

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

No.: ICC-01/05-01/13  
Date: 23 January 2015

**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**

**Joint decision on the “Corrected version of ‘Prosecution’s Request to obtain Records from the Victims and Witnesses Unit’, 18 December 2014, ICC-01/05-01/13-784” and the “Prosecution’s Motion for the Preservation of Evidence”**

**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**  
Melinda Taylor

**Counsel for Aimé Kilolo Musamba**  
Paul Djunga Mudimbi

**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**

**The Office of Public Counsel for Victims**

**The Office of Public Counsel for the Defence**

**States Representatives**

**Others**

**REGISTRY**

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**Registrar**  
Herman von Hebel

**Defence Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations Section**

**Others**

**I, Judge Cuno Tarfusser**, having been designated as Single Judge of Pre-Trial Chamber II (“the Chamber”) of the International Criminal Court;

**NOTING** the “Corrected version of ‘Prosecution’s Request to obtain Records from the Victims and Witnesses Unit’, 18 December 2014, ICC-01/05-01/13-784” dated 22 December 2014 (“Prosecutor’s First Request”),<sup>1</sup> requesting the Pre-Trial Chamber to order the Victims and Witnesses Unit “to provide the parties with the records and the dates of payments made to, as well as the receipts, invoices and documents obtained by the Registry in relation to 21 defence witnesses in the *Bemba Case*”;

**NOTING** the “Prosecution’s Motion for the Preservation of Evidence” dated 5 January 2015 (“Prosecutor’s Second Request”),<sup>2</sup> requesting the Chamber, *inter alia*, “to order the *Bemba* Defence in its current and former composition to preserve all records of interviews with, and statements of, *Bemba* Defence witnesses in whatever form they exist”;

**NOTING** “Narcisse Arido’s Response to the ‘Corrected Version of ‘Prosecution’s Request to Obtain Records from the Victims and Witnesses Unit’” (ICC-01/05-01/13-784-Corr)” dated 8 January 2015,<sup>3</sup> opposing the Prosecutor’s First Request;

**NOTING** the “Defence Request” dated 15 January 2015,<sup>4</sup> whereby the Defence for Mr Bemba opposes the Prosecutor’s First and Second Requests by requesting the Chamber “to desist from adjudicating any procedural issues or requests concerning issues that are not intrinsically linked to the pending requests for leave to the appeal the confirmation decision”;

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<sup>1</sup> ICC-01/05-01/13-784-Corr and Public Annex A thereto.

<sup>2</sup> ICC-01/05-01/13-788-Conf.

<sup>3</sup> ICC-01/05-01/13-790.

<sup>4</sup> ICC-01/05-01/13-795-Red.

**NOTING** articles 19(6), 56, 57, 61(11), 64(6)(a) and (d) of the Statute, rules 60, 129 and 130 of the Rules of Procedure and Evidence,

**CONSIDERING** that, except as regards the decisions on admissibility challenges, the Statute does not explicitly prevent the Pre-Trial Chamber to exercise its powers in the period between the confirmation of the charges and the transfer of the case to the Trial Chamber by the Presidency pursuant to rule 130 of the Rules;

**CONSIDERING** that, accordingly, the Bemba Defence submission to the effect that, “once the charges have been confirmed, the Pre-Trial Chamber has no competence over the subsequent proceedings” is not consistent with the relevant statutory framework;

**CONSIDERING**, by the same token, that the powers enshrined in article 57 (including, in particular, the one to adopt any such measures as might be required for the preservation of evidence pursuant to article 57(3)(c) of the Statute), the exercise of which is solicited by both the Prosecutor’s First and Second Requests, are to be construed as instrumental to the Pre-Trial Chamber’s core function, namely to determine whether the evidence as made available to it establishes or not substantial grounds to believe that the suspects have committed the crimes as charged by the Prosecutor;

**CONSIDERING** that articles 61(11), 64(6)(a) and (d) of the Statute make it clear that, once the charges have been confirmed, the powers vested in the Pre-Trial Chamber during the pre-trial phase, with particular respect to those powers relating to the production of evidence, are vested in the Trial Chamber;

**CONSIDERING** that, accordingly, as a matter of principle and absent compelling reasons to decide otherwise (first and foremost, the existence of a unique investigative opportunity within the meaning and for the purposes of article 56 of the Statute), it is not appropriate for the Pre-Trial Chamber to

exercise its powers relating to the production of evidence once the confirmation decision has been rendered, namely in light of the fact that the statutory framework makes it clear that the debate on the admissibility and relevance of the evidence will henceforth take place before the Trial Chamber;

**CONSIDERING** that, on the basis of the elements and the arguing submitted by the Prosecutor, the Chamber is not satisfied that either her First or her Second Request refer to a scenario whereby the items the submission of which the Chamber should order “may not be available subsequently for the purposes of a trial”;

**CONSIDERING** that, accordingly, it is not necessary for the Chamber to determine or otherwise address the merits of the Prosecutor’s First and Second Requests;

**NOTING** article 57(3)(c) of the Statute, rules 15, 43 and 81 of the Rules of Procedure and Evidence, regulation 23*bis* of the Regulations of the Court and regulation 25 of the Regulations of the Registry;

**NOTING** the “Decision on the reclassification of documents in the record of the case” dated 11 December 2014,<sup>5</sup> ordering the Prosecutor and the Defence teams “to review each of their filings which are not currently classified as public and (i) to indicate those which can be reclassified as public or (ii) to file a confidential or public redacted version of any remaining filings, as appropriate”, with a view to complying with the paramount principle of the publicity of the proceedings;

**CONSIDERING** that, accordingly, it is necessary that a public redacted version of the Prosecutor’s Second Request be filed in the record;

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<sup>5</sup> ICC-01/05-01/13-781.

**FOR THESE REASONS, THE SINGLE JUDGE HEREBY**

**REJECTS** the Defence Request;

**DISMISSES** the Prosecutor's First and Second Requests;

**ORDERS** the Prosecutor to file in the record a public redacted version of her Second Request.

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



**Judge Cuno Tarfusser**

**Single Judge**

Dated this Friday, 23 January 2015

The Hague, The Netherlands