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No.: **ICC-01/05-01/08**

Date: **06/02/2014**

THE PRESIDENCY

Before: Judge Sang-Hyun Song, President
Judge Sanji Mmasenono Monageng, First Vice-President
Judge Cuno Tarfusser, Second Vice-President

SITUATION IN THE CENTRAL AFRICAN REPUBLIC

**IN THE CASE OF
THE PROSECUTOR
v. Jean-Pierre Bemba Gombo**

Public

**Defence Request to the Presidency regarding privileges and immunities of
Defence team members**

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

Marie-Edith Douzima-Lawson

Legal Representatives of the Applicants

Unrepresented Victims

Unrepresented

(Participation/Reparation)

Applicants

The Office of Public Counsel for the Victims

Paolina Massida

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Mr. Xavier-Jean Keita

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Herman von Hebel

Defence Support Section

Deputy Registrar

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations Other
Section**

A. INTRODUCTION

1. On 20 November 2013, the Single Judge of Pre-Trial Chamber II issued arrest warrants against Mr. Jean-Pierre Bemba Gombo and others in connection with alleged violations of Article 70 of the Statute (“the Arrest Warrant Decision”).¹

2. The Single Judge refers in the Arrest Warrant Decision to :

“the Decision of even date whereby the Presidency of the Court determined that the privileges and immunities afforded to Aimé Kilolo and Jean-Jacques Mangenda as counsel and assistant to counsel in the Case do not cover conduct which constitutes an offence against the administration of justice. Accordingly, such privileges and immunities are no impediment to their arrest, surrender and detention for the purposes of prosecution before the Court on the foundation of article 70 of the Statute.”²

3. The French version of the Decision uses the phrase “ce jour” rather than “even date”. It would therefore appear that the Presidency issued this decision on 20 November 2013.

4. The privileges and immunities afforded to Defence Counsel and their assistants are not accorded to them for their personal benefit, but in order to ensure that they can perform their functions before the ICC.

5. They are a necessary corollary of the rights of the defendant under Article 67(1) of the Statute in that they enable the Defence to provide effective representation to the defendant free from any unwarranted and unauthorised interference from national authorities.³

6. The wording of both Article 48(4) of the Statute and Article 18(1) of the Agreement on Privileges and Immunities (APIC) further underscore that the

¹ ICC-01/05-01/13-1-Red2-tENG.

² Para. 28.

³ See ICC-01/11-01/11-291, para. 25. See also *Prosecutor v. Gotovina*, Decision on Gotovina Defence Appeal Against March 2010 Decision on Requests for Permanent Restraining Orders Directed to the Republic of Croatia, 14 February 2011.

privileges and immunities set out in these articles are essential to the “proper functioning of the Court”,⁴ and are “necessary for the independent performance” of Defence functions.⁵

7. Given that these privileges and immunities exist for the purpose of securing Mr. Bemba’s right to a fair trial and are essential pre-requisites as concerns the proper functioning of the Defence, the Defence has a direct interest in being apprised of all decisions and related filings, which altered the status of the privileges and immunities of current or former Defence team members at any point during these proceedings.

8. In particular, it will not be possible for the current Defence team members to represent Mr Bemba if they are unable to avail themselves of the full protections envisaged by Article 48(4) of the Statute, and Article 18(1) of APIC.

9. The Defence therefore seizes the Presidency with the current request to be apprised of the timing, addressees, and scope of any waivers of privileges and immunities afforded to those representing Mr. Bemba.

B. RELIEF SOUGHT

10. For the reasons set out above, the Defence for Mr. Jean Pierre Bemba-Gombo respectfully requests the Presidency to grant the Defence access by reclassifying on an urgent basis:

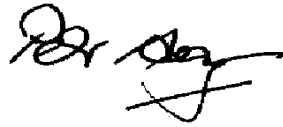
- i. all decisions issued by the Presidency, which concern the privileges and immunities of all past and current members of the Defence team; and
- ii. all related filings before the Presidency, setting out the justification and evidence submitted in support of any request to waive the

⁴ Article 48(1) of the Statute.

⁵ Article 18(1) of APIC.

privileges and immunities of any past or current member of the
Defence.

The whole respectfully submitted.

A handwritten signature in black ink, appearing to read 'Peter Haynes', with a stylized flourish at the end.

Peter Haynes QC
Lead Counsel of Mr. Jean-Pierre Bemba

The Hague, The Netherlands

6 February 2014