



Original: **English**

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

Date: **13 April 2015**

TRIAL CHAMBER VII

Before: Judge Chile Eboe-Osuji, Presiding Judge
Judge Olga Herrera Carbuccion
Judge Bertram Schmitt

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 with Public Annex A

**Joint Defence Observations on the Redactions Regime for Trial Pursuant to the Trial
Chamber's Order Seeking Submissions in Advance of First Status Conference
(ICC-01/05-01/13-824)**

Source: Counsel for Jean-Pierre Bemba Gombo
Counsel for Aimé Kilolo Musamba
Counsel for Jean-Jacques Mangenda Kabongo
Counsel for Fidèle Babala Wandu
Counsel for Narcisse Arido

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I. INTRODUCTION

1. The Defence for Mr. Bemba, Mr. Kilolo, Mr. Mangenda, Mr. Babala and Mr. Arido (hereinafter collectively ‘the Defence’) submit that a case-by-case assessment of redaction requests, and not a protocol, is the method best suited to redactions in the present case. As a result, the Defence requests that the Trial Chamber approve the following redaction regime:

- a. The Prosecution shall simultaneously submit to the Defence, on an *inter partes* basis, (i) the redacted material and (ii) an explanation thereof, which explanation concerns each redaction in detail;
- b. In the event any redaction is contested by the Defence, the Prosecution shall request authorisation from the Chamber to maintain the disputed redaction/s; and,
- c. The Prosecution remains under an on-going duty to review the necessity of any redactions and to lift them where possible, irrespective as to whether the Defence has contested the redaction/s or not.

2. In the alternative, should the Trial Chamber decide to adopt a protocol, the Defence also submits, in Part B below, (i) its observations on the Prosecution’s proposed protocol¹ as well as (ii) a number of additional positions thereon. The Defence has attached as Annex A to the present filing a version of the Prosecution’s Proposed Protocol that includes the Defence’s suggested modifications in tracked changes.

II. SUBMISSIONS

A. **A case-by-case assessment of redactions is most appropriate in the present case**

1. The circumstances of the present case do not justify the use of standard redactions

3. The Defence takes the position that, given the particular circumstances of the present case, the adoption of a redaction protocol permitting the parties to automatically apply certain

¹ ICC-01/05-01/13-825-AnxB, hereinafter “Prosecution’s Proposed Protocol”.

standard redactions pre-approved by the Trial Chamber (hereinafter ‘Standard Redactions’) is inappropriate.

4. Case-by-case review of redactions has generally been the rule at the Court. Redaction protocols have only been adopted in four cases.² The purpose of such protocols was to “streamline” the redaction process and ensure faster disclosure to the Defence in the face of extremely large volumes of documents requiring redaction.³ The Prosecution argues the same logic applies to this case; however, this contention is erroneous.

5. First, practice in this case to date has demonstrated that the volume of standard redactions will be quite limited. The Prosecution itself recently admitted that of the 750 documents presently under review for disclosure, only forty require redactions.⁴

6. Second, the amount of witness-related material is also limited, with the Prosecution indicating its intention to call only eleven witnesses.⁵ Furthermore, materials relating to most of these eleven witnesses have already been disclosed with redactions approved by the Single Judge at the Confirmation stage.

7. Third, witness protection concerns do not seem to present a major issue and, in any event, the identities of most of the witnesses are already known as a result of disclosure in the Main Case. In addition, the Prosecution has indicated that it does not presently intend to refer any witness to the ICC witness protection program⁶, thus limiting any justification for witness protection-related redactions.

8. Fourth, it is the Defence’s firm position that the adoption of a redaction protocol is not necessary to expedite or streamline the disclosure process. Instead, the Defence submits that an *inter partes* approach be adopted, and that the Trial Chamber be approached only in case of disagreement between the parties. This procedure is detailed in the Defence’s suggested modifications to the Prosecution’s proposed protocol, namely in paragraphs 44-45 of

² ICC-01/09-02/11-495-AnxA-Corr; ICC-01/09-01/11-458-AnxA-Corr; ICC-02/11-01/11-737-AnxA; and ICC-01/04-02/06-411-AnxA.

