

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 17 June 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**

**Confidential *ex parte* Independent Counsel and Counsel for Jean-Pierre Bemba
Gombo in case ICC-01/05-01/08**

**Decision on the “Communication d’un échange de courriers et demande de
clarification quant à la mise en œuvre de la Décision ICC-01/05-01/13-347-Conf
(mesures de protection)” submitted by Independent Counsel on 23 May 2014**

Decision to be notified, in accordance with regulation 31 of the Regulations of the Court, to:

The Office of the Prosecutor	Counsel for Jean-Pierre Bemba Gombo in case ICC-01/05-01/08 Peter Haynes QC
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Counsel for Aimé Kilolo Musamba

Counsel for Jean-Jacques Mangenda Kabongo

Counsel for Fidèle Babala Wandu

Counsel for Narcisse Arido

Legal Representatives of Victims	Legal Representatives of Applicants
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Unrepresented Victims	Unrepresented Applicants for Participation/Reparation
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The Office of Public Counsel for Victims	The Office of Public Counsel for the Defence
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States Representatives	Others Independent Counsel appointed pursuant to Decision ICC-01/05-52-Conf
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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 “Communication d’un échange de courriers et demande de clarification quant à la mise en œuvre de la Décision ICC-01/05-01/13-347-Conf (mesures de protection)” dated 23 May 2014¹, whereby Independent Counsel (I) submits (i) having been requested in writing by Mr Peter Haynes, Counsel for Jean-Pierre Bemba in case ICC-01/05-01/08 (“Main Case”), to provide details as to his appointment and mandate in the context of case ICC-01/05-01/13, by way of a message addressed to as many as five other persons; (ii) having replied to Mr Haynes’s request *inter alia* by stating not being in a position to provide the requested information and (II) requests the Single Judge to clarify “la portée de la décision” ICC-01/05-01/13-347-Conf, authorising *inter alia* the disclosure to the parties of the identity of Independent Counsel and instructing “all of the parties and their Counsel [to] strictly comply with the confidential nature of the information relating to the identity of Independent Counsel”;

NOTING article 68 of the Statute, rule 87 of the Rules of Procedure and Evidence and articles 7, 8, 31, 32 and 34 of the Code of Professional Conduct for Counsel (“Code”);

NOTING that, in the letter he addressed to Independent Counsel, Counsel for Mr Bemba in the Main Case expressly refers to “l’impact de telles questions sur les procédures en cours dans l’Article 70”;

¹ ICC-01/05-01/13-423-Conf-Exp.

CONSIDERING that, to the best of the Single Judge's knowledge, Mr Peter Haynes has not been appointed as counsel for Mr Bemba in proceedings related to case ICC-01/05-01/13 ;

CONSIDERING that, as already stated in these proceedings,

- i. there is no separation between a defendant and his or her counsel, in particular for the purposes of the right to access documents and, accordingly, Jean-Pierre Bemba is entitled to decide whether, and to what extent, he shall or shall not share access to documents relating to case ICC-01/05-01/13 with his Counsel in the Main Case²;
- ii. this 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 accessed³, and to the obligations specifically incumbent to Counsel in this respect⁴;
- iii. the absence of separation between a defendant and his counsel is not tantamount to saying that the Defence teams respectively appointed in this case and in the Main Case are interchangeable, whether in general or in respect of specific procedural rights⁵;

CONSIDERING that article 8(3) of the Code allows Counsel to reveal information of a confidential nature to "co-counsel, assistants and other staff working on the particular case to which the information relates and solely to enable the exercise of his or her functions in relation to that case";

² ICC-01/05-01/13-338.

³ ICC-01/05-01/13-338.

⁴ ICC-01/05-01/13-440

⁵ ICC-01/05-01/13-456.

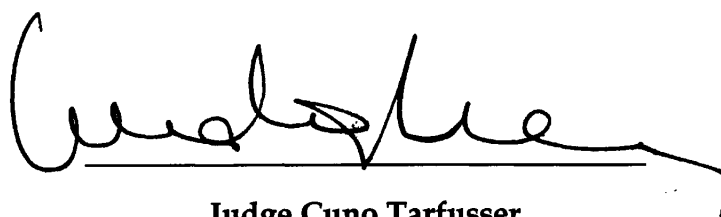
CONSIDERING that, in the absence of further action taken by Counsel for Mr Bemba in the Main Case following the correspondence annexed by Independent Counsel, it is not necessary for the Single Judge to take a position on the appropriateness of his conduct;

CONSIDERING that article 34 of the Code allows "any person or group of persons whose rights or interests may have been affected by the alleged misconduct" to submit a complaint to the Registry for transmission to the Commissioner and that, accordingly, this is without prejudice to the fact that Independent Counsel may wish to consider submitting such a complaint;

FOR THESE REASONS, THE SINGLE JUDGE HEREBY

REITERATES that the parties to these proceedings and their counsel are under an obligation to strictly comply with the confidential nature of the information relating to the identity of Independent Counsel.

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, 17 June 2014

The Hague, The Netherlands