



Original: English

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

Date: 11 July 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 “Defence objection to the form of the document containing the charges” submitted by the Defence for Mr Bemba on 2 July 2014 and on the “Requête urgente de la Défense tendant à obtenir de la Chambre préliminaire II l’autorisation d’accès aux Annexes confidentielles du document ICC-01/05-01/08-346-Conf dans l’affaire *le Procureur c. Jean-Pierre Bemba Gombo*” submitted by the Defence for Mr Babala on 7 July 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

Counsel for Jean-Jacques Mangenda Kabongo

Jean Flamme

Counsel for Fidèle Babala Wandu

Jean-Pierre Kilenda Kakengi Basila

Counsel for Narcisse Arido

Göran Sluiter

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

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’s Notification of Filing of the Document Containing the Charges and List of Evidence” dated 30 June 2014¹, and confidential Annex B1 thereto², containing the document containing the charges (“DCC”);

NOTING the “Defence objection to the form of the document containing the charges” dated 2 July 2014 (“Defence Objection”, or “Objection”)³;

NOTING the “Order on the level of confidentiality of the Prosecutor’s document containing the charges and the ‘Defence objection to the form of the document containing the charges’ submitted by the Defence for Mr Bemba” dated 2 July 2014⁴, reclassifying the Defence Objection as confidential and ordering the Prosecutor and the Defence for Mr Bemba to respectively file public redacted versions of the DCC and the Objection;

NOTING the “Prosecution’s response to the Defence’s objection to the form of the document containing the charges” dated 10 July 2014⁵, whereby the Prosecutor opposes the Defence Objection, by submitting *inter alia* that it “challenges the substance of the allegations against Bemba in the DCC rather than its form”;

NOTING article 61(6) of the Statute, rule 121(6) and (9) of the Rules of Procedure and Evidence (“Rules”);

CONSIDERING that the procedural framework of the proceedings leading to the confirmation of charges does not provide for a remedy consisting of an “objection” to the DCC other than in the context of the procedural strategies and actions which may be adopted by the Defence pursuant to article 61(6) of the Statute;

¹ ICC-01/05-01/13-526.

² ICC-01/05-01/13-526-Conf-AnxB1.

³ ICC-01/05-01/13-530-Corr-Red.

⁴ ICC-01/05-01/13-531.

⁵ ICC-01/05-01/13-555-Conf.

CONSIDERING that, in spite of its title making reference to it being solely directed to the “form” of the DCC, the Objection contains and is premised on a number of substantive objections relating to issues of a both a factual and legal nature which, in the view of Mr Bemba’s Defence, arise from the DCC;

CONSIDERING that this is particularly apparent when reading several paragraphs of the Defence Objection, including (without limitation and by mere way of example) the following: 3, 4, 5, 16, 29, 30, 33;

CONSIDERING that this is even more apparent when reading the “Analysis” of the DCC conducted by the Defence for Mr Bemba “paragraph by paragraph” in sections 8 to 24 of its Objection, in spite of the initial caveat stressing that “the critique presented” therein “is directed at the form of the allegations and NOT at their substance”, including (without limitation and by mere way of example) the following;

paragraphs 8, 9, 10, 11, 12, 13, 15, 16, 18, 20, 22 and 24 questioning the criminal nature of a behaviour alleged by the Prosecutor;

paragraphs 9 and 11, providing alternative explanations and motivations to the ones submitted by the Prosecutor for behaviours alleged by her as criminal;

paragraphs 11 and 21, questioning the accuracy and completeness of excerpts of phone intercepts selected by the Prosecutor for inclusion in the DCC ;

CONSIDERING that the objections raised by the Defence for Mr Bemba pertain to the merit of the case and that, accordingly, the appropriate procedural venue for the Defence to raise such objections are its submissions in lieu of hearing due on 30 July 2014 and/or its reply to the Prosecutor’s submissions due on 14 August 2014, as appropriate;

CONSIDERING that, likewise, the appropriate procedural venue for the Chamber to make its determinations on the issues raised by the Defence Objection is the decision on the confirmation of the charges pursuant to article 61(7) of the Statute;

NOTING the “Requête urgente de la Défense tendant à obtenir de la Chambre préliminaire II l’autorisation d’accès aux Annexes confidentielles du document ICC-01/05-01/08-346-Conf dans l’affaire *le Procureur c. Jean-Pierre Bemba Gombo*” submitted by the Defence for Mr Babala on 7 July 2014 (“Mr Babala’s Request”)⁶;

CONSIDERING that, following the confirmation of the charges, Trial Chamber III is the Chamber responsible for all issues relating to case ICC-01/05-01/08 and that, accordingly, a request for reclassification of documents pertaining to that case should be addressed to that Chamber;

FOR THESE REASONS, THE SINGLE JUDGE

DISMISSES Mr Babala’s Request;

DISMISSES the Defence Objection.

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



Judge Cuno Tarfusser
Single Judge

Dated this Friday, 11 July 2014

At The Hague, The Netherlands

⁶ ICC-01/05-01/13-541-Conf.