

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 13 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

Joint Decision on Mr Kilolo's "Defence Request to the Pre-Trial Chamber to order the Prosecution to transmit to the Kilolo Defence all requests made by the Office of the Prosecutor to the Belgian authorities for State cooperation on the wiretapping and logging of Mr Kilolo's privileged telephone calls and to transmit to the Kilolo's Defence the response of the Belgian authorities to such requests" and Mr Bemba's "Defence request for the disclosure of all Prosecutor's requests for foreign assistance"

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**

**The Office of Public Counsel for
Victims**

The Office of Public Counsel for the Defence

States Representatives

Others

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 "Defence Request to the Pre-Trial Chamber to order the Prosecution to transmit to the Kilolo Defence all requests made by the Office of the Prosecutor to the Belgian authorities for State cooperation on the wiretapping and logging of Mr Kilolo's privileged telephone calls and to transmit to the Kilolo's Defence the response of the Belgian authorities to such requests" dated 27 May 2014¹ ("Mr Kilolo's Defence Request"), whereby the Defence for Mr Kilolo requests that the Single Judge order the Prosecutor to transmit to the Kilolo Defence (i) "the request for cooperation addressed to the Belgian authorities by the Prosecution" and (ii) "the response provided by the Belgian authorities to such Prosecution Request";

NOTING the "Defence request for the disclosure of all Prosecutor's requests for foreign assistance", submitted by the Defence for Mr Bemba on 7 June 2014², requesting the Single Judge to "order the Prosecutor to disclose all requests for assistance ('RFAs') which she has made to foreign national authorities in so far as the evidence obtained thereby will be produced during the confirmation proceedings" ("Mr Bemba's Defence Request");

NOTING the "Prosecution's Consolidated Response to the Kilolo and Bemba Defence Request's [sic] for disclosure of requests for State cooperation made by the Office of the Prosecutor" dated 9 June 2014 ("Prosecution's Consolidated Response")³, whereby the Prosecutor opposes Mr Kilolo's Defence Request and Mr Bemba's Defence Request and, accordingly, requests their dismissal;

¹ ICC-01/05-01/13-430-Conf.

² ICC-01/05-01/13-470-Conf.

³ ICC-01/05-01/13-475-Conf.

CONSIDERING that Mr Kilolo's Defence Request and Mr Bemba's Defence Request (collectively, "Requests") raise issues of a similar nature and that it is therefore appropriate to address them jointly;

NOTING articles 57(3)(b), 61(3) of the Statute and rule 121(3) of the Rules of Procedure and Evidence;

CONSIDERING that, as already stated in the "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" dated 3 June 2014 ("3 June 2014 Decision")⁴, as a matter of principle 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 that, pursuant to article 61(3) of the Statute, a suspect has the right to be informed, within a reasonable time before the confirmation of charges, "of the evidence on which the Prosecutor intends to rely";

CONSIDERING that the Prosecutor stated that "no wiretap of Kilolo's telephone communications has been conducted by the Belgian authorities for this case";

CONSIDERING that Counsel for Mr Bemba appropriately qualifies his request by requesting that an order for disclosure be given "insofar as the evidence obtained thereby will be produced during the confirmation proceedings";

CONSIDERING that, at this stage, it is unknown not only whether any such request for cooperation as envisaged and referred to in the Requests actually

⁴ ICC-01/05-01/13-453-Conf.

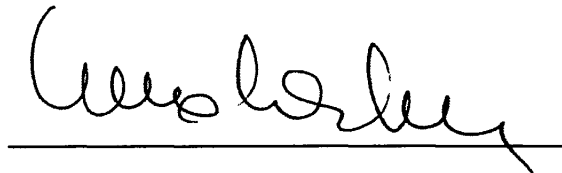
exists, but also whether any results yielded by any such requests for cooperation (one of which is specifically mentioned in Mr Bemba's Defence Request) shall be included in the Prosecutor's list of evidence;

CONSIDERING that, since both Mr Babala's and Mr Bemba's Requests are based on hypothetical and speculative assumptions, granting the Requests would not constitute an order "regarding the disclosure of information for the purposes of the hearing" within the meaning of article 61(3) of the Statute;

FOR THESE REASONS, THE SINGLE JUDGE HEREBY

REJECTS Mr Kilolo's Defence Request and Mr Bemba's Defence Request.

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



Judge Cuno Tarfusser
Single Judge

Dated this Friday, 13 June 2014

The Hague, The Netherlands