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

Date: 3 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*

Public Redacted Document

Public Redacted version of "Prosecution's Request to Refer Potentially Privileged Materials to Independent Counsel", 2 April 2014, ICC-01/05-01/13-310-Conf

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

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Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

Unrepresented Applicants for Participation/Reparation

States Representatives

Amicus Curiae

REGISTRY

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”) has recently received two DVDs from [REDACTED] containing the contents of email accounts of suspects in this case, including Aimé Kilolo Musamba and Jean-Jacques Mangenda Kabongo. These two email accounts, provided on separate discs, may potentially contain privileged information.

2. The Prosecution therefore requests the Single Judge to appoint an independent counsel to review the email accounts of Kilolo and Mangenda and to transmit only non-privileged information to the Prosecution. Because the DVD containing Mangenda’s email accounts also contains those of suspects Narcisse Arido and Fidèle Babala Wandu, the Prosecution further requests that the Registry be directed to copy/extract Arido’s and Babala’s email accounts in the presence of the independent counsel, and to transmit the copied/extracted information to the Prosecution promptly thereafter.

3. An independent counsel’s review of the material will ensure that the confidentiality of any legitimately privileged communications concerning *The Prosecutor v. Jean-Pierre Bemba Gombo* (“Main Case”) remains intact, and that the Prosecution does not inadvertently breach privileged or legally protected confidential information.

II. Confidentiality

4. This filing is classified as “Confidential” as it refers to material that is not yet available to the public. A Public redacted version will be filed.

III. Background

5. As noted, on 21 March 2014, pursuant to a request for assistance [REDACTED] (“RFA”), the [REDACTED] transmitted to the Prosecution two DVDs containing the content of the email accounts - including emails, draft emails, calendar entries and contacts – (“email accounts”) of Kilolo, and those of Babala, Arido, and Mangenda, respectively.

6. Because the email accounts of Mangenda and Kilolo might contain potentially privileged or legally protected confidential information, the Prosecution has refrained from their review. The DVDs thus remain packaged and sealed as received.

IV. Submissions

7. Given Kilolo’s and Mangenda’s respective roles as Lead Counsel and Case Manager in the Main Case, it is probable that their email accounts contain legally privileged information, although the subject email accounts are not those assigned by the Court.

8. The Prosecution considers it appropriate that an independent counsel assigned by the Single Judge reviews the email accounts of Kilolo and Mangenda before the Prosecution engages in any evidentiary analysis of these materials. This minimises any risk of the Prosecution’s inadvertent exposure to materials protected by legal privilege, and thereby ensures the integrity of such information. Conversely, it allows the Prosecution access to evidence otherwise contained in the respective email accounts, without prejudice to Jean-Pierre Bemba Gombo (as the privilege holder) in the Main Case, or to Mangenda or Kilolo.

9. As noted, the seal on the received material remains intact. The Prosecution undertakes to maintain it as such and to refrain from conducting any review or analysis of the emails before the Single Judge rules upon this application.

V. Requested relief

10. Upon the foregoing, the Prosecution respectfully requests that the Single Judge issue an order:

(i) appointing an independent counsel to review the email accounts of Mangenda and Kilolo for potentially privileged and/or legally protected confidential information, and to provide all non-privileged information contained therein to the Prosecution on a rolling basis as and when they are reviewed; and

(ii) instructing the Registry to copy/extract Arido's and Babala's email accounts in the presence of the independent counsel, and to promptly transmit the copied/extracted material to the Prosecution.



Fatou Bensouda, Prosecutor

Dated this 3rd Day of April 2014

At The Hague, The Netherlands