

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: **English**

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

Date: **10/02/2014**

**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 Document**

**Defence response to Decision ICC-01/05-01/13-161-Conf**

**Source: Defence for Mr. 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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Jean-Pierre Kilenda Kakengi Basila

**Legal Representatives of the  
Victims**

**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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**Registrar**

Mr. Herman von Hebel

**Defence Support Section**

**Victims and Witnesses Unit**

**Detention Section**

The Defence for Mr. Jean-Pierre Bemba Gombo ("the Suspect") hereby files its response to the Single Judge's Decision: ICC-01/05-01/13-161-Conf.

1. In so far as the request emanating from the Belgian authorities is designed to facilitate the identification of potentially privileged materials, the Defence respectfully declines to provide keywords. As stated elsewhere, the Defence believes that the provision of keywords will not provide a sufficiently safe mechanism for filtering out potentially privileged material. Without acknowledging that the Belgian authorities have lawful grounds to perform a search of Aime Kilolo's electronic materials, the Defence believes that the isolation of privileged information ought to be performed, first and foremost, by Counsel for the Defence. If obliged to agree to the present alternative, the Defence believes that the Investigating Magistrate is legally and ethically bound to search each and every electronic file or document for the isolation of potentially privileged information.

2. The Defence notes the Registry's observation that during the searches performed in Belgium on 20 November 2013, the Office of the Prosecutor informed the Belgian investigating magistrate that it would like to supply the latter with a list of keywords not for the identification of potentially privileged materials but, rather, for the identification of materials of relevance to the case.<sup>1</sup>

3. The Defence further notes that in his letter to the Belgian authorities on 23 December 2014, the Registrar's representative highlighted the fact that the Prosecutor's abovementioned and apparently informal communication was liable to delay the disclosure schedule.<sup>2</sup>

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<sup>1</sup> ICC-01/05-01/13-82-Conf-Anx1.

<sup>2</sup> *ibid.*

4. In the circumstances, the Defence repeats that the burden of proof is with the Prosecutor and that it will not assist her in the task of identifying materials of relevance to the case.

5. Given the potential delay at which the Registrar's representative hinted and given that the request for the supply of keywords was made some while ago, the Defence will oppose any request for the extension of disclosure deadlines in advance of the confirmation proceedings specifically for the purpose of permitting the electronic search of the materials seized from Aimé Kilolo Musamba.



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Nicholas Kaufman

Counsel for Jean-Pierre Bemba Gombo

Jerusalem, Israel

Monday, February 10, 2014