

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/05-01/13
Date: 7 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 document

with confidential ex parte Annex A- Prosecutor and Registry only

Decision on the “Prosecution’s Application for Redactions pursuant to Rule 81(4) of the Rules of Procedure and Evidence” dated 31 January 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

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

Amicus Curiae

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 Oral Decision issued during the status conference on issues relating to disclosure of evidence in the case held on 4 December 2013,¹ whereby the Single Judge decided, inter alia, that the Prosecutor should, no later than Friday, 31 January 2014, disclose to the Defence all the evidence collected between 23 November 2013 and 31 January 2014 on which she intends to rely for the purpose of the confirmation of charges, or submit to the Chamber requests for redactions or other protective measures;

NOTING the “Prosecution’s Application for Redactions pursuant to rule 81(4) of the Rules of Procedure and Evidence” (“Prosecutor’s Application”) and the confidential, ex parte Annexes attached thereto², filed on 31 January 2014;

NOTING 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 Chamber;³

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

HEREBY RENDER THIS DECISION

Submissions of the Prosecutor

1. In her Application and in the confidential ex parte Annexes thereto, the Prosecutor seeks authorisation, on the basis of rule 81(4) read together with articles 54(3)(f) and 68 of the Statute, to redact some information from a number

¹ ICC-01/05-01/13-T-2-CONF-ENG, page 32, lines 9-13.

² ICC-01/05-01/13-143 with Confidential, ex parte Prosecution and Victims and Witnesses Unit only, Annexes A-F.

³ ICC-01/04-01/06-773 (OA5), ICC-01/04-01/06-568 (OA3), ICC-01/04-01/07-476 (OA2).

of documents (“three documents and two audio recordings”) collected during the month of January 2014, relating to the Prosecution’s investigations in the situation of the Central African Republic on which she may rely for the purposes of the confirmation hearing. In particular, the Prosecutor seeks to redact identifying information (such as “names and/or locations”) and/or information of a personal nature relating either to Prosecutor’s witnesses and/or their family members, or to third persons that may be at risk on account of the Court’s activities, “where this information are (a) not relevant to the proceedings and (b) not clearly already accessible to the Defence”. The Prosecutor submits that the requested redactions are necessary to protect the safety of the persons concerned and that they would not be prejudicial to or inconsistent with the rights of the Suspects, because the redacted information “has no bearing on the material facts of this case”.

Single Judge’s determinations

2. All the redactions are requested under rule 81(4), entrusting the relevant Chamber with the authority to authorise redactions for the protection of witnesses, victims and their family members. Although rule 81(4) only refers to witnesses, victims and their family members, the Appeals Chamber clarified that other provisions of the Statute and the Rules expressly are aimed at ensuring that persons are not put at risk through the activities of the Court and, therefore, that rule 81(4) of the Rules should be read so as to include the words ‘persons at risk on account of the activities of the Court’.⁴

3. In compliance with the established practice of the Pre-Trial Chambers, the Single Judge has identified two sub-categories in which the redactions requested by the Prosecutor can be grouped:

⁴ ICC-01/04-01/07-475.

- A. Names, other identifying information and information of a personal nature pertaining to the family members of Prosecutor's witnesses, or to other third persons who might be put at risk on account of the activity of the Court; information of a personal nature pertaining to Prosecutor's witnesses;
- B. Information relating to the current place of residence or whereabouts of Prosecutor's witnesses, their family members, or of other third persons who might be put at risk on account of the activity of the Court .

4. The following paragraphs provide the reasons underlying the decisions taken in respect of each category of redactions. A table attached to this decision as Annex A, *ex parte* and available only to the Prosecutor and the Registry, lists: (i) each redaction requested; (ii) the reasons provided by the Prosecutor for such redactions; (iii) the Single Judge's decision as to the request, including the specific sub-category in which the redaction falls.

