

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

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

Date: 17 April 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**

**Joint decision on applications for leave to appeal the “Decision on the reclassification of documents in the record of the situation and of the case” (ICC-01/05-01/13-147) submitted by the Defence for Mr Kilolo and the Defence for Mr Babala**

**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**

**The Office of Public Counsel for  
Victims**

**The Office of Public Counsel for the Defence**

**States Representatives**

**Others**

**REGISTRY**

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**Registrar**

Herman von Hebel

**Detention Section**

**Victims and Witnesses Unit**

**Others**

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

**NOTING** the “Decision on the reclassification of documents in the record of the situation and of the case” dated 3 February 2014 (“Reclassification Decision”)<sup>1</sup>, reclassifying a number of filings both in the record of the case and in the relevant section of the record of the situation;

**NOTING** the “Requête aux fins d'autorisation d'appel de la ‘Decision on the reclassification of documents in the record of the situation and of the case’ (ICC-01/05-01/13-147)” dated 10 February 2014 (“Mr Kilolo’s Defence Application”)<sup>2</sup>, whereby the Defence for Aimé Kilolo Musamba requests leave to appeal the Reclassification Decision pursuant to article 82(1)(d) of the Statute on the following issue

*“l’anonymat d’un enquêteur, en l’espèce le Conseil indépendant, est-il de nature à garantir l’équité de la procédure à quelques semaines de l’audience de confirmation des charges”?*

**NOTING** the “Demande d’autorisation d’interjeter appel contre la ‘Decision on the reclassification of documents in the record of the situation and of the case’ (ICC-01/05-01/13-147-Conf-Red)” dated 10 February 2014 (“Mr Babala’s defence Application”)<sup>3</sup>, whereby the Defence for Fidèle Babala Wandu requests leave to appeal the Reclassification Decision pursuant to article 82(1)(d) of the Statute on the following issue:

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<sup>1</sup> ICC-01/05-01/13-147.

<sup>2</sup> ICC-01/05-01/13-164-Conf.

<sup>3</sup> ICC-01/05-01/13-166.

the “*maintien de l’anonymat du Conseil indépendant*”, which “*fait obstacle au respect du principe de la contradiction des débats*” and “*tend à affecter le principe de la présomption d’innocence*”;

**NOTING** the “Prosecution’s consolidated Response to the Kilolo and Babala Defences requests for leave to appeal decision ICC-01/05-147-Conf-Red” dated 14 February 2014<sup>4</sup>, opposing Mr Kilolo’s and Mr Babala’s Applications;

**CONSIDERING** that the issues raised by Mr Kilolo’s and Mr Babala’s Applications are similar in nature and that it is therefore appropriate to address and determine them jointly;

**NOTING** article 82(1)(d) of the Statute, rule 155(1) of the Rules of Procedure and Evidence and regulation 35 of the Regulations of the Court;

**NOTING** that, on 17 April 2014, the Single Judge lifted the anonymity of Independent Counsel *vis-à-vis* the parties in the proceedings;

**CONSIDERING** that, in the present circumstances, the issue arising out of the Reclassification Decision must be understood as whether the Defence should have been disclosed the identity of Independent Counsel already on 3 February 2014 rather than on 17 April 2014;

**CONSIDERING** that this issue cannot be said to significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial within the meaning of article 82(1)(d) of the Statute, also in light of the fact that in the meantime the confirmation of charges proceedings have been postponed by more than two months;

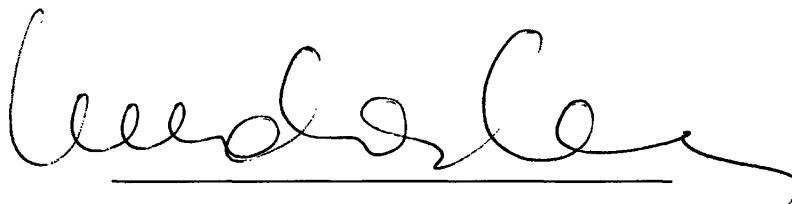
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<sup>4</sup> ICC-01/05-01/13-196-Conf.

**FOR THESE REASONS, THE SINGLE JUDGE HEREBY**

**REJECTS** Mr Kilolo's and Mr Babala's Defence Applications.

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

A handwritten signature in black ink, appearing to read 'Cuno Tarfusser', written over a horizontal line.

**Judge Cuno Tarfusser**

**Single Judge**

Dated this Thursday, 17 April 2014

The Hague, The Netherlands