

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **French**

No.: ICC-01/05-01/13
Date: 20 November 2013

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***

Under seal

Ex parte, only available to the Prosecutor and the Registrar

**Warrant of arrest for Jean-Pierre BEMBA GOMBO,
Aimé KILOLO MUSAMBA, Jean-Jacques MANGENDA KABONGO,
Fidèle BABALA WANDU and Narcisse ARIDO**

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

Office of the Prosecutor

Fatou Bensouda

James Stewart

Jean-Jacques Badibanga

Counsel for the Defence

Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparations**

Office of Public Counsel for Victims

**Office of Public Counsel for the
Defence**

States' Representatives

The competent authorities of the States
concerned

REGISTRY

Registrar

Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

I, **Cuno Tarfusser**, designated¹ by Pre-Trial Chamber II (“the Chamber”) of the International Criminal Court as Single Judge charged with adjudicating the matters arising from the Prosecutor’s 3 May 2013 request seeking judicial assistance in obtaining evidence necessary in respect of her investigative activities pursuant to article 70 (“First Request”),² hereby issue the present decision on the application filed on 19 November 2013 pursuant to article 58 (“the Application pursuant to article 58” or “the Application”),³ wherein the Prosecution seeks the issuance of a warrant of arrest for 1) **Jean-Pierre BEMBA GOMBO**, 2) **Aimé KILOLO MUSAMBA**, 3) **Jean-Jacques MANGENDA KABONGO**, 4) **Fidèle BABALA WANDU** and 5) **Narcisse ARIDO**, duly identified hereunder, for their alleged participation in the crimes set forth as follows:

1) Jean-Pierre BEMBA GOMBO (“Jean-Pierre Bemba”)

Born on 4 November 1962, a national of the Democratic Republic of the Congo, detained at the Court’s detention centre since 3 July 2008, accused of crimes against humanity and war crimes in the case of *The Prosecutor v. Jean-Pierre Bemba* (ICC-01/05-01/08, “the Case”), whose trial before the Court commenced on 22 November 2010,

Is criminally responsible for several offences against the administration of justice, as alleged by the Prosecutor in the following counts:

COUNT 1

Presenting evidence that the party knows is false or forged, within the meaning of article 70(1)(b) of the Statute, read with article 25(3)(b), by ordering, soliciting or inducing his associates to present such evidence;

COUNT 2

Corruptly influencing witnesses, within the meaning of article 70(1)(c) of the Statute, read with article 25(3)(b), by ordering, soliciting or inducing his associates to commit

¹ ICC-01/05-45-Conf-Exp.

² ICC-01/05-44-Conf-Exp.

³ ICC-01/05-67-US-Exp with under seal, *ex parte* annexes A-L.

an offence against the administration of justice consisting of the transfer of money to and the coaching of witnesses;

2) Aimé KILOLO MUSAMBA ("Aimé Kilolo")

Born on 1 January 1972, a national of the Democratic Republic of the Congo, residing at Camiel Vandenstein 8, 1931 Machelen, Belgium, and/or 41 c, Gevers Deynootweg, 2586 BC The Hague, The Netherlands, Lead Counsel for the Accused in the Case, a member of the Brussels Bar since 26 June 2001,

Is criminally responsible for several offences against the administration of justice, as alleged by the Prosecutor in the following counts:

COUNT 1

Presenting evidence that the party knows is false or forged, within the meaning of article 70(1)(b) of the Statute, read with article 25(3)(a), by presenting false or forged documents to the Court in the Case;

COUNT 2

Corruptly influencing witnesses, within the meaning of article 70(1)(c) of the Statute, read with article 25(3)(a), by bribing witnesses and coaching them to provide false testimony in the Case;

3) Jean-Jacques MANGENDA KABONGO ("Jean-Jacques Mangenda")

Born on 10 January 1979, a national of the Democratic Republic of the Congo, residing at Troelstralaan 218, 2624 GB Delft, The Netherlands, Case Manager for the Defence team,

