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No.: ICC-01/05-01/13
Date: 28 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 Document
With Confidential Annexes A to C**

Prosecution's Communication of Incriminatory Evidence, Rule 77 and Potentially Exculpatory Materials Disclosed to the Defence on 28 February 2014

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 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 Victims

Legal Representatives of Applicants

The Office of Public Counsel for Victims

The Office of Public Counsel for the Defence

States Representatives

Amicus Curiae

REGISTRY

Registrar

Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Detention Section

Victims Participation and Reparations Section

Other

I. Introduction

1. The Office of the Prosecutor (“Prosecution”) herewith submits this Communication Report¹ regarding incriminating, Rule 77 and potentially exculpatory evidence disclosed to the Defence teams of Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo and Fidèle Babala Wandu on 28 February 2014.²

2. On 4 December 2013, the Prosecution expressed its intention to rely on reports that were prepared by the Independent Counsel as well as the underlying materials.³ The Chamber ordered the disclosure of the Independent Counsel’s Reports and disclosed the underlying materials on 12 December 2013.⁴ However, in order for these materials to be uploaded to E-Court, the Prosecution has registered and re-disclosed them in accordance with the applicable E-court Protocol.⁵ Additionally, the Prosecution disclosed Rule 77 and potentially exculpatory materials to the Defence teams, in accordance with its on-going obligations.

II. Request for Confidentiality

3. The Prosecution requests that Annexes A, B and C, appended to this Report, be received as “Confidential” as they relate to evidence disclosed *inter partes* that should not be released to the public.

¹ ICC-01/05-01/13-T-2-CONF-ENG ET, 4 December 2013, p. 31, line 25 to p. 32, line 3 (“that any and all evidence disclosed for the purpose of the confirmation hearing shall be communicated to the Chamber”).

² The Prosecution requested but has not received from all Defences an indication of who has been designated to receive this disclosure. Accordingly, the Prosecution will upload the disclosure of incriminating material to E-court and will provide the physical disclosure of incriminating Rule 77 and potentially exculpatory materials as and when the Defences identify their respective focal points for their receipt.

³ ICC-01/05-01/13-T-2-CONF-ENG ET, p. 7, lines 3 to 8.

⁴ ICC-01/05-01/13-39-Conf, Decision on protective measures and on the filing of confidential redacted versions of documents in the record, 12 December 2013, page 6.

⁵ ICC-01/05-01/13-35-Anx, Unified Technical protocol (“E-court Protocol”) for the Provision of evidence, witness and victims information in electronic form, 6 December 2013.

III. Submissions

4. The *Confidential* Annexes to this Report list evidentiary items disclosed to all four Defence teams. *Confidential* Annex A includes the Independent Counsel's Reports⁶ and the underlying audio recordings and SMSs disclosed to the Defence pursuant to the PTC II's decision.⁷

5. *Confidential* Annex B contains items falling under Rule 77. These include audio files and corresponding Excel sheets containing relevant metadata as well as a financial document.

6. *Confidential* Annex C contains potentially exculpatory materials, including emails correspondences and a table containing Call Data Records.



Fatou Bensouda, Prosecutor

Dated this 28th Day of February 2014

At The Hague, The Netherlands

⁶ ICC-01/05-64-Conf-Red, *Premier rapport du Conseil indépendant (période du 15 au 30 août 2013)* and ICC-01/05-64-Conf-Anx, 16 December 2013; ICC-01/05-66-Conf-Red, *Deuxième rapport du Conseil indépendant (période du 23 août au 16 octobre 2013)* and ICC-01/05-66-Conf-Anx-Corr, 16 December 2013.

⁷ ICC-01/05-01/13-39-Conf, Decision on protective measures and on the filing of confidential redacted versions of documents in the record, 12 December 2013, page 6.