³ ICC-01/09-02/11-495, para. 12; ICC-01/09-01/11-458, para. 12; ICC-02/11-01/11-737, para. 15; and ICC-01/04-02/06-411, para. 19; ICC-01/04-02/06-382-Corr, para. 4.

⁴ ICC-01/05-01/13-859-Conf, para. 10.

⁵ *Ibid.*, para. 19.

⁶ *Ibid.*

Annex A. Pursuant to this procedure, the Defence, which does not object to the Prosecution's use of codes to indicate the nature of the redaction, requests only that the fullest explanation be given of the justification for the redaction and that a copy of the redacted materials be provided to the Defence to allow it to properly assess the context of the redactions. Only if the Defence objects to the redactions submitted would the Prosecution then need to approach the Trial Chamber to request authorisation for redaction. This process limits the redaction procedure to the parties to the greatest extent possible and, more importantly, would cause no delay to the disclosure process.

9. Fifth, the absence of a redaction protocol at the confirmation stage did not affect the Prosecution's disclosure obligations. In fact, only five requests for redactions were filed during the confirmation proceedings.⁷ Contrarily to the Prosecution's statement that it will "seek the Chamber's authorization upon the adoption of a redaction protocol",⁸ the Defence submits that the Prosecution has the obligation to disclose materials on an on-going basis and therefore, should not be using the absence of the adoption of a redaction protocol as an excuse not to disclose material to the Defence.

10. In short, the Defence submits that a redaction protocol is unnecessary in this case and need not be adopted. Rather, the redaction procedure should be limited to an *inter partes* approach which implicates the Trial Chamber only upon a disagreement between the parties.

2. The use of case-by-case redactions respects the exceptional nature of non-disclosure

11. The Chambers of this Court have consistently held that full disclosure is the rule and redaction is the exception.⁹ The case-by-case review of redactions has generally been the rule at the Court and the use of redactions protocols was made only in four cases.¹⁰ The Appeals Chamber has held that decisions on non-disclosure shall be taken on a case-by-case basis, in

⁷ See ICC-01/05-01/13-98; ICC-01/05-01/13-163; ICC-01/05-01/13-315; ICC-01/05-01/13-503; ICC-01/05-01/13-516.

⁸ ICC-01/05-01/13-859-Conf, para. 10.

⁹ ICC-01/04-01/06-568 OA 3, paras 36, 39 ; ICC-01/04-01/07-475 OA, para. 70 ; ICC-01/04-01/07-476 OA 2, para. 64 ; ICC-01/09-02/11-495, para. 9; ICC-02/11-01/11-737, para. 9; and ICC-01/09-01/11-458, para. 9.

¹⁰ ICC-01/09-02/11-495-AnxA-Corr; ICC-01/09-01/11-458-AnxA-Corr; ICC-02/11-01/11-737-AnxA; and ICC-01/04-02/06-411-AnxA.

cases where there is: (i) the existence of an “objectively justifiable risk”¹¹ to the safety of the person concerned or which may prejudice further or on-going investigations;¹² (ii) the risk must arise from disclosing the particular information to the accused;¹³ (iii) the infeasibility or insufficiency of less restrictive protective measures;¹⁴ (iv) an assessment as to whether the redactions sought are “prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial”;¹⁵ and (v) the obligation to periodically review the decision authorising the redactions should circumstances change.”¹⁶

B. Views on the Prosecution’s proposed redactions protocol

12. Because a protocol on redactions is a limitation on the fundamental principle of full disclosure, should the Trial Chamber choose to adopt such a protocol, the latter must comply with a number of essential requirements, such as, *inter alia*, strict limitations to the categories of standard redactions and reasonable deadlines for lifting such redactions. It is submitted that a protocol on redactions constitutes a limitation to the fundamental principle of full disclosure and must therefore be approached with caution. The following observations are submitted in the alternative, should the Trial Chamber rejects the Defence’s proposed approach.

