

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **11/05/2014**

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 request for leave to reply to Prosecution filing: ICC-01/05-01/13-379-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

Fatou Bensouda

James Stewart

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Nicholas Kaufman

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Counsel for Fidèle Babala Wandu

Jean-Pierre Kilenda Kakengi Basila

Counsel for Narcisse Arido

Goran 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

Other
The Presidency

REGISTRY

Registrar

Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Detention Section

Pursuant to Regulation 24(5) of the Regulations of the Court, Jean-Pierre Bemba Gombo ("the Suspect") hereby seeks leave to reply to the Prosecutor's filing: ICC-01/05-01/13-379-Conf ("the Prosecutor's Response") in which she vigorously objects to the cancellation *sine die* of the forensic acquisition of two DVDs containing the Email accounts of the co-suspects and suggests that the Suspect himself should be represented by the Office of Public Counsel for the Defence ("OPCD").

Should leave be granted, the Suspect will address the following issues which arise directly out of the Prosecutor's Response and could not be anticipated in advance:

I. CONCERNING THE FORENSIC ACQUISITION

a. Why whatever is contained on the DVDs received by the Prosecutor is presently irrelevant given that she received the DVDs on 22 March 2014¹ when the final deadline for disclosure of materials on which she intends to rely at confirmation was 18 March 2014 - the original date for the submission of the Prosecutor's document containing the charges and list of evidence.²

b. Why to order the forensic acquisition without delay would pre-empt both a request for leave to appeal the decision to forward the DVDs to the "Independent" Counsel³ and three requests to disqualify the Single Judge, *inter alia*, on account of decisions that he took and which touch on matters pertaining to client-attorney privilege – an issue which will not be resolved before 27 May 2014.⁴

¹ ICC-01/05-01/13-310 at paragraph 5.

² ICC-01/05-01/13-T-1-ENG CT WT 27-11-2013 15/25 at line 8 and ICC-01/05-01/13-255 at page 7.

³ ICC-01/05-01/13-376-Conf.

⁴ ICC-01/05-01/13-385 at page 3 penultimate paragraph.

II. CONCERNING THE SUSPECT'S REPRESENTATION

a. Why the Prosecutor who, undoubtedly, has a vested interest in seeing that the Suspect enjoys equality of arms should insist that the Suspect be represented by OPCD which has previously declared, regrettably, that it lacks the resources to assist him,⁵ and;

b. Why, notwithstanding the aforementioned, the Prosecutor should wish to deny the Suspect free choice of counsel as envisaged by article 67(1)(d) of the Rome Statute and foist upon him an organ of the Court concerning which she and her predecessor had previously stated that they would "*seek a remedy from the Commissioner responsible for investigating complaints for misconduct of counsel under Article 33 of the Code of Professional Conduct for counsel*" for the purpose of "*an investigation of the OPCD's counsel [sic] behaviour...*".⁶

Relief Sought

The Single Judge is respectfully requested to grant leave to reply as sought. In light of all the aforementioned, and in order to ensure that the confirmation proceedings commence on their appointed date, the Suspect suggests that there is no need to resolve this discrete litigation with any particular urgency.



Nicholas Kaufman

Counsel for Jean-Pierre Bemba Gombo

Jerusalem, Israel
Sunday, May 11, 2014

⁵ ICC-01/05-01/13-54 at paragraph 7.

⁶ ICC-01/11-01/11-122 at paragraph 7.