

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/05-01/13
Date: 19 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

Public

Decision on the "Defence request for assistance pursuant to Regulation 77(4)(b) of the Regulations of the Court"

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

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 “Defence request for assistance pursuant to Regulation 77(4)(b) of the Regulations of the Court”, submitted on 19 December 2013 (“Defence Request”),¹ whereby Mr Nicholas Kaufman, counsel for Mr Bemba, requests the Single Judge, “as a matter of extreme urgency, to order the Registrar to provide OPCD with the means of assisting Counsel” to perform tasks detailed in paragraph 7 of the Defence Request;

NOTING articles 16, 17 and 18 of the Code of Professional Conduct for Counsel;

NOTING the “Enregistrement de la désignation de Maître Nicholas Kaufman par M. Jean-Pierre Bemba Gombo comme son conseil et de l’acceptation de la désignation, accompagnée de la prestation de serment du conseil” dated 10 December 2013 and its annexes;²

NOTING, in particular, that in the document dated 8 December 2013,³ Jean-Pierre Bemba Gombo explicitly stated his wish that Nicholas Kaufman be his “conseil pro bono”, and this “en attendant une décision au sujet de l’aide judiciaire”;

NOTING that on 9 December 2013⁴ Mr Nicholas Kaufman accepted Mr Bemba’s designation of him as counsel, pursuant to the relevant instruments of the Court;

¹ ICC-01/05-01/13-54 and Conf. AnxA-E.

² ICC-01/05-01/13-36 and AnxI-IV.

³ ICC-01/05-01/13-36-Anx-I.

⁴ ICC-01/05-01/13-36-Anx-III.

CONSIDERING that Mr Nicholas Kaufman – as also evinced by his solemn undertaking required under article 5 of the Code of Professional Conduct for Counsel⁵ – has been acting as counsel before the Court for several years now and is therefore familiar with the texts governing the issue of legal assistance and with the procedures required for the purposes of granting such legal assistance;

CONSIDERING that this familiarity may also be evinced by the documents attached as confidential annexes to the Defence Request⁶, which also make apparent that Mr Kaufman was indeed aware that some time would have to elapse before a decision would be taken by the Registrar on the legal assistance requested by Mr Bemba for the present case;

CONSIDERING that article 16(1) of the Code of Professional Conduct for Counsel expressly provides *inter alia* that “counsel shall put the client’s interests before counsel’s own interests”;

CONSIDERING that, once the appointment of counsel has taken place, article 17(1) of Code of Professional Conduct for Counsel provides that a counsel’s obligation and duty to advise and represent a client shall continue until the case has been finally determined, or counsel has, or has been, withdrawn, in accordance with the same Code;

CONSIDERING that, as a fundamental principle of professional ethics, counsel cannot fail to perform any action which is required for the purposes of legal representation simply because of the fact that the client has failed to fulfil an obligation *vis-à-vis* him or her;

CONSIDERING that this principle underpins *inter alia* article 18(1)(b) of the Code of Professional Conduct for Counsel, which allows counsel to withdraw if

⁵ ICC-01/05-01/13-36-Anx-IV.

⁶ ICC-01/05-01/13-54-Conf-AnxA.

the client fails to fulfil an obligation to counsel regarding counsel's services only if the client "has been given reasonable warning that counsel will withdraw unless the obligation is fulfilled";

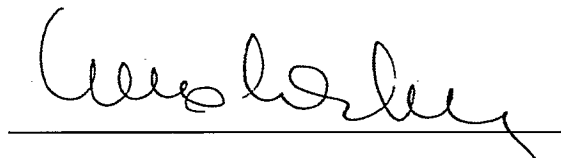
CONSIDERING further that Mr Kaufman fails to explain why the Single Judge is requested to rule on the Defence Request "as a matter of extreme urgency", when the documents attached to the Defence Request – in particular, its confidential annex E – show that the "issue" underlying the Defence Request has been known to him at least since Thursday, 12 December 2013, at 6:08 hours;

CONSIDERING that the relationship between the Registrar and the Office of Public Counsel for the Defence in matters concerning the assignment of resources is not a matter for the Single Judge to determine;

FOR THESE REASONS, THE SINGLE JUDGE HEREBY

REJECTS the Defence Request.

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



Judge Cuno Tarfusser
Single Judge

Dated this Thursday, 19 December 2013

The Hague, The Netherlands