

Annex B

Confidential

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/05

Date: 10 October 2013

PRE-TRIAL CHAMBER II

Before: Judge Cuno Tarfusser, Single Judge

SITUATION IN THE CENTRAL AFRICAN REPUBLIC

Confidential, *ex parte* Prosecutor and Victims and Witnesses Unit only

Decision on the Prosecutor's "Third request for judicial order to obtain evidence for investigation under Article 70" dated 7 October 2013 (ICC-01/05-60-Conf-Exp)

Decision to be notified, in accordance with regulation 31 of the *Regulations of the Court*, to:

The Office of the Prosecutor

Fatou Bensouda

James Stewart

Jean-Jacques Badibanga

Counsel for the Defence

Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

**The Office of Public Counsel for the
Defence**

States Representatives

Amicus Curiae

REGISTRY

Registrar

Herman von Hebel, Registrar

Defence Support Section

Victims and Witnesses Unit

Patrick Craig

Detention Section

**Victims Participation and Reparations Other
Section**

I, Judge Cuno Tarfusser, having been designated¹ as Single Judge of Pre-Trial Chamber II ("Chamber") of the International Criminal Court responsible for addressing and determining the issues arising in connection with the Prosecutor's "Request for Judicial Assistance to Obtain Evidence for Investigation under Article 70" dated 3 May 2013 ("Prosecutor's First Request"),² whereby the Prosecutor submitted that her office was investigating potential offences against the administration of justice under article 70 of the Rome Statute ("Statute") and rule 165 of the Rules of Procedure and Evidence ("Rules") in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo* ("Accused"), and that such investigation would require a number of additional investigative measures;

NOTING the "Decision on the Prosecutor's 'Request for judicial order to obtain evidence for investigation under Article 70'" dated 29 July 2013,³ whereby the Single Judge inter alia appointed [REDACTED] ("Independent Counsel") tasked with (a) reviewing the logs of telephone calls either placed or received by Mr Aime Kilolo and Mr Jean-Jacques Mangenda made available by the relevant Belgian and Dutch authorities, with a view to identifying any calls received from or placed by parties connected with the investigation; (b) listening to the recordings of any and all such calls; and (c) transmitting to the Prosecutor the relevant portions of any and all such calls which might be of relevance for the purposes of the investigation;

NOTING the Prosecutor's "Third request for judicial order to obtain evidence for investigation under Article 70" dated 7 October 2013 ("Prosecutor's Third Request"),⁴ whereby the Prosecutor (i) submits being in possession of information showing telephone contacts between Aime Kilolo, Counsel for the Accused, and a number of Defence witnesses, inter alia in violation of protocols established by Trial Chamber III; (ii) argues that, in order to fully investigate the extent of Kilolo's

¹ ICC-01/05-45-Conf-Exp.

² ICC-01/05-44-Conf-Exp.

³ ICC-01/05-52-Conf-Exp

⁴ ICC-01/05-60-Conf-Exp, with confidential, ex parte annexes A and B.

contacts with Defence witnesses, she must be able to attribute unknown phone numbers contained in the call data records in her possession; and, (iii) accordingly, requests the Chamber to order the Victims and Witnesses Unit ("VWU") to provide the Prosecution with information relating to telephone contact information for Defence Witnesses and additional clarifications, as detailed in paragraph 25 of the Prosecutor's Third Request;

NOTING the status conference convened by the Single Judge on 9 October 2013⁵ and held in closed session on 10 October 2013 in the presence of representatives of the Prosecutor and of the Independent Counsel, during which (i) the Prosecutor provided an update on the progress of her investigation; (ii) the Independent Counsel outlined the results of the work carried out so far in cooperation with the Dutch authorities [REDACTED] mandate and (iii) provided information as to the envisaged future steps;

NOTING articles 57(3)(a) and 68(1) of the Statute;

CONSIDERING that, for the Prosecutor to advance her investigation on possible offences against the administration of justice under article 70 of the Statute in the case of *The Prosecutor v. Jean-Pierre Bemba*, it is necessary that she be provided with the telephone numbers of Defence witnesses, as well as with the information detailed in paragraph 25 of the Prosecutor's Third Request;

CONSIDERING that, in light of the developments in the investigation, as well as of the stage of the trial of the Accused, it is important that the relevant information be made available to the Prosecutor without delay;

⁵ ICC-01/05-61-Conf-Exp.

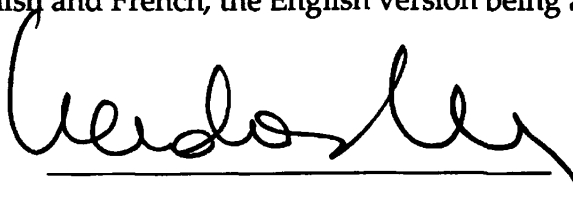
FOR THESE REASONS, THE SINGLE JUDGE

GRANTS the Prosecutor's Third Request;

ORDERS the VWU to provide the Prosecutor with the information detailed in paragraph 25 of the Prosecutor's Third Request, as follows:

- a. All available telephone contact information for all 62 Defence witnesses listed on ICC-01/05-01/08-2243-Conf-AnxA;
- b. All available telephone contact information for VWU mobile phones issued to Defence witnesses during their stays in the Netherlands; and
- c. Clarification as to whether KILOLO had specific authorisation to contact Defence witnesses CAR-D04-PPPP-0023 and CAR-D04-PPPP-0026 during overnight adjournments in their testimonies.

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



Judge Cuno Tarfusser

Single Judge

Dated this Thursday, 10 October 2013

At The Hague, The Netherlands