

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/05-01/13
Date: 28 January 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 request for an in-depth analysis chart” submitted by
the Defence for Mr Jean-Pierre Bemba Gombo**

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

Florence Darques Lane

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

Legal Representatives of Victims

Legal Representatives of 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

Others

REGISTRY

Registrar

Herman von Hebel

Detention Section

Victims and Witnesses Unit

Others

**Victims Participation and
Reparations Section**

I, Judge Cuno Tarfusser, having been designated as Single Judge of Pre-Trial Chamber II of the International Criminal Court;

NOTING the “Defence request for an in-depth analysis chart” dated 13 January 2014, whereby the Defence for Jean-Pierre Bemba Gombo requested the Single Judge to “order the Prosecutor to prepare an in-depth analysis chart of all incriminating evidence on which she intends to rely for the purpose of the confirmation hearing” and to “disregard” any item of evidence not “accounted for” in such chart when deciding whether or not to confirm the charges (“Mr Bemba’s Defence Request”);¹

NOTING the “Decision shortening the time limit for the Prosecutor’s response to the ‘Defence request for an in-depth analysis chart’”, granting the Prosecutor until Friday 24 January 2014 to respond to the Defence Request;²

NOTING the “Prosecution response to ‘Defence request for an in-depth analysis chart’”, submitted on 24 January 2014, whereby the Prosecutor opposes Mr Bemba’s Defence Request;³

hereby issue this decision.

Submissions by Mr Bemba’s Defence

1. The Defence for Mr Bemba submits that the in-depth analysis chart “has become an accepted tool at the International Criminal Court”; that it “will address the clear inequality of arms which presently exists” and “will prevent the Prosecutor from drowning the Defence and the Court in a sea of potentially irrelevant information”. It further submits that “any item of evidence not accounted for in the in-depth analysis chart should be disregarded by the Pre-Trial Chamber when deciding whether or not to confirm the charges”.

¹ ICC-01/05-01/13-84.

² ICC-01/05-01/13-100.

³ ICC-01/05-01/13-125.

Submissions by the Prosecutor

2. The Prosecutor opposes the request by arguing *inter alia* (i) that the Defence “fails to demonstrate a legal basis for the requested relief”; (ii) that “given the factual and legal straightforwardness of the case, the written confirmation process, and the planned comprehensive Document Containing the Charges (DCC), an IDAC is unwarranted and likely to result in unnecessary delay”.

Single Judge’s determinations

3. The Single Judge notes article 61 of the Statute, rule 121 of the Rules of Procedure and Evidence and regulation 52 of the Regulations of the Court.

4. At the outset, the Single Judge observes that the Defence for Mr Bemba does not provide an entirely accurate picture of the status of the in-depth analysis chart before the various Chambers of the Court. Whilst it is true that this instrument has now been in use for some time before Pre-Trial Chamber II, several cases before Pre-Trial Chamber I have been conducted without recourse to it. Its use in the context of trial proceedings seems likewise limited and far from uncontroversial⁴, and at least one defence team is on the record having said that the chart had “proved less useful”⁵. Accordingly, it cannot be said that it has become “an accepted tool”.

5. The Single Judge notes that there is no provision, in the Statute, the Rules of Procedure and Evidence or the Regulations of the Court for an in-depth analysis chart. As stated by the Prosecutor, it is a creature of judicial practice, not envisaged or supported as such by the statutory instruments. Article 61(3) of the Statute establishes that the suspect shall “be provided with a copy of the document containing the charges on which the Prosecutor intends to bring the

⁴ ICC-01/09-02/11-451, para. 11.

