

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **24 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

Prosecution's Request in respect of Access to the Defence to certain Materials

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

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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”) requests the Single Judge to order the Registry to make available to all Defence teams in this case *via* registration in E-court the items identified by the Independent Counsel in accordance with the Single Judge’s 13 December 2013 Order.¹ Additionally, the Prosecution requests that the Single Judge order the Registry to provide the suspects with access to the ICC Detention Centre call records and recordings involving suspect Jean-Pierre Bemba Gombo, via the TRIM folder where such material is located.

II. Submissions

A. Registration of material in E-court

2. During the suspects’ respective November 2013 arrests, the national authorities involved seized certain items of their personal property.² The Registry similarly seized Bemba’s personal property. Some of this material is currently in the Registry’s possession³ (“Seized Material”). Other material is expected to be transmitted to the Court by the relevant national authorities in due course (“Additional Seized Material”).⁴

3. As noted, on 13 December 2013, the Single Judge appointed the Independent Counsel to: (i) review the Seized Material and the Additional Seized Material with a view to identifying items which are privileged or obviously irrelevant; and (ii) promptly submit a report to the Single Judge.⁵

¹ ICC-01/05-01/13-41-Red, p. 6.

² ICC-01/05-01/13-41-Red, p. 3.

³ ICC-01/05-01/13-41-Red, p. 3.

⁴ ICC-01/05-01/13-41-Red, p. 5.

⁵ ICC-01/05-01/13-41-Red, p. 6.

4. On 17 April 2014, the Single Judge ordered “the Independent Counsel, with the assistance of the services of the registry, to file in the record of the case, on a confidential, ex parte basis, reserved to the Defence for Jean-Pierre Bemba only, all items identified as non-privileged and relevant (subject to the appropriate redactions), as referred to in paragraph 35 of Independent Counsel’s Report”.⁶ The Single Judge decided “that the relevant items shall only be made available to the Prosecutor and the other Defence teams after the Single Judge will have reviewed the observations by the Defence for Jean-Pierre Bemba, if any”.⁷

5. In the circumstances, the Registry is best placed to efficiently and expeditiously make these materials available to the parties. As such, the Prosecution requests that the Single Judge order the Registry to register the relevant items in E-court, assigning them the ERN prefix ‘CAR-ICC’,⁸ and following the E-court Protocol.⁹ Access can be provided to all Defence teams *via* E-court.

6. Proceeding in this way will allow the parties to (i) find and retrieve material swiftly; (ii) have access to the relevant meta-data in one centralised place; and (iii) refer to the material uniformly (namely, the Registry assigned ERN-numbers). In turn, this will avoid the necessity of each party separately and disparately registering the material in their respective Ringtail databases; re-disclosing the material, as may be required for confirmation; and ultimately, requesting the Registry to upload the very same material to E-court (possibly multiple times), albeit for each party under different ERN-numbers.

⁶ ICC-01/05-01/13-347-Red, p. 5.

⁷ ICC-01/05-01/13-347-Red, p. 6.

⁸ For example, CAR-OTP-1234-1234.

⁹ ICC-01/05-01/13-35-Anx.

B. Access to ICC Detention Centre telephone records

7. On 8 May 2013, the Single Judge ordered the Registrar "to make available to the Prosecutor the complete log of all telephone calls placed or received by the Accused during his stay at the detention centre, as well as any available recording of all non-privileged calls either placed or received by him".¹⁰

8. The Registry thereafter provided the Prosecution with access to a TRIM folder containing (i) the relevant audio files, as well as; (ii) their corresponding call logs and metadata (i.e., date, time, length of the conversation, etc.).

9. This material is voluminous and its disclosure through the Prosecution's Ringtail database has been complicated for several technical reasons, briefly outlined below.

10. The audio files, the corresponding call logs and metadata available in the TRIM folder are separate files. They are named or titled using non-standardised naming conventions.¹¹ Thus, when extracting these files from the TRIM folder in order to load them into the OTPs Ringtail database, the files containing the audio recordings of the relevant conversations and the separate files containing the information or metadata concerning those recordings, had to be linked to ensure the proper identification of each conversation.

11. Because the audio files, corresponding call logs and metadata were provided in a different file formats,¹² a custom technical solution had to be developed to properly

¹⁰ ICC-01/05-46-Conf-Exp, p. 8. The Decision was reclassified as 'Public' by decision ICC-01/05-01/13-147.

¹¹ The naming convention used is neither standardised nor intuitive. The convention uses numerical values for years followed by nominal values for months. Filenames employ an arbitrary identifying suffix without leading zeroes. The convention does not provide the day or the time that a given phone call was recorded, which further complicates the proper identification and association of the material.

¹² A Waveform audio format ("WAV") and a Comma Separated Value ("CSV") format respectively.

link the files.¹³ Unfortunately, the way the files were named in the TRIM folder did not allow them to be easily sorted. Thus, regenerating the chronology of the calls on the basis of the corresponding call logs and metadata, as necessary for their analysis and disclosure, has required an extensive effort.

12. Although the Prosecution has thus far been able to manage the transfer from TRIM into its Ringtail database for disclosure purposes, providing the Defence with equal access to the TRIM folder made available by the Registry would best obviate any potential inadvertence or omission as a result of this complicated process. Further, the Registry can provide immediate access to this material to the Defence by simply changing the access rights to the TRIM folder to add designated Defence team members.

13. In view of the scheduled confirmation process, the Prosecution thus requests that the Single Judge order the Registry to make the relevant TRIM folder available to the Defence teams as soon as practicable.

¹³ The Prosecution is now applying a system whereby the CSVs are merged into a master file associating both files to one ERN. Custom fields and scripts were developed to facilitate the loading of the metadata into Ringtail.

III. Requested relief

14. Upon the foregoing, the Prosecution respectfully requests that the Single Judge order the Registry:

- (1) to make the items identified by independent counsel accessible to all the Defence teams *via* E-court registration; and
- (2) to provide the suspects with immediate access to the TRIM folder containing the ICC Detention Centre call records.

A handwritten signature in blue ink, appearing to read 'Fatou Bensouda', is written over a horizontal line.

Fatou Bensouda, Prosecutor

Dated this 24th Day of April 2014

At The Hague, The Netherlands