

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **10/07/2014**

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
& NARCISSE ARIDO**

Confidential Document

Defence request pursuant to Regulation 35(2) of the Regulations of the Court

Source: Defence for Jean-Pierre Bemba Gombo

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

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**The Office of Public Counsel for
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Pursuant to Regulation 35(2) of the Regulations of the Court, Jean-Pierre Bemba Gombo (the “**Suspect**”) hereby requests the Single Judge to vary the deadline for the submission of the Defence response to the Document Containing the Charges notified on 30 June 2014 (“**DCC**”) and its list of evidence and, simultaneously, to order the Prosecutor to re-issue the DCC, in both English and in French, due to her failure appropriately to inform the Suspect of the evidence on which she intends to rely at the hearing. The Defence requests that this new DCC be reissued within the shortest time possible.

At the outset, the Defence feels it appropriate to address the timing of this request. The Defence was afforded two weeks to address the DCC and, ever since its issuance, has been working continually with the Suspect to address every aspect thereof. Contingent on the Suspect's answers, the Defence has been preparing its evidence. Only after completing its review of each and every one of the intercepted communications cited in the English version of the DCC (i.e. yesterday), has the Defence come to the conclusion that the present application is warranted.

Applicable Law

1. The Prosecutor must provide the Suspect “with a copy of the document containing the charges on which the Prosecutor intends to bring the person to trial” and “be informed of the evidence on which the Prosecutor intends to rely at the hearing.”¹ The person accused must be placed on notice of the “nature, cause and content” of the charges against him.²
2. The Prosecutor must provide the Pre-Trial Chamber and the Suspect with, “no later than 30 days before the date of the confirmation hearing, a detailed description

¹ Rome Statute, Article 61(3).

² Article 67(1).

of the charges together with a list of the evidence which he or she intends to present at the hearing.”³

3. In addition, the DCC must include “[a] statement of the facts, including the time and place of the alleged crimes, which provides a sufficient legal and factual basis to bring the person or persons to trial, including relevant facts for the exercise of jurisdiction by the Court.”⁴

4. Rule 165(2) permits the Pre-Trial Chamber to make its determinations in Article 70 of the Statute purely “on the basis of written submissions, without a hearing, unless the interests of justice otherwise require.”

5. Finally, the Pre-Trial Chamber has the inherent power to “issue orders regarding the disclosure of information for the purposes of the hearing”⁵ and “take the necessary decisions regarding disclosure between the Prosecutor and the person in respect of whom a warrant of arrest or a summons to appear has been issued.”⁶

6. The Pre-Trial Chamber can alter time limits if “good cause” for such is shown by the applying party.⁷

Procedural History

7. On 27 November 2013, the Single Judge ordered a written confirmation process pursuant to Rule 165(3).⁸

³ Rules of Procedure and Evidence, Rule 121(3).

⁴ Regulations of the Court, Regulation 54.

⁵ Article 61(3).

⁶ Rule 121(2).

⁷ Regulations of the Court, Regulation 35(2).

⁸ ICC-01/05-01/13-T-1-ENG.

8. On 13 January 2014, the Defence requested that the Single Judge order the Prosecutor to provide an In-Depth Analysis Chart in the course of the pre-confirmation proceedings.
9. On 24 January 2014, the Prosecutor objected to this request, citing the “factual and legal straightforwardness of the case”, and submitting that the Chamber’s decision to conduct the confirmation process in writing will afford “the parties and the Chamber the benefit of a structured and detailed exposition of the legal, factual and evidential basis of the Prosecution’s case”, which will make the “theory of the case and its supporting evidence more easily accessible and comprehensible”.⁹
10. The Prosecutor similarly promised to “construct its DCC in a form that will be footnoted and hyperlinked to the extent possible” in order to “readily direct the Chamber and Defence to the relevant supporting evidence uploaded in the electronic system of the Court.”¹⁰
11. On 28 January 2014, the Single Judge concurred with the Prosecutor, stating that

“The Single Judge cannot but take note of these submissions and defer to the Prosecutor’s professional judgment. It is for the parties only to identify, in light of the features of any given case, their preferred method and format of presentation, or line of arguing, selecting such method or format as might be more suitable to effectively convey the points they wish to make before the bench. This discretion is to be regarded as an integral and critical part of the professional duties of both the Prosecutor and the defence; its exercise should be ultimately guided by the paramount need for exhaustiveness, clarity, thoroughness, factual and legal accuracy which should characterise all judicial submissions, in the interest of both the relevant party and, more significantly, the overall efficiency of judicial proceedings. The Prosecutor’s proposal of constructing the document containing the charges ‘in a way which will be footnoted and hyperlinked’, so as to ‘readily direct the Chamber and Defence to the relevant supporting

⁹ ICC-01/05-01/13-125, para. 16.

¹⁰ *Ibid.* at para. 17.

*evidence', may be welcomed, as any practical proposal aimed at enhancing the easiness of access to the evidence should.'*¹¹

12. On 30 June 2014, the Prosecutor submitted her DCC in both English and French.

The citations and footnotes in the two versions do not correspond to one another, and in fact refer to completely different documents, transcriptions, translations, and/or other elements of proof, as further discussed below.

