

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 8 July 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 *ex parte* only Registry and Defence for Aimé Kilolo

**Decision on the "Request addressed to the Single Judge requesting the Pre-Trial Chamber to order the cooperation of the German authorities with the Defence team of Aimé Kilolo through the provision of legal assistance" dated
26 June 2014**

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

The Office of the Prosecutor

Counsel for Jean-Pierre Bemba Gombo

Counsel for Aimé Kilolo Musamba

Ghislain Mabanga

Counsel for Jean-Jacques Mangenda Kabongo

Counsel for Fidèle Babala Wandu

Counsel for Narcisse Arido

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 "Request addressed to the Single Judge requesting the Pre-Trial Chamber to order the cooperation of the German authorities with the Defence team of Aimé Kilolo through the provision of legal assistance" dated 26 June 2014¹ ("Mr Kilolo's Request" or "Request"), whereby the Defence for Aimé Kilolo (I) submits that

- (i) one of the Defence witnesses in case *The Prosecutor v. Jean-Pierre Bemba Gombo* ("Main Case"), whom Mr Kilolo is alleged of corruptly influencing ("Witness"), received EUR 60,00 from Aimé Kilolo, via Western Union transfer, as reimbursement of fees charged by Lufthansa Airlines in connection of the rescheduling of a flight and anticipated by the Witness ;
- (ii) the original purchase of airline tickets and the following rescheduling took place in connection with the Witness's travel to The Hague for the purposes of giving testimony in the Main Case;
- (iii) "in order to prove that Mr Kilolo's transfer of funds to [the Witness] was a legitimate act of reimbursement and not bribery payments in furtherance of witness corruption, Mr Kilolo must acquire a receipt of the rebooking fee paid by [the Witness] for 60 €";
- (iv) upon Mr Kilolo's Defence request to provide a formal receipt for the rebooking in the Witness's name ("19 June 2014 Request"²), Lufthansa Airlines communicated their inability to furnish any formal receipts absent "an official document confirming the fact that the information is needed for criminal proceedings held at the International Criminal Court

¹ ICC-01/05-01/13-517-Conf-Exp and Annexes 1, 2, 3, 4 thereto.

² ICC-01/05-01/13-517-Conf-Exp-Anx1.

in The Hague", including an official case-file-number and the legal basis on which the information was being requested;

and, accordingly, (II) requests the Single Judge to request the German authorities to cooperate with Mr Kilolo's Defence, by ordering, or, alternatively, requesting Lufthansa Airlines to provide Mr Kilolo's Defence with the "requisite documents relating to the payment of a sum of 60 euros for the rebooking of [the Witness]'s flight ... as well as any other ancillary documents including, *inter alia*, original airline tickets and receipts, rebooked tickets and receipts, official Lufthansa guidelines and memorandums as to the standard costs of rebooking within Europe" no later than 10 July 2014;

NOTING articles 57(3)(b), 87, 93(1)(1) and 96 of the Statute, rule 116 of the Rules of Procedure and Evidence;

CONSIDERING that, as clearly emerging from the Request (and without prejudice to the Chamber's determinations as to the admissibility and relevance of these documents or of the information contained therein), on 21 June 2014 the Defence for Mr Kilolo received an email communication by Lufthansa Airlines confirming the rebooking of the Witness's flight upon payment of a 60 EUR fee³;

CONSIDERING that, as it has already been stated in the jurisprudence of this Court⁴, cooperation from States Parties may be sought by a Chamber only when the requirements of (i) specificity, (ii) relevance and (iii) necessity are met;

CONSIDERING furthermore that the Defence for Mr Kilolo is in a position to submit a number of "official documents" relating to these proceedings (including the warrant of arrest, the Request and this decision) suitable to show the

³ ICC-01/05-01/13-517-Conf-Exp-Anx2.

⁴ *Inter alia*, ICC-02/11-02/11-63.

connection between the 19 June 2014 Request and the proceedings before the Court;

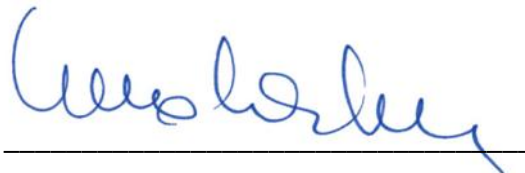
CONSIDERING that, accordingly, the Defence for Mr Kilolo has failed to demonstrate that it cannot obtain the documents without the assistance of the Chamber;

CONSIDERING that, accordingly, the requirement of necessity is not met, this making it unnecessary for the Single Judge to address the requirements of specificity and relevance of Mr Kilolo's Request;

FOR THESE REASONS, THE SINGLE JUDGE HEREBY

REJECTS Mr Kilolo's Request.

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



Judge Cuno Tarfusser
Single Judge

Dated this Tuesday, 8 July 2014

The Hague, The Netherlands