



Original: English

No.: ICC-01/05-01/13
Date: 20 November 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 redacted version of

Corrected version of "Registry observations pursuant Regulation 24*bis* of the
Regulations of the Court related to document ICC-01/05-01/13-234-Conf and ICC-
01/05-01/13-238-Conf-Corr"
(ICC-01/05-01/13-243-Conf)

Source: Registrar

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

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Counsel for Jean-Pierre Bemba
Nicholas Kaufman

Counsel for Aimé Kilolo Musamba
Paul Djunga

Counsel for Jean-Jacques Mangenda Kabongo
Jean Flamme

Counsel for Fidèle Babala Wandu
Jean-Pierre Kilenda Basila

Counsel for Narcisse Arido
Goran Sluiter

Legal Representatives of the Victims

Legal Representatives of the Applicants

The Office of Public Counsel for Victims

The Office of Public Counsel for the Defence

States' Representatives

Amicus Curiae

REGISTRY

Registrar
Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Detention Section

Victims Participation and Reparations Section

Other

The Registrar of the International Criminal Court (the "Court");

NOTING the Single Judge's *"Decision appointing an Independent Counsel and taking additional measures for the purposes of the forensic acquisition of material seized in the proceedings"* dated 13 December 2013;¹

NOTING the *"Decision on the requests submitted by the Defence for Mr Kilolo and the Defence for Mr Babala relating to the forensic acquisition and return of material seized in the proceedings"* dated 17 January 2014;²

NOTING the *"Prosecution's Request for Variation of Time Limits Pursuant to Regulation 35 of the Regulations of the Court Concerning the Confirmation of Charges"* dated 3 March 2014 (the "Prosecution's request");³

NOTING the *"Defence request that the Registrar be ordered to make observations on Prosecution filing ICC-01/05-01/13-234-Conf"* dated 5 March 2014 (the "Defence's request");⁴

NOTING regulations 23bis and 24bis of the Regulations of the Court ("RoC");

CONSIDERING that in the Prosecution's request it is indicated that the Registry retained custody and control of the materials seized in relation to Mr Babala and Mr Arido;⁵

¹ ICC-01/05-01/13-41-Red

² ICC-01/05-01/13-103

³ ICC-01/05-01/13-234-Conf

⁴ ICC-01/05-01/13-238-Conf

⁵ ICC-01/05-01/13-234-Conf at paragraph 6 and 18.

CONSIDERING that in the same request the Prosecution alleges that several seized electronic devices “have only been recently forensically copied and partially made available to the Prosecution”;⁶

CONSIDERING that the Prosecution argues that “[t]he manner in which the Registry provided the Prosecution with some of these [seized] materials has complicated the process” and that “[a]n extraction report recently made available by the Registry also leaves certain significant questions unresolved”;⁷

CONSIDERING that the Prosecution refers to other difficulties that need to be resolved such as the “complex technical challenges relating to material provided by the Registry, such as the Detention Centre recordings and the data extractions concerning the seized materials mentioned above”;⁸

CONSIDERING that in the Defence’s request it is requested that the Registrar is ordered to make his observations to the Prosecution’s filing ICC-01/05-01/13-234-Conf;⁹

CONSIDERING that for the proper discharge of his functions and pursuant to Regulation 24*bis* RoC, the Registrar submits the present observations to the Single Judge with notification to the participants;

RESPECTFULLY submits as confidential the following submissions as it pertains to information that is currently confidential:

⁶ ICC-01/05-01/13-234-Conf at paragraph 13.

⁷ ICC-01/05-01/13-234-Conf at paragraph 37 and 38.

⁸ ICC-01/05-01/13-234-Conf at paragraph 60.

⁹ ICC-01/05-01/13-238-Conf at page 3.

A. Items that remained in the custody and control of the Registry

1. The seized items belonging to Mr. Bemba, Mr. Babala and Mr. Arido were received between 23 to 26 Nov 2013. The Registry's report on the seized items dated 4 December 2013 contains the chain of custody forms of the seized items¹⁰.
2. The seized items remained indeed in the custody and control of the Registry pursuant the instructions given by the Single Judge in Decision ICC-01/05-01/13-41-Red. An Independent counsel was appointed to be present at the unsealing and the forensic acquisition of all the seized items with a view to determine which items were privileged and which were not.
3. The Registry, in the presence of Independent Counsel, proceeded to the implementation of Decision ICC-01/05-01/13-41-Red between 18 and 20 December 2013. Since 13 December 2013 Registry consulted the Single Judge to discuss an action plan on the handling of the electronic evidence seized and also contacted the Independent Counsel to schedule a meeting to proceed with the unsealing and acquisition of all seized material. A report explaining the process of copying and acquisition of the seized material, chain of custodies and return of originals copied, among others, was also filed by the Registry on 24 January 2014¹¹.
4. Following the Single Judge instructions from 8 January 2014, subsequently confirmed on 13 January 2014, and as indicated in Decision ICC-01/05-01/13-103, the Registry proceeded without undue delay to return the originals items of the seized material as soon as their certified copy and forensic acquisition was completed. As a consequence, on 14 and 15 January and 21 February 2014,

¹⁰ ICC-01/05-01/13-27-US-Exp-Corr with underseal *ex parte* annexes 1 to 3

¹¹ ICC-01/05-01/13-124-Conf with confidential annex 2 and confidential *ex parte* annexes 1 and 3 to 8.

the Registry returned to Mr Bemba and Mr Babala all the originals of material seized that had up to then been copied or forensically acquired.

