

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/05-01/13
Date: 3 February 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 the reclassification of documents in the record of the situation and of the case

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
Florence Darques Lane

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

Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

The Office of Public Counsel for the Defence

States Representatives

Others

REGISTRY

Registrar

Herman von Hebel

Detention Section

Victims and Witnesses Unit

Others

**Victims Participation and
Reparations Section**

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

NOTING the “Warrant of arrest for Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse Arido” issued on 20 November 2013;¹

NOTING that, prior to the issuance of the Warrant, investigative measures relating to the case were requested by the Prosecutor and issued by the Single Judge in the context of confidential, ex parte proceedings;

NOTING articles 57(3)(c) and 67 of the Statute, rules 15, 43, 81 and 121 of the Rules of Procedure and Evidence (“Rules”), regulation 23bis of the Regulations of the Court (“Regulations”) and regulation 25 of the Regulations of the Registry;

NOTING the “Requête aux fins de divulgation et communication d’actes de procédure et pièces en relation avec l’enquête diligentée contre M. Aimé Kilolo Musamba” (“Defence for Mr Kilolo’s Request”) dated 24 January 2014,² whereby the Defence for Mr Kilolo requests the reclassification of a number of documents relating to investigative measures and proceedings having taken place prior to the issuance of the Warrant, as listed in confidential, ex parte Annex I thereto;

NOTING the “Defence Request for reclassification of documents” dated 27 January 2014,³ whereby the Defence for Mr Bemba submits a request for reclassification very similar in nature and scope to the one submitted by Mr Kilolo in respect of a series of documents in the situation and the case;

NOTING “Jean-Pierre Bemba Gombo’s Request for reclassification of the annex to filing ICC-01/05-01/13-129” dated 27 January 2014,⁴ whereby the Defence for

¹ ICC-01/05-01/13-I-Red2-tENG.

² ICC-01/05-01/13-129 with Confidential, ex parte Prosecutor and Registry Annex I.

³ ICC-01/05-01/13-130-Conf.

⁴ ICC-01/05-01/13-131.

Mr Bemba requests that Annex I to the Defence for Mr Kilolo's Request be made accessible to all Defence teams;

NOTING the "Requête afin d'obtenir accès aux pièces de procédure et preuves dans l'affaire ICC-01/05-01/08 ainsi qu'en reclassification des requêtes et décisions « ex parte » dans la procédure présente" dated 28 January 2014,⁵ whereby the Defence for Mr Mangenda requests inter alia the Single Judge (i) to order the "reclassification de la procédure entière précédant les arrestations" and (ii) to order the Registrar to provide him with integral access to the case *The Prosecutor v. Jean Pierre Bemba Gombo* (ICC-01/05-01/08);

NOTING the " Requête en vue de solliciter l'autorisation d'accéder a l'intégralité du dossier de l'affaire ICC-01/05-01/08 opposant le Procureur a Monsieur Jean-Pierre Bemba Gombo et a toutes les écritures confidentielles et ex-parte antérieures au mandat d'arrêt ICC-01/05-01/13-1-US-Exp du 20 novembre 2013 et ayant motive celui-ci en ce compris toutes les écritures de même nature revêtant les mêmes caractères dans la Prosecution's Application for warrant of arrest" dated 29 January 2014,⁶ whereby the Defence for Mr Babala requests the Single Judge to order the Registrar to provide him with (i) "l'intégralité des écritures confidentielles et ex-parte en ce compris tous les transcripts des audiences de l'affaire principale ICC-01/05-01/08" and (ii) "toutes les écritures confidentielles et ex-parte ayant saisi le Juge unique en la présente cause, requêtes et décisions comprises, avant la délivrance du mandat d'arrêt susvisé";
issue this decision.

⁵ ICC-01/05-01/13-133-Conf.

⁶ ICC-01/05-01/13-138-Conf.

Single Judge's determinations on the publicity of proceedings and the reclassification of documents in the record

1. The Single Judge notes that the warrant of arrest was issued following a series of decisions triggered by the Prosecutor's requests for judicial orders relating to an investigation under article 70 in the situation in the Central African Republic, which culminated in the Prosecutor's Application under Article 58⁷ in this case. The investigation and the ensuing present case revolve around an alleged scheme for the commission of a number of offences against the administration of justice in connection with the case of the *Prosecutor v. Jean-Pierre Bemba Gombo*. Accordingly, at the time of their respective filing, both the Prosecutor's requests and the Single Judge's decisions were classified as *confidential, ex parte Prosecutor and Registrar*: at that stage, public knowledge not only of their content, but of their very existence, might have prejudiced the ongoing investigation. Furthermore, exceptions to the principle of publicity were also made with a view to ensuring the protection of Independent Counsel appointed by the Single Judge.

