

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: **French**

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

Date: **14 February 2014**

PRE-TRIAL CHAMBER II

Before: Judge Cuno Tarfusser

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***

Public Document

**Defence observations “on Mr Mangenda’s Defence Request” (ICC-01/05-01/13-
120-Conf)**

Source: Defence for Mr Fidèle Babala Wandu

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

Office of the Prosecutor

Ms Fatou Bensouda
Mr James Stewart
Mr Kweku Vanderpuye
Ms Florence Darques Lane

Counsel for the Defence of Mr Kilolo

Mr Ghislain Mabanga
Ms Catherine Mabilie

Counsel for the Defence of Mr Babala

Mr Jean-Pierre Kilenda Kakengi Basila

Counsel for the Defence of Mr Mangenda

Mr Jean Flamme

Counsel for the Defence of Mr Jean-Pierre Bemba Gombo

Mr Nicholas Kaufman

Counsel for the Defence of Mr Narcisse Arido

Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

Unrepresented Applicants for Participation/Reparations

Office of Public Counsel for Victims

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

Victims Participation and Reparations Other Section

I. PURPOSE OF THE PRESENT OBSERVATIONS

1. On 22 January 2014, the Defence for Mr Jean-Jacques Mangenda Kabongo submitted to the Chamber an application for relinquishment of jurisdiction and referral of his client to be tried by the Dutch courts pursuant to article 70 of the Statute.¹
2. On 7 February 2014, the Chamber ordered the Defence for Mr Kilolo and Mr Babala to submit their observations on the application by Friday, 14 February 2014.²
3. In compliance with the Chamber's Order, the Defence for Mr Fidèle Babala Wandu ("the Defence") makes the following observations.
4. The Defence concurs with the application for the reasons hereunder.

II. GROUNDS

5. The submission by the Defence for Mr Jean-Jacques Mangenda Kabongo is legally sound.
6. The Defence endorses it.
7. However, the Defence wishes to underscore – and this is critical – that Mr Fidèle Babala Wandu is a Congolese parliamentarian, who was elected to the National Assembly of the Democratic Republic of the Congo. As such, he is vested with the right to be tried by the Supreme Court of justice of his country and is amenable to its jurisdiction in accordance with article

¹ ICC-01/05-01/13-120-Conf-tENG.

² ICC-01/05-01/13-162, *Order requesting observations from the Kingdom of the Netherlands and from the other Defence Teams on the "Requête à la Cour de ne pas exercer sa compétence, en application de l'art. 70.4(b) du Statut de Rome et de la règle 162.a "Demande en dessaisissement" submitted by the Defence for Mr. Mangenda"*.

153 of the Constitution of 19 February 2006,³ which provides:
 “[TRANSLATION] Subject to the conditions prescribed by the Constitution and the laws of the Republic, the Court of Cassation acting at first and last instance, shall try criminal offences committed by: (1) members of the National Assembly and of the Senate.)

FOR THESE REASONS,

MAY IT PLEASE THE CHAMBER TO:

ENTERTAIN and **GRANT** Mr Jean-Jacques Mangenda Kabongo’s application.

TAKE NOTE of the fact that Mr Fidèle Babala Wandu is vested with the right to be tried by the Supreme Court of the Democratic Republic of the Congo.

AND JUSTICE WILL BE DONE

RESPECTFULLY SUBMITTED

Mr Jean-Pierre Kilenda Kakengi Basila
Counsel for Mr Fidèle Babala Wandu

[signed]

Dated this 14 February 2014

At Denderleeuw, East Flanders, Belgium

³ The Constitution is available at democratie.francophonie.org/IMG/pdf/Constitution_de_la_R.D.C.pdf, Kinshasa February 2006.