



Original: English

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

Date: 07/06/2014

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 response to Fidèle Babala's filing: ICC-01/05-01/13-459-Conf

Source: Defence for 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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Counsel for Narcisse Arido

Gøran Kimo Sluiter

Legal Representatives of the Victims	Legal Representatives of the Applicants
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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

Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Detention Section

Pursuant to decision ICC-01/05-01/13-461, the Defence for Jean-Pierre Bemba Gombo hereby files its response to the *Requête URGENTE de la Défense de Monsieur Fidèle Babala sollicitant de la Chambre préliminaire II d'ordonner au Conseil indépendant et/ou au Greffe de lui communiquer l'intégralité des conversations téléphoniques intervenues entre M. Babala et les autres suspects de l'affaire en cours* dated 4 June 2014 (ICC-01/05-01/13-459-Conf)("the Babala Request").

1. The Suspect supports the Babala Request and requests that the Single Judge grant the relief sought therein.

2. The Suspect respectfully submits that the position in which the Babala Defence finds itself is symptomatic of the unfair procedure established in this case.

3. As we are reminded, the Independent Counsel was tasked merely with identifying "*those portions of calls which might be relevant to the investigation which led to the opening of this case*" [emphasis added] – i.e., incriminating evidence. In so referring to his earlier decision (ICC-01/05-52-Red), taken without the benefit of an independent defence submission and without any right of appeal, the Single Judge highlighted the very unfairness built into the case against the suspects. At no stage has the Single Judge instructed the Independent Counsel to identify any aspect of the intercepted telecommunications which might exonerate the suspects. The net result has been that the Prosecution will, at confirmation, rely merely on the judicially approved and prejudicially orientated selection of snippets from intercepted telecommunications provided by a close colleague of the Senior Trial Lawyer in the Suspect's main case.

4. In essence, the burden of proof has been reversed and it is now for the suspects to prove their innocence. Not only do they have to identify exonerating information out of the many hundreds of hours of intercepted telephone

conversations cherry-picked by the Independent Counsel but, also, out of those deemed by him not to be relevant.

A handwritten signature in black ink that reads "Nicholas Kaufman". The signature is written in a cursive, slightly slanted style. Below the signature is a solid horizontal line.

Nicholas Kaufman

Counsel for Jean-Pierre Bemba Gombo

Jerusalem, Israel
Saturday, June 07, 2014