5. The Registry has been in active communication with the Single Judge on all the issues related to the seized items and their forensic acquisition throughout the entire process. Several meetings took place with the Single Judge in order to better address any difficulties raised and to determine the course of action to follow in relation to the handling and processing of the electronic items seized.

B. Electronic items that have been forensically copied and made available to the Prosecution

6. On 28 January 2014 the Registry was instructed by the Single judge through an email to provide the Prosecution with all copies of materials seized from Mr. Babala and Mr. Arido following their respective arrests, including hard copies and copies of electronic devices, as it was decided by the Single Judge that all these materials were not of a privileged nature.
7. The Registry proceeded without undue delay to make the necessary copies and the material was handed over to the Prosecution on 29 January 2014. The material handed over included only the items that were successfully copied and/or forensically acquired until that date. Some of the electronic items (such as two mobile phones and an Ipad) were not forensically acquired because either the procedure could not be done internally or because the Registry was not in possession of additional information allowing their acquisition¹².
8. Contrary to the Prosecution's submission the electronic material was not recently copied. Most of the material had been copied between 18 and

¹² For the iPad, provision of the password was required for forensic acquisition.

20 December 2013. It was only handed over on 29 January 2014 after the Single judge's instruction dated 28 January 2013 as explained in paragraph 6 above.

9. Following the provision of the password of the Ipad to the Registry by the Defence team of Mr Babala it was possible to forensically acquire the device. The unsealing of the material was made in the presence of the Independent Counsel and its acquisition was made between 5 and 7 February 2014. The copy of this additional material was provided to the Prosecution on 11 February 2014¹³. The original item was returned to Mr. Babala on 21 February 2014.
10. Additional forensic acquisitions need to be made on two mobile phones belonging to Mr Arido. Since their acquisition was not possible internally it has to be outsourced. It is expected that a minimum of two months is required by NFI to perform their analysis of the devices¹⁴.

C. The extraction reports made available by the Registry

11. According to the Prosecution, the manner in which the Registry provided the Prosecution with some of these materials has complicated the process and has left certain questions unresolved.
12. Following a meeting with the Prosecution on 11 February 2014 the Registry requested that the report on the forensic acquisition of the devices forensically copied in December 2013 be made available to all the participants. Pursuant to the Single Judge's instructions from 18 February 2014 documents ICC-01/05-

¹³ ICC-01/05-01/13-204-Conf with confidential annex 1

¹⁴ The two mobile phones together with replicas are to be provided during the week of 10 March to NFI for their processing; due to rarity of the models of mobile phones, obtaining replicas after NFI made that a requirement took some time.

01/13-124-Conf-Exp and ICC-01/05-01/13-124-Conf-Exp-Anx2 were reclassified as “confidential”.

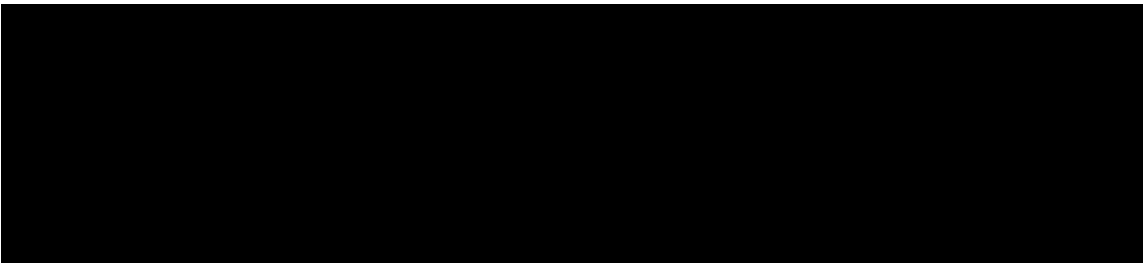
13. In addition, the report on the acquisition of the Ipad was also made available to the participants¹⁵.

14. The fact remains that, due to the current classification of a number of records, the Prosecution does not have a full view of the process, and of the relevant chains of custody which have been filed by the Registry¹⁶. The Registry suggests to prepare redacted versions of those annexes of filings currently not available to the participants for Chamber’s approval.

15. Consultations between the Prosecution and the Registry are on-going in order to collaboratively resolve the specific issues raised by the Prosecution¹⁷, while keeping with the confidentiality requirements as well as with the impartiality required from the Registry as a neutral organ.