Is criminally responsible for several offences against the administration of justice, as alleged by the Prosecutor in the following counts:

COUNT 1

Presenting evidence that the party knows is false or forged, within the meaning of article 70(1)(b) of the Statute, read with article 25(3)(c), by aiding, abetting or

otherwise assisting in the presentation of evidence that the party knows is false or forged in the Case;

COUNT 2

Corruptly influencing witnesses, within the meaning of article 70(1)(c) of the Statute, read with article 25(3)(c), by aiding, abetting or otherwise assisting in the bribery of witnesses and in coaching them to provide false testimony;

4) **Fidèle BABALA WANDU** (“Fidèle Babala”)

Born on 15 April 1956 in Kinshasa, a national of the Democratic Republic of the Congo, residing in Kinshasa, the Democratic Republic of the Congo, politician and close associate of the Accused,

Is criminally responsible for several offences against the administration of justice, as alleged by the Prosecutor in the following counts:

COUNT 1

Corruptly influencing witnesses, within the meaning of article 70(1)(c) of the Statute, read with article 25(3)(a), by bribing witnesses to provide false testimony in the Case;

COUNT 2

Presenting evidence that the party knows is false or forged, within the meaning of article 70(1)(b) of the Statute, read with article 25(3)(c), by aiding, abetting or otherwise assisting in the presentation of evidence that the party knows is false or forged;

5) **Narcisse ARIDO**

Born on 15 May 1978 in Bangui, the Central African Republic, residing at 102 Avenue Général Frère 69008, Lyons, France,

Is criminally responsible for several offences against the administration of justice, as alleged by the Prosecutor in the following counts:

COUNT 1

Corruptly influencing witnesses, within the meaning of article 70(1)(c) of the Statute, read with article 25(3)(c), by bribing witnesses to give false testimony;

COUNT 2

Presenting evidence that the party knows is false or forged, within the meaning of article 70(1)(b) of the Statute, read with article 25(3)(c), by aiding, abetting or otherwise assisting in the presentation of evidence that the party knows is false or forged.

I. Key stages in the proceedings preceding the filing of the Application pursuant to article 58

1. In her First Request, the Prosecutor announced that her office was investigating possible offences against the administration of justice, within the meaning of article 70 of the Statute and rule 165 of the Rules of Procedure and Evidence, in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo*.
2. On 8 May 2013,⁴ in partially granting the First Request, the Single Judge ordered the Registrar to make available to the Prosecutor information on the Accused's telephone communications at the detention centre. The Single Judge's 27 May 2013 decision stated the modalities of execution of the order.⁵
3. On 29 July 2013, the Single Judge⁶ granted the motion advanced by the Prosecutor in her 19 July 2013 request ("the Prosecutor's Second Request"),⁷ authorising her to seize the authorities of the Netherlands and Belgium for the purpose of obtaining information on privileged calls placed or received by Aimé Kilolo Musamba and Jean-Jacques Mangenda Kabongo, members of the team defending the Accused in the Case. The Single Judge also tasked an independent counsel with reviewing the logs of telephone calls placed or received by Aimé Kilolo Musamba and/or Jean-Jacques Mangenda Kabongo,

⁴ ICC-01/05-46-Conf-Exp.

⁵ ICC-01/05-50-Conf-Exp.

⁶ ICC-01/05-52-Conf-Exp.

⁷ ICC-01/05-51-Conf-Exp, with confidential, *ex parte* annexes A and B.

as made available by the authorities and to listen to the recordings of such calls ("Independent Counsel").

4. Independent Counsel's mandate and modus operandi, as well as the initial results of that work, were set out at status conferences held on 30 August 2013,⁸ 25 September 2013⁹ and 10 October 2013,¹⁰ and in the "*Rapport intermédiaire du conseil ad hoc*" dated 1 October 2013.¹¹ On 10 October 2013, in granting the Prosecutor's 7 October 2013 request ("the Third Request")¹², the Single Judge ordered the Victims and Witnesses Unit to provide the Prosecutor with other information concerning Defence witnesses in the Case.¹³
5. The "*Premier Rapport du Conseil indépendant*" was filed on 25 October 2013¹⁴ and the "*Deuxième Rapport du Conseil indépendant*" on 14 November 2013.¹⁵

II. Is it expedient for the Court, pursuant to rule 162 of the Rules of Procedure and Evidence, to exercise jurisdiction over the Prosecutor's Application?

