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

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TRIAL CHAMBER VII

Before: Judge Chile Eboe-Osuji, Presiding Judge
Judge Olga Herrera Carbuccion
Judge Bertram Schmitt

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 redacted version of

Decision on Prosecution's Application for Non-Standard Redactions

To be notified, in accordance with Regulation 31 of the *Regulations of the Court*, to:

The Office of the Prosecutor

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Ms Melinda Taylor

Counsel for Aimé Kilolo Musamba

Mr Paul Djunga Mudimbi

Counsel for Jean-Jacques Mangenda Kabongo

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Mr Jean-Pierre Kilenda Kakengi Basila

Counsel for Narcisse Arido

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Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

Unrepresented Applicants for Participation/Reparation

The Office of Public Counsel for Victims

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REGISTRY

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Detention Section

Victims Participation and Reparations Section

Others

Trial Chamber VII (the ‘Chamber’) of the International Criminal Court, in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse Arido*, having regard to Articles 54(3)(f), 67(2) and 68 of the Rome Statute (the ‘Statute’), Rules 76-77 and 81 of the Rules of Procedure and Evidence (the ‘Rules’) and Regulation 28 of the Regulations of the Court, issues the following ‘Decision on Prosecution’s Application for Non-Standard Redactions’.

I. Background and relief sought

1. On 8 June 2015, the Office of the Prosecutor (the ‘Prosecution’) filed an application to apply non-standard redactions to 13 documents (the ‘Application’).¹
2. On 15 June 2015,² the defence teams for Mr Bemba,³ Mr Mangenda,⁴ Mr Arido⁵ and Mr Kilolo⁶ (respectively, the ‘Bemba Defence’, ‘Mangenda Defence’, ‘Arido Defence’ and ‘Kilolo Defence’) responded to the Application. The Bemba and Mangenda Defence oppose most of the requested redactions, the Arido Defence opposes all of them and the Kilolo Defence opposes the redactions sought under Rule 81(2) of the Rules.
3. In its Application, the Prosecution seeks redactions to personal information for [Redacted] persons pursuant to Articles 54(3)(f) and 68 of the Statute and Rule 81(4) of the Rules: (i) P-214; (ii) P-316; [Redacted]. The Prosecution submits that

¹ Prosecution’s Application for Non-Standard Redactions, 8 June 2015, ICC-01/05-01/13-986-Conf-Red (redacted version notified 9 June 2015).

² The response deadline was shortened to this date. Email from Legal Officer of the Trial Chamber to the parties on 9 June 2015 at 14:04.

³ Defence Response to “Confidential redacted version of ‘Prosecution’s Application for Non-Standard Redactions’”, 8 June 2015, ICC-01/05-01/13-986-Conf-Exp”, 15 June 2015, ICC-01/05-01/13-1000-Conf (with annex).

⁴ Response to Prosecution’s Application for Non-Standard Redactions, 15 June 2015, ICC-01/05-01/13-1001-Conf.

⁵ Narcisse Arido’s Response to the Prosecution’s “Confidential redacted version of ‘Prosecution’s Application for Non-Standard Redactions’” (ICC-01/05-01/13-986-Conf-Red), 15 June 2015, ICC-01/05-01/13-1003-Conf.

⁶ Réponse de la défense de Monsieur Aimé Kilolo à la « Confidential redacted version of ‘Prosecution’s Application for Non-Standard Redactions’”, 8 June 2015, ICC-01/05-01/13-986-Conf-Exp”, 15 June 2015, ICC-01/05-01/13-1008-Conf-Exp (confidential redacted version notified 16 June 2015).

the proposed redactions are limited in scope and necessary to protect the dignity and privacy of the witnesses concerned.⁷

4. The Prosecution also seeks redactions to the names and functions of [Redacted] pursuant to Rule 81(2) of the Rules. [Redacted].⁸

II. Analysis

5. The Chamber recalls the test to be applied when evaluating redactions.⁹ In particular, the party requesting redactions must establish ‘the existence of an objectively justifiable risk to the safety of the person or interest concerned, or which may prejudice further or ongoing investigations’.
6. The Chamber’s determinations with respect to the requested redactions are as follows.
7. *P-316’s bank details¹⁰ and P-214’s resident card number, tax number and social security number.*¹¹ The Prosecution presents no evidence that revealing the personal information at issue establishes any objectively justifiable risk to the safety of P-316 or P-214. Irrespective of this information’s relevance, the Chamber is not persuaded that P-316 or P-214’s general privacy interest in these particular details justifies a deviation from the principle that ‘once it is established that a document is material to the preparation of the defence [...] the disclosure obligation extends to the entire document and not only to the “relevant”

⁷ Application, ICC-01/05-01/13-986-Conf-Red, paras 7-8.

⁸ Application, ICC-01/05-01/13-986-Conf-Red, paras 10-11.

