

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 19 May 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 the "Prosecution's request in respect of access to the Defence to certain materials" 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

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**

States Representatives

REGISTRY

Registrar

Herman von Hebel

Detention Section

Victims and Witnesses Unit

**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 "Prosecution's request in respect of access to the defence to certain materials" dated 24 April 2014¹, requesting the Single Judge (i) "to make the items identified by Independent Counsel", pursuant to the "Decision appointing an Independent Counsel and taking additional measures for the purposes of the forensic acquisition of material seized in the proceedings" dated 13 December 2013 ("13 December 2013 Decision")², "accessible to all the Defence teams via E-court registration" ("Prosecutor's First Request") and (ii) "to provide the suspects with immediate access to the TRIM folder containing the ICC Detention centre call records" ("Prosecutor's Second Request");

NOTING the "Defence response to Prosecution filing ICC-01/05-01/13-360" dated 25 April 2014 ("Mr Bemba's Defence Response")³, whereby the Defence for Mr Bemba *inter alia*

(I) reminds the time limits set for the disclosure in these proceedings and submits that, after 18 March 2014 (ie, the date originally set for the presentation of the document containing the charges), no incriminating evidence "should have been entered into E-court", with the sole exception of "material falling within the purview of the Independent's Counsel's third and last report", and

(II) requests the Single Judge to

1. *"REJECT the Prosecutor's request that the materials emanating from the Independent Counsel's third and last report be entered into E-Court before the*

¹ ICC-01/05-01/13-360.

² ICC-01/05-01/13-41-Red.

³ ICC-01/05-01/13-361.

- Single Judge has ruled on questions raised elsewhere concerning the said Independent Counsel's perceived lack of independence" ("Defence's First Request");
2. *"REJECT, failing the relief sought in paragraph 1, the application that the materials mentioned in the Prosecutor's Request be entered into E-Court except for those materials previously permitted by virtue of decision ICC-01/05-01/13-255 - without prejudice to Counsel's submission, at confirmation, that the Independent Counsel was illegally appointed" ("Defence's Second Request");*
 3. *"ORDER the Prosecutor to withdraw from E-Court all incriminating materials collected and subsequently entered into E-Court after the deadlines clearly set out at the status conference held on 4 December 2013 and to submit a report to the Single Judge detailing her compliance with such an order for withdrawal" ("Defence's Third Request");*
 4. *"ORDER the Prosecutor in her 'footnoted and hyperlinked' document containing the charges to make specific reference to the date of collection and date of disclosure of each specific item of evidence on which she shall rely during the confirmation proceedings" ("Defence's Fourth Request");*
 5. *"ORDER the Registrar to make available to the Prosecution and Defence teams only, by way of access rights to Registry Ringtail, all materials rejected and withdrawn pursuant to paragraphs 2 and 3 hereinabove" ("Defence's Fifth Request");*
 6. *"ORDER the Registrar, for the sake of creating a uniform mode of reference, to assign to the rejected and withdrawn materials mentioned in paragraph 5 above the following ID: "CAR-REG-XXXX-XXXX" and not "CAR-ICC-XXXX-XXXX" as envisaged by the Prosecutor" ("Defence's Sixth Request");*

NOTING the "Decision on the request for disqualification of Independent Counsel filed by the Defence of Jean-Pierre Bemba Gombo" dated 25 April 2014⁴, whereby the Single Judge rejected Mr Bemba's requests⁵ for immediate disqualification of Independent Counsel appointed pursuant to ICC-01/05-01/13-41-Red;

⁴ ICC-01/05-01/13-362-Red.

⁵ ICC-01/05-01/13-317-Conf and ICC-01/05-01/13-353-Conf.

NOTING the “Decision on the filing in the record of items seized upon the searches of the person and cell of Jean-Pierre Bemba Gombo” filed earlier today (“Decision”), whereby the Single Judge *inter alia* (i) ordered the reclassification as confidential of many of the items seized upon the searches of the person and the cell of Jean-Pierre Bemba Gombo upon the arrest and identified by Independent Counsel as not, or no longer, privileged, already filed in the record as confidential, *ex parte* Independent Counsel and Defence for Mr Bemba, and (ii) ordered the filing in the record of redacted confidential versions of some other items identified by Independent Counsel as partially not, or no longer, privileged;

NOTING article 67, rule 121(3) and 121(8) of the Rules of Procedure and Evidence and regulation 24 of the Regulations of the Court;

