

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/05-01/13
Date: 28 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,
AIMÉ KILOLO MUSAMBA, JEAN-JACQUES MANGENDA KABONGO, FIDÈLE
BABALA WANDU and NARCISSE ARIDO***

Public

**Decision on the “Prosecution’s notice of receipt of communication from Dutch
authorities concerning seized material” and related filings**

Decision 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
Florence Darques Lane

Counsel for Jean-Pierre Bemba Gombo

Nicholas Kaufman

Counsel for Aimé Kilolo Musamba

Ghislain Mabanga

Counsel for Jean-Jacques Mangenda Kabongo

Jean Flamme

Counsel for Fidèle Babala Wandu

Jean-Pierre Kilenda Kakengi Basila

Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

The Office of Public Counsel for the Defence

States Representatives

Others

REGISTRY

Registrar

Herman von Hebel

Detention Section

Victims and Witnesses Unit

Others

**Victims Participation and
Reparations Section**

I, Judge Cuno Tarfusser, having been designated as Single Judge of Pre-Trial Chamber II of the International Criminal Court;

NOTING the “Prosecution’s notice of receipt of communication from Dutch authorities concerning seized material” dated 10 January 2014 (“Prosecutor’s Notice”),¹ whereby the Prosecutor (i) informed the Chamber that the Dutch authorities had requested her, by 30 January 2014, to “submit a list of keywords to facilitate [their] search of the electronic data for relevant material for transmittal to the Court” among material seized upon the arrest of Jean-Jacques Mangenda and Jean-Pierre Bemba; (ii) noted that “the input of all the parties in developing a keyword list and relevance protocol may be the most efficient way forward”; (iii) proposed a protocol and list of keywords to be transmitted to the Dutch authorities;

NOTING the “Defence response to Prosecution filing ICC-01/05-01/13-77-Conf” dated 12 January 2014,² whereby the Defence for Mr Bemba requested (i) that the Prosecution Notice and its own response thereto be reclassified as public; (ii) that the Prosecutor’s suggestion that the defence might submit search terms to the Dutch authorities be rejected; (iii) that the Single Judge “clarify that the Prosecutor shall not rely on any digital data currently in the hands of the Dutch Investigating Magistrate which is not disclosed or submitted for redaction approval by 31 January 2014” and (iv) that the Prosecutor be ordered “to disclose the full nature of her communications with the Dutch Investigating Magistrate”;

NOTING the “Réponse à la note du Procureur du 10 janvier 2014 quant à la communication des autorités Néerlandaises à propos des saisies effectuées” dated 13 January 2014,³ whereby the Defence for Mr Mangenda (i) recalls norms

¹ ICC-01/05-01-13-77-Conf.

² ICC-01/05-01-13-83-Conf.

³ ICC-01/05-01-13-89-Conf.

and principles governing the legal profession and submits that those norms and principles preclude Mr Mangenda from submitting any key word to the Dutch authorities for the purposes of searching the seized material, and (ii) requests that the Single Judge instruct the Prosecutor not to submit any key words to the Dutch authorities;

NOTING the “Prosecution Clarification of its notice in relation to the seized material” dated 21 January 2014,⁴ and Mr Bemba’s “Defence response to Prosecution filing: ICC-01/05-01/13-116-Conf” dated 21 January 2014,⁵ requesting that the Prosecutor’s Clarification be disregarded since in violation of regulation 24(5) of the regulations of the Court;

NOTING articles 67 and 93 of the Statute, regulations 23bis and 24 of the Regulations of the Court;

CONSIDERING that, whilst heading her submission as “Notice”, the Prosecutor is requesting the Chamber to approve the transmission to the Dutch authorities of the protocol and the key words attached as confidential Annex B to her Notice; **CONSIDERING** that, as submitted by the Defence for Mr Bemba, the Prosecutor’s Notice does not contain any confidential information and should therefore be reclassified as public;

CONSIDERING likewise that, since no confidential information is contained in the responses to the Prosecutor’s Notice submitted by Mr Bemba’s and Mr Mangenda’s Defence, in the Prosecutor’s Clarification or in Mr Bemba’s response to the Clarification, all these filings should also be reclassified as public;

CONSIDERING, conversely, that both Annexes A and B to the Prosecutor’s Notice contain documents and/or information of a confidential nature and should therefore maintain their current classification as “confidential”;

⁴ ICC-01/05-01-13-116-Conf.

⁵ ICC-01/05-01-13-117-Conf.

CONSIDERING that the background information provided by the Prosecutor as regards her contacts with the Dutch authorities in respect of the search of the relevant seized material is sufficiently detailed for the purposes of the determinations to be taken by the Chamber;

CONSIDERING that the request from the Dutch authorities to the Prosecutor has its basis in the applicable national laws and procedures and that the Single Judge is not in a position to amend or otherwise interfere with such laws and procedures;

CONSIDERING further that, during a meeting, the Dutch magistrate in charge informed the Single Judge that the Dutch authorities are proceeding in accordance with their applicable laws and procedures, which provide for specific guarantees as to the protection of confidential and privileged information, and that, therefore, the concerns expressed by the Defence for Mr Mangenda are adequately taken into account;

CONSIDERING that the matter of whether the Defence shall or shall not provide the Dutch authorities with key words for the purposes of the search of the seized material falls within the competence of the Dutch authorities;

CONSIDERING that, pursuant to the Single Judge's oral decision issued during the hearing held on 4 December 2013,⁶ on 31 January 2014 the Prosecutor shall disclose to the defence "all evidence collected between 23 November 2013 and 31 January 2014" on which she intends to rely for the purposes of the confirmation hearing and that it is therefore obvious that all the evidence transmitted to the Prosecutor by the Dutch authorities after 31 January 2014 shall fall outside the scope of the 31 January 2014 deadline for the purposes of its disclosure;

⁶ ICC-01/05-01/13-T-2-Red-ENG, page 32, lines 9-13.

CONSIDERING that, in this Case, the final date for the Prosecutor to communicate the evidence on which she intends to rely for the confirmation is 18 March 2014;

CONSIDERING that the Prosecutor should indeed have requested leave to reply before submitting her Clarification;

FOR THESE REASONS, THE SINGLE JUDGE HEREBY

GRANTS the request by the Defence for Mr Bemba to disregard the Prosecutor's Clarification;

GRANTS the request for reclassification submitted by the Defence for Mr Bemba and **DECIDES** that documents

ICC-01/05-01-13-77-Conf (with the exception of Annexes A and B thereto);

ICC-01/05-01-13-83-Conf;

ICC-01/05-01-13-89-Conf;

ICC-01/05-01-13-116-Conf;

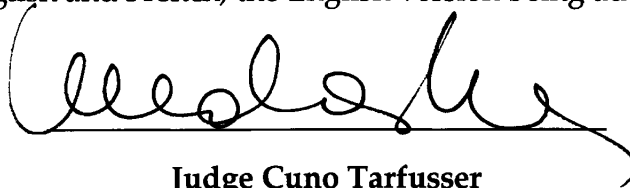
ICC-01/05-01-13-117-Conf

shall be reclassified as public;

REJECTS the other requests contained in the Responses by the Defence for Mr Bemba to the Prosecutor's Notice and to the Prosecutor's Clarification;

REJECTS the requests contained in the Response by the Defence for Mr Mangenda to the Prosecutor's Notice.

Done in both English and French, the English version being authoritative.



Judge Cuno Tarfusser
Single Judge

Dated this Tuesday, 28 January 2014
The Hague, The Netherlands