



Original: English

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

Date: 12 February 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 request to obtain evidence from the Victims and
Witnesses Unit” dated 10 February 2014**

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

Counsel for Jean-Pierre Bemba Gombo

Nicholas Kaufman

Counsel for Aimé Kilolo Musamba

Ghislain Mabanga

Catherine Mabilie

Counsel for Jean-Jacques Mangenda Kabongo

Jean Flamme

Counsel for Fidèle Babala Wandu

Jean-Pierre Kilenda Kakengi Basila

Legal Representatives of the Victims

Legal Representatives of the 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

Amicus Curiae

REGISTRY

Registrar

Herman von Hebel, Registrar

Defence Support Section

Victims and Witnesses Unit

Patrick Craig

Detention Section

Victims Participation and Reparations Section

Other

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

NOTING the “Prosecution request to obtain evidence from the Victims and Witnesses Unit” dated 10 February 2014, whereby the Prosecutor requests the Single Judge to order the Victims and Witnesses Unit “to provide the Prosecution with important information within the VWU’s possession concerning defence witnesses in the case *The Prosecutor v. Jean-Pierre Bemba*”, which information is “limited, targeted and necessary” to her continued investigation of the case (Prosecutor’s Request”);¹

NOTING the “Defence response to Prosecution filing: ICC-01/05-01/13-172-Red” dated 12 February 2014,² whereby the Defence for Mr Bemba (i) submits that the Prosecutor’s request should have been submitted to Trial Chamber III, since the Chamber “lacks the necessary jurisdiction to facilitate the provision of information pertaining to defence witnesses in case ICC-01/05-01-08 and to vary, if necessary, any protective measures to which they may be subject”; (ii) objects to the ex parte nature of the Prosecutor’s Request, and (iii) requests that the Prosecutor’s Request be dismissed;

NOTING articles 54(1)(a), 57(3)(a), 67 and 68(1) of the Statute;

CONSIDERING that this decision shall avoid any specific reference to the requested information or otherwise confidential material and shall therefore be classified as public;

CONSIDERING that the reference made by the Prosecutor to “evidence” as the subject matter of her Request is inappropriate and incorrect, since the information requested by the Prosecutor, as detailed in paragraph 5 of the *confidential, ex parte* version of her Request, is *per se* neutral *vis-à-vis* the charges and it is only by way of their use in the context and for the purposes of the line of arguing of either the Prosecutor or the Defence teams that it may, or may not, be found of probative value;

¹ ICC-01/05-01/13- 172-Red.

² ICC-01/05-01/13-180.

CONSIDERING that ordering the provision of information for the purposes of an investigation falls squarely within the powers vested in the Chamber pursuant to article 57(3)(a) of the Statute and that the submission by the Counsel for Mr Bemba, who is not part of the defence team in case ICC-01/05-01/08 (“Main Case”) and is therefore not privy to any confidential information relating thereto, that the relevant witnesses might be subject to protective measures ordered by Trial Chamber III is entirely speculative;

CONSIDERING that the identity of the defence witnesses in the Main Case who are relevant to the Prosecutor’s investigation in this case has been known to the suspects and their Defence teams since as early as 27 November 2013, when the Prosecutor’s Application under Article 58 was reclassified as confidential³, at which stage – and since then - no objection was raised by either Counsel of Mr Bemba, or any other Defence team, on the basis of a purported “lack of necessary jurisdiction” to proceed to that disclosure;

CONSIDERING that the Victims and Witnesses Unit, as a specialised unit within the Registry of the Court, possesses the necessary professional skills and judgment to promptly raise any issue which might arise from the provision of the requested information, whether in connection with existing protective measures, if any, or otherwise;

CONSIDERING that, at this stage, the Prosecutor’s investigative scenario is sufficiently delineated in its contours and known to the Defence teams; and that therefore no jeopardy to her case could result from “revealing at this stage the specific nature and content of the information sought by the Prosecutor”;

CONSIDERING that obtaining this information from a neutral organ such as the Victims and Witnesses Unit might indeed assist the Prosecutor and the Court in “establishing the truth” pursuant to article 54(1)(a) of the Statute;

CONSIDERING that, accordingly, it is appropriate that both the Prosecutor’s Request and the information to be provided by the Victims and Witnesses Unit, if any, be also made available to the Defence teams;

³ ICC-01/05-01/13-67-Conf.

CONSIDERING that, in light of the proximity of the date set for the confirmation of the charges in this case, it is important that the relevant information be made available to the parties without delay;

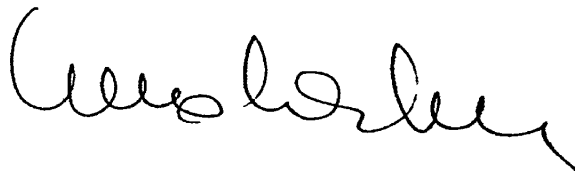
FOR THESE REASONS, THE SINGLE JUDGE

GRANTS the Prosecutor's Request;

DECIDES that the confidential, ex parte version of the Prosecutor's Request (ICC-01/05-01/13-172-Conf-Exp) shall be reclassified as "confidential";

ORDERS the Victims and Witnesses Unit (i) to submit to the Single Judge no later than Friday 14 February 2014 any issue which might constitute an obstacle to the implementation of this decision and, (ii) in the absence of any such obstacle, to provide the Prosecutor and the Defence teams of Mr Bemba, Mr Kilolo, Mr Mangenda and Mr Babala with the information detailed in paragraph 5 of the Prosecutor's Request as soon as practicable and no later than Wednesday 19 February 2014.

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



Judge Cuno Tarfusser
Single Judge

Dated this Wednesday, 12 February 2014

At The Hague, The Netherlands