

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 23 April 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 document

**Decision on the “Requête aux fins d’obtenir complément d’information sur
l’écriture ICC-01/05-01/13-292-Conf-AnxA-Red” dated 7 April 2014 submitted
by the Defence for Aimé Kilolo Musamba**

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

Counsel for Jean-Jacques Mangenda

Kabongo

Jean Flamme

Counsel for Fidèle Babala Wandu

Jean-Pierre Kilenda Kakengi Basila

Counsel for Narcisse Arido

Göran Sluiter

**Legal Representatives of
Victims**

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

States Representatives

REGISTRY

Registrar

Herman von Hebel

Detention Section

Victims and Witnesses Unit

Others

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

NOTING the “Second Decision on the ‘Defence request for disclosure’ submitted by the Defence for Jean-Pierre Bemba on 20 February 2014 and related filings” dated 27 March 2014 (“Second Decision on issues related to anonymous informant” or “Second Decision”)¹, whereby the Single Judge *inter alia* partially granted the “Defence request for disclosure” dated 20 February 2014 (“Mr Bemba’s Request for Disclosure”)² and ordered the Prosecutor to file in the record a confidential redacted version of emails exchanged between her office and an anonymous informant who provided her with information leading to the opening of her investigation of this case;

NOTING the “Confidential redacted version of Annex A to Prosecution’s submissions on protective measures in relation to an anonymous informant”³, whereby the Prosecutor complied with the Second Decision;

NOTING the “Requête aux fins d’obtenir complément d’information sur l’écriture ICC-01/05-01/13-292-Conf-AnxA-Red” dated 7 April 2014⁴, whereby the Defence for Aimé Kilolo Musamba seeks to obtain “un complément d’information” relating to the aforementioned emails and related circumstances;

NOTING the “Prosecution Response to Submissions in relation to an Anonymous Informant” dated 17 April 2014⁵, whereby the Prosecutor provides specific additional information concerning her contact with the anonymous informant;

¹ ICC-01/05-01/13-298.

² ICC-01/05-01/13-208.

³ ICC-01/05-01/13-292-Conf-AnxA-Red.

⁴ ICC-01/05-01/13-318-Conf.

⁵ ICC-01/05-01/13-346-Conf.

NOTING article 67 of the Statute and rule 77 of the Rules of Procedure and Evidence;

CONSIDERING that, as already stated in the Second Decision:

- (i) an informant (as opposed to a witness) is a person who, usually in exchange for the assurance of anonymity, contacts an investigator in order to “inform” him or her of something he or she considers of potential interest to the investigator, thereby either triggering a new investigation or supplementing already available information in the context of previously opened investigations or proceedings;
- (ii) any and all information provided by an informant has to be regarded and treated as a mere investigative hint possibly assisting the Prosecutor in discharging his or her duties, as such to be subjected to close and careful scrutiny as to its truthfulness, reliability and relevance by means of further investigations;
- (iii) by no means can information provided by an informant (as opposed to a witness statement), be regarded, treated or relied upon as evidence in the context of judicial proceedings and even less constitute the sole basis for a judicial decision;
- (iv) the anonymity of the informant must be strictly preserved, including for the purposes of his or her personal safety and security, and, for this purpose, it is necessary and appropriate to preserve the confidentiality of any and all information possibly leading to his or her identification;

CONSIDERING that, accordingly, if it appears debatable whether and to what extent the email exchanges between the anonymous informant and the Office of

the Prosecutor can be regarded as “material to the preparation of the defence” within the meaning and for the purposes of rule 77 of the Rules, it must be held that all the additional information requested by the Defence for Mr Kilolo has *per se* no bearing on the issues which will be relevant for the Chamber’s determinations under article 61 of the Statute;

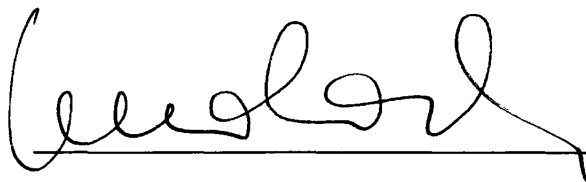
CONSIDERING further that the Prosecutor’s Response does provide details suitable to satisfy the substance of the queries submitted by the Defence for Mr Kilolo and, as such, constitutes adequate compliance with the Single Judge’s order that she provide “any other information or material in her possession which might be relevant” in connection with Mr Bemba’s Request for Disclosure⁶;

CONSIDERING that, contrary to what stated by the Defence for Mr Kilolo, there is no need for the Single Judge “d’avoir, aux fins de confirmation des charges, une idée précise sur les pratiques financières et/ou matérielles des parties dans l’affaire principale à l’égard des tierces personnes intervenant dans leurs enquêtes respectives”;

FOR THESE REASONS, THE SINGLE JUDGE

REJECTS Mr Kilolo’s Defence Request.

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



Judge Cuno Tarfusser

Single Judge

Dated this Wednesday, 23 April 2014 at The Hague, The Netherlands

⁶ ICC-01/05-01/13-262.