

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 25 April 2014

Date of public redacted version: 06 January 2017

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 redacted version of
Decision on the “Requête en application de la norm 83.4 du règlement de la
Cour”**

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

Mr Nicholas Kaufman

Counsel for Aime Kilolo Musamba

Me Ghislain Mabanga Monga Mabanga

Counsel for Jean Jaques Mangenda Kabongo

Me Jean Flamme

Counsel for Fidèle Babala Wandu

Me Jean Pierre Kilenda Kakengi Basila

Counsel for Narcisse Arido

Goran 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

REGISTRY

Registrar

Herman von Hebel

Esteban Losilla Peralta

Abdoul Aziz Mbaye

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 “Requête en application de la norm 83.4 du règlement de la Cour” (“Requête”)¹ filed on 21 February 2014 whereby the Defence Counsel of Mr Mangenda Kabongo requested the Single Judge: “1) Dire pour droit que la Défense devra disposer d’un montant mensuel minimal et provisionnel de [REDACTED] euros, hors taxes, payable à 100 % à la fin de chaque mois. 2) Dire pour droit qu’il n’y aura pas de montant maximal pour frais de déplacement. 3) Ordonner au Procureur de faire état du tableau de rémunération brute en vigueur au sein de ses services, toutes majorations et bénéfices compris, ainsi que du taux d’imposition en vigueur pour ces paiements. 4) Ordonner au Greffe de mettre à disposition un bureau séparé et dûment équipé pour la défense de Monsieur Jean-Jacques KABONGO MANGENDA. 5) Donner acte au requérant des réserves faites aux fins de demandes ultérieures de moyens supplémentaires”;

NOTING the “Observations du Greffier relatives à la « Requête en application de la norme 83.4 du règlement de la Cour» déposée par le conseil de M. Mangenda” (“Observations”),² filed on 28 February 2014, whereby the Registrar, after having given reasons in detail on his decision determining the legal aid to be paid to the defence team of the Suspect came to the conclusion that “De toutes les considérations précédentes, le Greffier considère que les ressources accordées en l’espèce sont largement justifiées et permettent que le conseil de la défense soit dans une position optimale assurant que M. Mangenda puisse bénéficier d’une défense effective et efficace sans qu’il ne soit nécessaire d’augmenter les

¹ ICC-01/05-01/13-211-Conf

² ICC-01/05-01/13-228-Conf

moyens accordés dans la décision du 20 décembre. Le Greffier est d'avis qu'il n'y a pour l'instant aucune raison valable pour reconsidérer le niveau de ressources arrêté dans cette décision et que la défense n'apporte aucune justification sérieuse établissant le bienfondé de la requête qui doit, dès lors, être écartée au motif qu'elle est dépourvue de tout fondement.”;

NOTING the “Rappel au Juge unique de la requête du 20 février 2014 en application de l’art. 83.4 du règlement de la Cour” (“Rappel”)³ filed on 14 April 2014 by the Defence Counsel of Mr Mangenda Kabongo whereby he asked the Single Judge to decide on his request;

CONSIDERING that object of the Requête to be reviewed by the Chamber is the decision on the “Entendue de l’aide judiciaire conformément à la norme du Règlement de la Cour” (“Decision”)⁴ dated 20 Decembre 2014;

CONSIDERING that these proceedings, governed by regulation 83 of the Regulations of the Court, are of an administrative nature and the Chambers function and competence is, if requested to do so according to par. 4 of the cited regulation, to “review” the decision of the Registrar on the “scope” of legal assistance paid by the Court;

CONSIDERING therefore that in reviewing the Registrar’s decision the Chamber effectively has an appellate function and as consequence it must not consider whether it would have made the same decision as the Registrar but must assess whether the decision of the Registrar was materially affected by an error of law or fact or whether the decision is as unfair and unreasonable as to constitute an abuse of discretion.

³ ICC-01/05-01/13-340-Conf

⁴ Annex 1 to ICC-01/05-01/13-228-Conf

CONSIDERING that in his Decision the Registrar, while deciding on the request on legal aid for Mr Mangenda Kabongo and determining the means "reasonably necessary" for an "effective and efficient defence" as set out in regulation 83(1) of the Regulations, has given a full and exhaustive legal and factual motivation as to his determinations;

CONSIDERING further that in his Observations to the Requête the Registrar made it clear:

- (i) that the determination of the means was not arbitrary but was pre-discussed within the competent units of the Registry in light of the upcoming article 70 case;
- (ii) that the determination took in account that an Article 70 proceedings had to be considered different, less complex, to proceedings for crimes under article 5 of the Statute; and
- (iii) that the same financial means (i.e. [REDACTED] Euro) was and still is accorded to all defence teams assisting a Suspect recognized as indigent;

CONSIDERING that in no way it can be said that the decision of the Registrar was somehow materially affected by any error of law or fact or that it was so unfair and unreasonable as to constitute an abuse of discretion, such that it would warrant interference by the Chamber;

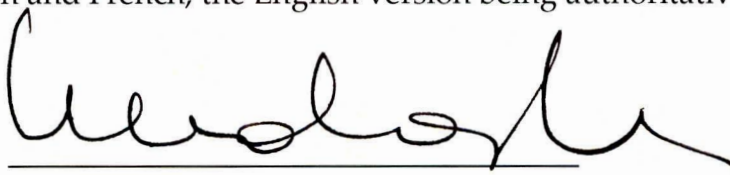
CONSIDERING, indeed, that the Defence, while expressing general dissatisfaction with the sum accorded, does not present any specific and motivated arguments to the contrary;

CONSIDERING finally that the determination of the Registrar on the means of legal aid is never final but can, upon request and given good cause, be adjusted;

FOR THESE REASONS, THE SINGLE JUDGE

REJECTS the request for judicial review.

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

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke at the end, positioned above a solid horizontal line.

Judge Cuno Tarfusser

Single Judge