

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 9 January 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***

Confidential

**Prosecution's Application for Extension of Time for the Disclosure of the
recordings of telephone calls between Messrs. Bemba and Mangenda**

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

Fatou Bensouda

James Stewart

Kweku Vanderpuye

Counsel for the Defence of Jean-Pierre Bemba

Nicholas Kaufman

Counsel for the Defence of Aimé Kilolo Musamba

Jean-Pierre Kilenda Kakengi Basila

Counsel for the Defence of Jean – Jacques Mangenda Kabongo

Jean Flamme

Counsel for Fidèle Babala Wandu

Prof Jean-Pierre Fofé Djofia Malewa

Counsel for the Defence of Narcisse Arido

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. On 17 December 2013, the Single Judge ordered the Office of the Prosecutor ("Prosecution") "to disclose to the Defence teams any material pertaining to the Mangenda Calls [audio files of conversations held between Mr. Bemba and Mr. Mangenda on the non-privileged line of the Detention Centre as recorded by the Detention Unit]¹ on which it intends to rely for the purposes of the confirmation hearing"² by 10 January 2014.³

2. As explained below, the Prosecution requests a 14-day extension to comply with the Chamber's order, pursuant to Regulation 35 of the Regulations of the Court ("Regulations").

3. Alternatively, the Prosecution is prepared to proceed to confirmation without relying on the Mangenda Calls. However, a full review of these sensitive materials is necessary for the Prosecution to fully discharge its obligations under Articles 54(1) and 67(2) of the Statute notwithstanding. Further, because of the nature of the Mangenda Calls, any such review must be undertaken with due regard to preserving the integrity of the Prosecution in the Main Case against Jean-Pierre Bemba Gombo ("Bemba").⁴

II. Confidentiality

4. This filing is classified as "Confidential" as it refers to matters at issue concerning a previous submission and Decision classified as such.

¹ ICC-01/05-01/13-48-Conf, Decision on the "Prosecution's request for recordings of telephone calls between Messrs Bemba and Mangenda to be referred to Independent Counsel" ("Decision"), para. 1.

² Decision, p. 7.

³ *Ibid.*

⁴ *The Prosecutor v. Jean-Pierre Bemba Gombo*, ICC-01/05-01/08 ("Main Case").

III. Submissions

5. Regulation 35(2) of the Regulations permits the Chamber to “extend . . . any time limit if good cause is shown.” The Appeals Chamber has assessed “good cause” as requiring “sound reasons, such as would objectively provide justification for the inability of a party to comply with his/her obligations.”⁵

6. The Mangenda Calls comprise approximately fifty audio recordings (50).⁶ According to corresponding Call Data Records, some of these recordings exceed one hour and may be partly in Lingala.

7. The OTP’s Language Services Unit (LSU) has previously advised that a one-hour conversation requires approximately three days to transcribe and translate, as appropriate, depending on the quality of the recording. Thus, the review of the Mangenda Calls requires substantially more time than that afforded by the Decision, given its issuance shortly before the Court recess.

8. Given the timing of the Decision, it has not been possible for the Prosecution to engage sufficient resources for a full review of the Mangenda Calls to determine the material upon which it would rely for confirmation purposes and to satisfy its obligations under Article 67(2) and Rule 77 of the Rules of Procedure and Evidence. Further, outsourcing the translations and transcriptions necessary for such a review was similarly unfeasible during the winter holidays, as the trusted companies with whom the LSU normally engages are not active during this period.

⁵ ICC-01/04-01/06-834, para. 7.

⁶ The Prosecution is presently in possession of these recordings. However, according to call data records approximately 179 additional audio recordings of calls between Bemba and Mangenda – not yet in the possession of the Prosecution – exist and will need to be reviewed and disclosed to the Defence at a later date.

9. Separately, it bears noting that the Mangenda Calls comprise a fraction of the calls between Bemba and Mangenda recorded at the Detention Centre, which number 229. As such, the Mangenda Calls reflect a limited selection of material considered by the Prosecution in June 2013 as likely to yield information relevant to the investigation in view of the state of the investigation and prevailing circumstances at such time. However, this selection does not rule out the potential relevance of the remaining recorded conversations maintained by the Registry, which are not in the Prosecution's possession and may likely require review.

10. Given the above, the Prosecution intends to assess and, if necessary, disclose the relevant Mangenda Calls within the requested extension period, as pertinent to the confirmation proceedings. However, if the request is denied, while the Prosecution will have no option but to discard the Mangenda calls for the purposes of the confirmation process, it reserves the right to review and to rely on any recorded communications between Bemba and Mangenda for trial.

IV. Requested Relief

11. For the above reasons the Prosecution respectfully requests that the Single Judge grant the Prosecution request.



Fatou Bensouda, Prosecutor

Dated this 9th Day of January 2014
At The Hague, The Netherlands