

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/05-01/13
Date: 12 December 2013

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

**Decision on protective measures and on the filing of confidential redacted
versions of documents in the record**

Order 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

Magalie Pirard

Counsel for Aimé Kilolo Musamba

Jean-Pierre Kilenda Kakengi Basila

Counsel for Jean-Jacques Mangenda Kabongo

Jean Flamme

Counsel for Fidèle Babala Wandu

Paul Djunga Mudimbi

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

Independent Counsel appointed pursuant to
ICC-01/05-52-Conf-Exp

REGISTRY

Registrar

Herman von Hebel

Detention Section

Victims and Witnesses Unit

Others

**Victims Participation and
Reparations Section**

I, Judge Cuno Tarfusser, having been designated ¹ as Single Judge of Pre-Trial Chamber II ("Chamber") of the International Criminal Court;

NOTING the "Warrant of arrest for Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse Arido" issued on 20 November 2013² ;

NOTING the status conference on issues relating to disclosure of evidence in the case held on 4 December 2013,³ during which the Defence for Aimé Kilolo Musamba inter alia requested access to two decisions issued by the Single Judge, namely ICC-01/05-52-Conf-Exp ("Decision on the Prosecutor's 'request for judicial order to obtain evidence for investigation under Article 70'", dated 29 July 2013: hereinafter, "29 July 2013 Decision") and ICC-01/05-62-Conf-Exp ("Decision on the Prosecutor's 'Third request for judicial order to obtain evidence for investigation under Article 70' dated 7 October 2013", dated 10 October 2013: hereinafter, "10 October 2013 Decision");

NOTING that, in the 29 July 2013 Decision, the Single Judge inter alia appointed an independent counsel tasked with (i) reviewing the logs of telephone calls either placed or received by Mr Aime Kilolo and Mr Jean-Jacques Mangenda made available by the relevant Belgian and Dutch authorities, with a view to identifying any calls received from or placed to parties connected with the investigation; (ii) listening to the recordings of any and all such calls; (iii) transmitting the relevant portions of any and all such calls which might be of relevance for the purposes of the investigation";

¹ ICC-01/05-45-Conf-Exp.

² ICC-01/05-01/13-1-US-Exp-tENG.

³ ICC-01/05-01/13-T-2-CONF-ENG.

NOTING that, in the 10 October 2013 Decision, the Single Judge ordered the Victims and Witnesses Unit (“VWU”) to provide to the Prosecutor information relevant for the purposes of her investigation, including information as to whether Aimé Kilolo Musamba had a specific authorisation to contact some defence witnesses during overnight adjournments in their testimonies;

NOTING the clarification provided by VWU to the Prosecutor on by email on 23 October 2013, denying that Aimé Kilolo Musamba had been given such authorisation;

NOTING that on 21 November 2013 the Single Judge ordered to file in the record of the case the reports, documents and CDs concerning the technical investigative activities carried out by the Dutch authorities further to the 29 July 2013 Decision, as transmitted to the Single Judge (“collectively, “the Dutch Authorities Reports”);⁴

NOTING that the Dutch Authorities Reports, including the CDs containing the recordings of relevant telephone calls as selected by the Independent Counsel, are currently classified as “confidential, ex parte Prosecutor and Registrar”;

NOTING that, on 1 October 2013, 25 October 2013 and on 14 November 2013 respectively, the Independent Counsel submitted to the Chamber the “Rapport intermédiaire du conseil ad hoc”⁵, the “Premier rapport du Conseil indépendant”⁶ and the “Deuxieme rapport du Conseil indépendant”⁷, all with confidential ex parte annexes (collectively, “Independent Counsel Reports”);

⁴ ICC-01/05-01/13-Conf-Exp, with confidential, ex parte Annexes A and B.

⁵ ICC-01/05-59-Conf-Exp with confidential ex parte Annex.

⁶ ICC-01/05-64-Conf-Exp with confidential ex parte Annex.

⁷ ICC-01/05-66-Conf-Exp with confidential ex parte Annex.

NOTING article 57(3)(b) and 57(3)(c) of the Statute, rule 81(4) of the Rules of Procedure and Evidence and regulations 20(3) and 23bis of the Regulations of the Court;

CONSIDERING that the 29 July 2013 and the 10 October 2013 Decisions ("Decisions"), the Independent Counsel Reports and the Dutch Authorities Reports all pertain to and are relevant to the proceedings in the present case, and that it is therefore appropriate that the Defence of the suspects be granted access to them;

NOTING, however, that the name of the person appointed as Independent Counsel appears in the Decisions, in the Independent Counsel Reports and in the Dutch Authorities Reports;

CONSIDERING that security reasons make it not appropriate to disclose to the Defence of the suspects the identity of the Independent Counsel;

CONSIDERING that the fact of not knowing the identity of the Independent Counsel does not prejudice the Defence's right and ability to have access to the results of the work carried out by the Independent Counsel in furtherance and execution of the Single Judge's appointment pursuant to the 29 July 2013 Decision;

CONSIDERING that, accordingly, it is appropriate to grant to the Defence of the suspects access to the Decisions, the Independent Counsel Reports and the Dutch Authorities Reports, subject to the redaction of the name and any other identifying information of the Independent Counsel, wherever they appear ;

FOR THESE REASONS, THE SINGLE JUDGE HEREBY**DECIDES**

to file in the record of the case a confidential redacted version of documents ICC-01/05-52-Conf-Exp and ICC-01/05-62-Conf-Exp, as respectively contained in confidential annexes A and B to this decision;

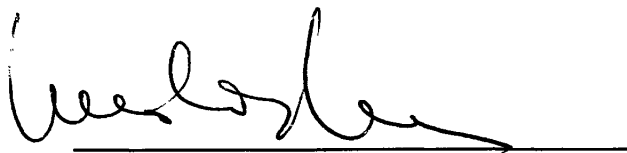
ORDERS

the Independent Counsel to file, no later than Monday 16 December 2013, a confidential redacted version of documents ICC-01/05-59-Conf-Exp, ICC-01/05-64-Conf-Exp and ICC-01/05-66-Conf-Exp, and of all their respective, confidential, ex parte annexes, from which the name and any other identifying information of the Independent Counsel will have been redacted;

DECIDES

to file in the record of the case a confidential redacted version of documents ICC-01/05-01/13-6-Conf-Exp-AnxA and ICC-01/05-01/13-6-Conf-Exp-AnxB, as contained in confidential Annex C and Annex D to this decision, and to reclassify as confidential ICC-01/05-01/13-6-Conf-Exp-Anx A000 to A0042 and ICC-01/05-01/13-6-Conf-Exp-Anx B000 to B042.

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



Judge Cuno Tarfusser
Single Judge

Dated this Thursday, 12 December 2013 The Hague, The Netherlands