, wished the Belgian authorities to carry out such telephone monitoring and other types of surveillance for the purposes of mounting a prosecution, it would simply have to send a request for cooperation to this effect to the Central Authority, pursuant to articles 86, 87 and 93 (read jointly) of the Rome Statute.

7. Seventh proposed guarantee: Mr Kilolo's undertaking not to contact any of the witnesses from the main case or the Article 70 proceedings, nor anyone close or related to the witnesses, and

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willingness to allow monitoring of his telephone conversations (paragraph 40(h) of the Observations)

Apart from the comments made at point 6 on the monitoring of telephone conversations, the Central Authority observes that the guarantee covers contact initiated by Mr Kilolo (“shall not contact”) and not contact initiated by witnesses, their friends or families. The Court could also make a determination on the latter.

8. Eighth proposed guarantee: Mr Kilolo’s undertaking to use no other telephones except his landline home telephone, or one specific cell phone number, to be monitored (paragraph 40(i) of the Observations).

We make no specific observations on this point other than those already expressed at point 6 on monitoring of telephone conversations.

9. Ninth proposed guarantee: Mr Kilolo’s undertaking to limit himself to the use of one e-mail address (his professional e-mail address) and to remain contactable at all times by mobile phone (paragraph 40(j) of the Observations)

We make no specific observations on this point, other than the comment already made at point 6 regarding surveillance.

10. Tenth proposed guarantee: undertaking to have no contact with the press in relation to the present proceedings, the main case, or any related issues (paragraph 40(k) of the Observations)

The Central Authority believes that contact with the press and any public or publicised pronouncements or announcements should be treated on an equal footing.

[Similarly, it could be useful for the Court to examine, in the context of any conditions included in a decision granting interim release, whether restrictions should be placed on any political activities which Mr Kilolo could undertake during his conditional release.

In this respect, the Central Authority takes the liberty of respectfully reminding the Court that, in his previous application for interim release, Mr Kilolo claimed that he “operate[d] strictly within legal circles”, “[was] not a politician”, “[was] only involved in law [...] [and] practise[d] only law” and “only

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operate[d] in legal circles where, for the past 15 years, he has moved amongst lawyers and judges”² whereas he stood as a candidate in the 2006 Congolese presidential elections.]

11. Eleventh guarantee proposed: acceptance of investigations by *Maisons de Justice* (paragraph 40(l) of the Observations)

The Central Authority respectfully informs the Court that the powers and activities of the *Maisons de Justice* are not dictated by Mr Kilolo’s good will. Mr Kilolo’s contact with the competent *Maison de Justice*, should he be conditionally released on Belgian territory, will be determined strictly by the regulations in force.

12. Twelfth guarantee proposed: acceptance of preventative psychological monitoring (paragraph 40(m) of the Observations)

We make no specific observations on this point.

13. Thirteenth guarantee proposed: enrolment in a 10-hour course on professional ethics organised by the Brussels Bar (paragraph 40 (n) of the Observations)

We make no specific observations on this point.

C. Observations of the Belgian authorities on the Defence request for a hearing to examine the practical questions and conditions associated with the interim release

At point IV of its submissions, entitled “Relief Requested”, the Defence “respectfully requests that the Pre-Trial Chamber [...] [r]equest a Status Conference with the appropriate authorities of [the] Kingdom of Belgium and the Kingdom of the Netherlands as regards the practical questions and conditions associated with Mr Kilolo’s conditional release on Belgian territory and transfer from the territory of the Netherlands to the territory of Belgium”.

² ICC-01/05-01/13-42-tENG, para. 59.

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The Central Authority notes that Rule 118(3) provides that the decision to hold a hearing in this case lies entirely with the Court.

The Central Authority would not object to such a hearing, provided it is held in closed session.

During such a hearing, it would seem appropriate to discuss the conditions of the Accused's release in his presence. However, the practical manner in which Belgium would implement a decision granting release and its attendant conditions, such as practical issues relating to Mr Kilolo's transfer from the Netherlands to Belgium or the technical and human resources to be employed to enforce the conditions for interim release, would appear to be a matter for discussion between the Court and the Kingdom of Belgium alone.