13. To that end, the Defence provides below its position on the Prosecution’s Proposed Protocol, namely (i) its opposition to the Prosecution’s suggestion of the Standard Redaction categories; and, alternatively, (ii) its opposition to the Prosecution’s proposed changes to the ‘Established Redaction Protocol’, related to the limitations on the use of individual pseudonyms, and the time limits for lifting redaction¹⁷The Defence’s proposed modifications are included in tracked changes in Annex A.

¹¹ ICC-01/04-01/07-475, para. 71.

¹² *Ibid.*, , para. 97.

¹³ *Ibid.*, , para. 71 (b).

¹⁴ ICC-01/04-01/06-568, para. 37, ICC-01/04-01/06-773, para. 33.

¹⁵ ICC-01/04-01/06-773, para. 34

¹⁶ ICC-01/04-01/07-475, para. 73(c).

¹⁷ ICC-01/05-01/13-825 and annexes thereof.

1. List of standard redactions

14. In the first place, categories of standard redactions should be limited to a small number of non-controversial items. To that end, it should be recalled that, to the best of the Defence's knowledge, no serious security concerns have arisen in the present case as regards either the Prosecution's investigations or its witnesses.¹⁸

a. The location of witness interviews/accommodation (category A.1)

15. The Defence opposes this category of information being treated as a standard category for the following reasons: first of all, unlike an Article 5 case, the possibility of multiple Article 70 investigations related to the present case in the same locality is unlikely. The nature of the offence also dictates that the Prosecution should act diligently to complete its investigations in an expeditious manner. For this reason, it is essential that there is, if necessary, effective judicial oversight over this category of redactions in order to ensure that delays in the Prosecution's on-going investigations do not delay the commencement of the trial.

16. Further, this information may contain Article 67 (2) or Rule 78 materials. It is apparent from the statements disclosed during the pre-confirmation phase that witnesses were interviewed at police stations, a location that can have a psychological impact on the witness akin to that of detention. It is therefore a highly relevant factor that must be disclosed so that the Defence can appreciate the context of the questioning. Similarly, if witnesses were all interviewed in the same location in a small village, there is a chance that witnesses would have seen each other enter or leave the building or may have interacted with each other while waiting. Again, this is a factor that might prove relevant to their testimony. Since this case should have a limited investigative scope, the prejudicial impact of redacting this information therefore greatly outweighs the limited need to redact it. The Defence submits that the Prosecution failed to provide an objectively justifiable reason for classifying such information as a standard redaction.

¹⁸ ICC-01/05-01/13-859-Conf, para. 19.

17. Such information should thus be treated as a non-standard redaction and requests for redactions should be made to the Trial Chamber in accordance with the set practice.

18. Should the Trial Chamber decide such information shall be considered a standard redaction, the Defence posits that any redaction should be lifted no later than four months prior to the start of trial.

b. Information related to the VWU or other Court Staff members, including Court's interpreters (Categories A.2.1, A. 2.2, A.2.3, A.2.6, A.3.1, A.3.2)

19. The Defence submits that the Prosecution failed to provide cogent reasons for the redaction of information related to the VWU or other Court Staff members in that the Prosecution has failed to objectively demonstrate why disclosure of their identifying and contact information might put these persons at risk. Rather, the Defence has a *right* to such information, pursuant to which such information should be left categorically *unredacted*. After all, the VWU and Registry staff members are supposed assist and facilitate Defence investigations. As a result, the Defence has the right to know which, if any, VWU or Registry personnel was present at an interview with the Prosecution's witnesses, particularly since that same person/s might also be present during the Defence's interview of the same or other witnesses.

