

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 25 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*

Public Document

with confidential *ex parte* Annex A- Prosecutor and Victims and Witnesses Unit only

Decision on the "Prosecution's Application for Redactions pursuant to Rules 81(2) and 81(4) of the Rules of Procedure and Evidence" dated 25 June 2014

Order 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**

**The Office of Public Counsel for
Victims**

The Office of Public Counsel for the Defence

REGISTRY

Registrar

Herman von Hebel

Detention Section

Victims and Witnesses Unit

Natacha Schauder

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 “Decision amending the calendar for the confirmation of the charges” dated 28 May 2014¹, whereby the Single Judge decided *inter alia* that the Prosecutor should, no later than 30 June 2014, file her document containing the charges and the list of evidence;

NOTING the “Prosecution’s Application for Redactions pursuant to Rules 81(2) and 81(4) of the Rules of Procedure and Evidence” (“Prosecutor’s Application”) and the confidential *ex parte* Annexes attached thereto, dated 25 June 2014²;

NOTING the “Defence response to Prosecution filing ICC-01/05-01/13-513”, also dated 25 June 2014³, whereby the Defence for Mr Bemba submits that the postponement of the confirmation of the charges “was permitted purely for the purpose of receiving the third report from the Independent Counsel” and, accordingly, requests that the Prosecutor’s Application be rejected;

CONSIDERING that, as already repeatedly stated in these proceedings⁴, whilst “the setting of intermediate deadlines for the disclosure of specific batches of evidence is possible and appropriate for the purposes of properly organising the disclosure process and enhancing its efficiency, the only provision to be found in the statutory framework of the Court as to the consequences of the presentation of evidence after the expiry of a given time limit relates to the thirty-day time limit before the date set for the confirmation of charges”;

¹ ICC-01/05-01/13-443.

² ICC-01/05-01/13-513, with Confidential, *ex parte* Prosecutor and Victims and Witnesses Unit only, Annexes A, B and C.

³ ICC-01/05-01/13-514.

⁴ See, among others, ICC-01/05-01/13-409.

NOTING articles 54, 57(3)(c), 61, 67 and 68 of the Statute, rules 15, 76, 77, 81(2), 81(4) and 121 of the Rules of Procedure and Evidence (“Rules”);

CONSIDERING that the authorisation of non-disclosure of information shall be viewed as an exception, the overriding principle being that of full disclosure, and that decisions on non-disclosure shall be taken on a case-by-case basis, in accordance with the principles established by the Appeals Chamber⁵;

CONSIDERING that as many as four decisions on the merits of Prosecutor’s Applications for redactions have already been rendered in these proceedings⁶;

CONSIDERING that the general principles recalled in the Single Judge’s previous decisions on the Prosecutor’s applications for redactions are hereby reiterated;

NOTING that, pursuant to article 54(3)(f) of the Statute and rules 81(2) and 81(4) of the Rules, the Prosecutor seeks authorisation to redact information from “one investigator’s note”, as well as from “one transcript of a meeting with an individual regarding whom the Single Judge has previously authorised redactions”, submitting that the proposed redactions would not be prejudicial or inconsistent with the rights of the suspect, since they are “limited in scope and necessary to protect the safety of the persons concerned” and the redacted information “has no bearing on the material facts of this case”;

CONSIDERING that, based on the information provided by the Prosecutor and in accordance with principles established by the Appeals Chamber⁷, the Single

⁵ ICC-01/04-01/06-773; ICC-01/04-01/07-475.

⁶ ICC-01/05-01/13-98; ICC-01/05-01/13-163; ICC-01/05-01/13-315; ICC-01/05-01/13-503.

⁷ ICC-01/04-01/07-475.

Judge is satisfied that there are circumstances warranting the requested redactions of

- A. names of staff members of the Office of the Prosecutor, or other individuals associated with OTP work, with a view not to prejudicing either their safety or the ongoing investigations;
- B. names and other identifying information of locations where the witnesses' interviews took place, with a view not to prejudicing the safety of Prosecutor's staff and witnesses and to avoiding jeopardising ongoing and/or further investigations, as well as other information the disclosure of which might prejudice ongoing and/or further investigations ;

CONSIDERING that, as stated in his previous decisions on the Prosecutor's Applications for redactions, authorising the redactions requested by the Prosecutor is without prejudice to the Single Judge's position either as to the relevance of the material, whether for the purposes of rule 77 of the Rules or otherwise, or as to the appropriateness of disclosing it to the Defence teams;

NOTING that, not for the first time in these proceedings, the Single Judge has detected a non-insignificant number of oversights and inconsistencies in the requested redactions, as highlighted in the table attached as Annex A hereto;

CONSIDERING that the Prosecutor apparently failed to exercise the required due diligence prior to submitting her Application, relying on the Chamber's diligence in reviewing its accuracy and consistency in the context of its decision, and that such reliance is inappropriate;

CONSIDERING it necessary to remind the Prosecutor that it is her responsibility to ensure both the accuracy of her applications and the consistency of the implementation of the Chamber's authorisation to apply redactions prior to the disclosure of the relevant material;

FOR THESE REASONS, THE SINGLE JUDGE HEREBY

GRANTS the Prosecutor's Application and authorises redaction of the information listed in categories A and B as spelt out above, as detailed in the table attached to this decision as confidential, *ex parte* Prosecutor and Victims and Witnesses Unit Annex A hereto;

ORDERS the Prosecutor to disclose to the Defence, no later than Friday 27 June 2014, the documents contained in Annexes B and C to her Application with the redactions granted in the present decision, as set forth in the confidential, *ex parte* Prosecutor and Victims and Witnesses Unit, Annex A hereto;

ORDERS the Prosecutor to review with the utmost diligence the material to be redacted so as to ensure the consistent application of the authorised redactions throughout the relevant material.

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



Judge Cuno Tarfusser

Single Judge

Dated this Wednesday, 25 June 2014 at The Hague, The Netherlands