

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 17 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***

Confidential

**Decision on the requests submitted by the Defence for Mr Kilolo and the
Defence for Mr Babala relating to the forensic acquisition and return 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 “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”), whereby the Single Judge *inter alia* (i) appointed an Independent Counsel for the unsealing, forensic acquisition of and the identification of any privileged material contained in the material seized during the searches carried out upon the arrest of Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse Arido”; (ii) decided that security reasons made it not appropriate to disclose the identity of the Independent Counsel to any of the parties and (iii) ordered the Defence teams to submit, by 3 January 2014, key-words which might assist the Independent Counsel in identifying items of a privileged nature within the seized material;¹

NOTING the “Requête de monsieur Fidèle Babala Wandu sollicitant la présence de son Conseil lors de la visite du contenu de ses appareils de communication et clé USB saisis dans le cadre de la procédure”, dated 3 January 2014,² requesting (i) that Counsel for Mr Babala be allowed to be present “au moment où seront ouverts ses appareils et visités leurs contenus”; and (ii) that the material pertaining to Mr Babala be returned to his Counsel (“Requests by the Defence for Mr Babala”);

NOTING the “Réponse de la Défense à la «Decision appointing an Independent Counsel and taking additional measures for the purposes of the forensic acquisition of material seized in the proceedings» (ICC-01/05-01/13-41-Conf-Red

¹ ICC-01/05-01/13-41-Conf-Red.

² ICC-01/05-01/13-64-Conf.

13-12-2013)" dated 3 January 2014³, whereby the Defence for Mr Kilolo requests the Chamber (i) to order that the seized materials pertaining to Mr Kilolo "qui doivent demeurer strictement confidentiels" be returned to him; and (ii) to decide that Mr Kilolo and his Counsel shall be present "lors des opérations que va mener le Conseil Indépendent" ("Requests by the Defence for Mr Kilolo");

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

CONSIDERING that the requests made by the Defence for Mr Babala and the Defence for Mr Kilolo have the same nature and content and are therefore appropriately addressed jointly;

CONSIDERING that the procedures for the forensic acquisition of the seized material are ongoing, and that the Registrar, following instructions by the Single Judge, is in the process of returning the original items;

CONSIDERING that the security reasons making it necessary to preserve the confidentiality of the identity of the Independent Counsel at the time of the 13 December 2013 Decision are still outstanding and that, accordingly, it has not been and is still not possible to allow any of the counsels for the Defence to be present at the time of the procedures for the forensic acquisition of the seized material;

CONSIDERING that on 6 January 2014 the Independent Counsel has submitted to the Chamber a confidential, ex parte report detailing the operations carried out for the purposes of the forensic acquisition of the seized material, which report shall be made available to the Defence teams and to the Prosecutor at the appropriate moment;

³ ICC-01/05-01/13-65-Conf.

NOTING the information received from the Registry, to the effect that, due to obstacles of a technical nature, it has not yet been possible to complete the forensic acquisition of one Ipad seized from Mr Babala;

CONSIDERING that, accordingly, the return of this Ipad shall only be possible until the relevant technical difficulties are overcome and its forensic acquisition is completed;

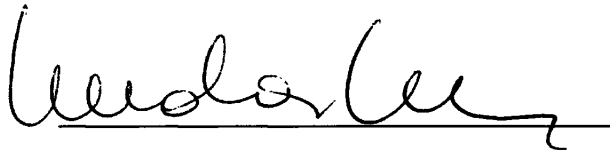
FOR THESE REASONS, THE SINGLE JUDGE HEREBY

PARTIALLY GRANTS the Requests by the Defence for Mr Babala and the Requests by the Defence for Mr Kilolo;

ORDERS the Registrar to proceed without undue delay to return the originals items of the seized material as soon as their forensic acquisition has been completed;

REJECTS the other requests contained in the Request by the Defence for Mr Babala and in the Request by the Defence for Mr Kilolo.

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, 17 January 2014

The Hague, The Netherlands