CONSIDERING, as regards the Prosecutor’s First Request, that its ultimate purpose (ie, the availability of those items to all parties in the proceedings), as well as the other objectives listed in paragraph 6 of the Prosecutor’s Request, will be met once the Decision will be fully implemented and each item will be available in the record as a separate annex to the relevant filings, as such bearing an individual and unique number;

CONSIDERING that, accordingly, there is no need for the additional filing of the same items in the E-Court system;

CONSIDERING it nevertheless appropriate to reiterate that the E-court system “is an information system which manages and provides access to judicial records and material” and that, accordingly, the registration of an item in the E-court system is *per se* neutral as to the determination of its reliability, admissibility, relevance or evidentiary weight;

CONSIDERING, as regards the Prosecutor’s Second Request, that it is indeed appropriate that all the Defence teams have access to the same material as made

available to the Prosecutor, without prejudice to the latter's obligations for disclosure and due insertion in her list of evidence of all those items on which she intends to rely for the purposes of the confirmation hearing;

NOTING the Prosecutor's submission that an amendment to the rights of access to the relevant TRIM folder would be the most efficient way to make the material referred to in her Second Request available to the Defence teams and the Registrar's submission, upon oral consultations, that such amendment would be technically feasible;

CONSIDERING that Mr Bemba's Defence Response, containing as many as six requests to the Single Judge, goes far beyond the scope and purpose of a "response" within the meaning of regulation 24 of the Regulations of the Court;

CONSIDERING nevertheless that it is appropriate, for the purposes of the efficiency of the proceedings, to address all of the requests submitted by the Defence for Mr Bemba;

CONSIDERING, as regards the Defence's First Request, that nowhere in the Prosecutor's request does emerge a reference to "*the materials emanating from the Independent Counsel's third and last report*";

CONSIDERING, as regards the Defence's Second Request, that, in light of the content of the Decision filed earlier today, no "*materials mentioned in the Prosecutor's Request*" shall "*be entered into E-Court*";

CONSIDERING, as regards the Defence's Third Request, that, as already stated, rule 121(3) of the Rules requires the Prosecutor to provide the Chamber and the person for whom the confirmation of the charges is sought with the document containing the charges and the list of evidence on which she intends to rely 30 days before the date of the confirmation hearing;

CONSIDERING that, accordingly, whilst the setting of intermediate deadlines for the disclosure of specific batches of evidence is possible and appropriate for

the purposes of properly organising the disclosure process and enhancing its efficiency, the only provision to be found in the statutory framework of the Court as to the consequences of the presentation of evidence after the expiry of a given time limit relates to the thirty-day time limit before the date set for the confirmation of the charges;

CONSIDERING that, in light of the postponement of the date set for the confirmation of the charges, the Prosecutor has been given until 30 May 2014 for the filing of her document containing the charges and her list of evidence and that therefore, at this stage, an order to the Prosecutor to “withdraw” any material entered into the E-court system would be unwarranted;

CONSIDERING, as regards the Defence’s Fourth Request, that ordering indiscriminately the Prosecutor “*to make specific reference to the date of collection and date of disclosure of each specific item of evidence on which she shall rely during the confirmation proceedings*” would result in imposing an excessive additional burden on her, for which no justification can be found in the statutory texts;

CONSIDERING that, should the Defence have reasons to doubt the Prosecutor’s compliance with the intermediate deadlines set for disclosure in respect of one or more specific items included in her list of evidence, it will have an opportunity to raise the issue in the context of its submissions for the purposes of the confirmation of the charges, on which issue the Chamber shall rule in its full composition, having regard to all relevant circumstances;

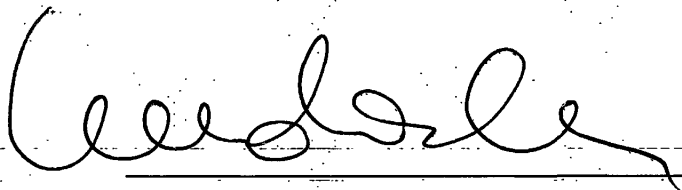
CONSIDERING that the Defence’s Fifth and Sixth Requests are deprived of content, since no materials will be “rejected” or “withdrawn” pursuant to the Defence’s Second and Third Requests;

FOR THESE REASONS, THE SINGLE JUDGE

REJECTS the Prosecutor’s First Request;

ORDERS the Registrar to extend to the Defence teams of all the suspects in this case access to the TRIM folder containing the ICC Detention Centre call records;
REJECTS the Requests submitted in Mr Bemba's Defence Response.

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



Judge Cuno Tarfusser

Single Judge

Dated this Monday, 19 May 2014

The Hague, The Netherlands