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No.: ICC-01/05-01/13
Date: 31 January 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*, Prosecution and Victims and Witnesses Unit Only
Annexes A - F**

**Prosecution's Application for Redactions pursuant to Rule 81(4) of the Rules of
Procedure and Evidence**

Source: The Office of the Prosecutor

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

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I. Introduction

1. The Office of the Prosecutor ("Prosecution") hereby applies for redactions pursuant to Articles 54(3)(f) and 68 of the Rome Statute ("Statute"), and Rule 81(4) of the Rules of Procedure and Evidence ("Rules").

2. On 4 December 2013, the Single Judge of Pre-Trial Chamber II ("Single Judge") decided that "[a]s regard all evidence collected between 23 November 2013 and 31st January 2014 on which the Prosecutor intends to rely for the purpose of the confirmation hearing, no later than Friday, 31st of January the Prosecutor shall disclose it to the Defence *or submit to the Chamber requests for redactions or other protective measures.*"¹

II. Request for Confidentiality

3. Pursuant to Regulation 23(1)*bis* of the Regulations of the Court, the Prosecution requests that Annexes A - F appended to this Application be received by the Single Judge as "Confidential, *Ex parte*, Prosecution and Victims and Witnesses Unit Only" in accordance with Rule 81(4), as they relate to confidential information that should not be released to the Defence at this stage.²

III. Submissions

4. The Appeals Chamber has held that "it may be permissible to withhold the disclosure of certain information from the defence prior to confirming the charge that could not be withheld prior to the trial."³ Additionally, pursuant to Rule 81(4)

¹ ICC-01/05-01/13-T-2-CONF-ENG ET 04-12-2013 page 32, lines 9-13. [Emphasis added].

² See, ICC-01/05-01/13-98, Decision on the "Prosecution's Application for Redactions pursuant to Rule 81(2) of the Rules of Procedure and Evidence", 15 January 2014, para. 5: "It is - and should be - obvious that, for the procedure leading to the Chamber's determination of a request to be effective, the specific, factual reasons underlying a request for redaction under rule 81 must only be submitted to the Chamber and not divulged to the other parties prior to the Chamber's determination as to whether the grounds set forth in rule 81 are met."

³ ICC-01/04-01/07-475, para. 68.

and Articles 54(3)(f) and 68, the Prosecution may submit proposals for redactions to ensure the safety of witnesses, their family members and third persons that may be at risk on account of the Court's activities.⁴

5. The Prosecution seeks redactions for three documents and two audio recordings containing ten tracks which, if authorised by the Single Judge, will be reflected in their corresponding original/ translation documents and transcripts. The Prosecution considers it necessary to redact information such as references to the names and/ or locations of family members of witnesses where this information is (a), not relevant to the proceedings, and (b) is not clearly already accessible to the Defence. The proposed redactions are limited in scope, necessary to protect the safety of the persons concerned who comprise Defence witnesses in the *Bemba* case and/or their relatives and whose statements may be unfavourable to the Defence in this case, and non-disclosure will not cause prejudice because the information has no bearing on the material facts of this case.⁵ *Confidential, Ex parte* Annex A contains justification for each of the proposed redactions; whilst *Confidential, Ex parte* Annexes B, C, D, E and F contain the evidence for which redactions are sought.

⁴ *Prosecutor v. Katanga*, Judgment on Prosecution's Appeal against the First Redaction Decision, ICC-01/04-01/07-475 OA, 13 May 2008, para. 43: In addition to Rule 81(4), "other provisions of the Statute and the Rules that are aimed at ensuring that persons are not put at risk through the activities of the Court and which are not limited to the protection of witnesses and victims and members of their families only", including Articles 43(6), 54(3)(f) and 68(4), and Rules 16-18, 59(2) and 87(1).

⁵ *Prosecutor v. Katanga*, Judgment on Prosecution's Appeal Against the First Redaction Decision, ICC-01/04-01/07-475 OA, 13 May 2008, para. 72.

IV. Relief Sought

6. The Prosecution requests the Single Judge to grant the redactions proposed as set out in *Confidential, Ex parte* Annex A of this Application and highlighted in *Confidential, Ex parte* Annexes B – F.⁶



Fatou Bensouda,
Prosecutor

Dated this 31st January 2014
At The Hague, The Netherlands

⁶ In relation to the two audio recordings, the Prosecution has provided the relevant time-stamps in *Confidential, Ex parte* Annex A and the audio tracks can be found in *Confidential, Ex parte* Annexes E and F.