

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: English

No.: ICC-01/05-01/13
Date: 7 November 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

**Decision on filings requesting access to the transcript of the 26 March 2014
Status Conference (ICC-01/05-01/13-734-Anx1, ICC-01/05-01/13-736)**

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 in case

ICC-01/05-01/13

Nicholas Kaufman

Counsel for Aimé Kilolo Musamba

Paul Djunga Mudimbi

Counsel for Jean-Jacques Mangenda Kabongo

Jean Flamme

Counsel for Fidèle Babala Wandu

Jean-Pierre Kilenda Kakengi Basila

Counsel for Narcisse Arido

Göran Sluiter

Counsel for Jean-Pierre Bemba Gombo in case

ICC-01/05-01/ 08

Peter Haynes QC

States Representatives

Others

REGISTRY

Registrar

Herman von Hebel

Detention Section

Others

Trial Chamber III

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

NOTING the “Request of the Defence for Mr. Jean-Pierre Bemba Gombo in ICC-01/05-01/08 to lift redactions to the transcript of the 26 March 2014 Status Conference” dated 31 October 2014 (“31 October 2014 Request”)¹, whereby the Defence for Mr Bemba in case 01/05-01/08 (“Main Case”) refers to the decision² rejecting his previous request³ for access to the transcript of the 26 March 2014 Status Conference (ICC-01/05-01/13-T-5-Conf-EXP, the “Transcript”) and requests the Single Judge “to lift any redactions in ICC-01/05-01/13-T-5-Conf-EXP-ENG, which concern: a. The evidential link between the Article 70 and Main Case; b. The appearance of impartiality of the Prosecution and potential conflicts of interest; c. The confidentiality of Defence witnesses and the Defence case; d. The consistency of Prosecution submissions on these points; and e. Any other matter that might be relevant to the appearance of fairness, impartiality and independence of the proceedings”;

NOTING the “Additional Defence request for the lifting of redactions applied to ICC-01/05-01/13-T-5-Conf-Exp-ENG”, dated 3 November 2014 (“3 November 2014 Request”)⁴, whereby the Defence for Mr Bemba in these proceedings (I) requests the Single Judge to lift the redactions applied to the Transcript and (II) relies, in making this request, on the dissenting opinion attached by Judge Anita Ušacka to the Appeals Chamber Decision rejecting the request for disqualification of the Prosecutor⁵, in which she stated *inter alia* (i) that, “[a]s

¹ ICC-01/05-01/13-734-Anx1.

² ICC-01/05-01/13-731.

³ ICC-01/05-01/13-728 and Annex 1 thereto.

⁴ ICC-01/05-01/13-736.

⁵ ICC-01/05-01/13-648-Anx2-Red, paragraph 10 and at footnotes 15 and 16.

regards the evidential link between the two cases, I particularly note that in the Bemba et al case, the Defence was not given access to certain crucial documents, including” the Transcript, which “I consider relevant to the proceedings at hand”; and (ii), in a footnote, that “if I had been aware of this transcript at the time of the decision of the Plenary on the request for the disqualification of Judge Tarfusser ... I would have voted in favour of his disqualification”;

NOTING that the 31 October 2014 Request also relies on Judge Ušacka’s dissenting opinion;

NOTING articles 57(3)(c), 67 and 68 of the Statute, rules 15, 43 and 81 of the Rules of Procedure and Evidence (“Rules”), regulation 23*bis* of the Regulations of the Court (“Regulations”) and regulations 25 and 50 of the Regulations of the Registry;

CONSIDERING that, at this stage, it is indeed feasible to significantly reduce the amount of redactions originally applied to the Transcript and to reclassify it as public redacted without prejudicing the protective objectives pursued by the its original classification as confidential *ex parte*;

CONSIDERING furthermore that the reclassification of the Transcript becomes necessary in light of the fact that both Requests mainly rely on the serious allegations contained in Judge Ušacka’s dissenting opinion;

CONSIDERING that the reclassification will make it possible both for the Defence for Mr Bemba (in the Main Case and in these proceedings) and for the public to realise that no information of whatsoever relevance to the merits of either the Main Case or this case is contained in the Transcript and that,

accordingly, the Transcript cannot by any means be regarded as “crucial” to either of those Defences;

CONSIDERING that, accordingly, the reclassification will also make it possible to appreciate that the statement by Judge Ušacka, to the effect that “crucial” documents would have been withheld from the Defence in these proceedings, is deprived of any substance or justification;

CONSIDERING that, even leaving aside the astonishment caused by such a gross misunderstanding of the “relevance” of the Transcript, as well as by the cryptic utterance as to the existence of an “evidential link” between these proceedings and the Main Case (also in light of the fact that Judge Ušacka does not sit on the bench of either of them), it is a matter of the utmost concern that a gratuitous statement of such gravity be included in a dissenting opinion of an Appeals Judge, especially in light of the even more concerning and gratuitous statement appearing in the footnote, to the effect that *“if I had been aware of this transcript at the time of the decision of the Plenary on the request for the disqualification of Judge Tarfusser ... I would have voted in favour of his disqualification”*, which statement is as legally irrelevant as deplorable in its threatening and discrediting content and tone;

CONSIDERING that the gravity of the aforementioned statement is enhanced by its formulation in terms apt to deceivingly induce the reader into thinking that more than one document might have been denied to the defence (*“certain crucial documents, including”*, emphasis added), when only the Transcript is listed in the footnote as falling into the scope of this purported denial;

CONSIDERING that a new redacted version of the Transcript will be provided to the Registry, with a view to creating a new public redacted version thereof;

FOR THESE REASONS, THE SINGLE JUDGE HEREBY

GRANTS the 31 October 2014 and the 3 November 2014 Requests;

DECIDES that the Transcript shall be reclassified as public redacted, in the redacted version which will be provided to the Registrar at the time of the filing of this decision.

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



Judge Cuno Tarfusser
Single Judge

Dated this Friday, 7 November 2014

The Hague, The Netherlands