

**Cour
Pénale
Internationale**

**International
Criminal
Court**



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No.: ICC-01/05-01/13
Date: 27 November 2013

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

**Urgent Request to Extend the Prohibition of Contacts between the Suspects and
with Third Parties**

Source: The Office of the Prosecutor

Document to be notified in accordance with Regulation 31 of the *Regulations of the Court* to:

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I. Introduction

1. Pursuant to Regulations 90, 91, 99 and 101 of the Regulations of the Court ("RoC"), the Office of the Prosecutor ("Prosecution") moves the Single Judge of Pre-Trial Chamber II ("Single Judge") for an order restricting contact between Jean-Pierre BEMBA GOMBO, Aimé KILOLO MUSAMBA, Jean-Jacques MANGENDA KABONGO, Fidèle BABALA WANDU and Narcisse ARIDO (together "Suspects").

2. BEMBA, KILOLO and BABALA are currently held at the Court's Detention Unit ("Detention Unit") and subject to the contact restrictions ordered by the Single Judge in the Warrant of Arrest.¹ However, the Prosecution is informed that the Registry will no longer implement the restrictions currently in place following the Suspects' Initial Appearance today.

3. Given the nature of the crimes alleged against the Suspects, there are reasonable grounds to believe that allowing them unrestricted contact could prejudice or affect the continuing investigation. In particular, it could frustrate the Prosecution's efforts to complete necessary suspect interviews, or interviews of material witnesses.

4. The Prosecution thus requests the Single Judge to extend the restrictions on the Suspects' contact for an initial period of 14 days, pending the completion of the contemplated interviews. Additionally, the Prosecution requests that the Single Judge direct the Registry to implement adequate surveillance measures in the Detention Unit to ensure the Suspects' segregation;² that contacts between each of them with third parties are actively monitored during visits, telephone calls and

¹ ICC-01/05-01/13-1-US-Exp, p. 17(iv).

² This includes but is not limited to their access to the common room or to the participation of work programs or exercise activities inside the Detention Unit.

when correspondence by post is received or sent.³ These measures will (1) preserve the integrity of the Prosecution's on-going investigations; (2) mitigate the risk of interference with witnesses or evidence; and (3) minimise the opportunity for the Suspects to collude, until the Prosecution has completed the necessary interviews.

5. Conversely, should the interviews be completed prior to the expiration of the requested period, the Prosecution will immediately notify the Chamber so that the restrictions may be lifted accordingly.

II. Background

6. The Suspects were arrested on 23 and 24 November 2013, with the exception of BEMBA who was already detained pursuant to an Arrest Warrant issued by the Single Judge on 20 November 2013.⁴

7. The Arrest Warrant specifically prohibited contact between the Suspects and/or with any third party, excluding their respective counsel for a period not exceeding 72 hours following execution.⁵

8. On 26 November 2013, KILOLO and BABALA were transferred to the Detention Unit. MANGENDA and ARIDO are presently involved in national proceedings in The Netherlands and France concerning their respective surrenders to the Court.

³ See Regulations 167-170, 173-175, 179-184 of the Registry. Because of the risk posed by affording the Suspects access to electronic mail, correspondence between the Suspects and their family should be by traditional post exclusively.

⁴ ICC-01/05-01/13-1-US-Exp.

⁵ ICC-01/05-01/13-1-US-Exp, p. 17(iv).

III. Submission

9. As alleged in the Prosecution's Application for Warrant of Arrest,⁶ incorporated by reference, the Suspects circumvented the Detention Unit's monitoring regime to plan and implement the witness tampering scheme. In fact, the exploitation of the communication protocols implemented in the Detention Unit was the prime instrumentality through which the alleged crimes were organised, planned and implemented. The Chamber should thus not permit the Suspects to be again in a position to elude and exploit the Detention Unit protocols potentially to frustrate proceedings before the Court or further damage its integrity.

10. In issuing the Arrest Warrant, the Single Judge has already determined that there are reasonable grounds to believe that the Suspects committed offences against the administration of justice under Article 70 of the Statute. Thus, placing them in contact could pose a substantial risk to the pending proceedings, the outcome of which they are directly interested; adversely affect on-going or further investigations; and potentially jeopardize the safety of witnesses or targets of that investigation, as well as efforts to preserve relevant evidence. By contrast, the Prosecution seeks minimally to extend the period of no-contact for the Suspects until it completes necessary investigative steps to be taken over the next 14 days. In the Prosecution's view, this request is reasonably proportionate to the risk at hand.

