

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 20 January 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**

URGENT

Public

**Decision on the "Demande en reconsidération de la décision du 19 décembre
2013 sur la requête en autorisation d'appel de la décision ICC-01/05-01/13-41-
Conf-Red" 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

Florence Darques Lane

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

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

**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 “Decision appointing an Independent Counsel and taking additional measures for the purposes of the forensic acquisition of material seized in the proceedings” dated 13 December 2013 (“13 December 2013 Decision”);¹

NOTING the “Decision on the ‘Requête d’autorisation d’appel de la décision ICC-01/05-01/13-41-Conf-Red’” dated 19 December 2013,² whereby the Single Judge dismissed *in limine* Mr Mangenda’s Defence request for leave to appeal the 13 December 2013 Decision (“19 December 2013 Decision”);

NOTING the “Demande en reconsidération de la décision du 19 décembre 2013 sur la requête en autorisation d’appel de la décision ICC-01/05-01/13-41-Conf-Red” dated 10 January 2014 and submitted on 13 January 2014 (“Defence Request for Reconsideration”),³ whereby the Defence for Mr Mangenda submits *inter alia*

- (i) having only had “un accès limité aux ‘court records’ qu’à partir du 10 janvier 2014, date à partir de laquelle le greffe a rentré la présente affaire dans le système informatique”;
- (ii) that, accordingly, it is only starting from 10 January 2014 that Counsel for the defence has had access to the “texte intégral” of the 13 December 2013 Decision;
- (iii) that the 19 December 2013 Decision is “mal motivée” and “contradictoire”, and its consequences are “manifestement pas satisfaisantes”;

¹ ICC-01/05-01/13-41-Conf-Red.

² ICC-01/05-01/13-56-Conf.

³ ICC-01/05-01/13-85-Conf.

NOTING that, accordingly, the Defence for Mr Mangenda requests that the 19 December 2013 be “reconsidered”;

NOTING article 82(1)(d) of the Statute;

CONSIDERING that the Single Judge has elsewhere⁴ extensively addressed the issue of the difficulties of access to the court records of the case alleged by Counsel for Mr Mangenda, including by highlighting that many of the statements made by him in this respect are either incorrect or incomplete, and that all the considerations made in that decision are herewith recalled and reiterated;

CONSIDERING, in particular, that the 19 December 2013 Decision was included in the CD sent by the Registry to Counsel for Mr Mangenda *via DHL* on 19 December and received by him on 20 December 2013;

CONSIDERING that the Single Judge reminds Counsel of his duties before the Court, in particular the duty to exercise due diligence and refraining from knowingly deceive or mislead the Court with incorrect statements;

CONSIDERING, as regards the request for reconsideration, that the statutory instruments of the Court do not provide for such a broad procedural remedy as an unqualified “motion for reconsideration” of a decision, as repeatedly highlighted by the pre-trial chambers of the Court;

CONSIDERING that, as established by the Appeals Chamber since long, “the Statute defines exhaustively the right to appeal against decisions of first instance courts, namely decisions of the Pre-Trial or Trial Chambers”⁵;

CONSIDERING that, accordingly, the Defence for Mr Mangenda might only have requested leave to appeal the 19 December 2013 Decision pursuant to article 82(1)(d) of the Statute, which provision sets forth the only admissible procedural

⁴ ICC-01/05-01/13-109.

⁵ ICC-01/04-168 OA03, para. 39.

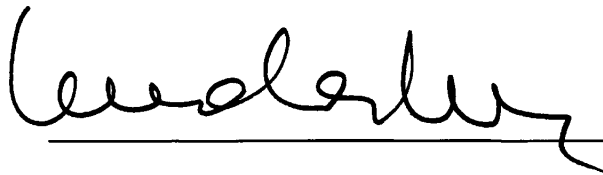
avenue for reviewing a decision other than final, and in compliance with all the requirements set forth by the Statute and the Rules, and chose not to do so within the applicable time limit of five days from the notification of the relevant decision;

CONSIDERING that, accordingly, the request for reconsideration must be dismissed as inadmissible and the Single Judge does not need to address its merits;

FOR THESE REASONS, THE SINGLE JUDGE HEREBY

DISMISSES the Defence Request for reconsideration of the 19 December 2013 Decision.

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



**Judge Cuno Tarfusser
Single Judge**

Dated this Monday, 20 January 2014

The Hague, The Netherlands