6. Rule 162(1) of the Rules of Procedure and Evidence ("the Rules") provides that before deciding whether to exercise jurisdiction over the offences against the administration of justice defined in article 70 of the Statute, the Chamber may consult with States Parties which may have jurisdiction over the offence. Rule 162(2) enumerates a certain number of points which the Chamber may entertain when deciding whether or not to exercise jurisdiction.
7. The circumstances of the case are such that it is neither desirable nor expedient for the Court to first consult, in accordance with rule 162(1), States Parties which may concurrently have jurisdiction over the alleged offences, since information may be needlessly disclosed, thus diminishing the chances

⁸ ICC-01/05-T-2-CONF-EXP-ENG.

⁹ ICC-01/05-T-3-CONF-EXP-ENG.

¹⁰ ICC-01/05-T-4-CONF-EXP-ENG.

¹¹ ICC-01/05-59-Conf-Exp, with confidential, *ex parte* Annex A.

¹² ICC-01/05-60-Conf-Exp.

¹³ ICC-01/05-62-Conf-Exp.

¹⁴ ICC-01/05-64-Conf-Exp with confidential, *ex parte* Annex.

¹⁵ ICC-01/05-66-Conf-Exp.

of arresting the persons who are the subject of the Application pursuant to article 58.

8. Furthermore, the Single Judge is satisfied that compelling reasons necessitate the Court's prompt exercise of jurisdiction, particularly given the clear urgency of the issue and the ensuing need to act forthwith. This conclusion finds further support in the close and manifest connections between the investigation which gave rise to the Prosecutor's Application and the trial in the Case before the Court, as well as by the gravity of the Prosecutor's allegations. Firstly, the Single Judge has been following the Prosecutor's investigation for a number of months and is thus best placed to rule promptly on the merits of the allegations set forth in the Application. Secondly, Trial Chamber III ("the Trial Chamber") is about to embark on its deliberation on the Case, and, were the Prosecutor's allegations to be correct, several pieces of evidence tendered at trial would be vitiated to the extent that their reliability would be seriously compromised. Hence the need to avoid the delays entailed by consultations held by the Court with State authorities, and whose duration would, to say the least, be uncertain.

III. Concise statement of the facts and specific reference to the crimes within the jurisdiction of the Court

9. Article 58(3) of the Rome Statute prescribes that a warrant of arrest shall contain i) "[t]he name of the person and any other relevant identifying information", ii) "[a] specific reference to the crimes within the jurisdiction of the Court for which the person's arrest is sought", and iii) "[a] concise statement of the facts which are alleged to constitute those crimes."
10. For the sake of clarity and consistency, the Single Judge considers that, in the first instance it is expedient to set out the concise statement of the essential and material facts and then to undertake a legal characterisation thereof with specific reference to the crimes which were allegedly committed by those persons whose arrest is sought.

