

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **05/02/2014**

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
& NARCISSE ARIDO**

Confidential Document

Defence request for disclosure

Source: Defence for Mr. Jean-Pierre Bemba Gombo

Document 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

Florence Darques Lane

Counsel for Jean-Pierre Bemba Gombo

Nicholas Kaufman

Counsel for Aimé Kilolo Musamba

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Counsel for Jean-Jacques Mangenda Kabongo

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Counsel for Fidèle Babala Wandu

Jean-Pierre Kilenda Kakengi Basila

Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

The Office of Public Counsel for Victims

The Office of Public Counsel for the Defence

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Herman von Hebel

Defence Support Section

Victims and Witnesses Unit

Detention Section

The Defence for Mr. Jean-Pierre Bemba Gombo ("the Suspect") hereby 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 ("the Document").

Submission

1. The Document is a translated summary of 22 excerpts from telephone conversations conducted between the Suspect and Fidèle Babala Wandu.
2. The Document was disclosed by the Prosecutor as incriminating evidence on 20 December 2013 and appended as Annex I.1 to the application for the Suspect's arrest in case ICC-01/05-01/13.
3. The accompanying metadata, as disclosed in Ringtail, do not reveal the names of those members of the Prosecutor's staff who handled, prepared or summarized the Document.
4. The metadata accompanying the Document thus infringe the Ecourt protocol which states that a chain of custody "should list **all** entities/persons who had custody of the item, in chronological order" [emphasis added].¹ For this reason alone, the identities of the authors of the Document should be disclosed.
5. As a rule, the judges of the International Criminal Court encourage litigants to settle disclosure issues *inter partes*.
6. On 29 January 2014, Counsel for the Suspect petitioned the Prosecutor's representative and requested that he disclose the names of those members of staff who prepared the Document.
7. Counsel is, regrettably, yet to receive a response to the above mentioned request.

¹ ICC-01/05-01/13-35-Anx1 at page 13/24.

8. Questions of admissibility aside, Counsel for the Suspect will challenge the evidentiary weight and accuracy of the Document at confirmation pursuant to article 61(6)(b) of the Rome Statute.

9. In so doing, Counsel for the Suspect will seek to exercise his statutory right under article 61(6)(c) of the Rome Statute to present evidence at confirmation by leading testimony from the authors of the Document. 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.

10. The Defence will argue as follows:

- a) that the Document lacks objectivity, is prejudicially selective and pays no attention whatsoever to any potentially exonerating circumstances. For this reason, the authors of the Document have infringed the Prosecutor's obligation of impartiality under article 54(1)(a) of the Rome Statute;
- b) that various parts of the Document are incorrectly translated from the original Lingala;
- c) that the Document is unfit for presentation to the Pre-Trial Chamber in that it contains evidence of a highly speculative nature. More particularly, on numerous occasions, the authors of the Document hazard a guess at the meaning of various "code" words which are forcibly contrived to suit the Prosecution case theory.

11. The requested disclosure and testimony is thus essential in order to substantiate 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.

12. It is worth noting that in a recent filing, the Prosecutor has notified the Single Judge of her request to seek access to the confidential record in case ICC-01/05-01/08. Given this development, Counsel can only presume that the Prosecutor has imposed a "chinese wall" policy on the two teams in her office dealing with the cases against the Suspect. Counsel is thus interested to know whether this admirable work ethic was applied to the translation of the Lingala intercepts – especially since it is believed that the only trial lawyer in the Prosecutor's office who understands this language is Mr. Jean-Jacques Badibanga – the senior attorney on case ICC-01/05-01/08.

Confidentiality


13. The classification of this filing is determined by the confidentiality of the Document.

Regulation 35(2) of the Regulations of the Court

14. In light of the failure to respect Counsel's expectation that *inter partes* requests for disclosure be dealt with in an expeditious manner, Counsel submits that "good cause" is shown to reduce the time limit for the Prosecutor's response to this filing.

Relief Sought

15. In light of all the aforementioned, the learned Single Judge is requested to order the Prosecutor to disclose the identities of the authors of the Document.



Nicholas Kaufman

Counsel for Jean-Pierre Bemba Gombo

Jerusalem, Israel

Wednesday, February 05, 2014