

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 10 June 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 ET NARCISSE ARIDO***

Public Document

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

Source: Defence for Mr Aimé Kilolo Musamba

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

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Legal Representatives of the Applicants

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

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Detention Section

Victims Participation and Reparations Section

Other

I. INTRODUCTION

1. *Purpose:* This Response (“Response” or “Defence Response”) is hereby submitted by the Defence of Mr Aimé Kilolo Musamba (“Kilolo Defence” and “Mr Kilolo” respectively) to the Pre-Trial Chamber II of this Court pursuant to Regulation 24(1) and Regulation 34(b) of the Regulations of the Court, in support of and to respectfully request the Single Judge grant the request of Mr Fidèle Babala in filing ICC-01/05-01/13-459-Conf (“Babala Request”).
2. This Response is filed pursuant to the Single Judge’s decision ICC-01/05-01/13-461, ordering the Defence teams to submit their observations to the Babala Request.
3. *Structure:* This Response will dispense with the procedural posture of this case, and will address only the Defence’s unequivocal support for the Babala Request. Hereinafter, all references to “the Suspects” shall refer collectively to Mr Jean-Pierre Bemba Gombo, Mr Aimé Kilolo Musamba, Mr Jean-Jacques Mangenda Kabongo, Mr Fidèle Babala Wandu and Mr Narcisse Arido.

II. DISCUSSION

1. On 4 June 2013, the Defence of Mr Fidèle Babala (hereinafter “Babala Defence” and “Mr Babala” respectively) filed 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*¹ in which the Babala Defence requested the Pre-Trial Chamber order the

¹ ICC-01/05-01/13-459-Conf.

Independent Counsel and/or the Registry to communicate the entirety of all recorded telephone conversations taking place between Mr Babala and the other Suspects.

2. By decision on 5 June 2014, the Single Judge ordered the Defence teams for Jean-Pierre Bemba, Aimé Kilolo, Jean-Jacques Mangenda and Narcisse Arido to file their responses to the Babala Request by Tuesday, 10 June 2014.²
3. Pursuant to such order, the Kilolo Defence hereby submits that it fully supports the Babala Request in its entirety and requests the Single Judge grant the relief sought therein.
4. The Kilolo Defence cannot help but recall the ambiguity and uncertainty that have so bitinglly and consistently permeated the present proceedings, as well as the unfair and unilateral procedures established in this case, not the least of which are the recorded phone conversations that form the subject of the Babala Request.
5. The Kilolo Defence also takes this opportunity to reaffirm its staunch opposition to the Single Judge's appointment and subsequent charging of Independent Counsel in July 2013 with investigating and substantiating the Prosecution's allegations³, and more specifically, to Independent Counsel's reviewing of the logs of telephone calls either placed or received by the Suspects...[for] transmi[ssion] to the Prosecutor [of] the relevant portions of any and all such calls which might be of relevance for the purposes of the [Prosecution's] investigation" (emphasis added).⁴ As addressed by the Bemba Defence on 9 June

² ICC-01/05-01/13-461, p. 5.

³ ICC-01/05-52-Conf-Exp.

⁴ *Ibid.*

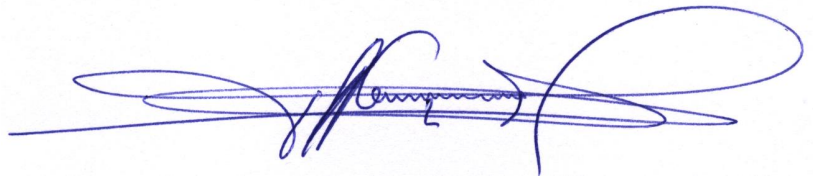
2014, an assessment with which the Kilolo Defence is inclined to agree, “[t]he net result has been that the Prosecution will, at confirmation, rely merely on the judicially approved and prejudicially orientated selection of snippets from intercepted telecommunications...”⁵

6. The burden of proof having been unfairly and unprecedentedly reversed onto the Suspects, who now bear the responsibilities otherwise reserved for the Prosecution, the Kilolo Defence feels the Suspects must be afforded full rights of access to *all* evidence obtained and accessed by the Prosecution in this case – including any and all recorded telephone conversations – on which the Prosecution may rely at the confirmation. This includes the intercepts that form the subject of the Babala Request. After all, the Prosecution has no doubt gleefully availed itself of the opportunity to listen to these phone intercepts; it seems only fair that the Defence be afforded the same opportunity, albeit with significantly less time remaining on the pre-confirmation calendar.
7. The Kilolo Defence emphasizes that granting the Babala Request would, to a miniscule degree, assist in remedying some of the procedural defects and injustice suffered in the present case.

III. RELIEF REQUESTED

4. The Defence for Mr Kilolo respectfully requests that the Single Judge:
 - Grant the request of Mr Fidèle Babala in filing ICC-01/05-01/13-459-Conf in its entirety.

⁵ ICC-01/05-01/13-469, para. 3.



Ghislain M. Mabanga

Lead Counsel for Mr. Aimé Kilolo Musamba

Dated this 10 June 2014,

At the Hague, The Netherlands