

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 6 August 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, AIME KILOLO
MUSAMBA, JEAN-JACQUES MANGENDA KABONGO, FIDELE BABALA WANDU
AND NARCISSE ARIDO***

**Public
with
Public Annex**

**Notice of Amended Prosecution's Communication of Incriminatory Evidence and
Rule 77 Materials Disclosed to the Defence on 30 July 2014, ICC-01/05-01/13-595**

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

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Legal Representatives of Applicants

The Office of Public Counsel for Victims

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Victims and Witnesses Unit

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Others

I. Introduction

1. The Office of the Prosecutor (“Prosecution”) hereby submits an amended version of the “Prosecution’s Communication of Incriminatory Evidence and Rule 77 Materials Disclosed to the Defence on 30 July 2014”¹ (“Communication”), annexed to this filing.

2. The Prosecution acknowledges the Arido Defence’s observations in a recent filing that the Communication does not reflect the Arido Defence’s objection to the Prosecution’s 30 July 2014 disclosure, its refusal to receive the disclosed items, or that not all the Defence teams collected the disclosure.²

II. Submissions

3. Disclosure in this case is governed by the operative eCourt protocol established by the Registry.³ As such, the Prosecution’s representation in the Communication that disclosure had been made to the Defence on 30 July 2014 is accurate and transparent.

4. The Prosecution further apprises the Chamber that, in advance of disclosure, on 29 July 2014, it informally provided to the Defence via email a chart listing the 13 translated documents, and the corresponding originals and their respective dates of disclosure, to facilitate the Defence’s ability to identify and assess the planned disclosure.⁴

¹ ICC-01/05-01/13-595.

² ICC-01/05-01/13-607-Conf, para. 14.

³ ICC-01/05-01/13-T-2-CONF-ENG ET, p. 33, ln. 4-5; ICC-01/05-01/13-35-Anx, Sections II and III.

⁴ The list provided to the Defence teams is the same as ICC-01/05-01/13-595-Conf-AnxC.

5. The Defence objected to the disclosure. However, in the Prosecution's view, objecting to the 30 July disclosure by refusing the physical receipt of the disclosed material⁵ neither impedes nor attenuates the effectiveness of the disclosure under the eCourt Protocol or of the accuracy of the Communication.

6. Nevertheless, the Prosecution considers that the Communication should fairly reflect the Defence's posture in respect of the 30 July disclosure. Accordingly, the Communication is amended as follows:

- a. At the end of the first sentence of paragraph one, "via eCourt" is added;
- b. At the end of the first sentence of paragraph one, footnote 2 is deleted, which reads:

"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 disclosed material to eCourt and will provide its physical disclosure as and when the Defences identify their respective focal points for their receipt."

- c. A second sentence has been added to the first paragraph:

"Disclosure was not physically effected to the Defence teams of Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, and Narcisse Arido because they did not attend the disclosure meeting. All Defence teams objected to the disclosure."



Fatou Bensouda, Prosecutor

Dated this 6th Day of August 2014
At The Hague, The Netherlands

⁵ All the Defence teams objected to the disclosure via email correspondence on 29 July 2014. The Mangenda Defence informed of its unavailability to collect the disclosure, while the Kilolo Defence informed that it intended to attend the disclosure and otherwise requested a different timeslot. On 30 July 2014, the Arido Defence informed the Prosecution that it refused to collect the disclosure. The Bemba and Babala Defence teams were present at the scheduled disclosure.