

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/05-01/13
Date: 15 January 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 Document

Decision on the “Requête en communication de la version originale des enregistrements sonores et des entretiens téléphoniques visés par le Procureur dans la pièce ICC-01/05-01/13-19-Conf-AnxI.1” submitted by the Defence for Mr Babala

Order 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

Jean-Pierre Kilenda Kakengi Basila

Counsel for Jean-Jacques Mangenda Kabongo

Jean Flamme

Counsel for Fidèle Babala Wandu

Prof. Jean-Pierre Fofé Djofia Malewa

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

Amicus Curiae

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 “Requête en communication de la version originale des enregistrements sonores et des entretiens téléphoniques visés par le procureur dans la pièce ICC-01/05-01/13-19-Conf-AnxI.1” dated 13 January 2014,¹ whereby the Defence for Mr Babala requests the Chamber “d’ordonner que soient communiqués à la Défense, sous toute réserve quant à leur légalité et régularité, les enregistrements sonores originaux et leurs transcriptions dans la langue utilisée par les interlocuteurs au cours des entretiens visés par le Procureur dans la pièce ICC-01/05-01/13-19-Conf-AnxI.1.” (“Mr Babala’s Defence Application”);

NOTING article 57(3)(b) of the Statute;

NOTING that confidential Annex I.1. is an annex to the Prosecutor’s Application under Article 58 of the Statute in this case, and contains translated excerpts of several phone conversations;

NOTING the “Prosecution’s communication of incriminatory evidence and Rule 77 material disclosed to the Defence on 20 December 2013” (“Prosecutor’s Communication”);

NOTING, in particular, confidential Annex A to the Prosecutor’s Communication, containing a list of material disclosed to the Defence on 20 December 2013;

CONSIDERING that, according to this list, the audio files of 18 out of the 22 phone conversations referred to in Annex I.1. to the Prosecutor’s Application

¹ ICC-01/05-01/13-87.

seem to have already been disclosed to the Defence, namely those listed under items 184, 232, 248, 256, 657, 659, 663, 673, 675, 693, 701, 707, 709, 711, 717, 719, 749 and 755 of the list;

CONSIDERING that the audio files of only four conversations referred to in Annex I.1. seem instead not to have been disclosed (namely, those referring to the following reference numbers, as contained in confidential Annex I.1: 2013/000045759; 2013/000031430; 2013/000045783; 2013/000043802);

CONSIDERING that the Prosecutor is under the obligation to also disclose the audio files of those remaining conversations, which were part of the material attached to her Application under article 58 in this case;

CONSIDERING therefore that not only the statement made by the Defence for Mr Babala, to the effect that “il convient que lui soient communiqués les enregistrements sonores originaux”, is much too broad and therefore misleading, but also seems to show that the Defence for Mr Babala failed to exercise the necessary diligence before submitting its Application;

NOTING article 24 of the Code of Professional Conduct for Counsel, listing counsel’s duties towards the Court;

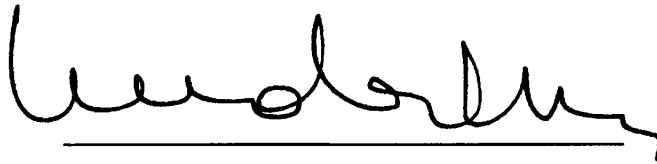
CONSIDERING that it is of essence, for the purposes of the efficient and expeditious conduct of the proceedings, that the parties show the utmost diligence prior to submitting a request to the Chamber;

FOR THESE REASONS, THE SINGLE JUDGE

PARTIALLY GRANTS Mr Babala's Defence Application;

ORDERS the Prosecutor, if and to the extent that she has not yet done so, to disclose to the Defence teams the audio files of all the conversations referred to in Annex I.1 to the Prosecutor's Application under article 58, no later than Friday 17 January 2014.

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 Wednesday, 15 January 2014

The Hague, The Netherlands