

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/05-01/13
Date: 21 February 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, AIME KILOLO
MUSAMBA, JEAN-JACQUES MANGENDA KABONGO, FIDELE BABALA WANDU
AND NARCISSE ARIDO***

Confidential

**Prosecution Request for Leave to Reply to the Babala Defence's Response to the
Prosecution's Submission on the Appointment of Defence Counsel**

Source: The Office of the Prosecutor

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 Victims

Legal Representatives of Applicants

Unrepresented Victims

Unrepresented Applicants for Participation/Reparation

States Representatives

Amicus Curiae

REGISTRY

Registrar

Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Detention Section

Victims Participation and Reparations Section Others

I. Introduction

1. Pursuant to Regulation 24(5) of the Regulations of the Court ("RoC"), the Office of the Prosecutor ("Prosecution") requests the Chamber's leave to reply to the Babala Defence's Response ("Response")¹ to the Prosecution's Submission on the Appointment of Defence Counsel ("Submission").²

2. A limited and focused reply may benefit the Chamber and assist in the proper determination of the Submission.

II. Confidentiality

3. This filing is filed confidentially because it refers to filings so designated.³

III. Submissions

4. The Prosecution seeks to reply on the following three issues:

(1) Whether the Prosecution has standing to contest the appointment of counsel under the legal framework of the Court;

(2) Who bears the burden to overcome or establish an impediment to representation (as opposed to an application for disqualification of counsel, for example) on the basis of a conflict or incompatibility of interests among a former and a current client in the same case;

(i) does an actual conflict or incompatibility need be established or disproved; and

¹ ICC-01/05-01/13-188-Conf, *Réponse de la Défense à la "Prosecution's Submission on the Appointment of Defence Counsel"*, 14 February 2014.

² ICC-01/05-01/13-159-Conf, *Prosecution's Submission on the Appointment of Defence Counsel*, 7 February 2014.

³ Regulation 23*bis*(2) of the RoC.

(3) Whether an impugned counsel's claimed absence of a conflict or incompatibility of interests among a former and current client in the same case alone obviates any need to obtain the clients' informed consent as to the proposed representation under the Code of Professional Conduct.

5. A limited reply clarifying the law and correcting allegations made in the Response on these issues "may benefit" the Chamber,⁴ and is in the interests of justice.

IV. Requested Relief

6. For the foregoing reasons, the Prosecution requests that the Chamber grant it leave to reply to the Defence Response on the issues identified in paragraph 4, pursuant to Regulation 24(5) of the Regulations of the Court.



Fatou Bensouda, Prosecutor

Dated this 21st Day of February 2014

At The Hague, The Netherlands

⁴ ICC-01/05-01/08-2014, Order granting leave to reply, 15 December 2011, para. 4; *see also* ICC-01/05-01/08-2942, Decision on "Prosecution's Request for leave to reply to Defence 'Response to the Prosecution's Application to Submit Additional Evidence'", 22 January 2014, para. 4.