



THE DISCIPLINARY BOARD OF THE INTERNATIONAL CRIMINAL COURT

**Original: French**

**Reference: SDO-2017-14-DB decision**

**Date: 3 August 2017**

**Before:**

**Ms Diane Turner, Chairperson**

**Mr Assane Dioma Ndiaye, Permanent member**

**Monsieur Vincent Asselineau, Ad hoc member**

**Case Re: Disciplinary Complaint against Mr Paul Djunga**

**Public**

Decision of the Disciplinary Board on Production of Evidence

## Decision:

Factual basis for decision:

- The Disciplinary Board has heard evidence from the complainant in the above noted matter on March 29, 2017.
- The Board has also heard preliminary representations on behalf of counsel in respect of disclosure of the file, particularly Annexes P and R.
- The Commissioner was initially provided Annexes P and R, but the complainant requested that the annexes be withdrawn on September 24, 2014.
- The Commissioner agreed not to consider Annexes P and R and kept them in a sealed envelope without utilizing them in the production of his report under Article 39 of The Code of Professional Conduct for counsel.
- On March 9, 2016, the Secretariat of the Disciplinary Board (the Secretariat) contacted the authors of the statements and they both expressed the desire that their statements be kept confidential.
- Since that time the case of Bemba and others ICC-01/05-01/13 in which the complainant, counsel subject to the disciplinary procedures and the authors of the annexes in question were involved has now been completed.
- On June 7, 2017 the Secretariat again contacted the authors of Annexes P and R and asked if they continued to oppose the production of their statements.
  - No response was received from the author of Annex P, while the author of Annex R remains opposed to the release of the statements.

The Disciplinary Board makes the following determination:

Article 40.3 states:


Counsel shall have the right to full disclosure of the information and evidence gathered by the Commissioner as well as the Commissioner's report.

Annexes P and R constitute evidence gathered by the Commissioner, despite the fact that they were sealed and not relied upon by him.

The Board has determined that in order to ensure a fair hearing that Annexes P and R should be produced to counsel in order to avoid the perception that information, that may somehow have benefited counsel in presenting his case, was withheld.


Therefore: Annexes P and R should be produced to counsel forthwith, but will be redacted to conceal the name of the authors of the statements who are concerned that their identity is revealed.

The Hague, 3 August 2017



Ms Diane Turner

Mr Assane Dioma Ndiaye



Mr Vincent Asselineau