

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 4 June 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

Decision on the “Defence request to compel the attendance of the Independent Counsel for examination during the confirmation proceedings” submitted by the Defence for Jean-Pierre Bemba Gombo

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

The Office of the Prosecutor

Fatou Bensouda

James Stewart

Kweku Vanderpuye

Counsel for Jean-Pierre Bemba Gombo

Nicholas Kaufman

Counsel for Aimé Kilolo Musamba

Ghislain Mabanga

Counsel for Jean-Jacques Mangenda Kabongo

Jean Flamme

Counsel for Fidèle Babala Wandu

Jean-Pierre Kilenda Kakengi Basila

Counsel for Narcisse Arido

Göran Sluiter

Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

States Representatives

Other

Independent Counsel appointed pursuant to ICC-01/05-52 and ICC-01/05-01/13-41

REGISTRY

Registrar

Herman von Hebel

Detention Section

Victims and Witnesses Unit

Others

**Victims Participation and
Reparations Section**

I, Judge Cuno Tarfusser, having been designated as Single Judge of Pre-Trial Chamber II of the International Criminal Court;

NOTING the “Defence request to compel the attendance of the Independent Counsel for examination during the confirmation proceedings” dated 9 May 2014 (“Mr Bemba’s Defence Request”)¹, whereby the Defence for Jean-Pierre Bemba (I) states his wish to prove that “the ‘Independent’ Counsel is a not-so-*really*’ independent counsel” by way of questioning “on the witness stand” and “to explore whether the ‘Independent’ Counsel acted in accordance with” the applicable domestic law or bar association ethics, and, accordingly, (II) requests the Single Judge “to permit the Defence to examine the ‘Independent’ Counsel”;

NOTING the “Prosecution Response to the Bemba Defence’s Request to Compel the Attendance of the Independent Counsel for Examination during the Confirmation Proceedings” dated 13 May 2014², opposing Mr Bemba’s Defence Request;

NOTING article 61 of the Statute, rules 121, 122 and 165(3) of the Rules of Procedure and Evidence;

CONSIDERING that, as stated in the “Decision on the request for disqualification of Independent Counsel filed by the Defence of Jean-Pierre Bemba Gombo”, the tasks carried out by Independent Counsel in the context and for the purposes of these proceedings “are for the assistance of, but without prejudice to, the proper exercise of the Single Judge’s responsibility ... and are equally without prejudice to the Chamber’s power to assess the admissibility, relevance and probative value of any item of evidence” which might be relied upon by the parties;³

¹ ICC-01/05-01/13-384-Conf.

² ICC-01/05-01/13-395-Conf.

³ ICC-01/05-01/13-362-Conf.

CONSIDERING that, accordingly, neither the sought exploration of how Independent Counsel “would determine ‘relevance’ with respect to the article 70 investigations”, nor the determination of whether Independent Counsel was “acute to the need to search for exculpatory evidence” can be said to be instrumental to the proper elucidation of the relevant facts by the Chamber;

CONSIDERING further that the Suspects have full access to the material identified, reviewed and submitted to the Court by Independent Counsel and will therefore be in a position to challenge the results of the work carried out in furtherance of the Chamber’s mandate, including as to the accuracy of the translations of relevant material and the substantive results of this work;

CONSIDERING that, in light of the nature of the tasks performed by Independent Counsel, it is obvious that “the contents of potentially exonerating communications which could contradict the allegedly incriminating import of intercepted communications” as selected by independent Counsel should not be “put” to Independent Counsel, but rather to the Chamber;

CONSIDERING further that the existence of a previous relationship of Independent Counsel with a member of the Office of the Prosecutor, as well as the fact that he might have acted in violation of the applicable domestic law or bar association ethics, are *per se* neutral *vis-à-vis* the determinations the Chamber will have to make for the purposes of its final decision under article 61(7) of the Statute and, as such, a testimony bearing on either of them cannot be said to be instrumental to the proper elucidation of the relevant facts;

CONSIDERING further that, since the Chamber’s appointment, Independent Counsel has always shown full awareness⁴ of the need to comply with all relevant normative framework, with particular regard to the obligations set forth

⁴ ICC-01/05-55-Conf.

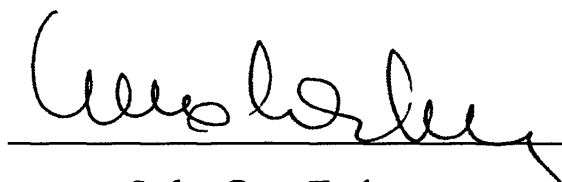
by the relevant bar association, and that the matter has been repeatedly addressed by the Chamber, in particular by way of a status conference⁵ and two decisions⁶, and that compliance by Independent Counsel with relevant deontological provisions is also attested in the documents submitted by the Dutch judicial authorities⁷;

CONSIDERING, therefore, that the request to question the Independent Counsel on the witness stand cannot be said to be required by the interests of justice within the meaning of rule 165(3) of the Rules;

FOR THESE REASONS, THE SINGLE JUDGE HEREBY

REJECTS Mr Bemba's Defence Request.

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



Judge Cuno Tarfusser
Single Judge

Dated this Wednesday, 4 June 2014

The Hague, The Netherlands

⁵ ICC-01/05-T-2-CONF-ENG page 6.

⁶ ICC-01/05-T-2-CONF-ENG page 23 and ICC-01/05-72-Conf.

⁷ ICC-01/05-01/13-6-Conf-AnxA-Red.