

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

No.: ICC-01/05-01/13  
Date: 10 February 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, AIME KILOLO  
MUSAMBA, JEAN-JACQUES MANGENDA KABONGO, FIDELE BABALA WANDU  
AND NARCISSE ARIDO***

**Confidential**

**Prosecution Response to Defence Request for Disclosure**

**Source: The Office of the Prosecutor**

**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

**Counsel for the Defence of Jean-Pierre Bemba**

Nicholas Kaufman

**Counsel for the Defence of Aimé Kilolo Musamba**

Ghislain Mabanga

**Counsel for the Defence of Jean – Jacques Mangenda Kabongo**

Jean Flamme

**Counsel for Fidèle Babala Wandu**

Jean-Pierre Kilenda Kakengi Basila

**Legal Representatives of Victims**

**Legal Representatives of Applicants**

**Unrepresented Victims**

**Unrepresented Applicants for Participation/Reparation**

**States Representatives**

**Amicus Curiae**

**REGISTRY**

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**Registrar**

Herman von Hebel

**Counsel Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations Section Others**

## **I. Introduction**

1. The Office of the Prosecutor ("Prosecution") hereby responds to the Bemba Defence's 5 February 2014 request for disclosure ("Request").<sup>1</sup> The Request is unwarranted and premised on unsubstantiated allegations. It should be dismissed.

## **II. Confidentiality**

2. This filing is classified as "Confidential" as the Request to which it responds is so designated.

## **III. Submissions**

3. The Request seeks an order from the Single Judge of Pre-Trial Chamber II requiring the Prosecution to disclose the identities of the OTP staff members who participated in creating the translations contained in document CAR-OTP-0072-0186 ("Document"). Contrary to the Request, the E-court Protocol ("Protocol") does not require the requested disclosure, nor is this necessary for the preparation of the Defence. Further, the Prosecution objects to the groundless allegations made in the Request against its staff.

### **A. The metadata disclosure is consistent with the E-court Protocol**

4. The OTP Language Services Unit (OTP-LSU) produced the Document at issue internally. The unit maintains ownership of its institutional work. Regardless of the individuals who participated in creating the translations in the Document, the fact remains that is the product of the unit, as a whole.

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<sup>1</sup> ICC-01/05-01/13-150-Conf, Defence request for disclosure, 5 February 2014.

5. The part of the Protocol on which the Request relies,<sup>2</sup> provides for the possibility to indicate either an entity or person in the chain of custody. It does not, and cannot reasonably be construed to require an indication of the entity that produced the document, as well as a list of the entire staff that took part in its production. Taken to its logical extension, this would mean that a UN report, for instance, could not be registered unless every officer, intern, or researcher who participated in its production is mentioned in the chain of custody.

6. The Request further ignores the fact that the Document at issue is not the original evidence, which has been disclosed to the Defence. Instead, it comprises excerpted translations thereof. For this category of documents, the Protocol requires that the metadata reflect the organ producing the translation, not the identities of every individual who took part in its production.<sup>3</sup>

7. In short, the E-Court Protocol is not designed or intended as a springboard from which to embark upon fishing expeditions. Nor, does it contemplate circumventing the Court's established procedural framework to require disclosure absent any demonstrable entitlement.

## **B. The Request is based on unsubstantiated allegations**

8. Without any substantiation, the Request contends that the authors of the Document have infringed the impartiality obligation.<sup>4</sup> First, this is untrue. Second, it is without any basis. Third, there is a presumption of good faith in the performance

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<sup>2</sup> A chain of custody "should list all entities/persons who had custody of the item, in chronological order." See Request, para. 4.

<sup>3</sup> The Protocol states that: when the document is a translation, choose one of the following options to indicate by whom the translation has been done: 'ICC-Registry services'; 'OTP-OTP services'; and 'Ext-External services'. See ICC-01/05-01/13-35-Anx, Unified Technical protocol ("E-court Protocol") for the provision of evidence, witness and victim information in electronic form, 6 December 2013, p. 11.

<sup>4</sup> Request, para. 10.

of duties of Court staff members, absent a strong showing to the contrary. The Request hardly meets this threshold.

9. The Defence will undoubtedly challenge the evidentiary weight and accuracy of translations, and may draw the Chamber's attention to those parts of them in dispute by, *inter alia*, offering alternative translations or interpretations of the original evidence. In any case, the Defence can, and perhaps may avail itself of the appropriate procedural mechanisms by which to address the issues raised in the Request.

#### **IV. Requested Relief**

10. For the foregoing reasons, the Prosecution respectfully requests that the Chamber dismiss the Request in its entirety.



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**Fatou Bensouda, Prosecutor**

Dated this 10<sup>th</sup> Day of February 2014

At The Hague, The Netherlands