A. Names, other identifying information and information of a personal nature pertaining to the family members of Prosecutor's witnesses, or to other third persons who might be put at risk on account of the activity of the Court; information of a personal nature pertaining to Prosecutor's witnesses

5. Based on the information submitted by the Prosecutor in her confidential, *ex parte* Annex A, the Single Judge is satisfied that, although the witnesses are known to the Suspects, there are nevertheless circumstances warranting the redaction of some information for the purposes of rule 81(4). In particular, disclosing the names, age and other information of a personal nature (such as residential cards, bank details and telephone numbers) of family members of the witnesses, as well as of other third persons who are not involved in the activities of the Court and might be put at risk by its activities, would render them

unnecessarily identifiable and therefore create an unjustifiable risk to their safety. The disclosure of information of a personal nature relating to Prosecutor's witnesses is similarly unwarranted. Non-disclosure of names and other identifying information of third persons mentioned because of the nature of their work is also necessary to avoid that they be perceived as cooperating with the Prosecutor and/or the Court. Redaction of the names of staff of the Court is likewise necessary, with a view not to prejudicing its work.

6. The Single Judge is satisfied that the requested redactions are necessary and adequate with a view to ensuring the protection of the interests enshrined in rule 81(4) of the Rules and that they are the least intrusive measure available.

7. For these reasons, the Single Judge grants authorisation to redact the names, other identifying information and information of a personal nature pertaining to family members of Prosecutor's witnesses, or to other third persons who might be put at risk on account of the activity of the Court; as well as information of a personal nature pertaining to Prosecutor's witnesses, contained in both the documents and audio recordings. The redactions falling within this category will be marked in the table with the letter A.

B. Information relating to the place of residence or whereabouts of Prosecutor's witnesses, their family members, or of other third persons who might be put at risk on account of the activity of the Court

8. Based on the information submitted by the Prosecutor in her confidential, ex parte Annex A, the Single Judge is satisfied that disclosing specific information relating to the current place of residence or whereabouts of the Prosecutor's witnesses, their family members or other third persons who might be put at risk by the activity of the Court might result in putting their safety unnecessarily at risk. By the same token, redacting such information does not

violate the right of the suspects to a fair trial, since the identity of the witnesses is known to the Defence teams.

9. For these reasons, the Single Judge grants authorisation to redact any and all specific information relating to the place of residence or whereabouts of Prosecutor's witnesses, their family members or other third persons who might be put at risk by the activity of the Court. The redactions falling within this category will be marked in the table with the letter B.

FOR THESE REASONS, THE SINGLE JUDGE

GRANTS the Prosecutor's Application and authorises redactions of the following information:

- (i) names, other identifying information and information of a personal nature pertaining to the family members of Prosecutor's witnesses, or to other third persons who might be put at risk on account of the activity of the Court; information of a personal nature pertaining to Prosecutor's witnesses;
- (ii) information relating to the current place of residence or whereabouts of Prosecutor's witnesses, their family members, or of other third persons who might be put at risk on account of the activity of the Court

as set forth in the confidential, ex parte Prosecutor and Registry, Annex A to this decision;

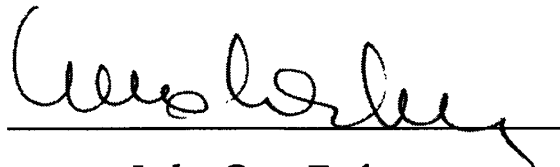
ORDERS

the Prosecutor to disclose to the Defence, no later than **Friday 14 February 2014**,

- (i) the documents contained in Annexes B, C and D to the Prosecution's Application and (ii) transcripts of the audio recordings contained in Annexes E

and F to the Prosecution's Application with the redactions granted in the present decision as set forth in the confidential, *ex parte* Prosecutor and Registry, Annex A hereto.

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

A handwritten signature in black ink, appearing to read 'Cuno Tarfusser', written over a horizontal line.

Judge Cuno Tarfusser
Single Judge

Dated this Friday, 7 February 2014
The Hague, The Netherlands