



Original: English

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

Date: 08/04/2014

**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 Redacted Document**

**Defence response to Prosecution filing: ICC-01/05-01/13-310-Red**

**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**

Fatou Bensouda

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**Counsel for Jean-Pierre Bemba Gombo**

Nicholas Kaufman

**Counsel for Aimé Kilolo Musamba**

Ghislain Mabanga

**Counsel for Jean-Jacques Mangenda Kabongo**

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**Counsel for Fidèle Babala Wandu**

Jean-Pierre Kilenda Kakengi Basila

**Counsel for Narcisse Arido**

Gôran Kimo Sluiter

<b>Legal Representatives of the Victims</b>	<b>Legal Representatives of the Applicants</b>
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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**

Xavier-Jean Keïta

**States' Representatives**

**Amicus Curiae**

**REGISTRY**

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**Registrar**

Herman von Hebel

**Defence Support Section**

**Victims and Witnesses Unit**

**Detention Section**

The Defence for Jean-Pierre Bemba Gombo ("the Suspect") hereby responds to the *Prosecution's Request to Refer Potentially Privileged Materials to Independent Counsel*.<sup>1</sup> The materials in question are two DVDs comprising, inter alia, the contents of the email accounts of the co-Suspects Aimé Kilolo and Jean-Jacques Mangenda.

1. The Suspect can only repeat his strenuous objection to the continuing role of the Independent Counsel [REDACTED]. His identity remains a secret and no ruling has been delivered on a whether he has enjoyed a previous working relationship or friendship with a member of the Office of the Prosecutor (and thus subject to the real or perceived risk of bias).<sup>2</sup>

2. The role of the Independent Counsel was originally devised by judicial decision in the "situation"<sup>3</sup> and, as a consequence, the Suspect was denied the basic right to challenge its legality by way of appellate review. The Single Judge subsequently appointed the Independent Counsel to review potentially privileged materials "in the case", yet did so without hearing any defence submissions on the matter.<sup>4</sup> [REDACTED].

3. The Defence once again re-iterates that past practice of the International Criminal Court in the *Mbarushimana* case has provided an alternative and far less prejudicial way of dealing with the Prosecutor's request; namely, by permitting Counsel for the Defence, in the first instance, to filter out potentially privileged materials and, thereafter, to submit the resulting work product for the approval of the Pre-Trial Chamber.

4. The Defence suggests that where the materials in question are undeniably and unquestionably privileged - as in the present case - the case for submitting them for

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<sup>1</sup> ICC-01/05-01/13-310-Red.

<sup>2</sup> ICC-01/05-01/13-209.

<sup>3</sup> ICC-01/05-52-Red2.

<sup>4</sup> ICC-01/05-01/13-41-Red.

prior Defence review – including review by the Defence team in case ICC-01/05-01/08  
- is even stronger.

Relief Sought

5. In the circumstances, the Single Judge is respectfully requested to permit Counsel for the Defence in the present case and Counsel for the Suspect in case ICC-01/05-01/08 to review the two DVDs received from [REDACTED] and to filter out any potentially privileged materials.



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Nicholas Kaufman

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Jerusalem, Israel

Tuesday, April 08, 2014