

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 17 March 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

Decision on the “Requête à la Cour de ne pas exercer sa compétence, en application de l’art. 70.4(b) du Statut de Rome et de la règle 162.a, ‘Demande en dessaisissement’” submitted by the Defence for Mr Mangenda

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

Catherine Mabile

Counsel for Jean-Jacques Mangenda Kabongo

Jean Flamme

Counsel for Fidèle Babala Wandu

Jean-Pierre Kilenda Kakengi Basila

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

Competent authorities of the
Kingdom of the Netherlands

Others

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 à la Cour de ne pas exercer sa compétence, en application de l’art. 70.4(b) du Statut de Rome et de la règle 162.a, ‘Demande en dessaisissement’” submitted on 22 January 2014¹, whereby the Defence for Mr Mangenda requests the Single Judge the following: (i) “ordonner le dessaisissement de la Cour Pénale Internationale” and (ii) “demander aux Pays Bas de saisir ses autorités judiciaires compétentes aux fins d’instruction et de poursuites éventuelles dans le cadre de cette affaire, conformément à l’art. 70.4 (b) du Statut de Rome ainsi que de la règle 162.4 des règles de procédure et de preuve”, on the basis of a series of arguments ranging from the alleged lack of independence and impartiality of the Prosecutor to the relationship between the article 70 proceedings and developments in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo* (“Main Case”), as better detailed in Mr Mangenda’s Defence Request;

NOTING the “Defence response to Mangenda Kabongo Filing: ICC-01/05-01/13-Conf” dated 22 January 2014,² whereby the Defence for Mr Bemba requested the Single Judge “to refrain from ruling” on Mr Mangenda’s Defence Request until it “has received access to the confidential record in case ICC-01/05-01/08 and has had an opportunity to make informed observations”;

NOTING the “Prosecution opposition to the Defence request under Article 70(4)(b) and Rule 162(4)” dated 27 January 2014³, whereby the Prosecutor submits that Mr Mangenda’s Defence Request “fails on the law” as well as “on the facts” and should therefore be dismissed;

¹ ICC-01/05-01/13-120-Red.

² ICC-01/05-01/13-122-Red.

³ ICC-01/05-01/13-132.

NOTING the “Order requesting observations from the Kingdom of the Netherlands and from the other Defence teams on the ‘Requête à la Cour de ne pas exercer sa compétence, en application de l’art. 70.4(b) du Statut de Rome et de la règle 162.a, ‘Demande en dessaisissement’” submitted by the Defence for Mr Mangenda” dated 7 February 2014⁴, requesting the competent authorities of the Kingdom of the Netherlands to submit their observations on Mr Mangenda’s Defence Request no later than 24 February 2014;

NOTING the “Observations de la Défense ‘on Mr Mangenda’s defence Request’ (ICC-01/05-01/13-120-Conf” dated 14 February 2014⁵, whereby the Defence for Fidèle Babala inter alia joins Mr Mangenda’s Defence Request;

NOTING the “Report of the Registry on the ‘Order requesting observations from the Kingdom of the Netherlands and from the other Defence teams on the ‘Requête à la Cour de ne pas exercer sa compétence, en application de l’art. 70.4(b) du Statut de Rome et de la règle 162.a, ‘Demande en dessaisissement’” submitted by the Defence for Mr Mangenda” dated 25 February 2014 (“Registry’s Report”)⁶;

NOTING, in particular, Annex IV to the Registry’s Report⁷, setting forth the observations submitted by the Dutch authorities on Mr Mangenda’s Defence Request;

NOTING article 70 of the Statute and rule 162 of the Rules of Procedure and Evidence;

CONSIDERING that, pursuant to article 70(4)(b) of the Statute, a State Party requested by the Court to exercise jurisdiction over article 70 proceedings shall

⁴ ICC-01/05-01/13-162.

⁵ ICC-01/05-01/13-192.

⁶ ICC-01/05-01/13-223 with annexes I to IV.

⁷ ICC-01/05-01/13-223-AnxIV.

submit the case to its competent authorities for the purposes of prosecution only
“whenever it deems it proper”;

CONSIDERING that, pursuant to rule 162(2)(a) of the Rules, “the availability and effectiveness of prosecution in a state Party” is one of the factors which the Court may consider in making a decision as to whether or not to exercise its jurisdiction under article 70 of the Statute;

NOTING that the Kingdom of the Netherlands, requested to submit observations, informed the Court that it saw “no reason, in the request submitted by the Defence of Mr Jean-Jacques Mangenda Kabongo, to prosecute Mr Mangenda Kabongo, under its domestic jurisdiction, for the facts as set out in the request”;

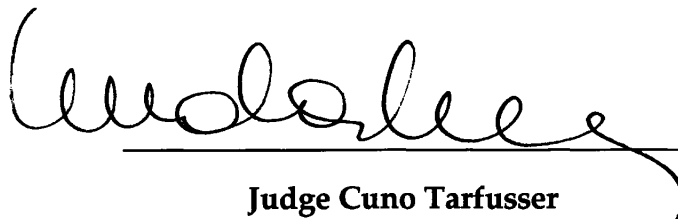
CONSIDERING that this submission makes it clear that the Dutch authorities do not deem it proper to exercise jurisdiction in this case;

CONSIDERING that, in the absence of their availability, it is not feasible to defer these proceedings to the Dutch authorities;

FOR THESE REASONS, THE SINGLE JUDGE HEREBY

REJECTS Mr Mangenda’s Defence Request.

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



Judge Cuno Tarfusser

Single Judge

Dated this Monday, 17 March 2014

The Hague, The Netherlands