



Original: English

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

Date: 08/04/2014

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***

CONFIDENTIAL

*ex parte Bemba Defence only
with Confidential ex parte Annex A*

**Defence request for a confidential investigative measure
pursuant to article 57(3)(b) of the Rome Statute**

Source: Defence for 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

Counsel for Jean-Pierre Bemba Gombo
Nicholas Kaufman

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

Other

REGISTRY

Registrar

Herman von Hebel

Defence Support Section

Victims and Witnesses Unit

Detention Section

The Defence for Jean-Pierre Bemba Gombo ("the Suspect") hereby requests that the Registrar (more particularly the internet administrator of the International Criminal Court) be ordered to provide to the Single Judge with the geographical location(s) of the IP address(es) used by the "anonymous informant" who, purportedly, precipitated the Prosecutor's investigation in case ICC-01/05-01/13.

Relevant Procedural Background

1. On 20 February 2014, the Defence requested that the Single Judge order the Prosecutor to disclose information pertaining to an "anonymous informant" who had provided her with information concerning an alleged witness 'bribery' scheme orchestrated by the Suspect ("the Defence Request").¹ More importantly, the Defence requested that the Prosecutor disclose the IP address(es) used by the "anonymous informant" to communicate with her office.

2. On 3 March 2014, the Prosecutor opposed the Defence Request on the basis that it failed *"to establish that the information sought is material to the preparation of the Defence"*.²

3. On 17 March 2014, the Single Judge delivered his *"Decision on the 'Defence request for disclosure' submitted by the Defence for Jean-Pierre Bemba on 20 February 2014"*³ and ordered the Prosecutor to submit *"a copy of the email exchanges sought on an ex parte basis", as well as any other information or material in her possession which might be relevant in connection with and for the purposes of the Defence Request, by Wednesday 19 March 2014*". Although the Single Judge made no specific ruling on the issue of the IP addresses, the Defence believes these IP addresses to be *"other material"* which *"might be relevant"*.

4. On 20 March 2014, the Single Judge ordered the Prosecutor to file by 25 March 2014 a confidential ex parte submission elaborating on any potential

¹ ICC-01/05-01/13-208.

² ICC-01/05-01/13-232.

³ ICC-01/05-01/13-262.

protective measures which she would request in case the Defence Request should be granted. The Single Judge also convened a status conference to be held on 26 March 2014 and in the presence of the Prosecutor only.⁴

5. On 25 March 2014, the Prosecutor submitted the "*Prosecution's submissions on protective measures in relation to an anonymous informant*"⁵ and argued (i) that the identity of the anonymous informant was unknown to her and that the email exchange made it clear that the informant wanted to remain anonymous for security reasons. In the circumstances, the Prosecutor requested that the Single Judge grant a number of redactions with a view to preventing the disclosure of the identity of the anonymous informant.

6. On 27 March 2014, the day after the ex parte, Prosecution only, status conference, the Single Judge issued his "*Second Decision on the "Defence request for disclosure" submitted by the Defence for Jean-Pierre Bemba on 20 February 2014 and related filings*".⁶ By virtue of this decision, the Prosecutor was ordered to enter into the case record a redacted version of the correspondence between her office and the "anonymous informant".⁷

Submission

7. The "anonymous" informant's interlocutor in the Office of the Prosecutor was Jean-Jacques Badibanga ("Badibanga"). While corresponding with Badibanga, the anonymous informant did not hide the fact that he originates from the Central African Republic. Moreover, from the Email correspondence dated 10 – 11 September 2012, it would appear, on the face of it, that the anonymous informant presents himself as a resident of Bangui.

⁴ ICC-01/05-01/13-278.

⁵ ICC-01/05-01/13-292-Conf-Exp

⁶ ICC-01/05-01/13-298.

⁷ The Email exchange is to be found at ICC-01/05-01/13-292-ConfAnxA.

8. On 2 April 2014, Counsel wrote to the Prosecutor's representative – Kweku Vanderpuye - and requested that he access the raw data or "complete message source" accompanying each of the Emails sent by the anonymous informant and that he (Vanderpuye) satisfy himself that the geographical location(s) of the IP address(es) used by the anonymous informant corresponded to the places from where the Emails were, according to their content, purportedly sent. It should be stressed that Counsel placed his full trust in Kweku Vanderpuye whose integrity he does not doubt. Counsel thus requested that he be informed if the geographical whereabouts of the IP addresses did not conform to the anonymous informant's professed location. Counsel added that should the geographical locations of the IP addresses be either the Democratic Republic of the Congo or The Netherlands, then that would be highly material to the preparation of the Suspect's defence.⁸

9. On 7 April 2014, having failed to receive a response to his mail of 2 April 2014, Counsel requested that the Prosecutor's representative reply to him by close of business.⁹ As of the date of this request, Counsel has received no response from the Prosecutor's representative.

10. Article 57(3)(b) of the Rome Statute provides as follows: "*Upon the request of a person who has been arrested or has appeared pursuant to a summons under article 58, issue such orders, ... as may be necessary to assist the person in the preparation of his or her defence*". In light of the Prosecutor's failure to respond to Counsel's two communications, Counsel requests that the Registrar or, more specifically, his internet administrator receive from Chambers an unredacted copy of the Email exchange and be ordered to provide the Single Judge, as far as is possible, the geographical location(s) of the IP address(es) used by the anonymous informant. Counsel believes that the ICC internet administrator will be able to provide the required information from analyzing the data available at the exact times that the Emails from the anonymous informant hit the ICC's general internet servers.

⁸ Since it would suggest that the anonymous informant was not genuine. *c.f.*; Confidential exp Annex A.

⁹ *ibid.*

11. Counsel is conscious of the Single Judge's decision to protect the anonymity of the informant. For this reason, Counsel does not, at this stage, ask to know the whereabouts of the anonymous informant. Nor does Counsel seek to analyse the complete message source of the informant's Emails himself. Counsel feels that by entrusting this discrete investigative procedure to the Single Judge, an appropriate balance will be struck between the need to protect a source and the defendant's right to an impartial and independent investigation.

Classification and Urgency

12. This application is filed *ex parte* Defence only because it concerns an aspect of the Defence investigation which should not be disclosed to the Prosecution and is intended to test the credibility of the Prosecution's evidence. The request is also urgent because of the impending confirmation proceedings.

Relief Sought

13. In light of all the aforementioned, the Single Judge is respectfully requested to perform the discrete investigative procedure sought hereinabove and to satisfy himself that the geographical locations of the IP addresses used by the anonymous informant indeed conform to his professed location (Bangui). Should the geographical locations not correspond to this location, the Single Judge will be requested to seek further submissions from the parties. Until further decision, the Single Judge alone will retain any information as to the geographical location(s) of any IP address(es) should they be identified.



Nicholas Kaufman

Counsel for Jean-Pierre Bemba Gombo

Jerusalem, Israel
Tuesday, April 08, 2014