



Original: English

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

Date: 14 February 2014

PRE-TRIAL CHAMBER II

Before: Judge Cuno Tarfusser, Single Judge

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC
IN THE CASE OF *THE PROSECUTOR V. JEAN-PIERRE BEMBA GOMBO,
AIMÉ KILOLO MUSAMBA, JEAN-JACQUES MANGENDA KABONGO, FIDÈLE
BABALA WANDU AND NARCISSE ARIDO***

Public

**Decision on the redaction and transmission to Trial Chamber III of Mr
Mangenda's Defence "*Requête à la Cour de ne pas exercer sa compétence, en
application de l'art. 70.4(b) du Statut de Rome et de la règle 162.a, 'Demande en
dessaisissement'*" dated 22 January 2014**

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

The Office of the Prosecutor

Fatou Bensouda

James Stewart

Kweku Vanderpuye

Counsel for Jean-Pierre Bemba Gombo

Nicholas Kaufman

Counsel for Aimé Kilolo Musamba

Ghislain Mabanga

Catherine Mabilie

Counsel for Jean-Jacques Mangenda Kabongo

Jean Flamme

Counsel for Fidèle Babala Wandu

Jean-Pierre Kilenda Kakengi Basila

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

Other

Trial Chamber III

REGISTRY

Registrar

Herman von Hebel, Registrar

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

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

NOTING the “Requête à la Cour de ne pas exercer sa compétence, en application de l’art. 70.4(b) du Statut de Rome et de la règle 162.a, ‘Demande en dessaisissement’” dated 22 January 2014 (“Mr Mangenda’s Defence Request”),¹ whereby the Defence for Mr Mangenda requested the Single Judge the following: (i) “ordonner le dessaisissement de la Cour Pénale Internationale” and (ii) “demander aux Pays Bas de saisir ses autorités judiciaires compétentes aux fins d’instruction et de poursuites éventuelles dans le cadre de cette affaire, conformément à l’art. 70.4 (b) du Statut de Rome ainsi que de la règle 162.4 des règles de procédure et de preuve”, on the basis of a series of arguments ranging from the alleged lack of independence and impartiality of the Prosecutor to the relationship between the article 70 proceedings and developments in the case of The Prosecutor v. Jean-Pierre Bemba Gombo (“Main Case”);

NOTING the “Order requesting observations from the Kingdom of the Netherlands and from the other Defence teams on the “Requête à la Cour de ne pas exercer sa compétence, en application de l’art. 70.4(b) du Statut de Rome et de la règle 162.a, ‘Demande en dessaisissement’” submitted by the Defence for Mr Mangenda”,² whereby the Single Judge inter alia (i) granted the relevant authorities of the Kingdom of the Netherlands until Monday 24 February 2014 to submit their observations on Mr Mangenda’s Defence Request, and (ii) ordered “the Defence for Mr Mangenda, the Defence for Mr Bemba and the Prosecutor, no later than Tuesday 11 February 2014, either (i) to file public redacted versions of their respective filings ICC-01/05-01/13-120-Conf; ICC-01/05-01/13-122-Conf and ICC-01/05-01/13-132-Conf, from which any confidential information relating to the Main Case will have been redacted; or (ii) to indicate that such filings can be reclassified as public;

¹ ICC-01/05-01/13-120-Conf.

² ICC-01/05-01/13-162.

NOTING the “Réponse à l’injonction du Juge Unique dans sa décision du 7 février 2014 concernant la « requête en dessaisissement » ICC-01/05-01/13-120 Conf. du 22 janvier 2014” dated 10 February 2014,³ whereby the Defence for Mr Mangenda

(I) submitted that

- (i) Mr Mangenda’s Defence Request was submitted as confidential “suite à la décision du Juge Unique du 5 décembre 2013 de classer, dans le rapport d’audience, une partie de l’exposé du conseil de la défense à l’audience de première comparution de la même date comme «confidentiel» ”; that he “n’avait pas considéré les éléments de fait exposés alors comme «confidentiels», puisque rien n’était révélé concernant l’identité de témoins ” and that it “n’y faisait référence qu’aux témoins du Procureur en général et ne faisait que mentionner le fait et une partie du contenu d’une lettre ouverte écrite par un des témoins du Procureur et adressée à divers acteurs”;
- (ii) it was not possible for Counsel “de produire une «version expurgée» de cette requête, sans la dénaturer”;
- (iii) while failing to see any “obstacle à rendre cette requête publique ... [e]lle ne peut toutefois prendre cette décision elle-même, sans contrevenir à la décision du Juge Unique du 5 décembre 2013” and “il appartient donc à la Cour, et à la Cour seule, de prendre ou non cette décision”;

and, (II) accordingly, requested the Single Judge to “Acter l’accord de la Défense de reclasser sa requête en dessaisissement en document public, sous réserve de la décision de la Cour à ce sujet”;

NOTING regulations 23bis and 42 of the Regulations of the Court and article 8 of the Code of Professional Conduct for counsel,

CONSIDERING that Mr Mangenda’s Defence Request makes reference - in its paragraphs 4 and 5 - to developments in the Main Case which is unclear to what extent are, or have been made, available to the public, and - in footnote 1 - to a confidential filing in the Main Case;

³ ICC-01/05-01/13-176.

CONSIDERING it therefore necessary and appropriate to file a public redacted version of Mr Mangenda's Defence Request, from which all information relating to developments and/or filings relating to the Main Case will be expunged;

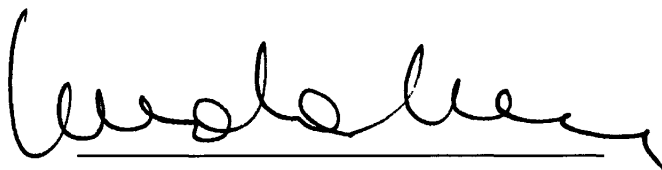
CONSIDERING that, since Counsel for Mr Mangenda is not part of the defence team in case ICC-01/05-01/08 ("Main Case") and should therefore not privy to any confidential information relating thereto, it also appropriate that Mr Mangenda's Defence Request be transmitted to Trial Chamber III, as the competent Chamber for all issues relating to the Main Case, as a matter of information and with a view to taking any and all measures which it might consider necessary and appropriate;

FOR THESE REASONS, THE SINGLE JUDGE

ORDERS the Registrar to file in the record of the case the public redacted version of Mr Mangenda's Defence Request attached as Annex A to this decision;

ORDERS the Registrar to transmit Mr Mangenda's Defence Request (ICC-01/05-01/13-120-Conf) to Trial Chamber III.

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

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke at the end, positioned above a solid horizontal line.

Judge Cuno Tarfusser
Single Judge

Dated this Friday, 14 February 2014

At The Hague, The Netherlands