D. Observations of the Belgian authorities on the potential financial impact of a possible interim release on Belgian soil

The Central Authority respectfully draws the Court's attention to the relevant provisions of the framework agreement mentioned above and emphasises that it would be necessary to make advance arrangements to cover the expenses generated by a decision to allow interim release on Belgian soil, should such release be granted.

E. Observations of the Belgian authorities on the confidentiality or non-confidentiality of these observations

The Kingdom of Belgium raises no objection to these observations being made public, should the Court so wish.

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CONCLUSION

In conclusion, mindful of the observations made at A, B, C, D and E above, the Belgian Central Authority for Judicial Cooperation, on behalf of the Belgian Government, respectfully informs the Court that:

- it has no objection in principle to the Court's selection of the Kingdom of Belgium as the location for interim release, should the Court grant the Defence application;
- it is willing to attend a closed session hearing on this matter;
- the financial implications of interim release should be addressed prior to implementation, should the Court allow such release;
- it agrees to these observations being made public, should the Court so wish.

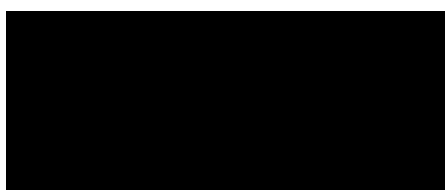
Done at Brussels, 23 July 2014

FOR THE KINGDOM OF BELGIUM

On behalf of the Central Authority for Judicial Cooperation

with the International Criminal Court,

[signature]

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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***

**DECISION REQUESTING THE KINGDOM OF BELGIUM TO PROVIDE ITS VIEWS FOR THE
PURPOSES OF THE REVIEW OF Aimé KILOLO MUSAMBA'S AND Jean-Jacques MANGENDA'S
DETENTION PURSUANT TO ARTICLE 60(3) OF THE STATUTE
of 4 July 2014**

***OBSERVATIONS OF THE KINGDOM OF BELGIUM ON THE PERIODIC REVIEW OF THE
DETENTION of Jean-Jacques MANGENDA KABONGO
23 July 2014***

Noting articles 21, 58(1), 60(3) and 67(1) of the Rome Statute, rules 118, 119 and 185 of the Rules of Procedure and Evidence, and regulation 51 of the Regulations of the Court;

Noting the declaration made by the Kingdom of Belgium pursuant to article 87(1) of the Rome Statute ("the Statute"), stipulating that "the Kingdom of Belgium declares that the Ministry of Justice is the authority competent to receive requests for cooperation";

Noting the declaration made by the Kingdom of Belgium pursuant to article 87(2) of the Statute stipulating that "the Kingdom of Belgium declares that requests by the Court for cooperation and any documents supporting the request shall be in an official language of the Kingdom";

Noting Article 2, (4th dash), and Article 5 of the Belgian Law on Cooperation with the International Criminal Court and International Criminal Tribunals of 29 March 2004, designating the International Humanitarian Law Section (Ministry of Justice) as the Belgian Central Authority for Judicial Cooperation with the International Criminal Court;

Noting the decision of the Presidency of the International Criminal Court, dated 19 March 2009, assigning the situation in the Central African Republic to Pre-Trial Chamber II of the International Criminal Court;

Noting the arrest warrant issued under seal on 20 November 2013 by the Single Judge designated by Pre-Trial Chamber II of the International Criminal Court in the case against Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse Arido;

Noting the charges in that decision against Jean-Jacques Mangenda Kabongo, namely:

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- (i) “Presenting evidence that the party knows is false or forged, within the meaning of article 70(1)(b) of the Statute, read with article 25(3)(a), by aiding, abetting or otherwise assisting in the presentation of evidence that the party knows is false or forged in the Case; and
- (ii) Corruptly influencing witnesses, within the meaning of article 70(1)(c) of the Statute, read with article 25(3)(a), by aiding, abetting or otherwise assisting in the bribery of witnesses and in coaching them to provide false testimony;

[...]”

