

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 27 March 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

Second Decision on the “Defence request for disclosure” submitted by the Defence for Jean-Pierre Bemba on 20 February 2014 and related filings

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 Mabilie

Counsel for Jean-Jacques Mangenda

Kabongo

Jean Flamme

Counsel for Fidèle Babala Wandu

Jean-Pierre Kilenda Kakengi Basila

Duty Counsel for Narcisse Arido

Xavier-Jean Keïta

**Legal Representatives of
Victims**

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

States Representatives

REGISTRY

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 “Defence request for disclosure” dated 20 February 2014 (“Mr Bemba’s Defence Request”), whereby the Defence for Jean-Pierre Bemba Gombo requested the Single Judge to order the Prosecutor “to disclose information pertaining to an ‘anonymous informant’ who provided her with information concerning an alleged witness ‘bribery’ scheme orchestrated by the Suspect” (ICC-01/05-01/13-208);

NOTING the “Adjonction de la Défense de Monsieur Fidèle Babala à ‘Defence Request for Disclosure’ de la Défense de M. Jean-Pierre Bemba (ICC-01/05-01/13-208)” dated 3 March 2014 (“Mr Babala’s Defence Request”), whereby the Defence for Mr Babala “appuie intégralement” the Request for Disclosure and “s’y joint pour l’intérêt de son propre client” (ICC-01/05-01/13-230);

NOTING the “Prosecution Response to the Bemba Defence’s request for disclosure” dated 3 March 2014, whereby the Prosecutor opposed Mr Bemba’s Defence Request on the basis that it failed “to establish that the information sought is material to the preparation of the Defence” (ICC-01/05-01/13-232);

NOTING the “Decision on the ‘Defence request for disclosure’ submitted by the Defence for Jean-Pierre Bemba on 20 February 2014” dated 17 March 2014 (ICC-01/05-01/13-262), whereby the Single Judge ordered the Prosecutor to submit “a copy of the email exchanges sought on an ex parte basis”, as well as any other information or material in her possession which might be relevant in connection with and for the purposes of the Defence Request, by Wednesday 19 March 2014;

NOTING the “Prosecution Response to the ‘Adjonction de la Défense de Monsieur Fidèle Babala à “Defence Request for Disclosure” de la Défense de M. Jean-Pierre Bemba (ICC-01/05-01/13-208)’” dated 19 March 2014, whereby the Prosecutor submits that Mr Babala’s Defence Request “is without merit and

should be dismissed”, since “it introduces no additional arguments” to those advanced by the Defence for Mr Bemba and, in particular, “it fails to establish materiality under rule 77” (ICC-01/05-01/13-271);

NOTING that, on 20 March 2014, the Single Judge (i) ordered the Prosecutor to file by 25 March 2014 a confidential ex parte submission elaborating on any potential protective measures which she would request in case the Mr Bemba’s and Mr Babala’s Defence Requests were to be granted and (ii) convened a status conference for the purpose of discussing any related relevant matter to be held on 26 March 2014 in closed session, in the presence of the Prosecutor only (ICC-01/05-01/13-278);

NOTING the “Prosecution’s submissions on protective measures in relation to an anonymous informant” dated 25 March 2014 (“Prosecutor’s Request for Protective Measures” (ICC-01/05-01/13-292-Conf-Exp), whereby the Prosecution (I) submitted (i) that the identity of the anonymous informant is unknown to her and (ii) that the email exchange makes it clear that the informant wants to remain anonymous for security reasons, and, accordingly, (II) requested the Single Judge to grant a number of redactions, as detailed in confidential ex parte Annex A thereto, with a view to preventing the disclosure of the identity of the anonymous informant;

NOTING that, in the status conference held on 26 March 2014 (ICC-01/05-01/13-T-5-CONF-EXP-ENG), the Prosecution clarified some outstanding issues related to the requested redactions;

NOTING article 67 of the Statute and rule 77 of the Rules of Procedure and Evidence;

CONSIDERING that an informant (as opposed to a witness) is a person who, usually in exchange for the assurance of anonymity, contacts an investigator in order to “inform” him or her of something he or she considers of potential

interest to the investigator, thereby either triggering a new investigation or supplementing already available information in the context of previously opened investigations or proceedings;

CONSIDERING that any and all information provided by an informant, whether anonymous or not, has to be regarded and treated as a mere investigative hint possibly assisting the Prosecutor in discharging his or her duties, as such to be subjected to close and careful scrutiny as to its truthfulness, reliability and relevance by means of further investigations;

CONSIDERING that by no means can information provided by an informant, whether anonymous or not (as opposed to a witness statement), be regarded, treated or relied upon as evidence in the context of judicial proceedings, and even less constitute the sole basis for a judicial decision;

CONSIDERING that, accordingly, it appears debatable whether and to what extent the email exchanges for which the Defences for Mr Bemba and for Mr Babala request disclosure can be regarded as “material to the preparation of the defence” within the meaning and for the purposes of rule 77 of the Rules;

CONSIDERING it nevertheless appropriate that the information provided by the anonymous informant be disclosed to all of the Defence teams in these proceedings;

CONSIDERING, by the same token, that the anonymity of the informant must be strictly preserved, including for the purposes of his or her personal safety and security, and that, for this purpose, it is necessary and appropriate that any and all information possibly leading to his or her identification (in particular, names and pseudonyms, email addresses, locations and travelling plans) be redacted;

CONSIDERING that, in light of the principles recalled above as to the limitations and restrictions governing the relevance of any and all information provided by an informant, whether anonymous or not, in the context of judicial

proceedings, it is to be held that no prejudice will be caused to the Defence teams by these limited redactions, none of which affects the content of the information provided;

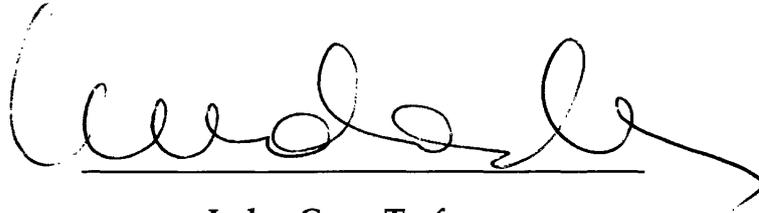
FOR THESE REASONS, THE SINGLE JUDGE

PARTIALLY GRANTS Mr Bemba's and Mr Babala's Defence Requests;

GRANTS the Prosecutor's Request for Protective Measures;

ORDERS the Prosecutor to file in the record a confidential version of ICC-01/05-01/13-292-Conf-Exp-AnxA, in which all the requested redactions shall have been applied, no later than Friday 28 March 2014.

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

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke ending in a tail that curves upwards and to the right.

Judge Cuno Tarfusser

Single Judge

Dated this Thursday, 27 March 2014

The Hague, The Netherlands