11. However the Single Judge must first, with regret, object to the lack of concision which marks the Application, and the decision to articulate the counts in generic terms: a statement of the necessary temporal and geographic circumstances in which the crimes were allegedly committed would have been preferable, even at this early juncture. The Single Judge also takes issue with the repetitive and hence unduly complicated manner in which the facts are set out. Nonetheless, the Single Judge considers that he is able to navigate the body of evidence tendered by the Prosecutor, relying also on Independent Counsel's work.
12. Numerous, objective, specific and detailed items of evidence were tendered in relation to each category of alleged conduct or each person whose arrest the Prosecutor seeks. The majority of material evidence appended to the Application consists of tables summarising money transfers effected through international services, particularly Western Union and Express Union, telephone call records, transcripts, translations and summaries of recorded communications, text messages ("SMS"), witness statements and e-mails. Furthermore, Independent Counsel, too, has furnished a wealth of material to support the Prosecutor's claims. In short, the record contains at this stage a considerable and indeed quite remarkable quantity of items of evidence which furnish objective and incriminating information and details pertaining directly and specifically to the Prosecutor's factual allegations.
13. In light of the evidence in the record, specifically the material described in the Application and appended thereto, the Single Judge is satisfied that there are reasonable grounds to believe that as of early 2012 and thenceforth, a criminal scheme has been affording benefits and advantages to certain Defence witnesses in exchange for false testimony and the presentation of false or forged evidence in the Case, in violation of article 70(1)(b) and (c) of the Statute. Ultimately, the Accused, who orchestrates the scheme, profits from it and it is now mainly implemented by Aimé Kilolo and Jean-Jacques Mangenda, assisted by a number of persons in the field, including Fidèle

Babala, Caroline Bemba (the Accused's sister), Robert Nginamau and Narcisse Arido.

14. In particular, the Single Judge is firmly satisfied that there are reasonable grounds to believe that the scheme consists of three categories of conduct, each alone justifying arrest: i) presentation and filing in the Case of false or forged documents; ii) coaching of witnesses to give false testimony before the Trial Chamber in the Case; and iii) transfers of money to several Defence witnesses in the Case.
15. As regards Jean-Pierre BEMBA, the Single Judge is satisfied that there are reasonable grounds to believe that he heads the said criminal scheme and that from the detention centre he orchestrates the activities undertaken by his associates in respect of its implementation. In particular, there are reasonable grounds to believe that: i) he makes available the financial resources enabling the transfers to be effected, approves the amounts and the recipients of the transfers and issues specific instructions, enabling his associates to locate and access the financial resources; ii) he circumvents the telephone monitoring system introduced at the Court's Detention Centre, by using his counsels' telephone numbers, so that the conversations are privileged; iii) he is able to speak to witnesses and his associates under the guise of conference calls with counsel; iv) he uses codes during non-privileged conversations concerning the trial or money transfers, particularly with Fidèle Babala and Caroline Bemba ; v) he issues instructions concerning contact with the Defence witnesses and the coaching of such witnesses for the purposes of their court appearance.
16. As to Aimé Kilolo, the Single Judge is satisfied that there are reasonable grounds to believe that i) he made payments to Defence witnesses with funds made available by the Accused; ii) he attempted to tender into the record at least 14 documents which he knew to be false or forged; iii) he contacted several Defence witnesses, immediately before or after their appearance before the Trial Chamber, and, in some instances, during recesses between two phases of their in-court testimony; iv) during such contact, he explained to the

witnesses which questions would be put to them and the responses they should give in court.

17. Turning to Jean-Jacques Mangenda, the Single Judge is satisfied that there are reasonable grounds to believe that he assists Jean-Pierre Bemba and Aimé Kilolo in the furtherance of the criminal scheme. More specifically, there are reasonable grounds to believe that: i) he frequently appears to receive money transfers via Western Union, particularly when Defence witnesses appear in court; ii) he works very closely with Aimé Kilolo in respect of the coaching of witnesses and the devising of instructions to be issued to them; iii) he takes part in certain privileged conference calls with Jean-Pierre Bemba and Fidèle Babala.
18. Having regard to Fidèle Babala (a very close associate of Jean-Pierre Bemba for a number of years, particularly since the time when he was his *chef de cabinet* and principal political adviser during the Accused's vice-presidency of the DRC), the Single Judge is satisfied that there are reasonable grounds to believe that i) in accordance with Jean-Pierre Bemba's instructions, he directly or indirectly disbursed¹⁶ sums of money to Defence witnesses and/or members of their families, and to Aimé Kilolo and Jean-Jacques Mangenda; ii) he frequently called Defence witnesses, specifically at time periods coinciding with money transfers to the same witnesses, and took part in several privileged conference calls with Jean-Pierre Bemba and Aimé Kilolo; iii) he acts as an intermediary in the transmission of the Accused's instructions to members of his family; iv) he uses a coded language to discuss financial matters with the Accused.
19. As to Narcisse Arido, the Single Judge is satisfied that there are reasonable grounds to believe that he provided false or forged evidence, which was disclosed to the Prosecutor and which the Defence attempted to tender into the record of the Case, and that he transferred sums of money to Defence