2. The Single Judge recalls that the Chamber has the duty to ensure that proceedings are conducted in a fair and expeditious manner and that the rights of the suspects are preserved, including with due regard to the paramount principle of publicity of the proceedings. According to regulation 23bis(3) of the Regulations, the Chamber may order the reclassification of documents when the grounds for the original classification no longer exist. At this stage of the proceedings, when the scope of the case against the suspects has been defined and the confirmation hearing is scheduled for 18 April 2014, the Single Judge takes the view that, to a great extent, disclosure of relevant documents not only

⁷ ICC-01/05-67-Conf.

to the defence teams (with a view to allowing them to adequately prepare their case) but also to the public may no longer prejudice the investigation and that, accordingly, all restrictions to the principle of publicity considered at the relevant time necessary for that purpose should be lifted.

3. As regards the redaction of the name and other identifying information of Independent Counsel, the Single Judge is conversely persuaded that there are persisting security reasons making it necessary not to disclose the identity of Independent Counsel to either the parties or the public. By the same token, he reiterates that the fact of not knowing the identity of Independent Counsel does not prejudice the rights of the Defence teams. Accordingly, the name and any other identifying information of Independent Counsel will be redacted from all filings to be reclassified pursuant to this decision.

4. The Single Judge is mindful that, pursuant to regulation 25(4) of the Regulations of the Registry, “the date and the signature of the redacted document, material, order or decision shall reflect the date of filing”. He is nevertheless of the view that, for the purposes of clarity and with a view to making it easier to follow the order in which developments in and prior to this case have taken place, the redacted versions of documents issued pursuant to this decision shall also bear a clear indication of the date of the issuance of the original document.

5. These principles shall govern also the reclassification of transcripts of status conferences held in the situation prior to the issuance of the warrant.

6. The Single Judge notes that it is indeed necessary that the Defence teams have access to the Prosecutor’s past relevant filings that are currently classified as confidential, *ex parte*. The Single Judge is likewise mindful of the paramount principle of the publicity of proceedings. Accordingly, for each one of her filings in the relevant portion of the situation and in the case, the Prosecutor is

instructed either (i) to indicate that it can be reclassified as confidential (or public) as such; or (ii) to file a confidential (or public) redacted version.

7. The Single Judge notes that the implementation of this decision will result in the parties being fully aware of the proceedings having led to the Prosecutor's Application under article 58 in this case. Therefore, it also satisfies the requests for access submitted in the meantime by four defence teams (the Defence for Mr Kilolo,⁸ the Defence for Mr Bemba,⁹ the Defence for Mr Mangenda¹⁰ and the Defence for Mr Babala¹¹) in the case.

8. Furthermore, the Single Judge takes the view that, as of the date of the present decision, it is necessary that the parties simultaneously file confidential redacted versions of any document filed as confidential *ex parte*, whenever appropriate.

Single Judge's determinations as regards other requests by the Defence teams

a) Mr Bemba's request for reclassification of Annex I to the Defence for Mr Kilolo's Request

9. The Defence for Mr Bemba requests that Annex I to the Defence for Mr Kilolo's Request be made accessible to all defence teams.

⁸ "Requête aux fins de divulgation et communication d'actes de procédure et pièces en relation avec l'enquête diligentée contre M. Aimé Kilolo Musamba" dated 24 January 2014 (ICC-01/05-01/13-129 with Confidential, *ex parte* Prosecutor and Registry Annex I).

⁹ "Defence Request for reclassification of documents" dated 27 January 2014 (ICC-01/05-01/13-130-Conf); "Jean-Pierre Bemba Gombo's Request for reclassification of the annex to filing ICC-01/05-01/13-129" dated 27 January 2014 (ICC-01/05-01/13-131).

¹⁰ "Requête afin d'obtenir accès aux pièces de procédure et preuves dans l'affaire ICC-01/05-01/08 ainsi qu'en reclassification des requêtes et décisions « *ex parte* » dans la procédure présente" dated 28 January 2014, submitted by the Defence for Mr Mangenda (ICC-01/05-01/13-133-Conf).

¹¹ "Requête en vue de solliciter l'autorisation d'accéder à l'intégralité du dossier de l'affaire ICC-01/05-01/08 opposant le Procureur à Monsieur Jean-Pierre Bemba Gombo et à toutes les écritures confidentielles et *ex-parte* antérieures au mandat d'arrêt ICC-01/05-01/13-1-US-Exp du 20 novembre 2013 et ayant motivé celui-ci en ce compris toutes les écritures de même nature revêtant les mêmes caractères dans la Prosecution's Application for warrant of arrest" dated 29 January 2014 (ICC-01/05-01/13-138-Conf).

10. The Single Judge notes that Annex I to the Defence for Mr Kilolo's Request does not contain information of a confidential nature and shall therefore be reclassified as public.

b) Mr Kilolo's request to access non-identified documents

11. Annex I to the Defence for Mr Kilolo's Request lists, among the documents to which access is requested, some documents which it describes as "inconnu[s]" in their date and number: namely, the Prosecutor's requests for cooperation addressed to the Dutch and Belgian authorities pursuant to the decisions taken by the Single Judge and the responses of those authorities to those requests.