⁵ ICC-01/09-01/11-T-15, page 32, lines 15-17.

person at trial” and “be informed of the evidence on which the Prosecutor intends to rely at the hearing”. Rule 121(3) further circumscribes this duty of the Prosecutor’s, by requiring that he or she provide “to the Pre-Trial Chamber and the person, no later than 30 days before the date of the confirmation hearing, a detailed description of the charges together with a list of the evidence which he or she intends to present at the hearing”. Similarly, the person for whom the Prosecutor is seeking confirmation of the charges is required, if he or she “intends to present evidence” for the purposes of the confirmation hearing, to “provide a list of that evidence” to the Pre-Trial Chamber no later than 15 days before the date of the hearing, for prompt transmission to the Prosecutor. Finally, regulation 52 of the Regulations of the Court supplements these provisions by setting forth the minimum content of the document containing the charges, as follows: name and other identifying information of the person, statement of the facts and legal characterisation thereof.

6. In light of this, the Single Judge takes the view that the preparation and submission of an appropriately drafted document containing the charges (including all the elements listed in Regulation 52) and of an exhaustive list of evidence by the Prosecutor, and of a list of evidence, if any, by the defence, fully satisfy the parties’ statutory duties and requirements as regards the presentation of their respective case. The Pre-Trial Chamber has no power to order or otherwise impose on either the Prosecutor or the defence additional duties or requirements in this respect. Whilst several provisions entrust the Pre-Trial Chamber with the duty and power to “issue orders” regarding the disclosure of information for the purposes of the confirmation hearing (most notably, article 61(3) and rule 121(2) of the Rules), nowhere it is stated that such orders may include specific, binding directions as to the particular *format* in which the parties shall present their evidence or argue their case.

7. In light of the above, it is for the Prosecutor to decide whether she wishes to make use of a tool such as the in-depth analysis chart for the presentation of her case. The Prosecutor's Response highlights that the in-depth analysis chart is unwarranted in light of the circumstances of the case, in particular since the Chamber's decision to conduct the confirmation process in writing will afford "the parties and the Chamber the benefit of a structured and detailed exposition of the legal, factual and evidential basis of the Prosecution's case", which will make the "theory of the case and its supporting evidence more easily accessible and comprehensible".

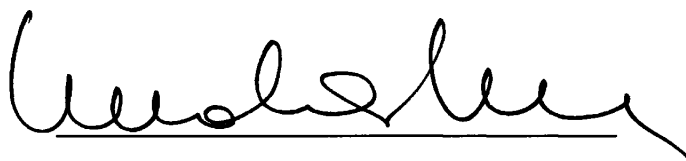
8. The Single Judge cannot but take note of these submissions and defer to the Prosecutor's professional judgment. It is for the parties only to identify, in light of the features of any given case, their preferred method and format of presentation, or line of arguing, selecting such method or format as might be more suitable to effectively convey the points they wish to make before the bench. This discretion is to be regarded as an integral and critical part of the professional duties of both the Prosecutor and the defence; its exercise should be ultimately guided by the paramount need for exhaustiveness, clarity, thoroughness, factual and legal accuracy which should characterise all judicial submissions, in the interest of both the relevant party and, more significantly, the overall efficiency of judicial proceedings. The Prosecutor's proposal of constructing the document containing the charges "in a way which will be footnoted and hyperlinked", so as to "readily direct the Chamber and Defence to the relevant supporting evidence", may be welcomed, as any practical proposal aimed at enhancing the easiness of access to the evidence should.

9. In light of the above, the Single Judge also takes the view that the Defence's request to "disregard" any evidence not included in the in-depth analysis chart is not supported by the statutory texts. Article 61(7) mandates the

Pre-Trial Chamber to determine whether there is sufficient evidence to establish that there are substantial grounds to believe that the person has committed each of the crimes charged “on the basis of the hearing”. Accordingly, only the fact that a given item has or has not formed part of the hearing, whether oral or written, namely through its inclusion in the list of evidence, determines whether such evidence may or may not be relied upon by the Pre-Trial Chamber in reaching its determination.

**FOR THESE REASONS, THE SINGLE JUDGE HEREBY
REJECTS Mr Bemba’s Defence Request.**

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

A handwritten signature in black ink, appearing to read 'Cuno Tarfusser', written over a horizontal line.

**Judge Cuno Tarfusser
Single Judge**

Dated this Tuesday, 28 January 2014

The Hague, The Netherlands