¹⁶ In particular, through Narcisse Arido and other persons who are not the subject of the Application pursuant to article 58.

witnesses. In particular, there are reasonable grounds to believe that i) he received sums of money from Bemba's close associates, including Aimé Kilolo and Fidèle Babala, around the date of delivery of the documents to Aimé Kilolo; ii) he acted as intermediary in respect of other money transfers to other witnesses, who, akin to him, reside in Cameroon; and iii) he transferred money to Defence witnesses.

20. Accordingly, in light of the evidence tendered by the Prosecutor, the Single Judge is firmly satisfied that the essential facts alleged, as set out in the counts and described in greater detail in the Application, have been proven to the "reasonable grounds" to believe standard prescribed by article 58(1)(a) of the Statute and that, therefore, the five persons at issue are criminally responsible for offences against the administration of justice, as alleged in the foregoing counts.

IV. Necessity of arrest

21. Having regard to the arguments advanced by the Prosecutor and the nature of the conduct at hand, the Single Judge is satisfied that the arrest of all of the persons who are the subject of the Application is necessary for all of the grounds laid down by article 58(1)(b) of the Statute, namely: i) to ensure that the person appears at trial; or ii) to ensure that the person does not obstruct or endanger the proceedings; or iii) to prevent the person from continuing with the commission of the crime.
22. In particular, the political connections which Jean-Pierre Bemba continues to maintain, even at an international level, despite his current detention, and the substantial nature financial resources directly or indirectly available for the purposes of the conduct under investigation, which is particularly apparent from the evidence appended to the Application, show that Jean-Pierre Bemba could also mobilise substantial means and resources to evade prosecution for said conduct before the Court or to prevent such prosecution of his associates (including the other persons who are the subject of the Application pursuant to article 58). Aimé Kilolo and Jean-Jacques Mangenda possess identity

documents which entitle them to travel freely, not only throughout the Schengen area, but also to non-States parties to Statute, such as Cameroon, which are under no obligation de cooperate with the Court. Both individuals are part of a network (comprising, *inter alia*, Jean-Pierre Bemba and Caroline Bemba) which could provide them with the financial resources to readily abscond the jurisdiction of the Court. Fidèle Babala, as a DRC parliamentarian, also has numerous contacts, including at an international level, and is able to travel freely, including to non-States parties. As concerns Narcisse Arido, he failed to materialise before the Trial Chamber for his scheduled testimony, and given that the visa, secured for this sole purpose with the Court's assistance, was misused by him to travel to France, he has already shown that the likelihood of his voluntary appearance before the Court is slim, if not non-existent.

23. Moreover, the conduct which may constitute an offence against the administration of justice, as summarised in the present warrant, has continued from at least early 2012, and in all likelihood continues to date. Accordingly, the arrest of all of the persons who are the subject of the Application is necessary to prevent them from further obstructing or endangering the investigation or the trial, and so that the commission of the crime does not continue.

V. Further requests by the Prosecutor

24. In light of the circumstances of the matter at bar and the information placed before him, the Single Judge is satisfied that to make public the Prosecutor's Application at this stage would prevent or significantly impede the execution of the present warrant of arrest. The warrant of arrest is therefore issued "under seal, *ex parte*, only available to the Prosecutor and the Registrar".
25. The Prosecutor requests the Single Judge to order the Registrar to notify the warrant of arrest to Jean-Pierre Bemba and to prepare requests for arrests and surrender and requests for cooperation to be addressed the competent authorities of the countries concerned:

