

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: 10/03/2014

THE PRESIDENCY

Before: Judge Sang-Hyun Song, President
Judge Sanji Mmasenono Monageng, First Vice-President
Judge Akua Kuenyehia, Acting Second Vice-President

SITUATION IN THE CENTRAL AFRICAN REPUBLIC

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

Confidential

**Defence Request for Further Reclassification of Filings on Privileges and
Immunities**

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

Fatou Bensouda

Jean-Jacques Badibanga

Counsel for the Defence

Peter Haynes QC

Kate Gibson

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

The Office of Public Counsel for the Defence

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. BACKGROUND

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. On 6 February 2014, the Defence for Mr. Bemba filed a request that the Presidency reclassify all decisions and related filings concerning the privileges and immunities of the Defence.³

4. Following this request, the Presidency firstly, noted that “there appears to be no prima facie reason to justify maintaining the under seal and ex parte status of the Immunity Decision (including all annexes thereto) and the Request for Clarification”, and secondly, requested the Prosecution and the Registrar to submit their observations concerning the appropriate level of classification for Annex 1 or the Registry Request for Clarification.⁴

¹ ICC-01/05-01/13-1-Red2-tENG.

² ICC-01/05-01/13-1-Red2-tENG, para. 28.

³ ICC-01/05-01/08-2962.

⁴ ICC-01/05-01/08-2998-Conf, page 4.

5. In its response, the Prosecution confirmed that apart from an extract of a confidential document cited in Annex 1, “no reasons exist for the Annex I Excerpt to remain under seal or under seal and *ex parte*”.⁵

6. The Registry also confirmed that there was no independent justification for maintaining the *ex parte* and under seal classification of the Request for Clarification.⁶

7. In its Order of 28 February 2014, the Presidency noted that “neither the Prosecutor nor the Registrar have put forward any reasons for retaining the current classification of the Immunity Decision and the Request for Clarification”, and “the Pre-Trial Judge has provided his consent for Annex I to the Immunity Decision to be reclassified on the condition that this is done after the execution of the arrest warrants”.⁷

8. The Presidency therefore ordered the Registrar to reclassify these filings as ‘confidential’ in Case No. ICC-01/05-01/08.

B. SUBMISSIONS

9. It would appear that apart from a specific extract included in Annex 1, none of the participants cited any justification as why the filings should not be reclassified as public, particularly as the arrest warrants have been publicly executed.

⁵ ICC-01/05-01/08-2998-Conf, page 4.

⁶ ICC-01/05-01/08-2998-Conf, page 4.

⁷ ICC-01/05-01/08-2998-Conf, page 5.

10. Apart from Annex 1 (which could easily be redacted), it would be contrary to the presumption of public proceedings to maintain the confidential status of these filings.⁸

11. In particular, the Immunity Decision does not refer to any factual information, which is not already in the public domain.

12. Given the fact that this appears to be the first ICC decision lifting the privileges and immunities of the Defence, there is a strong public interest in the underlying reasons for the Immunity Decision and the procedure, which lead to the waiver, being made public.

13. The confidentiality classification also prevents the Defence in Case No. ICC-01/05-01/08 from being able to consult with firstly, any of the lawyers in the Article 70 proceedings in relation to the implications of these decisions, and secondly, any lawyers who are instructed in connection with the proceedings before Dutch Courts.

14. In terms of the latter aspect, the Immunity Decision was presumably communicated to the Dutch authorities in order to ensure its effective execution.

15. The Defence is, however, placed at a significant disadvantage if it cannot discuss the legal and procedural implications of the Immunity Decision with the Dutch lawyers appearing in these proceedings, notwithstanding the fact that the relevant judicial and police authorities in The Netherlands have (presumably) been provided with a copy.

16. There is therefore a significant risk that the lawyers instructed to appear in these proceedings might fail to protect the interests of the ICC Defence or to assert a

⁸ ICC-01/05-01/08-2153, para. 2.

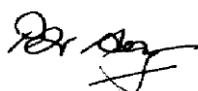
legal right in a timely manner due to their ignorance of the existence and contents of the Immunity Decision and related filings.

C. RELIEF SOUGHT

17. For the reasons set out above, the Defence for Mr. Jean-Pierre Bemba Gombo respectfully requests the Presidency to:

- i. reclassify the following filings as public on an urgent basis: ICC-01/05-01/08-3001-Conf, ICC-01/05-01/08-3002-Conf, ICC-01/05-01/08-3003-Conf, ICC-01/05-01/08-3001-Conf-AnxII, and ICC-01/05-01/08-3001-Conf-AnxIII; and
- ii. issue a public redacted version of ICC-01/05-01/08-3001-Conf-AnxI.

The whole respectfully submitted:



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

The Hague, The Netherlands

10 March 2014