Noting that on 23 November 2013, the Dutch authorities executed the said arrest warrant for Jean-Jacques Mangenda Kabongo;

Noting that on 3 December 2013, Jean-Jacques Mangenda Kabongo was surrendered to the International Criminal Court, at the seat of the Court;

Noting that on 5 December 2013, Jean-Jacques Mangenda Kabongo made his first appearance before the Single Judge of Pre-Trial Chamber II of the International Criminal Court;

Noting the application for interim release filed by the Defence for Jean-Jacques Mangenda Kabongo on 8 January 2014, pursuant to article 60 of the Statute, whereby Jean-Jacques Mangenda Kabongo sought release to the United Kingdom and, in the alternative, to the Netherlands, and the Single Judge’s decision rejecting the Defence’s application, rendered on 17 March 2014 and upheld on appeal on 11 July 2014;

Noting the *Order requesting observations for the purposes of the periodic review of the state of detention of Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo and Fidèle Babala Wandu pursuant to rule 118(2) of the Rules of Procedure and Evidence* rendered by the Single Judge on 13 June 2014;

Noting the Defence “Observations concerning pre-trial detention – application for release; in the alternative, application for interim release” dated 30 June 2014 and communicated to the Central Authority in a *note verbale* by the Registry on 8 July 2014.

Noting the Single Judge’s Decision of 4 July 2014 requesting the Kingdom of Belgium to provide its views no later than Friday 25 July, for the purposes of the review of Aimé Kilolo Musamba’s and Jean-Jacques Mangenda’s detention pursuant to article 60(3) of the Statute, transmitted to the Central Authority in French in a *note verbale* by the Registry on 11 July 2014;

On behalf of the Kingdom of Belgium, the Belgian Central Authority for Judicial Cooperation with the International Criminal Court hereby makes the following observations, bearing in mind the arguments set out by the Defence for Jean-Jacques Mangenda Kabongo in its application for interim release.

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The observations are to be considered solely in relation to the issue of the Court's potential choice of the Kingdom of Belgium as the location for enforcing a decision on interim release and not in relation to the issue of the appropriateness of granting the application for interim release itself, which is an issue under the sovereign jurisdiction of the Court.

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A. General observations by the Belgian authorities on a hypothetical interim release into the Kingdom of Belgium

Considering that Jean-Jacques Mangenda Kabongo may find himself on Belgian soil if a decision by the International Criminal Court to grant interim release were to be implemented, it is incumbent upon the Belgian authorities to make the following general observations:

- 1) *Concerns whether the Statute and the Rules of Procedure and Evidence relating to interim release are adequate in the event it becomes necessary to respond quickly if the conditions of release are flagrantly violated*

Neither the Rome Statute nor the Rules of Procedure and Evidence provide an appropriate solution in the event that it is necessary to respond on an emergency basis to a flagrant violation of the conditions for interim release.

For example, if Jean-Jacques Mangenda Kabongo decided to leave the country without the Court's permission, the country's geography would allow him to do so very quickly. [REDACTED]

However, Article 20bis(2) of the Law on Cooperation with the International Criminal Court and International Criminal Tribunals of 29 March 2004, inserted through an amendment law of 26 March 2014, allows a Belgian investigating judge, on the instructions of the Public Prosecutor's Office, acting *proprio motu* or at the request of the Central Authority, to issue a Belgian arrest warrant for a person who has been conditionally released if the latter does not respect the conditions in question. This arrest warrant is valid for a non-renewable period of 15 days. If within that period the Central Authority does not receive a request from the Court for the person's interim arrest or a request for the person to be arrested and transferred, the latter is to be released on the same conditions as previously decided.

- 2) *Framework agreement between the International Criminal Court and the Kingdom of Belgium relating to interim release on Belgian territory*

The Court and Belgium concluded, by exchange of letters dated 2 and 8 April 2014 issued by the Kingdom of Belgium and the Court respectively, a framework agreement containing terms for the interim release of detainees to Belgian soil in furtherance of decisions of competent Chambers. Although the existence of this agreement has been made public, its content is confidential.

