

**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**

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**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”<sup>1</sup>, to which the Registrar attached as Annex I the “Defence Request for access to confidential transcripts and filings” dated 1 April 2014<sup>2</sup>, 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

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<sup>1</sup> ICC-01/05-01/13-309.

<sup>2</sup> 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;

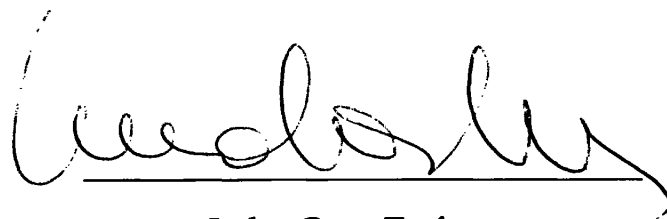
**CONSIDERING** that the above is without prejudice to Jean-Pierre Bemba's and his Counsel's duties to fully comply with any and all protective measures which are applicable and in force *vis-à-vis* the materials to be accessed;

**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