

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: ICC-01/05-01/08

Date: **1 August 2014**

TRIAL CHAMBER III

Before: Judge Sylvia Steiner, Presiding Judge
Judge Joyce Aluoch
Judge Kuniko Ozaki

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC
IN THE CASE OF
THE PROSECUTOR
V. JEAN-PIERRE BEMBA GOMBO**

Confidential Document

Prosecution's Response to "*Requête URGENTE de la Défense de M. Babala dans l'affaire ICC-01/05-01/13 tendant à obtenir de la Chambre de première instance III 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*"

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

Ms Fatou Bensouda

Mr James Stewart

Mr Jean-Jacques Badibanga

Counsel for the Defence of Jean-Pierre Bemba

Mr Peter Haynes

Ms Kate Gibson

Ms Melinda Taylor

Legal Representatives of Victims

Ms Marie-Edith Douzima-Lawson

Legal Representatives of Applicants

Unrepresented Victims

Unrepresented Applicants for Participation/Reparation

The Office of Public Counsel for Victims

Ms Paolina Massidda

The Office of Public Counsel for the Defence

Mr Xavier-Jean Keita

States Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Herman Von Hebel

Counsel Support Section

Victims and Witnesses Unit

Detention Section

Victims Participation and Reparations Other Section

I. Introduction

1. The Office of the Prosecutor (“Prosecution”) opposes the request filed by the Defence of Fidèle BABALA WANDU (“Babala Defence) in the case ICC-01/05-01/13 (“Article 70 Case”) for access to confidential documents filed in the record of this case (“Request”).¹

2. The Request is unsubstantiated and fails to demonstrate that the material sought is either relevant evidence or information material to the preparation of the Babala Defence under Rule 77 of the Rules of Procedure and Evidence (“Rules”). The Request amounts to a fishing expedition and should be rejected.

II. Confidentiality

3. This response is filed as “confidential” pursuant to Regulation 23*bis* of the Regulations of the Court, as it refers to a document filed with this classification.

III. Submissions

4. The Request, predicated upon submissions by the Defence of Jean-Pierre BEMBA GOMBO in the Article 70 Case, seeks access to 10 confidential annexes of document ICC-01/05-01/08-346 (“Confidential Annexes”) filed in this case.² It erroneously claims, in vague terms, that this document and its annexes relate to a ruling by the Single Judge

¹ Transmission of a submission from the Defence for Mr. Fidèle Babala Wandu in case ICC-01/05-01/13, 18 July 2014, ICC-01/05-01/08-3106-Conf &Conf-Anx1.

² Submission of confidential redacted versions of documents pursuant to the decision on re-classification on monitoring reports, 6 January 2009, ICC-01/05-01/08-346-Conf-Anxs1 to 10.

of Pre-Trial Chamber III (“PTC III”) on the use of codes between Mr Bemba and Mr Babala.³

5. Contrary to the Request, the documents sought do not comprise a judicial ruling, but instead emanate from the Registry. The main document (ICC-01/05-01/08-346, reclassified as “public”⁴), clarifies that the Confidential Annexes are monitoring reports that have been reclassified as “confidential”, following the Registry’s application of redactions, in accordance with PTC III’s order to “remove all information relating to the proper management of the Court detention centre and to the privacy of the detained person ...”⁵ Thus, the Confidential Annexes do not correspond to the information sought. They are not what the Babala Defence purports them to be.

6. Furthermore, the Request simply mentions that the use of coded language is an issue in the Article 70 Case, without any justification as to how the annexes would be material to their preparation under Rule 77, or why any such document issued in a different context several years ago would be relevant. The test for materiality requires that the information sought would “undermine the prosecution case or support a line of argument of the defence ... or significantly assist the accused in understanding the incriminating and exculpatory evidence, and the issues, in the case.”⁶ The Request fails to meet this standard.

³ ICC-01/05-01/08-3106-Conf-Anx1, para. 8.

⁴ Decision on Re-classification and Unsealing of Certain Documents and Decisions, 18 September 2009, ICC-01/05-01/08-528.

⁵ ICC-01/05-01/08-346, page 3.

⁶ Decision on the “Defence Motion on Prosecution contact with its witnesses”, 2 July 2014, ICC-01/05-01/08-3070, para. 23. [Emphasis added].

IV. Relief Sought

7. For the above reasons, the Prosecution respectfully requests the Chamber to reject the Babala Defence's Request.



Fatou Bensouda, Prosecutor

Dated this 1st Day of August 2014

At The Hague, The Netherlands