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

Date: 20/02/2014

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***

Public Document

**Defence request for the disclosure of information
pertaining to the Independent Counsel**

Source: Defence for Mr. Jean-Pierre Bemba Gombo

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

The Office of the Prosecutor

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Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

The Office of Public Counsel for Victims

The Office of Public Counsel for the Defence

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Mr. Herman von Hebel

Defence Support Section

Victims and Witnesses Unit

Detention Section

The Defence for Jean-Pierre Bemba Gombo ("the Suspect") hereby requests that the Single Judge disclose information pertaining to the independence of the "Independent" Counsel appointed by virtue of decision ICC-01/05-52-Red2.

1. On 29 July 2013, the Single Judge appointed an "Independent" Counsel to review the intercepted telephone calls of Aime Kilolo and to "screen all relevant recordings, with a view to identifying those providing elements which might be relevant for the limited purposes of the Prosecutor's investigation and delivering them to the Prosecutor".¹

2. The Single Judge noted that the "Independent" Counsel possessed the necessary familiarity with Lingala – the language spoken by Aimé Kilolo and the Suspect.²

3. Review of all the materials supplied by the "Independent" Counsel to date suggests that he was not even alert to the need to search for the existence of potentially exonerating information.

4. Accordingly, the Suspect has no means to verify the Single Judge's assessment that the "Independent" Counsel is "a really independent one"³ other than to rely on the assurances of the Single Judge himself.

5. The Suspect is mindful of the role performed by the "Independent" Counsel which, in the present case, may be broadly equated to that of the Prosecutor.

6. To this end, the Suspect believes that the "Independent" Counsel should abide by the same principles of independence which apply to members of the Office of the Prosecutor, the breach of which should entail his disqualification.

¹ ICC-01/05-52-Red2 at paragraph 7.

² *ibid* at paragraph 8.

³ *ibid* at paragraph 7.

7. Rules 34(1)(a) and 34(1)(c) of the Rules of Procedure and Evidence state that the grounds for disqualification of the Prosecutor (and by implication the "Independent" Counsel) shall include, inter alia, a "personal interest in the case .. or other professional relationship with any of the parties" and the "performance of functions, prior to taking office, during which he or she could be expected to have formed an opinion, ... on the parties or on their legal representatives".

8. The "Independent" Counsel was appointed "[f]ollowing consultations with the relevant units of the Registry (namely, the Counsel Support Section)".⁴

9. It is reasonable to assume, therefore, that the Counsel Support Section would only appoint someone who is familiar with the workings of the International Criminal Court and/or international justice in Africa.

10. The Single Judge is thus requested to clarify whether the "Independent" Counsel has ever had any previous working relationship with any member of the Office of the Prosecutor and, if this be the case, whether such a previous working relationship was disclosed by the member of the Office of the Prosecutor in question.

11. The Single Judge is also requested to clarify whether the "Independent" Counsel has previously been engaged in any function as a result of which he could be expected to have formed an opinion on any of the suspects in the present case.



Nicholas Kaufman

Counsel for Jean-Pierre Bemba Gombo

Jerusalem, Israel
Thursday, February 20, 2014

⁴ *ibid* at paragraph 8.