11. Given the circumstances, the Single Judge's no-contact order should be adapted to the detention regime of the Detention Unit, even if the Suspects may not be informed of such measure or provided an opportunity to be heard before its execution.⁷

⁶ ICC-01/05-67-US-Exp.

⁷ Regulation 101(3) of the RoC provides that: "[...] In exceptional circumstances such as in an emergency, an order may be made prior to the detained person being informed of the request."

IV. Request for Receipt of Filing as Confidential

12. The Prosecution requests that this Application be received by the Single Judge Confidential as it relates to material currently with the same level of confidentiality.

V. Request Pursuant to Regulations 90, 99 (2) and 101 (2) of the RoC

13. The Prosecution acknowledges that detainees are entitled to engage in certain activities which may bring them into contact.⁸ However, restrictions may be imposed in the interest of justice, particularly if unrestricted access could prejudice the outcome of the proceedings against that detained person or the outcome of any other investigation.⁹

14. The Prosecution believes that contacts between the Suspects will adversely affect the proceedings, as the investigation against them is continuing and the Suspects have an interest in undermining it. Giving the Suspects an opportunity to collude provides them with the means to fabricate, conceal or even arrange for the destruction or dissipation of evidence not yet collected.

15. Additionally, bearing in mind the nature of the charges against them, providing the Suspects with the ability to discuss and exchange information may significantly increase the risk of intimidation or corruption of potential witnesses against them. Communication between the Suspects could reveal operational details and investigative techniques used to monitor communications, movements of

⁸ Such as: participating in a work programme; exercising in the open air at least one hour per day; engaging in sporting activities and using a common space equipped with reading and writing materials, a television, radio and computer, which shall be provided for the general use of all detained persons. *See* Regulation 99 (1) (a) of the RoC and Regulation 163 of the Regulations of the Registry; Regulation 99 (1) (f) of the RoC and Regulation 165 of the Regulations of the Registry; Regulation 99 (1) (g) of the RoC and Regulation 165 of the Regulations of the Registry; Regulation 99 (1) (e) of the RoC. *See further* Regulation 164 of the Regulations of the Registry.

⁹ *See* Regulation 101 (1) of the RoC.

persons, some of whom may be cooperating with the Office of the Prosecutor.¹⁰

16. Although the requested order restricts the activities to which the Suspects may otherwise be entitled in the Detention Unit, they are reasonably proportionate to the goals pursued,¹¹ both in scope and duration, and advance the interests of justice, and do not unfairly prejudice the Defence teams' ability adequately to prepare for trial.

VI. Nature of Measures Sought

17. The Prosecution requests that the Single Judge direct the Registrar to impose and maintain restricted conditions of detention for the Suspects for a period of 14 days. As such the Registrar should ensure that the Suspects do not have the possibility to obviate the surveillance in place at the Detention Unit, and that heightened vigilance is observed by custodial staff to ensure that the Suspects do not exchange information with each other or with third parties, with the exception of Defence counsel, through e-mail, printers, computer software or hardware form, and the like; that the Suspects are not given access to the Internet and that a strict segregation of the computers and computer networks that the Suspects may use is maintained. Any activities offered to the Suspects at the Detention Unit, including their access to a common space, should be regulated in such a way so as to preserve the segregation measures in place.

18. The Prosecution further requests that any breach of the Single Judge's Order be immediately reported to the parties and the Pre-Trial Chamber. Any material exchanged between the Suspects should also be seized immediately and disclosed to the parties and the Pre-Trial Chamber.¹²

¹⁰ *Ibid.*

¹¹ Regulation 99(2) of the RoC.

¹² Regulation 211 (a) of the Regulations of the Registry provides that the Chief Custody Officer may impose disciplinary measures, including "Confiscation of an offending item."

VII. Request

19. Upon the foregoing, the Prosecution respectfully requests, pursuant to Regulations 90, 99 (2) and 101 of the RoC, that the Single Judge extend its order to prohibit all contacts between the Suspects and with third parties for a 14-day period.



Fatou Bensouda
Prosecutor

Dated this 27th day of November 2013

At The Hague, The Netherlands