

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: French

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

Date: 26 May 2014

THE PRESIDENCY

Before: Judge Sang-Hyun Song, President
Judge Sanji Mmasenono Monageng, First Vice-President
Judge Cuno Tarfusser, Second Vice-President

**SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO
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

URGENT request to reply to "Written submissions on the defence applications for my disqualification in case ICC-01/05-01/13" (ICC-01/05-01/13-419-Anx)

Source: Defence for Mr Fidèle Babala Wandu

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

Office of the Prosecutor

Ms Fatou Bensouda
Mr James Stewart
Mr Kweku Vanderpuye

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Mr Ghislain Mabanga Monga

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Legal Representatives of Victims

Unrepresented Victims

Office of Public Counsel for Victims

States' Representatives

Legal Representatives of Applicants

**Unrepresented Applicants for
Participation/Reparations**

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Mr Xavier-Jean Keita

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Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

I. BRIEF PROCEDURAL BACKGROUND

1. On 29 April, 1 May and 7 May, respectively, the defence teams (“the Defence Teams”) for Mr Jean-Jacques Mangenda Kabongo,¹ Mr Aimé Kilolo Musamba² and Mr Fidèle Babala Wandu³ filed applications for Judge Cuno Tarfusser’s disqualification as Single Judge for Pre-Trial Chamber II with the Presidency of the International Criminal Court (“the Presidency” and “the Court” or “the ICC”).
2. Pursuant to article 41(2)(c) of the Rome Statute (“the Statute”) and rule 34(2) of the Rules of Procedure and Evidence (“the Rules” or “the RPE”), the Presidency requested the impugned Judge to make written observations on the above applications for disqualification.⁴
3. Judge Cuno Tafusser complied and on 16 May 2014 filed the requested Observations, which were notified to the parties on 21 May 2014 by order of the Presidency.⁵
4. The three points raised in varying detail therein warrant a brief and prompt reply to dispel the shadow which they seek to cast.

II. SUBJECT OF THE REPLY

5. The Defence for Mr Fidèle Babala Wandu (“the Defence”) notes that the Single Judge’s Observations in fact addressed only three of the eleven or so points contained in the three Defence Teams’ applications. These were his involvement at the investigation stage together with the Prosecutor, the *extra legem* institution of Independent Counsel and the Defence Teams’ interference with the judicial function of the Court.
6. Accordingly, the Defence will show, firstly, that the Single Judge’s involvement at the investigation stage as an investigative body violates the rule of objective

¹ ICC-01/05-01/13-367.

² ICC-01/05-01/13-372.

³ ICC-01/05-01/13-380.

⁴ ICC-01/05-01/13-419-Anx.

⁵ ICC-01/05-01/13-385-Anx3

impartiality and therefore constitutes a ground for disqualification under article 41 of the Statute.

7. Secondly, the Defence will show that the Independent Counsel whom the Single Judge refers to as an expert for the first time in his Observations cannot be considered such insofar as, in accordance with the provisions of regulation 44 of the Regulations of the Court, he is not included on the Registry list of experts, nor does he possess the relevant linguistic or investigative expertise.
8. Thirdly, the Defence will show that it is not seeking to interfere with the Court's exercise of its judicial function and is especially not seeking to obstruct the ordinary course of its proceedings. Disqualification is a right clearly provided for by the basic texts applicable at the ICC, and the Defence is doing no more than legitimately exercising that right in order to ensure that the suspect benefits from lawful, proper, unbiased, smooth and estimable proceedings in which law and justice alone prevail fairly.

III. DEFENCE REQUEST

The Defence respectfully seeks leave to reply to the Single Judge in order to enable the Presidency to make a fully informed decision on the above application.

AND JUSTICE SHALL BE DONE.

MOST RESPECTFULLY SUBMITTED.

[signed]

Mr Jean-Pierre Kilenda Kakengi Basila
Counsel for Mr Fidèle Babala Wandu

Dated this 26 May 2014

At Denderleeuw, East Flanders, Belgium