

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

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

Date: 9 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, AIME KILOLO  
MUSAMBA, JEAN-JACQUES MANGENDA KABONGO, FIDELE BABALA WANDU  
AND NARCISSE ARIDO***

**Public**

***Prosecution Request for Leave to Reply to Mangenda Defence's "Réponse à la  
requête du Procureur du 3 avril 2014 concernant les comptes de courrier électronique  
saisis ICC-01/05-01/13-310-Red – 03-04-2014"***

**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 Applicants**

**Unrepresented Victims**

**Unrepresented Applicants for Participation/Reparation**

**States Representatives**

**Amicus Curiae**

**REGISTRY**

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**Counsel Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations Section Others**

## I. Introduction

1. Pursuant to Regulation 24(5) of the Regulations of the Court (“RoC”), the Office of the Prosecutor (“Prosecution”) requests the Chamber’s leave to reply to the Defence’s Response<sup>1</sup> to the Prosecution’s Request to Refer Potentially Privileged Materials to Independent Counsel (“Request”).<sup>2</sup>

2. A limited and focused Reply may benefit the Chamber and assist in the proper determination of the Request.

## II. Submissions

3. The Prosecution seeks to reply to three arguments advanced in the Response:
- a) the alleged illegality of the manner in which the Prosecution acquired Mangenda’s email accounts;
    - i. whether the acquisition of the email accounts furnished in response to a request for assistance under Article 93 and in full accordance with the respondent State’s laws and procedures may legitimately constitute an “abuse of power” by the Prosecution or otherwise violate the principles of a fair trial in the circumstances of this case;
    - ii. whether the acquisition of the email accounts contravenes any privilege inuring to the benefit of Mangenda acting in his capacity as a case manager in the *Bemba* case;
  - b) the alleged untimeliness of the Prosecution’s request to refer Mangenda’s email accounts to the Chamber for review by an independent counsel in order to preclude the Prosecution’s exposure to any potentially privileged material; and

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<sup>1</sup> ICC-01/05-01/13-316.

<sup>2</sup> ICC-01/05-01/13-310-Red.

- c) the legality of the Registry's recording of telephone conversations involving Mangenda from the ICC Detention Centre and of the propriety of the seizure of other materials from him.

4. A limited Reply clarifying the law and correcting factual misrepresentations concerning these issues "may benefit"<sup>3</sup> the Chamber, and is in the interests of justice.

### III. Requested Relief

5. For the foregoing reasons, the Prosecution requests the Chamber to grant it leave to reply to the Defence Response, pursuant to Regulation 24(5) of the RoC.




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**Fatou Bensouda, Prosecutor**

Dated this 9<sup>th</sup> day of April 2014  
At The Hague, The Netherlands

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<sup>3</sup> ICC-01/05-01/08-2014, Order granting leave to reply, 15 December 2011, para. 4; see also ICC-01/05-01/08-2942, Decision on "Prosecution's Request for leave to reply to Defence 'Response to the Prosecution's Application to Submit Additional Evidence'", 22 January 2014, para. 4.