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

Date: 15 January 2015

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 Redacted
Defence Request

Source: Defence for Mr. Jean-Pierre Bemba Gombo

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 the Victims

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

The Office of Public Counsel for Victims

The Office of Public Counsel for the Defence

Xavier-Jean Keita

States' Representatives

Other Parties

REGISTRY

Registrar

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Defence Support Section

Deputy Registrar

Victims and Witnesses Unit

Detention Section

Victims Participation and Reparations Section

Other

Introduction

1. The Defence for Mr. Jean-Pierre Bemba Gombo respectfully requests the Pre-Trial Chamber to desist from adjudicating any procedural issues or requests concerning issues that are not intrinsically linked to the pending requests for leave to the appeal the confirmation decision.
2. The adjudication of requests, which are linked to the subsequent proceedings before the Trial Chamber, falls outside the current competence of the Pre-Trial Chamber, and is contrary to judicial economy and the expeditiousness of the proceedings.
3. The present request concerns the general competence of the Pre-Trial Chamber to issue decisions on such matters, and is filed without prejudice to the right of the Defence to address the contents and merits of specific motions in a separate response to these motions.
4. It has been filed on confidential basis in order to accord with the classification of Prosecution filings referred to herein. A public redacted version will be submitted forthwith.

Submissions

5. On 11 November 2014, the Pre-Trial Chamber confirmed Article 70 charges against Mr. Bemba, Mr. Kilolo, Mr. Mangenda, Mr. Babala, and Mr. Arido, and committed the case for trial.¹

¹ ICC-01/05-01/13-739.

6. Article 61(11) of the Statute specifies, in mandatory terms, that

“once the charges are confirmed in accordance with this article, the Presidency shall constitute a Trial Chamber which, subject to paragraph 9 and to article 64, paragraph 4, shall be responsible for the conduct of subsequent proceedings [...]” (emphasis added).

7. Article 64(4) concerns the scenario whereby the Trial Chamber refers preliminary issues to the Pre-Trial Chamber for consideration. Article 61(9) is confined to procedures concerning a request to amend the charges.

8. This distinction between the roles of the Pre-Trial Chamber and the Trial Chamber is further reflected in Rules 122(2) and Rule 134(2). The former mandates the Pre-Trial Chamber with the responsibility for considering any issues pertaining to the conduct of the proceedings “prior to the confirmation hearing”, whereas the latter entrusts the Trial Chamber with the obligation to consider matters pertaining to the conduct of the proceedings, “which have arisen since the confirmation hearings”.

9. It follows from the above that once the charges have been confirmed, the Pre-Trial Chamber has no competence over the subsequent proceedings, unless it is instructed by the Trial Chamber to consider a particular matter, or the issue is intrinsically linked to the confirmation decision, such as requests for leave to appeal, or Article 61(9) requests.

10. This is also consistent with Rule 60, which stipulates that if a challenge to admissibility or jurisdiction is submitted after the confirmation of charges but before the constitution of a Trial Chamber, such an application should be addressed to the Presidency, which will in turn, refer it to a Trial Chamber,

once it is constituted. As found by Pre-Trial Chamber II, after the confirmation decision has been issued, the parties have no *locus* to bring procedural matters before the Pre-Trial Chamber, in relation to issues that will be adjudicated by the Trial Chamber.²

11. A distinction can also be made as concerns decisions, which are not related to the conduct of the proceedings before the Court, and which pertain to fundamental rights of the Defence. Article 60 of the Statute requires the Chamber to conduct periodic reviews of detention, and to consider releasing the defendant if there has been inexcusable delay. This obligation cannot be deferred or put on hiatus during the transfer of the case from the Pre-Trial Chamber and the Trial Chamber.³

12. Notwithstanding this clear legal framework, the day after Counsel for Mr. Bemba requested the Trial Chamber to withdraw from the case, the Prosecution submitted a broadly framed request to obtain records from the Victims and Witnesses Unit.⁴

13. According to the terms of its own argumentation, the Prosecution request relates to the subsequent proceedings before the Trial Chamber and not the confirmation process.⁵

14. [Redacted].⁶ [Redacted].⁷

² See also ICC-01/05-01/08-529.

³ See for example, ICC-01/05-01/08-425.

⁴ ICC-01/05-01/13-784-Corr.

⁵ “the information sought [...] will assist the Trial Chamber” (para.2) ; “The Records [...] will allow the Trial Chamber” (para. 8).

⁶ [Redacted].

⁷ [Redacted].

15. The Prosecution has also failed to adduce any argumentation for bypassing the authority of the Trial Chamber on this issue. The Prosecution has been aware of the potential existence of such material for several months. Having sat on this issue for several months, the Prosecution has failed to cite any actual evidence or argumentation in support of the exigency of now bringing this matter before the Pre-Trial Chamber, rather than the soon to be constituted Trial Chamber.
16. It is also contrary to the interests of judicial economy to seize the Pre-Trial Chamber with such requests at the present juncture.
17. If the Pre-Trial Chamber were to grant any such Prosecution requests, the Defence would be likely to seek leave to appeal. As a result, the Pre-Trial Chamber would remain seized of the issues in question, and related applications, which would either delay the ability of the Trial Chamber to exercise effective competence over the matter, or invite the possibility of two different Chamber's exercising parallel competence over the same issues in the same case.
18. The issuance of decisions concerning the future conduct of the proceedings could also frustrate the requests for leave to appeal, which are pending before the Pre-Trial Chamber. If leave is granted, the Defence are likely to request suspensive effect of the proceedings pending the outcome of the appeal.
19. For one of the pending requests, the Prosecution has requested an outcome that cannot be undone: if Prosecution are granted access to the VWU records, they cannot eliminate their knowledge of the contents. It would be

impossible for the Appeals Chamber to issue suspensive effect as concerns something that had already occurred.

20. If, however, the Pre-Trial Chamber rejects the leaves to appeal, then it is likely that the Trial Chamber will be constituted forthwith, and would be in a position to adjudicate any request submitted by the Prosecution.

21. Judicial economy and efficiency therefore dictates that such matters should be put before the Trial Chamber.

Relief Sought

22. For the reasons set out above, the Defence for Mr. Bemba respectfully requests the Pre-Trial Chamber to desist from adjudicating any procedural issues or requests concerning issues that are not intrinsically linked to the pending requests for leave to the appeal the confirmation decision.



Melinda Taylor
Counsel for Mr. Jean-Pierre Bemba Gombo

Dated this 15th day of January, 2015

At The Hague, The Netherlands