

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 28 May 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

**Decision on the "Prosecution's Application for Redactions pursuant to Rule
81(4) of the Rules of Procedure and Evidence" dated 27 May 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

Counsel for Narcisse Arido

Goran 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

Others

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

NOTING the confidential *ex parte* "Prosecution's Application for Redactions pursuant to rule 81(4) of the Rules of Procedure and Evidence" ("Prosecutor's Application" or "Application") and the confidential *ex parte* Annexes attached thereto, dated 27 May 2014¹;

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 2014², 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 articles 54, 57(3)(c), 61 and 67 of the Statute, rules 76, 77, 81(4) and 121 of the Rules of Procedure and Evidence;

CONSIDERING that, whilst the specific factual reasons supporting a request for redactions should indeed not be disclosed to the defence prior to the Chamber making its determinations, there are no reasons warranting the classification as "confidential, *ex parte*" of an application for redactions, which classification runs contrary to well-established practice;

CONSIDERING that the inclusion in the application of the information which the Prosecutor seeks to redact, as done for instance in paragraph 7 of the Application, also runs counter to well-established practice;

CONSIDERING that, accordingly, a public redacted version of the Prosecutor's Application should be filed;

¹ ICC-01/05-01/13-432-Conf-Exp, with Confidential, *ex parte* Prosecutor's and Victims and Witnesses Unit only, Annexes A and B.

² ICC-01/05-01/13-255.

CONSIDERING that the Prosecutor's Application seeks redaction to two witness statements respectively consisting of as many as 142 and 78 pages and that these statements refer to interviews having taken place between as early as 28 February 2014 and 29 April 2014;

CONSIDERING that rule 76 of the Rules mandates the Prosecutor to provide the defence with information relating to and statements of prosecution witnesses "sufficiently in advance to enable the adequate preparation of the defence";

CONSIDERING that, under the circumstances, it is debatable whether the Prosecutor's Application can be regarded as in compliance with the principle whereby requests for redactions should be submitted as early as practicable;

CONSIDERING that, at the very minimum, the need to preserve the expeditiousness of the proceedings would have make it appropriate for the Prosecutor to alert the Chamber as to the existence of additional statements which might require redactions prior to the date set for the filing of the document containing the charges;

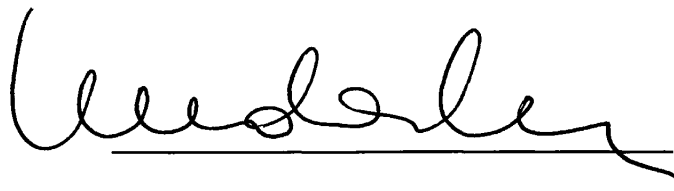
CONSIDERING further that, notwithstanding the fact that the Prosecutor's Application omits to make any reference to it, the current calendar set for the confirmation of the charges is such as to make it absolutely unfeasible for the Chamber to process the Application, the Prosecutor to implement the Chamber's decision on the Application and the witness statements to be included in the list of evidence in redacted form within the given time limit and that, accordingly, the Prosecutor's statement to the effect that "in principle, it will be in a position to disclose their 21 interview transcripts before the end of this week" belies a gross miscalculation of the time required to process a request as extensive as the one contained in the Application;

FOR THESE REASONS, THE SINGLE JUDGE HEREBY

REJECTS the Prosecutor's Application;

ORDERS the Prosecutor to file a public redacted version of her Application on an expedited basis.

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 Wednesday, 28 May 2014
The Hague, The Netherlands