

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 4 April 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 Registrar only

Decision on the “Prosecution’s Application for Redactions pursuant to Rule 81(4) of the Rules of Procedure and Evidence” dated 21 March 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
Catherine Mabilie

Counsel for Jean-Jacques Mangenda Kabongo

Jean Flamme

Counsel for Fidèle Babala Wandu

Jean-Pierre Kilenda Kakengi Basila

Counsel for Narcisse Arido

Göran Kimo 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

Patrick Craig

**Victims Participation and
Reparations Section**

Others

I, Judge Cuno Tarfusser, having been designated as Single Judge of Pre-Trial Chamber II (“Chamber”) of the International Criminal Court;

NOTING the “Decision on the ‘Prosecution’s request for variation of the time limits pursuant to Regulation 35 of the Regulations of the Court concerning the confirmation of the charges’ dated 3 March 2014” dated 14 March 2014¹, whereby the Single Judge amended the calendar for the confirmation of the charges and decided *inter alia* that the Prosecutor should, no later than 30 May 2014, file her document containing the charges and the list of evidence;

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 thereto, dated 24 March 2014²;

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;

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 Chamber³;

HEREBY RENDER THIS DECISION.

Prosecutor’s submissions

1. In her Application, the Prosecutor seeks authorisation to redact some information from “133 newly obtained documents and one document provided by a witness in the Bemba case”, on the basis of rule 81(4) of the Rules read together with articles 54(3)(f) and 68(5) of the Statute. In particular, the Prosecutor seeks to redact identifying information - such as names, signature,

¹ ICC-01/05-01/13-255.

² ICC-01/05-01/13-287, with Confidential, *ex parte* Prosecutor’s and Victims and Witnesses Unit only, Annexes A-E.

³ ICC-01/04-01/06-773; ICC-01/04-01/07-475.

pictures, dates of birth - and/or contact information – such as email addresses and telephone numbers relating to members of Mr Arido's family, witnesses in the case of *the Prosecutor v. Jean-Pierre Bemba Gombo* ("Main Case") and other third persons that may be at risk on account of the Court's activities (including staff members of the Court), "where this information is (a) not relevant to the proceedings and (b) not clearly already accessible to the Defence", with a view to protecting their safety. In her view, since the requested redactions relate to information which "has no bearing on the material facts of the case", they would not be prejudicial to or inconsistent with the rights of the suspects.

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. The Appeals Chamber clarified that rule 81(4) of the Rules should be read broadly, so as to include the words 'persons at risk on account of the activities of the Court'⁴.

3. The Single Judge takes the view that all the requested redactions can be grouped into a single category, since they are all requested for the purpose of protecting the safety of third persons who might be put at risk on account of the activity of the Court.

4. Based on the information submitted by the Prosecutor in her confidential, ex parte Annex A, the Single Judge is satisfied that there are circumstances warranting the requested redactions, as identified in detail in that same Annex A, for the purposes of rule 81(4) of the Rules. In particular, disclosing the names, ages, pictures and other contact information (such as e-mail addresses and telephone numbers) of members of Mr Arido's family, as well as other persons

⁴ ICC-01/04-01/07-475.

connected to him but 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.

5. As far as the redaction of Defence and Prosecution witnesses' contact details is concerned, the Single Judge is persuaded that revealing their contact information, such as their e-mail addresses, would pose an unjustified risk to their safety and is therefore unwarranted.

6. Finally, disclosure of the names and other personal or contact information of third persons mentioned because of the nature of their work is similarly unwarranted, including with a view to avoiding that they be perceived as cooperating with the Prosecutor and/or with the Court. Redaction of the names of staff members of the Court is likewise necessary, with a view not to prejudicing their work.

7. The Single Judge is persuaded that all the requested redactions are necessary and adequate with a view to ensuring the protection of interests enshrined in rule 81(4) of the Rules, that they are the least intrusive measure available and that – in light of the fact that all of the individuals they refer to appear extraneous to the facts of the case - no prejudice to the Defence can be detected as a result of their implementation.

8. By the same token, the Single Judge regrets the non-negligible amount of oversights affecting the submissions contained in Annexes B through E of the Prosecutor's Application. In several instances, a proposal for redaction of a particular piece of information, redaction of which is requested either above or below in the same document, is missing. Whilst the Single Judge has carefully perused the documents in their entirety, and will therefore proceed to grant redactions on his own motion whenever necessary and appropriate in light of the principles set forth in this decision, he reminds the Prosecutor of her duty to

exercise the utmost care in the preparation and supervision of her submissions prior to their filing, with a view to preserving the efficiency and expeditiousness of the proceedings.

9. A table attached to this decision as Annex A, *ex parte* and available only to the Prosecutor and the Registrar, 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 and (iv) the redaction ordered by the Single Judge *motu proprio*.

10. The Single Judge clarifies that, at this stage of the proceedings, he does not take any position either as to the relevance of the material contained in Annexes B through D to the Application, whether for the purposes of rule 77 of the Rules or otherwise, or as to the appropriateness of disclosing it to the Defence teams.

FOR THESE REASONS, THE SINGLE JUDGE HEREBY

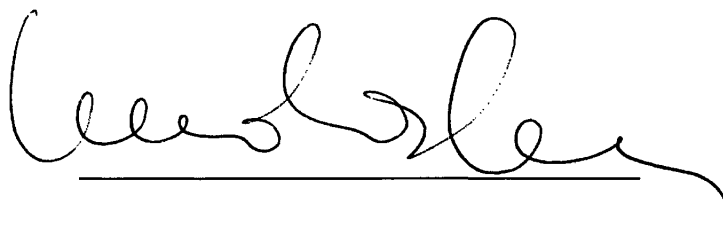
GRANTS the Prosecutor's Application and authorises redaction of the following information:

- (i) names, other identifying information and contact information pertaining to family members of Narcisse Arido's;
- (ii) contact information pertaining to other third persons who might be put at risk on account of the activity of the Court;
- (iii) contact information relating to witnesses in the Main Case;
- (iv) names, identifying and contact information pertaining to staff members of the Court,

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

ORDERS the Prosecutor to disclose to the Defence, no later than Friday 11 April 2014, the documents contained in Annexes B, C and D to her Application with the redactions granted in the present decision, as set forth in the confidential, *ex parte* Prosecutor and Registrar, Annex A hereto.

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

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke at the end, positioned above a solid horizontal line.

Judge Cuno Tarfusser
Single Judge

Dated this Friday, 4 April 2014
The Hague, The Netherlands