The framework agreement on interim release regulates the procedure for the interim release of an ICC detainee into Belgian territory and, in particular, formalises the Court Registrar's necessary consultations with the Belgian authorities, who will examine the Court's requests on a case-by-case basis. However, this agreement in no way alters the applicable rules, namely: article 60(3) of the Rome Statute and rules 118, 119 and 185 of the Rules of Procedure and Evidence.

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Hence, the abovementioned agreement does not in itself have any specific impact on a decision granting interim release on Belgian soil which may be rendered following an application for interim release under defined conditions. It streamlines the procedure for implementing the applicable provisions, without pre-empting Belgium's decision which will be taken on a case-by-case basis for a specific request for observations transmitted as part of a specific application for conditional release.

Therefore, contrary to the Defence's claim at paragraph 15 of its observations, the mere existence of the said framework agreement does not "[TRANSLATION] eliminate all the risks listed in article 58 of the Rome Statute".

3) Observations on rule 185 of the Rules of Procedure and Evidence

The Defence states at paragraphs 13 and 14 of its observations that according to its interpretation, the United Kingdom is the State which, under rule 185, should receive Mr Mangenda Kabongo in the event of interim release, particularly as it is allegedly his domicile and that of his nuclear family and other close relatives, and he holds a long-term right of residence there.

As stated at paragraph 15 of those observations, it is therefore "[TRANSLATION] wholly in the alternative" that Belgium has been designated as another receiving State in the event of Mr Mangenda Kabongo's conditional release.

Were the Court, like the Central Authority, to subscribe to this analysis of rule 185, it would, in the event of a decision granting conditional release into the territory of Belgium, need to state the specific reasons for designating Belgium rather than the United Kingdom as the State of execution. According to the Central Authority, such reasons will undoubtedly arise either out of the United Kingdom's refusal to take such measures as are necessary to permit execution on its territory of a decision granting conditional release or out of specific and concrete reasons in connection with Mr Mangenda Kabongo's prosecution preventing his interim release into the territory of the United Kingdom.

4) Observations on Mr Kabongo's right to reside in the territory Belgium

The Central Authority takes advantage of its observations to respectfully inform the Court that Mr Mangenda Kabongo does not currently have right of residence in the territory of Belgium.

Belgium however recognises that this does not amount to a major impediment to the designation of Belgium as the State of execution of a decision granting conditional release.

However, it would be paradoxical if the arrest and transfer of Mr Mangenda Kabongo to the seat of the International Criminal Court in The Hague were ultimately to result in a change of his domicile, whereas his family lives in the United Kingdom where, he maintains, they hold long-term right of residence.

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5) *Observations on Mr Mangenda Kabongo's alleged links with the territory of Belgium*

At paragraph 15 of its observations particularly, the Defence justifies the choice of Belgium – in the alternative – as the State of execution in the event of conditional release, on the ground that Mr Mangenda Kabongo's [REDACTED] resides [REDACTED]

In this regard, the Central Authority wishes to state that neither the alleged family links with that person, nor that person's agreement to receive Mr Kabongo have been confirmed at this stage of the proceedings.

6) *Observations on Aimé Kilolo Musamba's concomitant application for conditional release*

The Central Authority respectfully directs the Court's attention to Aimé Kilolo Musamba's concomitant application for interim release.

Simultaneous enforcement in Belgium of a decision to conditionally release the two co-accused persons would mean that they would be living within a few dozen kilometres of each other.

B. Observations of the Belgian authorities on the guarantees offered by the Defence in its application for interim release

1. First proposed guarantee: Mr Mangenda Musamba's undertaking to reside at the home [REDACTED] in the event of his release into the territory of Belgium (paragraph 15, indent 1 of the Observations)

We make no specific observations on this point.

2. Second proposed guarantee: Mr Mangenda Kabongo's undertaking to present himself weekly to a police station located in his neighbourhood to confirm his presence (paragraph 15, indent 2 of the Observations)

We make no specific observations on this point, except to indicate that the Central Authority defers to the wisdom of the Court in determining the frequency of proposed controls should the Court make interim release conditional on such controls and were the Defence application to prosper.

