

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 15 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*

Confidential ex parte Defence for Jean-Pierre Bemba Gombo

Decision on the "Defence request for a confidential investigative measure pursuant to article 57(3)(b) of the Rome Statute"

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

The Office of the Prosecutor

Counsel for Jean-Pierre Bemba Gombo
Nicholas Kaufman

**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 “Second Decision on the ‘Defence request for disclosure’ submitted by the Defence for Jean-Pierre Bemba on 20 February 2014 and related filings” dated 27 March 2014 (“Second Decision on issues related to anonymous informant” or “Second Decision”)¹, whereby the Single Judge *inter alia* partially granted the “Defence request for disclosure” dated 20 February 2014² and ordered the Prosecutor to file in the record a confidential redacted version of emails exchanged between her office and an anonymous informant who provided her with information leading to the opening of her investigation of this case;

NOTING the “Confidential redacted version of Annex A to Prosecution’s submissions on protective measures in relation to an anonymous informant”³, whereby the Prosecutor complied with the Second Decision;

NOTING the confidential, *ex parte* “Defence request for a confidential investigative measure pursuant to article 57(3)(b) of the Rome Statute” dated 8 April 2014 (“Mr Bemba’s Defence Request”)⁴, whereby the Defence for Jean-Pierre Bemba requests “that the Registrar (more particularly the internet administrator of the International Criminal Court) be ordered to provide to the Single Judge with the geographical location(s) of the IP address(es) used by the ‘anonymous informant’ who, purportedly, precipitated the Prosecutor’s investigation in case ICC-01/05-01/13” pursuant to article 57(3)(b) of the Statute, submitting *inter alia* that “should the geographical locations of the IP addresses

¹ ICC-01/05-01/13-298.

² ICC-01/05-01/13-208.

³ ICC-01/05-01/13-292-Conf-AnxA-Red.

⁴ ICC-01/05-01/13-320-Conf-Exp.

be either the Democratic Republic of the Congo or The Netherlands, then that would be highly material to the preparation of the Suspect's defence”;

NOTING articles 57(3)(b) and 67 of the Statute and rule 77 of the Rules of Procedure and Evidence;

CONSIDERING that Mr Bemba's Defence Request seeks to obtain from the Chamber measures possibly allowing the identification of, or the gathering of additional information on, the anonymous informant, in particular “the geographical location(s) of the IP addresses used by the anonymous informant”;

CONSIDERING that the seeking and disclosure of this information might compromise the anonymity of the anonymous informant;

CONSIDERING, as already stated in the Second Decision, that the anonymity of an informant must be strictly preserved, including for the purposes of his or her personal safety and security, in particular by avoiding the disclosure of any and all information possibly leading to his or her identification;

CONSIDERING further that, as also already stated in the Second Decision:

- (i) 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;
- (ii) any and all information provided by an informant 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;

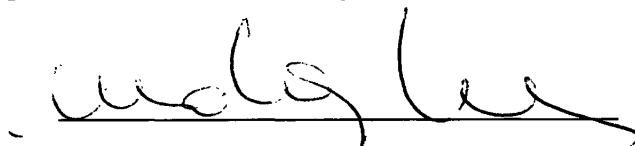
- (iii) by no means can information provided by an informant (as opposed to a witness statement), be regarded, treated or relied upon as evidence in the context of judicial proceedings, and even less constitute the sole basis for a judicial decision;

CONSIDERING that, in light of the principles recalled above as to the very limited, if any, relevance of any and all information provided by an informant in the context of judicial proceedings, the gathering of additional information on the whereabouts of the anonymous informant would serve no purpose in the context of these proceedings;

CONSIDERING, therefore, that the exercise of the Chamber's power to issue the order requested by the Defence for Mr Bemba would not be instrumental to the assistance of the person in the preparation of his or her defence within the meaning of article 57(3)(b) of the Statute and is therefore unwarranted;

**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 Tuesday, 15 April 2014

The Hague, The Netherlands