

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 17 April 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 reclassifying documents in the record, lifting protective measures and taking additional measures related to the implementation of Decision ICC-01/05-01/13-41-Red

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

Counsel for Jean-Pierre Bemba Gombo

Nicholas Kaufman

Counsel for Aimé Kilolo Musamba

Ghislain Mabanga

Counsel for Jean-Jacques Mangenda Kabongo

Jean Flamme

Counsel for Fidèle Babala Wandu

Jean-Pierre Kilenda Kakengi Basila

Counsel for Narcisse Arido

Göran Sluiter

Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

States Representatives

Others

Fidel Nsita Luvengika
(Independent Counsel appointed pursuant to
Decision ICC-01/05-01/13-41-Conf-Exp)

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 2013¹ (“13 December 2013 Decision”), whereby the Single Judge *inter alia* appointed Independent Counsel tasked with (i) being present at the unsealing and the forensic acquisition of documentary and electronic material seized upon the searches of the person and cell of Jean-Pierre Bemba, the residence of Narcisse Arido and the residence of Fidèle Babala (“Seized Material”); (ii) reviewing the Seized Material, with a view to identifying any item which is privileged or otherwise obviously irrelevant for the purposes of these proceedings; (iii) promptly submitting a report to the Single Judge as to the results of such review;

NOTING the “Rapport du Conseil indépendant suivant la Décision ICC-01/05-01/13-41 (Levée et copie d’une dernière pièce saisie et analyse des pièces saisies)” (“Independent Counsel’s Report” or “Report”) submitted on an *ex parte*, confidential basis by Independent Counsel on 8 April 2014 (“Independent Counsel Report”)², whereby Independent Counsel describes the operations conducted in connection with the forensic acquisition of some items contained in the Seized Material and transmits the results of the review of items seized upon the searches of the person and cell of Jean-Pierre Bemba;

CONSIDERING it necessary to disclose to the parties the identity of Independent Counsel, also in light of the advanced stage of the proceedings and the proximity of the date set for the confirmation of the charges;

¹ ICC-01/05-01/13-41-Red.

² ICC-01/05-01/13-319-Conf-Exp.

NOTING that, as confirmed by Independent Counsel, there are no longer security reasons making it necessary to withdraw this identity from the parties;

CONSIDERING, by the same token, that there are still outstanding security reasons making it necessary to maintain the identity of Independent Counsel confidential *vis-à-vis* the public, with a view to ensuring that the personal safety and security of Independent Counsel be preserved;

CONSIDERING that it is therefore of the essence that all of the parties and their Counsel strictly comply with the confidential nature of the information relating to the identity of Independent Counsel;

CONSIDERING that the information contained in Independent Counsel Report pertain to the proceedings and the charges in the present case and that, therefore, it is appropriate to make it available to the parties;

NOTING that the 13 December 2013 Decision requested Independent Counsel to review the Seized Material with a view to determining which items, if any, would not have to be made available to the Prosecutor and the other parties, whether because of their privileged nature or because of their being obviously irrelevant to these proceedings (such as items of a private and personal nature);

NOTING that, as a result of the review of material seized upon the searches of the person and cell of Jean-Pierre Bemba, Independent Counsel identified items which are privileged or otherwise obviously irrelevant for the purposes of these proceedings, as well as items which are not privileged;

CONSIDERING it necessary that any and all those items which were identified as non privileged and relevant for the purposes of these proceedings be eventually made available to all of the parties to these proceedings;

NOTING that Independent Counsel indicates that some of these items should be subject to redactions prior to their being made available to the parties and proposes to carry out the requested redactions with the assistance of the Registry;

CONSIDERING it also necessary that the Defence for Jean-Pierre Bemba be given an opportunity to provide observations on the selection made by Independent Counsel, prior to any item being made available to the Prosecutor and the other Defence teams, if it so wishes;

CONSIDERING that, accordingly, the relevant items shall be made available to the Prosecutor and the other Defence teams only after the Single Judge has reviewed the observations made by the Defence for Jean-Pierre Bemba, if any;

FOR THESE REASONS, THE SINGLE JUDGE HEREBY

DECIDES that ICC-01/05-01/13-319-Conf-Exp shall be reclassified as "confidential";

ORDERS all the parties and their Counsel to strictly comply with the confidential nature of the information relating to the identity of Independent Counsel;

ORDERS Independent Counsel, with the assistance of the services of the Registry, to prepare redacted versions of those items, as referred to in paragraph 37 of Independent Counsel's Report, where redactions are needed before they can be made available;

ORDERS Independent Counsel, with the assistance of the services of the Registry, to file in the record of the case, on a confidential, ex parte basis, reserved to the Defence for Jean-Pierre Bemba only, all items identified as non-privileged and relevant (subject to the appropriate redactions), as referred to in paragraph 35 of Independent Counsel's Report;

ORDERS the Registrar to provide Independent Counsel with all assistance which may be necessary and appropriate with a view to allowing the expeditious completion of the tasks entrusted in Independent Counsel by this decision;

DECIDES that the Defence for Jean-Pierre Bemba shall have 5 days to submit observations, if any, following the notification of relevant items into the record of the case pursuant to this decision;

DECIDES that the relevant items shall only be made available to the Prosecutor and the other Defence teams after the Single Judge will have reviewed the observations submitted by the Defence for Jean-Pierre Bemba, if any.

Done in both English and French, the English version being authoritative.

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke at the end, positioned above a solid horizontal line.

Judge Cuno Tarfusser
Single Judge

Dated this Thursday, 17 April 2014

The Hague, The Netherlands