⁹ Decision on Modalities of Disclosure, 22 May 2015, ICC-01/05-01/13-959 (the ‘Disclosure Modalities Decision’), para. 11.

¹⁰ Annex 9 of the Application, CAR-OTP-0085-0340, 0341 (redaction on right side of the page) and 0342 (redaction on right side of the page); Annex 10 of the Application, CAR-OTP-0085-0345 (last redaction on the page); Annex 11 of the Application, CAR-OTP-0085-0346 (last redaction on the page); Annex 12 of the Application, CAR-OTP-0085-0348 (last redaction on the page); Annex 13 of the Application, CAR-OTP-0085-0349 (last redaction on the page).

¹¹ Annex 1 of the Application, CAR-OTP-0074-0860, 0861 (last four redactions on the page); Annex 2 of the Application, CAR-OTP-0074-0872, 0875 (last four redactions on the page).

portions of information contained within such a document'.¹² These redactions are rejected and must be lifted forthwith.

8. [Redacted].¹³ The Prosecution presents no evidence that revealing the personal information at issue establishes any objectively justifiable risk to the safety [Redacted]. No information is presented that revealing such information would have any undue impact on [Redacted] privacy, dignity or psychological well-being. The Chamber is also concerned that this type of information may be potentially important for the Defence. However, the Chamber does consider this information to relate to sensitive matters and will give the Prosecution a final opportunity to supplement its Application. These redactions must be lifted unless, within seven days of notification of the present decision, the Prosecution provides the Chamber with further information justifying maintaining these redactions.

9. [Redacted].¹⁴ The Chamber notes that this information has already been provided to the Defence, and that a Prosecution request to redact this information was already rejected at the confirmation stage.¹⁵ This request is dismissed.

10. [Redacted].¹⁶ [Redacted].¹⁷ [Redacted].¹⁸ [Redacted].

¹² Appeals Chamber, *The Prosecutor v. Thomas Lubanga Dyilo*, Decision on the Prosecutor's request for non-disclosure in relation to document "OTP/DRC/COD-190/JCCD-pt", 27 May 2013, ICC-01/04-01/06-3031, para. 14.

¹³ Annex 7 of the Application, CAR-OTP-0083-1291, paras 19-24.

¹⁴ Annex 6 of the Application, CAR-OTP-0080-0021, 0024-0025; Annex 8 of the Application, CAR-OTP-0084-0472, 0484.

¹⁵ Decision on the "Prosecution's Application for Redactions pursuant to Rule 81(4) of the Rules of Procedure and Evidence" dated 29 August 2014, 10 September 2014, ICC-01/05-01/13-667-Conf.

¹⁶ Annex 3 of the Application, CAR-OTP-0077-1092; Annex 4 of the Application, CAR-OTP-0078-0155, 0156; Annex 5 of the Application, CAR-OTP-0080-0007, 0017.

¹⁷ Annex of the Disclosure Modalities Decision, ICC-01/05-01/13-959-Anx, para. 23 ('The parties have a limited pool of investigators. In the course of their employment, Prosecution investigators in particular work on multiple cases involving multiple situation countries and multiple accused persons. Disclosure of the investigators' identity may put the persons and/or the ongoing investigation at risk. It may also pose security risks to witnesses they interview or contact').

¹⁸ Disclosure Modalities Decision, ICC-01/05-01/13-959, para. 17; Annex of the Disclosure Modalities Decision, ICC-01/05-01/13-959-Anx, para. 25 (a pseudonym requirement was also imposed).

11. As a final note, the Chamber notes that the Arido Defence requests that the Chamber order the Prosecution to disclose the redacted version of the documents for which redactions were sought no later than three days following the notification of the Chamber's decision on the request for redactions.¹⁹ The Chamber recalls that the procedure it has adopted in this case is that the documents at issue should have already been in the defence teams' possession at the time the Application was filed.²⁰ There is no submission that the Prosecution has failed to comply with this procedure on this occasion, but the Chamber wishes to emphasise this point for future purposes.

¹⁹ ICC-01/05-01/13-1003-Conf, para. 47(e).

²⁰ Annex of the Disclosure Modalities Decision, ICC-01/05-01/13-959-Anx, para. 49.

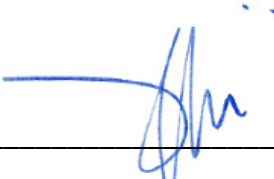
FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

DIRECTS the Prosecution to lift redactions to [Redacted] information, subject to paragraph 8 above;


GRANTS the Prosecution's request to maintain redactions for the [Redacted], so long as they are assigned pseudonyms [Redacted]; and

REJECTS all other requests.


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



Judge Chile Eboe-Osuji, Presiding



Judge Olga Herrera Carbuccia



Judge Bertram Schmitt

Dated 17 June 2015

At The Hague, The Netherlands