13. On 2 July 2014, the Defence submitted its "Objection to the Form of the Document Containing the Charges", requesting *inter alia* that the Single Judge strike the Suspect's name from the DCC and suspend the deadline for the Suspect's response to the DCC.¹²

14. The Defence further argued that "each and every reference to the conduct of the Suspect lacks the requisite specificity and, more importantly, fails to support an allegation of criminality" and that the DCC as a whole lacked the "exhaustiveness, clarity, thoroughness, factual and legal accuracy" previously mandated by the Single Judge.¹³

Submission

15. The Suspect has now examined in detail the Prosecutor's DCC in both English and French, and has sought to address each element of proof cited therein through the preparation of his defence. The Prosecutor's written submissions, and their accompanying evidence and elements of proof, are the Suspect's only basis in the instant case for the preparation of his defence.

16. However, the Suspect has noted and is extremely perturbed by a number of inconsistencies between the two versions of the DCC. The Defence considers that these inconsistencies have for effect to remove the notice of the charges levied

¹¹ ICC-01/05-01/13-134, para. 8 (emphasis added).

¹² ICC-01/05-01/13-530, para. 7.

¹³ ICC-01/05-01/13-530, paras. 7, 14.

against the Suspect, and therefore fail to meet the standards required by the Statute and the Rules discussed above.

17. Regardless of how the Prosecutor may view her duties in its production of the DCC, the Suspect is only too well aware of the importance of each and every footnote and document. **The Suspect will be addressing each and every transcript upon which the Prosecutor relies in her DCC in his response.**

18. The DCC cites to virtually no transcripts which directly incriminate the Suspect. Consequently, those transcripts which "circumstantially" incriminate the Suspect are of the utmost importance.

19. The Defence further notes the Single Judge's order that all submissions be exhaustive, clear, thorough, and legally and factually accurate. The Suspect had hoped for a DCC that fulfilled these standards in order to allow him to prove his innocence by confronting every piece of evidence cited by the Prosecutor as regards the Suspect's alleged actions.

20. However, this has been rendered impossible by the Prosecutor's errors and negligent handling of the citations in the DCC. The fact that the two language versions of the DCC do not align prejudices the Suspect in his preparation of the Case and effectively eliminates any notice he may have had of the charges, facts, and legal and factual basis for the Prosecutor's allegations - all in violation of his pre-trial rights as accorded by the Statute and the Rules. It should be noted that the Defence has been working with the Suspect in the language with which he is more familiar – French.

21. By way of example,¹⁴ footnote 72 of the DCC is cited in both the English and French versions of the DCC to support an integral aspect of the charges; namely,

¹⁴ See also DCC, para. 91, fn. 266.

the allegation that the Suspect “instructed or authorised BABALA to arrange such transfers to the other co-perpetrators, including KILOLO and MANGENDA.”¹⁵

22. In the English version of the DCC, footnote 72 cites to the following documents: CAR-OTP-0077-1307; CAR-OTP-0077-1348; CAR-OTP-0077-1324; CAR-OTP-0077-1084; CAR-OTP-0077-1299; CAR-OTP-0079-1724; CAR-OTP-0080-0466; CAR-OTP-0079-1732; CAR-OTP-0077-1341; CAR-OTP-0077-1336; CAR-OTP-0077-1316; CAR-OTP-0080-0481; CAR-OTP-0080-0477.

23. In the French version, however, footnote 72 cites to: CAR-OTP-0077-1303; CAR-OTP-0079-1689; CAR-OTP-0079-1727; CAR-OTP-0077-1341; CAR-OTP-0077-1291; CAR-OTP-0077-1077; CAR-OTP-0082-0321; CAR-OTP-0082-0322; CAR-OTP-0082-0328.

24. Only one of the documents cited overlaps between these two footnotes (document CAR-OTP-0077-1341).

25. In addition, references to documents and/or other parts of the DCC text are missing in the French version of the DCC in footnotes 43, 310, 311, 313, 314, 316, 317, 318, 331, 334, 336, 337, 341, 353, 365, 387, 401, 405, 409, 410, 412-414, 426, 427, 432-434, 438, 440, 441.

26. The current situation prevents the Suspect from understanding what documents are actually cited in support of the charges against him (and what are not). This state of affairs inhibits his ability to review the evidence, to support the assertions in his defence, and to be put on notice of the charges and underlying facts brought against him by the Prosecutor.

¹⁵ DCC, para. 32.

Relief Sought

27. The Suspect asserts that the above defects in the DCC infringe his fundamental right to be notified of the charges against him, and the facts underlying those charges, pursuant to Articles 61(3) and 67(1) of the Statute.
28. The charges levelled against the Suspect are no trifling matter, regardless of the carelessness with which the Prosecutor appears to have put together the various versions of the DCC. The Suspect therefore requests the Single Judge to intervene in order to protect these rights and uphold his own previous requirements of professionalism, thoroughness, and factual and legal accuracy.
29. The Suspect therefore requests that the Single Judge order the Prosecutor to re-issue the DCC, with corrections being made to the footnotes as necessary. This will harmonize the two versions of the DCC and enable the Suspect to properly prepare his defence in accordance with his fair trial rights.
30. In light of the aforementioned, the Suspect submits that "good cause" has been shown to suspend the deadline for his response to the DCC and the submission of his list of evidence until shortly after the date on which the Prosecutor re-issues her corrected DCC.
31. Failing the aforementioned, the Suspect submits, at the very least, that "good cause" has been shown to grant a postponement of a few days in order to enable the submission of a response to the DCC and list of evidence which will accommodate the extra work which the Defence will now need to perform in order to address those transcripts which it has not addressed to date because of the lack of harmony between the two DCCs.

32. The Suspect requests the Single Judge to order the Prosecutor to provide an immediate response to this petition if such a response is deemed necessary.



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Thursday, July 10, 2014