20. Further, the Defence is also entitled to know if Registry interpreters are present at such interviews, as the same persons may be appointed to assist the Defence during their investigations. Finally, and very importantly, the ability to assess the interpreter's professional background qualifies as "material to the preparation of the Defence" within the meaning of Rule 77 of the RPE, particularly where any dispute might arise as to the quality of the interpretation.

21. As such, the Defence contends this category of information should *not* be redacted. Should the Trial Chamber decide otherwise, this category should be treated as a non-standard redaction and the procedure detailed by the Defence in paragraphs 44-45 below should apply.

22. Should the Trial Chamber decide that such information be considered a standard redaction, the Defence submits that any redaction should be lifted no later than four months prior to the start of trial.

c. Identifying information of investigators (category A.4)

23. The Defence opposes the redaction of identifying information of investigators as a standard redaction (Category A.4). Given the potential relevance of this information to the Defence's case preparation and in view of the fact that investigators are not permanently based in the field, as recognized by Trial Chamber V¹⁹, this information should *not* be considered a Standard Redaction. In particular, access to such information is necessary to identify any potential conflict of interest, including regarding their involvement in the Main Case. Further, in light of the fact that certain Prosecution witnesses have changed their evidence during the course of one or several interviews with the Prosecution,²⁰ the identifying information of investigators would also permit the Defence to determine whether to interview or call the investigators involved in such interviews.

24. Such information should be subject of a redaction request made on a case-by-case basis.²¹ The procedure proposed by the Defence and detailed in paragraphs 44-45 below should apply.

25. Should the Trial Chamber decide that such information qualifies as a Standard Redaction, such redactions shall be lifted within a reasonable time upon disclosure of the identity of the last witness interviewed or contacted by that investigator. Prior to the lifting of redactions, the disclosing party shall, in accordance with the provisions of the Prosecution's Proposed Protocol, indicate the unique pseudonym of the investigator in addition to the category code.

¹⁹ ICC-01/09-02/11-495, paras 20-23.

²⁰ See e.g. ICC-01/05-01/13-598-Conf, paras 211-238

²¹ ICC-01/09-02/11-495, para. 23 and ICC-01/09-01/11-458-AnxA-Corr, para. 6.

d. Information related to intermediaries (category A. 5)

26. The rationale against non-disclosure of information related to the location of witness interviews and investigators applies also to intermediaries. Indeed, there is simply no indication that intermediaries may be put at risk if their identities are disclosed to the Defence.

27. In any event, the Defence would like the Trial Chamber to order the Prosecution to indicate (i) whether they are using any intermediaries in the present case, and if so, (ii) the underlying justification for it, and (iii) whether any intermediary who was used in the Main Case is also being used in the present case. It would also request the Trial Chamber to ensure that such individuals have been informed of their obligations under the code of conduct for intermediaries, and that the standard contract for intermediaries has been used. The Defence wishes to express its concern that the use of intermediaries in the current proceedings could compromise the on-going security and protection of Defence witnesses in the Main Case. This is particularly true in light of the fact that concerns have been raised of the Prosecution's intermediaries corruptly influencing witnesses in the Main Case.

28. As a result, such information should be treated as a non-standard redaction and the procedure listed in paragraphs 44-45 below should apply.

29. Should the Trial Chamber decide that such information should be considered a standard redaction, the Defence submits that any redaction should be lifted no later than four months prior to the start of trial.

e. Information related to leads and sources (Category A.6)

30. Given the particular nature of this case, the Defence opposes this category being treated as a standard category. If any 'source' or 'lead' has information concerning the charges, the Defence - in both the Article 70 and the Main Case - has the right to know not only of the existence of third parties in possession of information concerning Defence investigations or witnesses but also the identity of the person in question.

