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

Date: 19 March 2014

THE APPEALS CHAMBER

Before:

Judge Sang-Hyun Song, Presiding Judge
Judge Sanji Mmasenono Monageng
Judge Akua Kuenyehia
Judge Erkki Kourala
Judge Anita Ušacka

**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

**CORRIGENDUM of the Defence Observations on the “Request for
disqualification of the Prosecution from the investigation and prosecution against
Mr Aimé Kilolo Musamba” (ICC-01/05-01/13-233-Conf)**

Source: Defence team for Mr Fidèle Babala Wandu

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

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Legal Representatives of the Victims

Unrepresented Victims

Office of Public Counsel for Victims

State Representatives

Legal Representatives of the Applicants

**Unrepresented Applicants
(participation/reparations)**

**The Office of Public Counsel for the
Defence**

Amicus Curiae

REGISTRY

Registrar

Mr Herman von Hebel

Defence Counsel Support Section

Victims and Witnesses Unit

Detention Section

Victims Participation and Reparations

Others

I. BACKGROUND

1. On 28 February 2014, Mr Aimé Kilolo Musamba (“Mr Kilolo”) submitted a request to the Chamber for disqualification of the Prosecutor and other members of her Office.¹
2. On 14 March 2014, the Appeals Chamber (“this Chamber” or “the Chamber”) ordered, *inter alia*, the Defence for Mr Fidèle Babala Wandu (“the Defence”) to submit its observations on this request.²
3. In compliance with the Chamber’s Order, the Defence hereby submits its observations. It concurs with the abovementioned request for the reasons briefly set out below.

II. GROUNDS

4. Like any citizen being prosecuted, Mr Kilolo has the right to the principle of conformity with the Statute³ and the right to the presumption of innocence.⁴
5. Mindful of Mr Kilolo’s rights under article 67 of the Statute, the Single Judge (“the Pre-Trial Chamber”) took the trouble to remind him of this in public in the presence of the Office of the Prosecutor at the First Appearance hearing on 27 November 2013. You, said the Single Judge on that occasion, and all suspects moreover, are presumed innocent until proved otherwise and beyond reasonable doubt that you are guilty, and the burden of proof lies with the Prosecutor. You have the right not to have imposed on you any reversal of the burden of proof or

¹ ICC-01/05-01/13-233-Conf.

² ICC-01/05-01/13-257 Order on the filing of submissions and consolidated comments on the requests for disqualification of the Prosecutor, the Deputy Prosecutor and the other members of the Office of the Prosecutor.

³ Articles 22 and 23 of the Statute.

⁴ Article 66 of the Statute.

any onus of rebuttal. You have the right to have disclosed to you material which shows or tends to show your innocence, mitigates your guilt or which may affect the credibility of... of Prosecution evidence or evidence in the custody of the Prosecutor.⁵

6. The courtroom of the International Criminal Court is the only venue where the Prosecutor ("Prosecution" or "Office of the Prosecutor") must prove Mr Kilolo's guilt beyond reasonable doubt. It would be rather improper and contrary to the legal civilisation of states governed by the democratic rule of law were the Prosecution to give free rein to comments outside the courtroom about the guilt of Mr Kilolo who has the right to be presumed innocent.
7. The Office of the Prosecutor must be guided by objectivity and impartiality. As soon as a defendant, as in Mr Kilolo's case, feels that anything other than impartiality and objectivity is to be expected from either the Prosecutor or the Judges, he has the right to request their disqualification so that he may be judged by organs that provide the greatest guarantees of objectivity, neutrality and impartiality.
8. The documents appended to Mr Kilolo's request provide *prima facie* evidence that these guarantees are completely lacking on the part of the Prosecutor.
9. This is why the Defence for Mr Fidèle Babala Wandu respectfully requests that the Chamber take judicial notice of the foregoing and draw all the necessary legal conclusions. Justice will be done only if the Chamber grants Mr Kilolo's request for a dispassionate attempt to determine the truth. It is solely for this reason that the Defence supports Mr Kilolo's request for disqualification unreservedly, with a view to enabling all the organs of the Court hearing which must examine this case

⁵ICC-01/05-01/13-T-1-FRA ET WT 27-11-2013, p. 12, lines 8-16.

to seek the truth fairly and impartially, in accordance with article 67(1) of the Statute enshrining the rights of the accused.

10. Regulation 17 of the Regulations of the Office of the Prosecutor provides that
“The Office shall ensure compliance with the Staff Rules and Regulations and Administrative Instructions of the Court in order to ensure that its staff members uphold the highest standards of efficiency, competence and integrity.”

FOR THESE REASONS

MAY IT PLEASE THE CHAMBER TO

ENTERTAIN and GRANT Mr Kilolo’s Request

AND JUSTICE WILL BE DONE.

RESPECTFULLY SUBMITTED.

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

Done at Denderleeuw (East Flanders, Belgium), 19 March 2014