

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 20 March 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

**Decision ordering the Prosecutor to provide further submissions and convening
a status conference**

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 Mabilille

Counsel for Jean-Jacques Mangenda Kabongo

Jean Flamme

Counsel for Fidèle Babala Wandu

Jean-Pierre Kilenda Kakengi Basila

Legal Representatives of Victims

**The Office of Public Counsel for
Victims**

Legal Representatives of Applicants

The Office of Public Counsel for the Defence

Xavier-Jean Keïta

(Duty Counsel for Narcisse Arido)

States Representatives

REGISTRY

Registrar

Herman von Hebel

Detention Section

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

NOTING the “Defence request for disclosure” (“Defence Request”) dated 20 February 2014, whereby the Defence for Jean-Pierre Bemba Gombo requests the Single Judge to order the Prosecutor “to disclose information pertaining to an ‘anonymous informant’ who provided her with information concerning an alleged witness ‘bribery’ scheme orchestrated by the Suspect”¹;

NOTING the “Adjonction de la Défense de Monsieur Fidèle Babala à ‘Defence Request for Disclosure’ de la Défense de M. Jean-Pierre Bemba (ICC-01/05-01/13-208)” (“Mr Babala’s Request”) dated 3 March 2014, whereby the Defence for Mr Babala “appuie intégralement” the Request for Disclosure and “s’y joint pour l’intérêt de son propre client”²;

NOTING the “Decision on the ‘Defence request for disclosure’ submitted by the Defence for Jean-Pierre Bemba on 20 February 2014” dated 17 March 2014³, whereby the Single Judge ordered the Prosecutor to submit “a copy of the email exchanges sought on an ex parte basis”, as well as any other information or material in her possession which might be relevant in connection with and for the purposes of the Defence Request, by Wednesday 19 March 2014;

NOTING the “Prosecution Response to the ‘Adjonction de la Défense de Monsieur Fidèle Babala à ‘Defence Request for Disclosure’ de la Défense de M. Jean-Pierre Bemba (ICC-01/05-01/13-208)” (“Prosecutor’s Response”) dated 19 March 2014, whereby the Prosecutor submits that Mr Babala’s Request “is without merit and should be dismissed” on the grounds that “it introduces no additional arguments” to those advanced by the Defence for Mr Bemba in the

¹ ICC-01/05-01/13-208.

² ICC-01/05-01/13-230.

³ ICC-01/05-01/13-262.

Request⁴ and, in particular (i) “it fails to establish materiality under rule 77 (ii) the Chamber’s disposition of previous article 57(3)(a) of the Rome Statute requests is irrelevant and (iii) the absence of a specific request for protective measures has no bearing on the determination of the request”⁵;

NOTING that, upon order by the Single Judge,⁶ on 19 March 2014 the Prosecutor provided the Single Judge with a copy of the email exchanges sent by the anonymous informant to the Office of the Prosecutor and the responses thereto on an *ex parte* basis, only available to the Prosecutor⁷;

NOTING that in her Response the Prosecutor *inter alia* maintains that, should the Single Judge determine that an obligation to disclose to the Defence the email exchanges at issue arises, she will need “a reasonable time opportunity to apply for protective measures”;

NOTING articles 54(3)(f) and 57(3)(c) of the Rome Statute, and rules 77 and 121(2) of the Rules of Procedure and Evidence;

CONSIDERING that, prior to the disposal of the Defence Request, and without prejudice thereto, it is appropriate: (i) to request the Prosecutor to file in the record of case, on a confidential *ex parte* basis, only available to her, further submissions elaborating on any protective measure requested by the Prosecutor in case the Defence Request is eventually granted; and (ii) to convene a status conference in closed session, and in the presence only of the Prosecutor, to discuss any related relevant matter.

FOR THESE REASONS, THE SINGLE JUDGE HEREBY

⁴ ICC-01/05-01/13-271.

⁵ ICC-01/05-01/13-271.

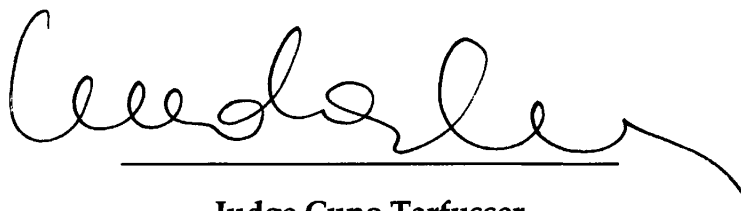
⁶ ICC-01/05-01/13-262.

⁷ ICC-01/05-01/13-273 with confidential, *ex parte* Prosecutor only, Annex A.

ORDERS the Prosecutor to file confidential *ex parte* submissions elaborating on any protective measures requested by the Prosecutor in case the Defence Request is eventually granted, by Tuesday, 25 March 2014; and

DECIDES to convene a status conference for the purposes of discussing any related relevant matter, to be held in closed session and in the presence only of the Prosecutor on Wednesday, 26 March 2014 at 10 hours.

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

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke, positioned above a solid horizontal line.

Judge Cuno Tarfusser
Single Judge

Dated this Thursday, 20 March 2014
The Hague, The Netherlands