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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*, only available to the Prosecution and Victims and
Witnesses Unit Annexes A to E**

**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(5) of the Statute and Rule 81(4) of the Rules of Procedure and Evidence (“Rules”).

2. On 4 December 2013, the Single Judge established the pre-confirmation disclosure schedule, setting deadlines for disclosure of evidence on which the Prosecutor intends to rely for confirmation, and allowing the Prosecution to “submit to the Chamber requests for redactions or other protective measures”.¹

3. On 31 January 2014, the Single Judge granted the Prosecution’s request pursuant to Regulation 35 of the Regulations of the Court (“RoC”) and clarified that the applicable disclosure deadline for “newly obtained” materials was 18 March 2014.² This deadline is now 30 May.³

4. During the course of its review of newly obtained materials, the Prosecution identified documents containing identifying and/or contact information pertaining to Arido’s family members, and to other persons who might be put at risk on account of the activities of the Court.

II. Confidentiality

5. Pursuant to Regulation 23(1)*bis* of the RoC, the Prosecution requests that Annexes A to E be classified as “Confidential, *Ex parte*, Prosecution and Victims and

¹ ICC-01/05-01/13-T-2-CONF-ENG, pp. 31-32.

² ICC-01/05-01/13-142, p. 4.

³ ICC-01/05-01/13-255; Rule 121(3).

Witnesses Unit Only”, as they contain confidential information.⁴

III. Submissions

6. The Appeals Chamber has held that “it may be permissible to withhold the disclosure of certain information from the Defence prior to confirming the charges that could not be withheld prior to the trial”.⁵ Additionally, pursuant to Rule 81(4) and Article 54(3)(f), the Prosecution may propose redactions to ensure the safety of third persons who may be at risk on account of the Court’s activities.⁶

7. The Prosecution seeks redactions for 133 newly obtained documents and one document provided by a witness in the *Bemba* case. The Prosecution considers it necessary to redact certain information, such as references to the names, signature, photographs, or contact information of persons who may be at risk on account of the Court’s activities; where this information is (a) not relevant to the proceedings, and (b) not clearly already accessible to the Defence. The proposed redactions are limited in scope, and necessary to protect the safety of the persons concerned, including Defence witnesses in the *Bemba* case, family members of Arido, Court staff, and other persons not involved in the activities of the Court. The non-disclosure of such information is not prejudicial to or inconsistent with the rights of the Suspects because the information has no bearing on the material facts of this case.⁷

⁴ See, ICC-01/05-01/13-98, 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.”).

⁵ ICC-01/04-01/07-475, para. 68.

⁶ *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(s): 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).

⁷ *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.

8. The Single Judge has already granted authorisation to redact similar information in this case, considering the requested redactions to be “necessary and adequate with the view to ensuring the protection of the interest enshrined in Rule 81(4) of the Rules” and to be “the least intrusive measure available”.⁸

9. Confidential, *Ex parte*, Annex A contains the justification for each proposed redaction; Confidential, *Ex parte*, Annexes B, C, D and E contain the evidence for which redactions are sought.

IV. Relief Sought

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



Fatou Bensouda, Prosecutor

Dated this 21st day of March 2014
At The Hague, The Netherlands

⁸ ICC-01/05-01/13-163, Decision of the “Prosecution’s Application for Redactions pursuant to Rule 81(4) of the Rules of Procedure and Evidence”, 7 February 2014, para. 6.