

**Cour
Pénale
Internationale**



La Présidence

**International
Criminal
Court**

The Presidency

Internal memorandum
Memorandum interne

To À	President Song Vice President Monageng	From De	Cuno Tarfusser
Date	19 November 2013	Through Via	
Ref.	2013/PRES/412	Copies	Ekaterina Trendafilova, Hans Peter Kaul
Subject Objet	Request to waive immunities of counsel and to be excused from the Presidency in such decision		

Dear President, dear Vice President,

having been designated as Single Judge of Pre-Trial Chamber II in the case of the Prosecutor vs. Jean Pierre Bemba + 4 (Situation in the CAR), responsible for addressing and determining the issues arising in connection with the Prosecutor's "Request for Judicial Assistance to Obtain Evidence for Investigation under Article 70" dated 3 May 2013, I am now in the process of preparing an urgent arrest warrant against 5 persons, all accused to have committed various and multiple offences against the administration of justice (Art. 70 RS).

Two of the five accused are the Lead Defense Counsel and the Case Manager in the defense team of Jean Pierre Bemba at trial before the ICC, **Aime Kilolo Musamba** and **Jean Jaques Magenda Kabongo**, respectively.

Both enjoy the immunities and privileges foreseen by the relevant ICC agreements.

In its request dated 19 November 2013 *"The Prosecution further notes that Counsel before the Court and persons assisting Defence counsel enjoy certain privileges and immunities which may only be waived by the Presidency.¹ However, such privileges and immunities, and their waiver, apply only with respect to the exercise of jurisdiction by national courts with respect to their official capacity before the ICC, and do not serve as a limitation to their prosecution under Article 70 of the Statute before this Court. Accordingly, in transmitting requests for arrest and surrender with respect to KILOLO and MANGENDA, the Prosecution requests the*

¹ Article 48, ICC Statute; Articles 18 and 26, Agreement on Privileges and Immunities.

Court to specify to the relevant State(s) that such persons are not entitled to invoke such privileges and immunities as a bar to their arrest and surrender to the Court.”.

However I consider it is for the Presidency to make a finding on such a delicate issue and therefore I am formally requesting the Presidency, whether to waive the privileges and immunities of **Aime Kilolo Musamba** and **Jean Jaques Magenda Kabongo**, or to follow the interpretation given by the Prosecution. To a better understanding of the facts and to be in a position to take an informed decision I attach a draft hard copy of the arrest warrant to be filed urgently, latest tomorrow 20 November.

By the same token I also request to be excused from the deliberation of the Presidency upon my request to waive the immunities and privileges of the two named Defense Counsel, because as Single Judge in charge of the case involving both Defense Counsel I am in evident conflict of interest.

I have no objection for this request to be made public as long that this will be done after the arrest warrants are executed.