31. In particular, the Defence has a right to be informed of the identity of these individuals in order to determine whether the confidentiality of the Main Case Defence has been

compromised in any manner, and whether there might be implications regarding the on-going security and protection of Defence witnesses and Defence team members, if further investigations are undertaken. Although the Defence does not contest redaction of the lead's *specific* address, the Defence nevertheless has the right to know the person's general location and his/her identity.

32. Regarding the specific categories ranging from A.6.1 to A.6.5, the Defence notes that the Prosecution has failed to objectively justify such broad-ranging Standard Redactions. So far, there has been no indication of such sources/leads even being involved in the present case. As this is not an Article 5 case, the rationale for such broad-ranging security measures are inapplicable.

33. As a result, such information should be treated as a non-standard redaction and the Defence's proposed procedure listed in paragraphs 44-45 below should apply.

34. Should the Trial Chamber decide that such information should be considered a standard redaction, the Defence submits that any redaction should be lifted no later than four months prior to the start of trial.

f. Information related to the means of communication (category A.7)

35. The Defence disagrees with the Prosecution's categorical and entirely unsubstantiated statement that such information is in principle irrelevant to the other party. Firstly, all communications between the Prosecution and its witnesses must be disclosed to the Defence. The fact that the Prosecution might be communicating via a non-ICC email address or via telephone might be relevant as to the authenticity or security of the information (calling into question, for instance, the verification of the person's identity). Further, the Prosecution fails to present objective reasons as to why disclosing such information to the Defence would prejudice the Prosecution or its investigations.

36. It is submitted that this category of information should not be redacted at all. At the very least, the Defence should be entitled to disclosure, even in general terms, of information regarding whether the communication was made in person, by email, or through the phone.

37. Alternatively, it should be treated as a non-standard redaction and the procedure listed in paragraphs 44-45 of the Defence's proposed redaction protocol below should apply.

38. Should the Trial Chamber decide that such information should be considered a standard redaction, the Defence submits that any redaction should be lifted no later than four months prior to the start of trial.

2. Limitations on standard redactions

39. The Defence included a provision limiting the automatic application of standard redactions in cases where the information sought to be redacted falls under Article 67(2) of the Statute or Rule 77 of the RPE.

3. Proposed merging of categories related to unique pseudonyms for intermediaries, leads and investigators

40. Should the Trial Chamber decide, contrary to the Defence's position, that the information discussed in sub-heading B-1 above be qualified as standard redactions, the Defence submits the following.

41. In the Prosecution's Proposed Protocol, all redactions of information under rule 81(2) of the Rules of Procedure and Evidence, for the purpose of protecting further and on-going investigations, are contained in standard redaction categories A.1 to A.7. These categories are further sub-divided in more specific categories. For every person redacted under categories and sub-categories A.2 to A.6, the Established Redaction Protocol provides for the assignment of a unique pseudonym.²² The Prosecution now proposes to merge certain of these subcategories and proposes to limit the amount of categories for which unique pseudonyms must be used. Whereas a unique pseudonym has to be provided for every redaction of a person relevant to further or on-going investigations, the Prosecutor want to limit the use of pseudonyms to the categories of investigators and intermediaries only.²³ These changes were justified by the fact that a large number of redaction options would render the redaction

²² ICC-01/05-01/13-825, paras 12-13.

²³ *Ibid.*, paras 17-18.

system in Ringtail “impracticable, error prone and inefficient” according to the Prosecution.²⁴ As stated above,²⁵ the Defence opposes the classification of investigator’s information as a standard redaction.

