

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 3 June 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 the “Requête aux fins de divulgation des demandes d’assistance
adressées à la France par le Bureau du Procureur” submitted by the
Defence for Aimé Kilolo on 5 May 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

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

**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 de divulgation des demandes d’assistance adressées à la France par le Bureau du Procureur les 9 novembre (sic¹) 2013 et 22 novembre 2013” dated 3 May 2014², whereby the Defence for Aimé Kilolo requests the Single Judge “d’ordonner la divulgation des demandes d’assistance adressées à la France par le Bureau du Procureur les 9 octobre 2013 et 22 novembre 2013 dans le cadre de l’enquête visant le Suspect” (“Mr Kilolo’s Request”);

NOTING the “Prosecution’s response to the Kilolo Defence’s ‘Requête aux fins de divulgation des demandes d’assistance adressées à la France par le Bureau du Procureur les 9 novembre 2013 et 22 novembre 2013’ (ICC-01/05-01/13-375-Conf)” dated 26 May 2014³, whereby the Prosecutor, whilst noting the “absence of any substantiated legal basis” for Mr Kilolo’s Request, states to be nevertheless prepared to disclose the “two requests for assistance ... directed to the French authorities in the course of the investigation of this case” (“Requests for Assistance”), should the Single Judge consider it appropriate, which Requests for Assistance are contained in the confidential *ex parte* Annex thereto;

NOTING the “Narcisse Arido’s response to Kilolo’s ‘Requête aux fins de divulgation des demandes d’assistance adressées à la France par le Bureau du Procureur les 9 novembre 2013 et 22 novembre 2013’” dated 26 May 2014⁴, whereby the Defence for Mr Arido, in addition to the disclosure of the RFAs (Mr Arido’s First Request”), requests the Single Judge to order the Prosecutor “to

¹ This request is dated 9 October 2013.

² ICC-01/05-01/13-375-Conf.

³ ICC-01/05-01/13-427-Conf.

⁴ ICC-01/05-01/13-429-Conf.

disclose the responses from France received as a result" ("Mr Arido's Second Request");

CONSIDERING that, as a matter of principle and as noted by the Prosecutor, requests for cooperation are *per se* irrelevant for the purposes of determining the admissibility of evidence which might be retrieved as a result of their implementation and are not intended as evidence themselves;

CONSIDERING, however, the Prosecutor's readiness and availability to disclose the Requests for Assistance;

CONSIDERING, as regards Mr Arido's Request, that it is presently unknown whether any results yielded by the Requests for Assistance shall be included in the Prosecutor's list of evidence and that, accordingly, Mr Arido's Request is based on a hypothetical and speculative assumption;

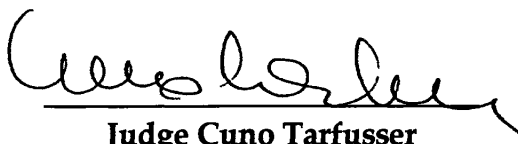
FOR THESE REASONS, THE SINGLE JUDGE HEREBY

GRANTS Mr Kilolo's Request and Mr Arido's First Request;

ORDERS the Registrar to reclassify document ICC-01/05-01/13-427-Conf-Exp-Anx as confidential;

REJECTS Mr Arido's Second Request.

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


Judge Cuno Tarfusser
Single Judge

Dated this Tuesday, 3 June 2014

The Hague, The Netherlands