

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **24/02/2014**

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***

Confidential Document

***ex parte* Prosecution and Defence for Jean-Pierre Bemba Gombo only**

Second Defence request for a loan *in lieu* of legal assistance

Source: Defence for Mr. Jean-Pierre Bemba Gombo

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 Jean-Pierre Bemba Gombo

Nicholas Kaufman

Counsel for Aimé Kilolo Musamba

Counsel for Jean-Jacques Mangenda Kabongo

Counsel for Fidèle Babala Wandu

Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

**The Office of Public Counsel for
Victims**

**The Office of Public Counsel for
the Defence**

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Mr. Herman von Hebel

Defence Support Section

Victims and Witnesses Unit

Detention Section

Jean-Pierre Bemba Gombo ("the Suspect") is currently without access to the means necessary to finance his defence. This situation presents a manifest inequality of arms and, to date, has prevented any proper defence investigation. Given the Suspect's proven inability to access his assets, the Defence repeats its request that the Single Judge order the Registrar to forward, as a loan, the monthly sum of 32,922 Euros – a sum which the latter formerly deemed appropriate for financing the defence case at the pre-trial stage of proceedings.

1. On 19 December 2013, the Single Judge rejected the Suspect's request that the Office of Public Counsel for the Defence be ordered to assist counsel with administrative tasks and stated that " the relationship between the Registrar and the Office of Public Counsel for the Defence in matters concerning the assignment of resources is not a matter for the Single Judge to determine".¹

2. On 20 December 2013, the Registrar rejected the Suspect's request for financial legal assistance.

3. On 6 February 2014, the Single Judge and the other members of the Presidency quashed the aforementioned decision of the Registrar and ordered him to reassess the Suspect's eligibility for legal assistance. The Presidency, ruled, *inter alia*, "that the "means" referred to in article 67(1)(d) of the Statute must be available to the applicant immediately or in the near future, thereby concurring with the 2009 Trial Chamber III Decision in this particular respect". The Presidency furthermore stated that "[i]t is not in the interests of justice to deprive a person of legal assistance paid for by the Court if that person lacks the means to fund his or her defence where his or her assets are confirmed as unavailable".²

¹ ICC-01/05-01/13-57.

² ICC-RoC85-01/13-7-Conf-Exp

4. The Registrar has yet to reissue a decision on the Suspect's eligibility for legal assistance and has declined to say when he will reissue such a decision.

5. On 10 January 2014, independently of his request for judicial review before the Presidency, the Suspect requested that the Single Judge order the Registrar to forward him, as a loan, the monthly sum of 32, 922 Euros in order to finance his defence.³ The Prosecutor graciously and appropriately replied by submitting that "it is axiomatic that adequate Defence funding is important to achieving procedural parity and trial fairness". As such, the Prosecutor did not oppose the Suspect's request "insofar it seeks via the auspices of the Chamber the Registrar's temporary assistance whether by loan or full provision of funds "to enable [Bemba] to fund his Defence"⁴. Counsel for the Suspect has not been notified of any Registry objection to the Suspect's request for a financial loan.

6. In the meantime, the Single Judge has rendered two decisions the implementation of which by the Defence is impossible without financial assistance.

7. On 11 February 2014, the Single Judge issued his *Decision on the 'Defence request for an order requiring the translation of evidence'* in response to the Suspect's request that all Lingala intercepts be translated into one of the working languages of the International Criminal Court.⁵ In this decision the Single Judge ruled as follows: "Whilst the Prosecutor is under a strict obligation to provide the Defence with the entirety of the materials it considers relevant, thereby making the Defence fully aware of the nature, cause and content of the charges, the Defence cannot abdicate its duty and responsibility to examine such materials, which examination is necessary for it to be in a position to decide whether to challenge the evidence or its reading by the Prosecutor, as well as to identify portions which it deems relevant for the purposes of the Chamber's determinations under article 61(7) of the Statute". In the same decision, the Single Judge also stipulated that:

³ ICC-01/05-01/13-79-Conf.

⁴ ICC-01/05-01/13-121-Conf at paragraph 3.

⁵ ICC-01/05-01/13-177.

"[s]ince those [Lingala] communications are perfectly intelligible to the suspects, their disclosure will enable the Defence not only to challenge the portions included in the Prosecutor's list of evidence, but also to otherwise rely on other portions of the same conversations which it might identify as relevant and decide to bring to the attention of the Chamber".

8. On 21 February 2014, the Single Judge rendered his *Decision on Mr Kilolo's Defence 'Requête aux fins d'accès aux enregistrements soumis par les autorités néerlandaises au Conseil indépendant nommé par décision ICC-01/05-52-Red2' dated 20 February 2014*.⁶ This decision was prompted by a Defence request to listen to the original recordings of the intercepts performed by the Dutch authorities on the telecommunications of Aime Kilolo and Jean-Jacques Mangenda. In this decision, the Single Judge ordered that "the parties should be given the opportunity, if they so wish, to access and inspect the First DVD, which has since been stored in the Registry's vault" and, further, that "such access occur by accessing the DVD on the premises of the Court". The Single Judge also ordered that Counsel should "address directly the Dutch judicial authorities if he wishes to obtain materials other than those filed in the record of the case".

9. The Defence is unable to examine and challenge evidentiary materials disclosed in Lingala and mentioned in paragraph 7 above unless he meets his client and his client is able to listen to the said recordings.

10. Similarly, the Defence is unable to "inspect" the DVD supplied by the Dutch authorities mentioned in paragraph 8 above unless the Suspect is given access to that DVD "on the Court's premises" and in the presence of his Counsel (who does not speak Lingala).

⁶ ICC-01/05-01/13-214-Conf.

11. Counsel cannot address the Dutch authorities nor, for that matter, the Belgian authorities for the purpose of obtaining information pertaining to the legal proceedings before the national jurisdictions without the assistance of local counsel.

12. All of the investigative measures mentioned in paragraphs 9,10 and 11 above require a financial outlay.

Classification

13. This request is filed confidentially and ex parte because it refers to the Presidency's decision ICC-RoC85-01/13-7 which is yet to be reclassified. Counsel has no objection to the future reclassification of this filing as a public document.

Relief Sought

14. In light of all the aforementioned, the Single Judge is requested to order the Registrar to forward to the Suspect, retrospectively to 20 December 2013, the monthly sum of 32,922 Euros in order to finance the investigative measures mentioned in this application, other investigative measures which will need to be performed and Counsel's fees and expenses. The Single Judge is also requested to order the Registrar to make the necessary logistical and financial arrangements for the Suspect and Counsel, together, to be given access to the Court's premises in order to inspect the DVD supplied by the Dutch judicial authorities and kept in the Registry's vault.



Nicholas Kaufman

Counsel for Jean-Pierre Bemba Gombo

Jerusalem, Israel
Monday, February 24, 2014