

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

URGENT

Confidential redacted version

**Decision appointing an Independent Counsel and taking additional measures
for the purposes of the forensic acquisition of material seized in the
proceedings**

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

Jean-Pierre Kilenda Kakengi Basila

Counsel for Jean-Jacques Mangenda Kabongo

Jean Flamme

Counsel for Fidèle Babala Wandu

Prof Jean-Pierre Fofé Djofia Malewa

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
this decision

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 “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 2013 ;

NOTING the “Corrected version of Registry’s report on seized evidence and request for guidance on further processing” dated 4 December 2013, whereby the Registrar *inter alia* (I) reported having received “sealed documentary as well as electronic material” seized during the searches of the person and cell of Jean-Pierre Bemba, the residence of Narcisse Arido and the residence of Fidèle Babala and (II) submitted recommendations as to a number of steps to be taken for the purposes of the processing of the Seized Material;

NOTING, more specifically, that as regards the electronic material, the Registrar (i) highlighted the need to proceed to its forensic acquisition, whereby – for the purposes of subsequent searches - a copy of the relevant materials is made, (ii) submitted a number of options as to the way in which forensic copies could be scrutinised and (iii) sought guidance as to the modalities which should be followed;

NOTING that it appears possible, or even likely, that some of the Seized Material, or of their contents, will be of a privileged nature, in particular in light of the profession of some of the suspects and of the links between this case and the main case of the *Prosecutor v. Jean-Pierre Bemba Gombo*;

NOTING further that, during the status conference held on 4 December 2013, Counsel for Mr Aimé Kilolo Musamba submitted that material of a private nature (including private photographs) had been seized;

NOTING articles 57(3)(c), 67(1)(b) and 69(5) of the Statute and rule 73 of the Rules of Procedure and Evidence;

NOTING, in particular, that rule 73(1) of the Rules provides that “communications made in the context of the professional relationship between a person and his or her legal counsel shall be regarded as privileged, and consequently not subject to disclosure”;

CONSIDERING that the proper acquisition and, as appropriate, disclosure of the Seized Material is of essence for the purposes of the proper and expeditious conduct of the proceedings in this case;

CONSIDERING, by the same token, that appropriate measures need to be taken, with a view to preventing undue access by either party to information of a privileged nature, as well as to ensuring that information of a private nature, or otherwise obviously irrelevant for the purposes of these proceedings, be promptly returned to their legitimate owners;

CONSIDERING that, with a view to preserving the integrity of proceedings in this case, as well as in the case of the *Prosecutor v. Jean-Pierre Bemba Gombo*, it is therefore appropriate to appoint an Independent Counsel responsible for (i) being present at the place and time when representatives of the Registry will proceed to the unsealing and the forensic acquisition of the Seized Material; (ii) reviewing the Seized Material, with a view to identifying any item which is privileged or otherwise obviously irrelevant for the purposes of these proceedings; (iii) promptly submitting to the Single Judge a confidential, ex parte Registrar report detailing the results of the aforementioned review;

CONSIDERING that, in light of the information available to the Single Judge, [REDACTED] is in possession of the professional requirements and skills which are relevant for the purposes of the review of the Seized Material;

CONSIDERING that, in light of the time-frame set forth for these proceedings, it is appropriate that the operations relating to the unsealing, forensic acquisition and review of the Seized Material by the Independent Counsel take place without undue delay;

CONSIDERING that, with a view to expediting the review of the Seized Material, it is appropriate that the Prosecutor and the Defence of Mr Bemba, Mr Kilolo, Mr Babala and Mr Mangenda submit a list of properly motivated keywords which may be used by and assist the Independent Counsel in identifying material of a privileged nature;

CONSIDERING that it is appropriate that the procedure set forth in this decision be followed also in respect of the unsealing, forensic acquisition and review of any additional material which might have been seized for the purposes of these proceedings and which may be made available to the Court by the relevant national authorities at a later stage ("Additional Seized Material");

CONSIDERING that security reasons make it not appropriate to disclose to either of the parties the identity of the Independent Counsel and that the fact of not knowing the identity of the Independent Counsel does not prejudice their rights;

CONSIDERING that, accordingly, it is appropriate that a redacted version of this decision, from which the name of the Independent Counsel will have been redacted, be notified to the Prosecutor and the Defence of the suspects;

FOR THESE REASONS, THE SINGLE JUDGE HEREBY

DECIDES

to appoint, through the Registrar, [REDACTED] as Independent Counsel tasked with (i) being present at the unsealing and the forensic acquisition of the Seized Material, as well as of the Additional Seized Material, if any; (ii) reviewing the Seized Material, as well as the Additional Seized Material, if any, with a view to identifying any item which is privileged or otherwise obviously irrelevant for the purposes of these proceedings; (iii) promptly submitting a report to the Single Judge as to the results of such review;

ORDERS

the Independent Counsel to promptly liaise with the relevant sections of the Registry, with a view to making it possible for the unsealing, the forensic acquisition and the review of the Seized Material (as well as of the Additional Seized Material, if any) to be carried out and completed as expeditiously as feasible;

ORDERS

the Prosecutor, the Defence for Jean-Pierre Bemba Gombo, the Defence of Aimé Kilolo Musamba, the Defence of Mr Fidèle Babala Wandu and the Defence of Jean-Jacques Mangenda Kabongo to submit, no later than Friday 3 January 2014, a list of properly motivated keywords which may be used by and assist the Independent Counsel in identifying items of a privileged nature within the Seized Material (as well as the Additional Seized Material, if any);

ORDERS

the Registrar and the Independent Counsel appointed pursuant to this decision to promptly submit to the Single Judge any question or issue which may arise in connection with the review of the Seized Material (as well as of the Additional Seized Material, if any).

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

A handwritten signature in black ink, appearing to read 'Cuno Tarfusser', written over a horizontal line.

Judge Cuno Tarfusser
Single Judge

Dated this Friday, 13 December 2013

The Hague, The Netherlands