- a. requesting the Netherlands to search Jean-Pierre Bemba's cell at the detention centre in the presence of an investigator of the Office of the Prosecutor, and to seize and transmit to the Court any relevant evidence;
 - b. requesting the States which will arrest Aimé Kilolo, Jean-Jacques Mangenda, Fidèle Babala and Narcisse Arido to search their persons and to search the site of their arrest, any vehicle in their possession and any site connected to them (offices at the Court, work-place offices and homes), and to seize and transmit to the Court any relevant evidence;
 - c. requesting the States which will arrest the persons concerned to locate and freeze their assets;
 - d. requesting the States which will arrest the persons concerned not to allow any communication between the persons subject to this warrant of arrest, and between them and any third person, save for their respective counsel, for a period which shall not exceed 72 hours.
26. The Single Judge is satisfied that, having regard to article 57(3)(a), these measures may assist the Prosecutor to discharge the investigative duties cast on her by article 54(1)(a). He is of the further view that, as the Prosecutor desires, those States which will arrest the persons concerned must be requested to authorise the presence of an investigator from the Office of the Prosecutor during the personal and other searches, and promptly to transmit to the Court any evidence seized on the occasion.
27. In granting the Prosecutor's rightful request in that regard, the Single Judge enjoins the Registrar to prepare the requests for arrest and surrender in consultation and coordination with the Prosecutor, so as to determine the States to which they must be addressed and the timing of their transmission thereto.

28. Lastly, the Single Judge notes the Decision of even date whereby the Presidency of the Court determined¹⁷ that the privileges and immunities afforded to Aimé Kilolo and Jean-Jacques Mangenda as counsel and assistant to counsel in the Case do not cover conduct which constitutes an offence against the administration of justice. Accordingly, such privileges and immunities are no impediment to their arrest, surrender and detention for the purposes of prosecution before the Court on the foundation of article 70 of the Statute.

¹⁷ ICC-01/05-68-US-Exp.

FOR THESE REASONS, THE SINGLE JUDGE

ORDERS THE ARREST OF

- 1. Jean-Pierre BEMBA GOMBO**
- 2. Aimé KILOLO MUSAMBA**
- 3. Jean-Jacques MANGENDA KABONGO**
- 4. Fidèle BABALA WANDU**
- 5. Narcisse ARIDO**

As duly identified hereabove, for their alleged criminal responsibility for the offences against the administration of justice described in the foregoing counts;

ORDERS

The Registrar to notify this warrant of arrest to Jean-Pierre Bemba at the detention centre of the Court and/or in the courtroom;

ORDERS

The Registrar:

- i) to identify, in consultation and cooperation with the Prosecutor, the States to which a request for cooperation for the purposes of the arrest and surrender of the persons concerned must be transmitted, and to determine the timing and precise circumstances of the transmission and notification of the warrant of arrest to said persons;
- ii) to prepare one or several requests for cooperation to be addressed to the competent authorities of the States concerned, for the purposes of the arrest and surrender of the persons at issue;

ORDERS

The Registrar to prepare requests for cooperation to be addressed to the competent authorities of the States concerned:

- i) Requesting the Netherlands to search Jean-Pierre Bemba's person and to search his cell at the detention centre in the presence of an

- investigator of the Office of the Prosecutor, and to seize and transmit to the Court any relevant evidence;
- ii) requesting the States which will arrest Aimé Kilolo, Jean-Jacques Mangenda, Fidèle Babala and Narcisse Arido to, in the presence of an investigator of the Office of the Prosecutor, search their persons and search the site of their arrest, any vehicle in their possession and any site connected to them (offices at the Court, work-place offices and homes), and to seize and transmit to the Court any relevant evidence;
 - iii) requesting the States which will arrest the persons concerned, and any other relevant State which may be identified, to locate and freeze their assets;
 - iv) requesting the States which will arrest the persons concerned not to allow any communication between the persons subject to this warrant of arrest, and between them and any third person, save for their respective counsel, for a period which shall not exceed 72 hours.

Done in both English and French, the French version being authoritative.

[signed]

Judge Cuno Tarfusser
Single Judge

Dated this 20 November 2013

At The Hague, The Netherlands