

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/05-01/13
Date: 21 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***

Confidential

Decision on Mr Kilolo's Defence

**"Requête aux fins d'accès aux enregistrements soumis par les autorités
néerlandaises au Conseil indépendant nommé par décision
ICC-01/05-52-Red2" dated 20 February 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 Mabilile

Counsel for Jean-Jacques Mangenda

Kabongo

Jean Flamme

Counsel for Fidèle Babala Wandu

Jean-Pierre Kilenda Kakengi Basila

Legal Representatives of Victims

Legal Representatives of 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

REGISTRY

Registrar

Herman von Hebel

Detention Section

Victims and Witnesses Unit

Others

**Victims Participation and
Reparations Section**

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

NOTING the “Requête aux fins d'accès aux enregistrements soumis par les autorités néerlandaises au Conseil indépendant nommé par décision ICC-01/05-52-Red2” dated 20 February 2014,¹ whereby Mr Kilolo's Defence requests access “à l'ensemble des enregistrements téléphoniques soumis par la justice néerlandaise au Conseil indépendant nommé par décision du Juge unique ICC-01/05-52-Red2 dans le cadre de l'exercice de sa mission”, as well as to obtain “la divulgation des enregistrements transmis au Juge unique par la justice néerlandaise”;

NOTING that Mr Kilolo's Defence Request arises, in particular, from a reference to a DVD having been initially prepared and made available to the Single Judge by the Dutch judicial authorities (“the First DVD”) contained in the report by Independent Counsel dated 25 October 2013²;

NOTING that the format and technical features of the First DVD were found, upon examination by the technical services of the Registry, not compatible with the electronic filing system of the Court and that, accordingly, the Dutch authorities were asked to provide the relevant material in a technical format which would allow its filing before the Court;

NOTING that, following consultations and joint working sessions between the technical services of the Registry and of the Dutch authorities, a technical solution was found allowing the proper filing of all relevant material;

NOTING that on 15 October 2013 and on 19 November 2013 the Dutch judicial authorities transmitted to the Single Judge the reports, documents and CDs concerning the technical investigative activities carried out by them further to the

¹ ICC-01/05-01/13-210-Conf.

² ICC-01/05-64-Conf-Red, para. 4.

“Decision on the Prosecutor’s ‘Request for judicial order to obtain evidence for investigation under Article 70’” dated 29 July 2013³;

NOTING that, accordingly, by order dated 21 November 2013 (“21 November 2013 Order”),⁴ the reports, documents and CDs transmitted by the Dutch authorities on 15 October 2013 and on 19 November 2013 were filed in the record of the case;

NOTING that the materials filed in the record of the case pursuant to the 21 November 2013 Order were made available to the Defence teams as of 12 December 2012;⁵

NOTING that, to the best of the Chamber’s knowledge, the materials contained in the First DVD are the same as those attached as Annexes A and B to the 21 November 2013 Order and reclassified as confidential on 12 December 2013;

CONSIDERING that, accordingly, “la divulgation des enregistrements transmis au Juge unique par la justice néerlandaise” requested by Mr Kilolo’s Defence has already occurred;

CONSIDERING nevertheless that the parties should be given the opportunity, if they so wish, to access and inspect the First DVD, which has since been stored in the Registry’s vault;

CONSIDERING it appropriate that such access occur by accessing the DVD on the premises of the Court;

CONSIDERING that no materials other than those filed in the record of the case pursuant to the 21 November 2013 Order, consisting of the communications selected by Independent Counsel, have been made available to the Court by the Dutch authorities;

³ ICC-01/05-52-Red2.

⁴ ICC-01/05-01/13-6-Conf-Exp.

⁵ ICC-01/05-01/13-39-Conf.

CONSIDERING that the intercepts carried out by the Dutch authorities, on the basis of which Independent Counsel made their selection, pertain to the procedure pending before the Dutch judicial authorities in accordance with their applicable national law, which procedure is still ongoing;

CONSIDERING that, accordingly, at this stage the Defence for Mr Kilolo has to address directly the Dutch judicial authorities if he wishes to obtain materials other than those filed in the record of the case pursuant to the 21 November 2013 Order;

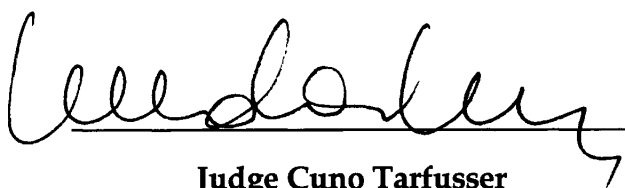
FOR THESE REASONS, THE SINGLE JUDGE HEREBY

PARTIALLY GRANTS Mr Kilolo's Defence Request;

ORDERS the Registrar to make it possible for the parties to access the First DVD on the premises of the Court, if they so request;

REJECTS Mr Kilolo's Defence Request to order the Registrar to address a request for judicial cooperation to the Dutch authorities "aux fins d'obtenir l'intégralité des enregistrements téléphoniques soumis au Conseil indépendant pour sélection".

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

A handwritten signature in black ink, appearing to read 'Cuno Tarfusser', written over a horizontal line.

**Judge Cuno Tarfusser
Single Judge**

Dated this Friday, 21 February 2014

The Hague, The Netherlands