

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 17 June 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 Victims and Witnesses Unit
only**

**Decision on the “Prosecution’s Application for Redactions pursuant to Rules
81(2) and 81(4) of the Rules of Procedure and Evidence” dated 6 June 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

Göran 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

Natacha Schauder

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 “Decision amending the calendar for the confirmation of the charges” dated 28 May 2014¹, whereby the Single Judge decided *inter alia* that the Prosecutor should, no later than 30 June 2014, file her document containing the charges and the list of evidence;

NOTING the “Prosecution’s Application for Redactions pursuant to Rules 81(2) and 81(4) of the Rules of Procedure and Evidence” (“Prosecutor’s Application”) and the confidential *ex parte* Annexes attached thereto, dated 6 June 2014²;

NOTING articles 54, 57(3)(c), 61, 67 and 68 of the Statute, rules 15, 76, 77, 81(2), 81(4) and 121 of the Rules of Procedure and Evidence (“Rules”);

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 “16 interview transcripts of Witnesses P-0245 and P-0260”, as well as from the audio recording of Witness P-0245’s interview, in particular “(i) information related to third persons who might be at risk on account of the Court’s activities; and (ii) information that may prejudice further or ongoing investigation”. In her view, the proposed redactions would not be prejudicial or inconsistent with the rights of the suspect, since they are “limited in scope and

¹ ICC-01/05-01/13-443.

² ICC-01/05-01/13-467, with Confidential, *ex parte* Prosecutor and Victims and Witnesses Unit only, Annexes A-C.

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

necessary to protect the safety of the persons concerned” and the relative information “has no bearing on the material facts of this case”.

Single Judge’s determinations

2. The redactions are requested under article 54(3)(f) of the Statute and Rules 81(2) and 81(4) of the Rules. In accordance with the principles established by the Appeals Chamber, 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 requested redactions can be grouped into three categories:

- A. Names, other identifying information and information of a personal nature pertaining to third persons who are unconnected with these proceedings and who might be put at risk on account of the activity of the Court;
- B. Names and other identifying information of staff members of the Office of the Prosecutor, or individuals hired by the OTP on a temporary basis, disclosure of which is unwarranted, with a view not to prejudicing their work and their safety;
- C. Names and other identifying information of locations where the witnesses’ interviews took place, with a view not to prejudicing the safety of Prosecutor’s staff and witnesses and to avoiding jeopardising ongoing and/or further investigations.

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* available only to the Prosecutor and the Victims and Witnesses Unit, lists: (i) each redaction requested; (ii) the reasons provided by the

⁴ ICC-01/04-01/07-475.

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 third persons who are unconnected with these proceedings and who might be put at risk on account of the activity of the Court

5. 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. The Single Judge is persuaded that revealing this information could endanger third persons whose identities may be unknown to the Defence and put them unnecessarily at risk. By the same token, redacting such information does not violate the right of the suspect to a fair trial, since this information is not relevant to the facts of the current proceedings.

6. For these reasons, the Single Judge grants authorisation to redact any information pertaining to third persons who might be put at risk on account of the activity of the Court. The redactions falling within this category will be marked in the table with the letter A.

B. Names of staff members of the Office of the Prosecutor, or individuals hired by the OTP on a temporary basis, disclosure of which is unwarranted, with a view not to prejudicing their work and their safety

7. Based on the information submitted by the Prosecutor in her confidential *ex parte* Annex A, the Single Judge is satisfied that disclosing specific information identifying staff members of the OTP might put at risk their safety and the ongoing investigations, according to article 54(3)(f) of the Statute, rules 81(2) and 81(4) of the Rules. The Single Judge is persuaded that the requested redactions are necessary and adequate with a view to ensuring the protection of interests

enshrined in those provisions, that they are the least intrusive measure available and that – in light of the fact that all of the individuals they refer to are extraneous to the facts of the case - no prejudice to the Defence can be detected as a result of their implementation.

8. For these reasons, the Single Judge grants authorisation to redact names and identifying information of staff members of the Office of the Prosecutor, or individuals hired by the OTP on a temporary basis, who might be put at risk by the activity of the Court and revealing which might also prejudice the ongoing investigation. The redactions falling within this category will be marked in the table with the letter B.

C. Names and other identifying information of locations where the witnesses' interviews took place, with a view not to prejudicing the safety of Prosecutor's staff and witnesses and to avoiding jeopardising ongoing and/or further investigations

9. Based on information provided by the Prosecutor in her confidential *ex parte* Annex A, the Single Judge is satisfied that disclosing information relating to the place where the witnesses' interviews took place may put unnecessarily at risk the safety of the Prosecutor's staff and witnesses. The Single Judge is persuaded that revealing this information may unduly attract attention to the movements of the Prosecutor's staff and witness and pose an objective risk the ongoing and/or further investigations. By the same token, such redactions do not violate the right of the suspects of a fair trial, since they refer to information not relevant to the facts of the current proceedings.

10. For these reasons, the Single Judge grants authorisation to redact any and all identifying information of locations where the interviews took place. The redactions falling within this category will be marked in the table with the letter C.

11. 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 and C 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:

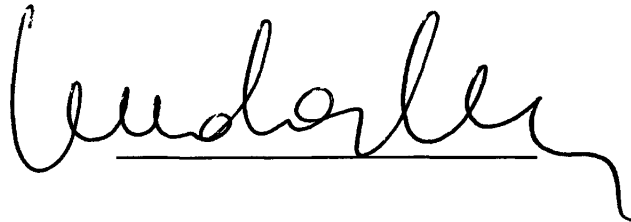
- A. Names, other identifying information and information of a personal nature pertaining to third persons who are unconnected with these proceedings and who might be put at risk on account of the activity of the Court;
- B. Names and identifying information of staff members of the Office of the Prosecutor, or individuals hired by the OTP on a temporary basis, disclosure of which is unwarranted, with a view not to prejudicing their work and their safety;
- C. Names and other identifying information of locations where the witnesses' interviews took place, with a view not to prejudicing the safety of Prosecutor's staff and witnesses and to avoiding jeopardising ongoing and/or further investigations;

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

ORDERS the Prosecutor to disclose to the Defence, no later than Friday 20 June 2014, the documents contained in Annexes B and C to her Application and the

audio recordings of Witness P-0245's interview with the redactions granted in the present decision, as set forth in the confidential, *ex parte* Prosecutor and Victims and Witnesses Unit, 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. The signature is fluid and cursive.

Judge Cuno Tarfusser

Single Judge

Dated this Tuesday, 17 June 2014 at The Hague, The Netherlands