3. Third proposed guarantee: Mr Mangenda Kabongo's undertaking to hand over his passport to the authorities concerned (paragraph 15, indent 3 of the Observations)

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The Central Authority wishes to respectfully draw the Court's attention to the difficulties that may arise if Mr Mangenda Kabongo is left without any identification papers, should he be granted interim release into Belgian territory, particularly if he is stopped for identification on the street.

Consequently, the Central Authority suggests that Mr Mangenda Kabongo be provided with a document other than his passport, proving his right of residence in the territory of Belgium, in order to avoid any such inconveniences.

Furthermore, except the Court's decision for interim release includes a condition barring Mr Mangenda Kabongo from driving a vehicle, Mr Mangenda Kabongo's driving licence should be returned to him if he has one.

4. Fourth proposed guarantee: Mr Mangenda Kabongo's undertaking not to leave the territorial limits of Belgium to travel to another State in the Schengen area without prior authorisation (paragraph 15, indent 3 of the Observations)

We make no specific observations, save that the Central Authority notes that Mr Mangenda Kabongo would leave the territory of Belgium only if authorised in advance by the competent Chamber.

5. Fifth proposed guarantee: Mr Mangenda Kabongo's undertaking to use only a single telephone known to the police, which may be monitored (paragraph 15, indent 4 of the Observations).

We make no specific observations other than that Belgian law does not allow monitoring of the telephone calls of persons on conditional release. Were such surveillance to be ordered by the competent authority when ruling on an application for interim release, it would imply that the authority feared the continued commission of the offences prosecuted or believed there was a high risk of flight or non-appearance. Indeed, under Belgian law and the Rome Statute (articles 58(1) and 60(2) read jointly), such grounds would by themselves justify a decision to continue detention.

In contrast, if during the interim release, the Office of the Prosecutor, as part of its investigations, wished the Belgian authorities to carry out such telephone monitoring and other types of surveillance for the purposes of a prosecution, it would simply have to send a request for cooperation to this effect to the Central Authority, pursuant to articles 86, 87 and 93 (read jointly) of the Rome Statute.

6. Any other condition set by the Court (paragraph 15, indent 5 of the Observations)

The Central Authority respectfully draws the Court's attention to the need to consider conditions additional to those proposed by Mr Mangenda Kabongo, such as, conditions relating to:

- Contact with the co-accused and their family and close associates, witnesses and their family and close associates;

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- Contact with the media and any public or publicised statements or announcements;
- Political activity in the territory of the host State.

C. Observations of the Belgian authorities on a hearing to examine the practical issues and conditions associated with the interim release

Were the Court to grant Mr Mangenda Kabongo's application for conditional release, the Central Authority would seek a hearing in closed session which the Central Authority, Mr Mangenda Kabongo and representatives of the United Kingdom could attend to determine the place of execution of the decision, any reasons justifying the choice of Belgium instead of the United Kingdom – should that be the case – and the conditions attaching to the decision to release Mr Mangenda Kabongo.

D. Observations of the Belgian authorities on the potential financial impact of a possible interim release on Belgian soil

The Central Authority respectfully draws the Court's attention to the relevant provisions of the aforementioned framework agreement and emphasises that it would be necessary to make advance arrangements to cover the expenses generated by a decision to allow interim release onto Belgian soil, should such release be granted.

E. Observations of the Belgian authorities on the confidentiality or non-confidentiality of these observations

The Kingdom of Belgium raises no objection to these observations being made public, should the Court so wish.

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CONCLUSION

In conclusion, mindful of the observations made at A, B, C, D and E above, the Belgian Central Authority for Judicial Cooperation, on behalf of the Belgian Government, respectfully informs the Court that:

- it has no objection in principle to the Court's selection of the Kingdom of Belgium as the location for the implementation of a decision granting interim release, should the Court grant the Defence application and it can be shown that the United Kingdom is unable to receive Mr Mangenda Kabongo;
- it is willing to attend a closed session hearing on the matter;
- the financial implications of interim release should be addressed prior to implementation, should the Court allow such release;
- it agrees to these observations being made public, should the Court so wish.

Done at Brussels, 23 July 2014

FOR THE KINGDOM OF BELGIUM

On behalf of the Central Authority for Judicial Cooperation
with the International Criminal Court,

[signature]

