

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/05-01/13
Date: 12 February 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

Decision on Mr Bemba's request for disclosure dated 5 February 2014

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
Catherine Mabile

Counsel for Jean-Jacques Mangenda Kabongo

Jean Flamme

Counsel for Fidèle Babala Wandu

Jean-Pierre Kilenda Kakengi Basila

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

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 (“Chamber”) of the International Criminal Court;

NOTING the “Defence request for disclosure” dated 5 February 2014 (“Mr Bemba’s Defence Request”),¹ whereby the Defence for Jean-Pierre Bemba Gombo requests the Single Judge to order the Prosecutor “to disclose the names of those members of her staff who prepared document CAR-OTP-0072-0186-0072-0203”, a document consisting of “a translated summary of 22 excerpts from telephone conversations conducted between the Suspect and Fidèle Babala Wandu”, disclosed on 20 December 2013 and previously appended as Annex I.1 to the Prosecutor’s Application under article 58 in the case (“Document”);

NOTING the “Decision shortening the time limit for the Prosecutor’s response to the ‘Defence request for disclosure’ dated 5 February 2014”;²

NOTING the “Prosecution response to Defence request for disclosure” dated 10 February 2014,³ whereby the Prosecutor submits that Mr Bemba’s Defence Request “is unwarranted and premised on unsubstantiated allegations” and should therefore be dismissed;

NOTING article 67(1) of the Statute and the paramount principle of the publicity of the proceedings;

CONSIDERING that, since (i) no information of a confidential nature is included either in Mr Bemba’s Defence Request, the Prosecutor’s Response or this decision and (ii) none of these makes reference to the content of the Document, Mr Bemba’s Defence Request, the Prosecutor’s Response and this decision should be classified as public;

¹ ICC-01/05-01/13-150-Conf.

² ICC-01/05-01/13-155-Conf.

³ ICC-01/05-01/13-173-Conf.

NOTING the submission made by the Defence for Mr Bemba, to the effect that, since the metadata accompanying the Document “do not reveal the names of those members of the Prosecutor’s staff who handled, prepared or summarized” it, an infringement of the e-court protocol has occurred;

NOTING regulation 26 of the Regulations of the Court and regulation 10 of the Regulations of the Registry;

CONSIDERING that the e-court system “is an information system which manages and provides access to judicial records and material” and that the metadata required under the e-court protocol are “designed to minimise the document management and technology costs to the participants and the Court and to allow for the efficient management of proceedings”, as such neutral in respect of the reliability of a given document;

CONSIDERING that, for the purposes of the e-protocol, it is of the essence that proper identification be ensured of the “participant” providing documents and/or material and that nowhere is it required, in the e-court protocol or elsewhere, that the names of the individuals “who handled, prepared or summarized” a given document be indicated;

CONSIDERING it self-evident that, for the purposes of authorship and responsibility (including for the purposes of the “chain of custody”, to the extent that this notion may apply to a filing emanating from an organ of the Court, a *per se* debatable assumption), the Document must be regarded as emanating from the Office of the Prosecutor as an organ of the Court, and from the Prosecutor as the head of that organ and that, accordingly, the personal identity of the staff member(s) of that Office who might have been in charge of the background work relating to it, or of its preparation; is irrelevant;

CONSIDERING that the staff of the Office of the Prosecutor discharge their functions and operate on behalf of the Prosecutor, to whom they are accountable,

and are subject to a number of obligations and standards (including the requirement to uphold “the highest standards of efficiency, competence and integrity”), failure to honour which might trigger disciplinary proceedings and result in the imposition of disciplinary measures;

NOTING that the Defence for Mr Bemba states that he intends to “challenge the evidentiary weight and accuracy of the Document” at confirmation by way of “leading testimony from the authors of the Document” and submits that “disclosure of the identities of the authors of the Document is thus material to the preparation of the defence under rule 77 of the Rules of Procedure and Evidence”;

NOTING that, more specifically, the Defence for Mr Bemba submits that he will argue that the Document (i) “lacks objectivity, is prejudicially selective and pays no attention whatsoever to any potentially exonerating circumstances”; (ii) that various parts of it “are incorrectly translated from the original Lingala”; (iii) that it “is unfit for presentation to the Pre-Trial Chamber in that it contains evidence of a highly speculative nature”, in particular as regards the determination of the meaning of various “code” words;

CONSIDERING that all of these statements amount to lines of arguing legitimately envisaged by the Defence for Mr Bemba *vis-à-vis* the probative value and relevance of the Document, all of which can be adequately pursued and developed by way of preparing and submitting to the Chamber what the Defence for Mr Bemba deems to be a proper and accurate translation (not of the Document, but rather) of the telephone conversations of which the Document contains translated summaries;

CONSIDERING that, accordingly, the identification of the authors of the documents (and even less their testimony) has no bearing on the pursuit and development of the lines of arguing envisaged by the Defence for Mr Bemba;

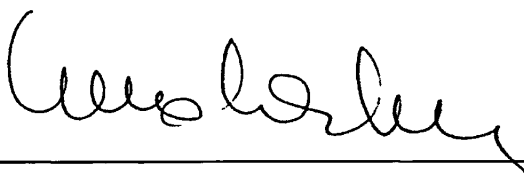
CONSIDERING that, if and to the extent that Mr Bemba's Defence Request intends to question the propriety of the conduct of the Prosecutor or her staff (as might be adumbrated for example in statements such as reference to "the Defence argument that the Prosecution, either recklessly or intentionally, designed the Document in order to persuade the Single Judge to arrest the Suspect for offences against the administration of justice and to scupper his defence in case ICC-01/05-01/08"), a request for disclosure of the names of staff members involved in the preparation of the Document is certainly not the appropriate procedural venue to do so and the designed disciplinary procedures should have been, or be, pursued;

FOR THESE REASONS, THE SINGLE JUDGE HEREBY

REJECTS Mr Bemba's Defence Request;

DECIDES that documents ICC-01/05-01/13-150-Conf; ICC-01/05-01/13-155-Conf, and ICC-01/05-01/13-173-Conf shall be reclassified as public.

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



Judge Cuno Tarfusser

Single Judge

Dated this Wednesday, 12 February 2014

The Hague, the Netherlands