D. Detention Centre recordings

16. The Prosecution notes in its request that there remain other difficulties that need to be resolved such as “the Detention Centre recordings”¹⁸. This on-going

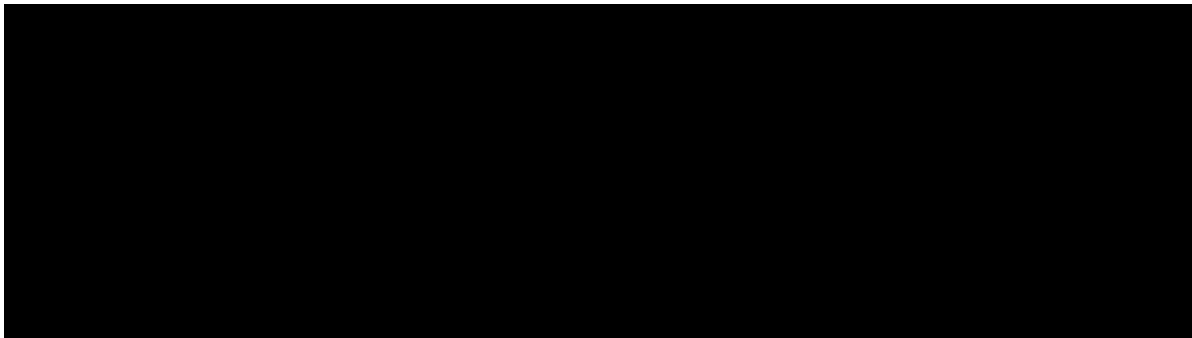


¹⁵ ICC-01/05-01/13-204-Conf with confidential annex 1

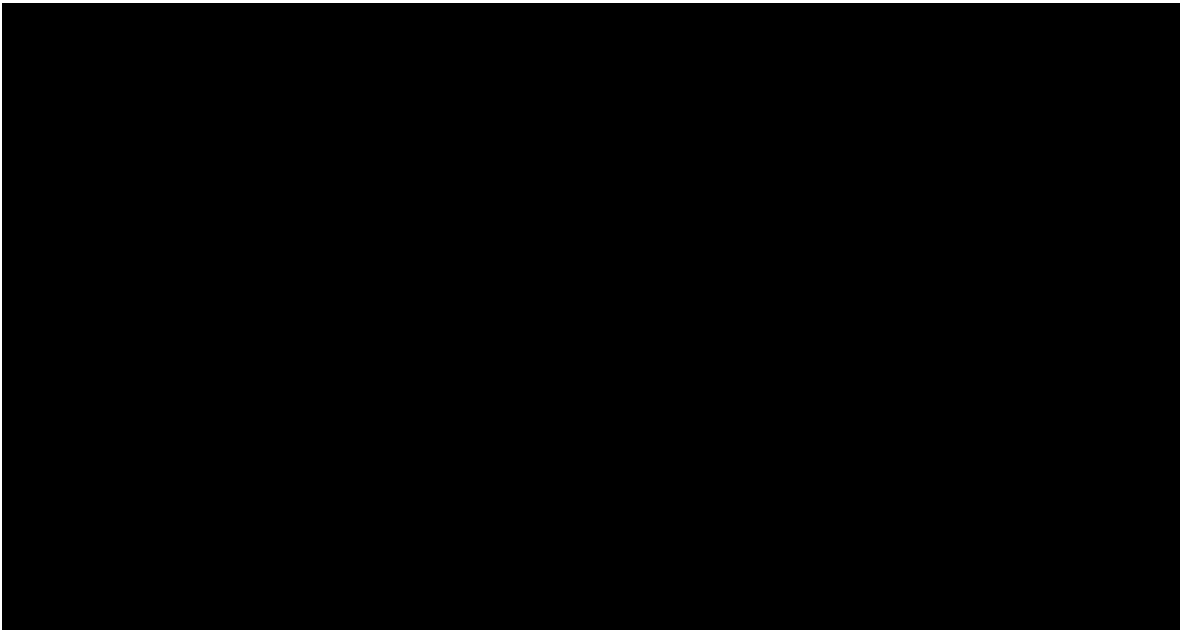
¹⁶ ICC-01/05-01/13-27-US-Exp-Corr with underseal *ex parte* annexes 1 to 3;
ICC-01/05-01/13-124-Conf with confidential annex 2 and confidential *ex parte* annexes 1 and 3 to 8;
ICC-01/05-01/13-204-Conf with confidential annex 1

¹⁷ ICC-01/05-01/13-234-Conf, paras 37, 38,

¹⁸ ICC-01/05-01/13-234-Conf, para 60.

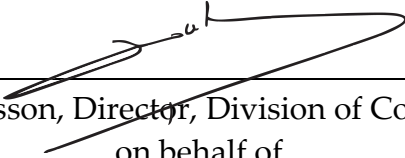


17. Further discussions will take place between the Detention Section and Prosecution during the week of 10 March 2014 to address this issue. The



18. The Registry looks forward to discuss any further questions the OTP may have in this regard. [REDACTED]

19. The Registry remains, as always, available to all participants in case additional questions remain related to the handling of seized materials.



Marc Dubuisson, Director, Division of Court Services
on behalf of
Herman von Hebel, Registrar

Dated this 20 November 2014

At The Hague, The Netherlands