12. The Single Judge notes that no such documents are currently included in the record of either the case or the relevant portion of the situation. The Single Judge's decisions on the Prosecutor's requests for investigative measures issued prior to the warrant, on the one hand, and the reports of the Dutch authorities on the investigative actions taken by way of implementation of those decisions, on the other hand (which have been available to the defence teams since 13 December 2013¹²), provide a sufficiently comprehensive picture of the judicial proceedings leading to the Prosecutor's Application under article 58 in this case.

c) Mr Kilolo's request for reclassification of a decision issued by the Presidency

13. The Single Judge notes that filing ICC-01/05-68-US-Exp, for which Mr Kilolo requests reclassification, is a decision issued by the Presidency and that, accordingly, this request should be addressed to the Presidency.

¹² ICC-01/05-01/13-39-Conf.

d) Mr Mangenda's and Mr Babala's Defence requests to have integral access to the record of the case The Prosecutor v. Jean Pierre Bemba Gombo (ICC-01/05-01/08)

14. The Single Judge notes that issues of access to the record of the case *The Prosecutor v. Jean Pierre Bemba Gombo* (ICC-01/05-01/08) fall within the competence of Trial Chamber III.

**FOR THESE REASONS, THE SINGLE JUDGE HEREBY
DECIDES**

- a) that the following documents shall be reclassified as public:
- ICC-01/05-45-Conf-Exp ("Decision designating a Single Judge")
 - ICC-01/05-46-Conf-Exp ("Decision on the Prosecutor's 'Request for judicial assistance to obtain evidence for investigation under Article 70'")
 - ICC-01/05-50-Conf-Exp ("Decision on the 'Registry's Observations pursuant to regulation 24 bis of the Regulations of the Court on the implementation of the 'Decision on the Prosecutor's 'Request for judicial assistance to obtain evidence for investigation under Article 70'")")
 - ICC-01/05-01/13-20-Conf ("Decision on the Prosecutor's 'Urgent Request to extend the prohibition of contacts between the Suspects and with Third Parties'")
 - ICC-01/05-01/13-48-Conf ("Decision on the 'Prosecution's request for recordings of telephone calls between Messrs Bemba and Mangenda to be referred to Independent Counsel'")
 - ICC-01/05-01/13-50-Conf ("Decision on 'Demande d'autorisation d'interjeter appel contre la 'Decision appointing an Independent Counsel and taking additional measures for the purposes of the

forensic acquisition of material seized in the proceedings' (ICC-01/05-01/13-41-Conf-Red)")

- ICC-01/05-01/13-51-Conf ("Decision on 'Defence request for leave to appeal decision ICC-01/05-01/13-41-Conf-Red'")
 - ICC-01/05-01/13-103-Conf ("Decision on the requests submitted by the Defence for Mr Kilolo and the Defence for Mr Babala relating to the forensic acquisition and return of material seized in the proceedings");
- b) that the following documents shall be reclassified as public redacted:
- ICC-01/05-62-Conf-Red ("Decision on the Prosecutor's "Third request for judicial order to obtain evidence for investigation under Article 70" dated 7 October 2013 (ICC-01/05-60-Conf-Exp)")
 - ICC-01/05-01/13-41-Conf-Red ("Decision appointing an Independent Counsel and taking additional measures for the purposes of the forensic acquisition of material seized in the proceedings");
- c) that a public redacted version of the following documents shall be filed:
- ICC-01/05-52-Conf-Red
 - ICC-01/05-56-Conf-Exp
 - ICC-01/05-57-Conf-Exp
 - ICC-01/05-61-Conf-Exp

ORDERS the Registrar to file, as soon as practicable, confidential redacted versions of the following transcripts, from which the name and any other identifying information of Independent Counsel will be redacted

- ICC-01/05-T-2-CONF-EXP
- ICC-01/05-T-3-CONF-EXP
- ICC-01/05-T-4-CONF-EXP

ORDERS the Prosecutor, for each one of her filings in the relevant portion of the situation and in the case, no later than Wednesday 12 February 2014, either (i) to

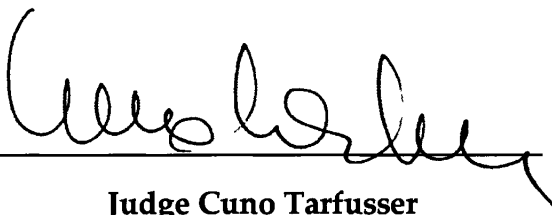
indicate that it can be reclassified as confidential (or public) as such; or (ii) to file a confidential (or public) redacted version;

ORDERS the Prosecutor and the Defence teams, as of the date of the present decision, to simultaneously file confidential redacted versions of any document filed as confidential ex parte, whenever appropriate;

DISMISSES Mr Kilolo's request for reclassification of ICC-01/05-68-US-Exp;

DISMISSES Mr Mangenda and Mr Babala's Request to have integral access to the case of the *Prosecutor v. Jean Pierre Bemba Gombo* (ICC-01/05-01/08).

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



Judge Cuno Tarfusser

Single Judge

Dated this Monday, 3 February 2014

The Hague, the Netherlands