

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/05-01/13

Date: 15 April 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 document

Decision on the “Defence Request for access to confidential transcripts and filings” dated 1 April 2014 submitted by the Defence for Jean-Pierre Bemba Gombo in case ICC-01/05-01/08

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

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

Counsel for Narcisse Arido

Göran Sluiter

**Legal Representatives of
Victims**

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

States Representatives

Other

Trial Chamber III

REGISTRY

Registrar

Herman von Hebel

Detention Section

Victims and Witnesses Unit

Others

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

NOTING the “Transmission of a submission from the Defence for Mr. Jean-Pierre Bemba Gombo in case ICC-01/05-01/08 for the attention of the Single Judge in case ICC-01/05-01/13”¹, to which the Registrar attached as Annex I the “Defence Request for access to confidential transcripts and filings” dated 1 April 2014², whereby Mr Peter Haynes, Counsel for Jean-Pierre Bemba Gombo in the case of the *Prosecutor v. Jean-Pierre Bemba Gombo* (“Main Case”), requests that the Single Judge “vary the classification level” of a number of documents in the record of this case, “in order to enable the Defence to access them” in the Main Case (in particular, the transcripts of Status Conferences held on 30 August 2013, 25 September 2013, and 10 October 2013 and the Reports of Independent Counsel dated 1 October 2013, 25 October 2013, and 14 November 2013), with a view *inter alia* to identifying any information which has been transmitted to the Prosecutor and “assess[ing] the repercussions for its rights and strategy as concerns the Main case”;

CONSIDERING that the Defence Request seems premised on the assumption that there is a separation between a defendant and his or her counsel, in particular for the purposes of the right to access documents;

CONSIDERING that, since counsel(s) for the defence ensure the legal representation of a defendant in criminal proceedings, this assumption is inaccurate;

CONSIDERING that, as Counsel for Mr Bemba in the Main Case also observes, “[c]ommunications concerning the Defence case file and Defence records are the property of the defendant, and not Counsel” and that, accordingly, “[i]f the

¹ ICC-01/05-01/13-309.

² ICC-01/05-01/13-309-AnxI.

defendant consents for his Counsel to access such information, the confidential or privileged nature of the information cannot be invoked to oppose Counsel's access";

CONSIDERING that Jean-Pierre Bemba has indeed access to all of the documents which his Counsel in the Main Case wishes to access and is therefore entitled to decide whether, and to what extent, he shall or shall not share such access with his Counsel;

CONSIDERING that, accordingly, the defence request is deprived of content;

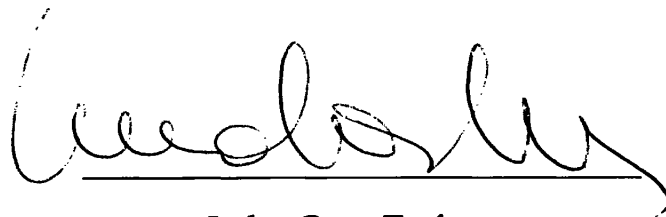
CONSIDERING that the above is without prejudice to Jean-Pierre Bemba's and his Counsel's duties to fully comply with any and all protective measures which are applicable and in force *vis-à-vis* the materials to be accessed;

CONSIDERING further that the determination of the extent to which, if any, the materials and information relating to these proceedings (to which Jean-Pierre Bemba has access by virtue of his position as a defendant and might, or might not, decide to share with Counsel) might be relevant in the context of the proceedings relating to the Main Case, as well as of the "repercussions" on it that might be entailed by these proceedings, falls entirely within the discretion of Trial Chamber III;

FOR THESE REASONS, THE SINGLE JUDGE

DISMISSES the Defence Request.

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



Judge Cuno Tarfusser

Single Judge

Dated this Tuesday, 15 April 2014 at The Hague, The Netherlands