42. Even where redaction protocols have been adopted, the Trial Chambers have consistently recognized the potential relevance to the Defence of the knowledge provided by the use of specific pseudonyms. In *Kenyatta and Muthaura* and *Ruto and Sang*, the Chamber ordered the Prosecution to provide unique pseudonyms for intermediaries, and further held investigators’ identities were considered a non-standard redaction.²⁶ In the *Gbagbo* and the *Ntaganda* cases, the pseudonym requirement for intermediaries was maintained and the obligation to use pseudonyms was extended to categories A.2, A.3, A.4 and A.6 (as in the Prosecution’s Proposed Protocol). Trial Chamber VI considered this “a useful element which enables the Defence to better contextualize the underlying information and, as applicable, to cross-reference relevant contacts”.²⁷ According to Single Judge Henderson of Trial Chamber I, “the Defence should be in a position to understand the documents disclosed and scrutinize the circumstances of all witness interviews”.²⁸

43. The Defence believes that technical practicalities should not impede the redaction regime’s compliance with the Prosecution’s statutory obligations and this Court’s jurisprudence. This is all the more important in light of the fact that witnesses D-4 and D-6 in this case have claimed that people working for the Prosecution have inappropriately contacted them and threatened them.²⁹ As redacting information should be exceptional and these categories of information are potentially of great relevance to the Defence’s preparation, every standard redaction should be justified as specifically as possible.

44. Hence, it is crucial that the existing subcategories remain in place, as well as the use of unique pseudonyms for each individual. Identifying the “type” of individual is not sufficient for investigative purposes; the Defence needs to be aware of which precise individual is

²⁴ ICC-01/05-01/13-825, paras 12-19.

²⁵ *Supra*, paras 23-25.

²⁶ ICC-01/09-02/11-495, para. 22; ICC-01/09-02/11-495-AnxA, para. 40; and ICC-01/09-01/11-458-AnxA-Corr, para. 40.

²⁷ ICC-01/04-02/06-411, para. 27.

²⁸ ICC-02/11-01/11-737, para. 26.

²⁹ CAR-D21-0004-0310, p. 11-17 and CAR-D21-0004-0354, p. 13-18.

concerned to be able to compare the documents between themselves and identify situations involving the same individual. Without unique pseudonyms, the Defence is left unable to identify whether, for instance, the same source was used in relation to several matters.

45. As a result, the Defence requests the Trial Chamber to reject the Prosecution's proposed changes to the previous redaction protocols, as contained in paragraphs 12, 19, 22, 25 and 30 of its proposed redaction protocol.³⁰

4. Time limit for lifting redactions regarding investigators

46. Secondly, in its Proposed Protocol, the Prosecution seems to modify the time limit for lifting redactions to identifying information of investigators, as it proposes to maintain the redactions on an on-going basis.³¹ The Prosecution argues that it only has a "limited number of investigators on whom [it] continue[s to] rely until the end of trial" and which investigators meet regularly with witnesses or other individuals assisting the Court.³² Accordingly, the Prosecution asserts disclosure of their identities would heighten the potential risk to those individuals.³³

47. Assuming the Chamber finds that investigators' identifying information are subject to a standard redaction, the Defence opposes the Prosecution's proposed change and requests that the Chamber maintain instead the time limit for lifting the redaction as in the previously adopted protocols. The Prosecution fails to show good cause from departing from this practice, and fails to provide objective reasons that its investigators may be subject to any risk. As a result, the Defence submits that the lifting of redactions related to identifying information of investigators should be lifted "when the identity of the last witness interviewed or contacted by that investigator is disclosed".³⁴

³⁰ ICC-01/05-01/13-825-AnxA, paras 12, 19, 22, 25 and 30.

³¹ *Ibid.*, para. 25.

³² ICC-01/05-01/13-825, paras 21-23.

³³ ICC-01/05-01/13-825, para. 22.

³⁴ ICC-02/11-01/11-737, para. 35 and ICC-01/04-02/06-411, para. 57.

5. Lifting deadline for the redactions of other categories of information

48. For the same reasons, the Defence opposes the deadline proposed by the Prosecution regarding the lifting of redactions under categories A.2-3, A.5 and A.6, namely: redactions of (i) identifying and contact information of parties' staff (excluding investigators), as well as translators, interpreters, stenographers and psycho-social experts assisting during interviews who are not prosecution staff members, and VWU or other Court staff members (including VWU partners), who travel frequently to, or are based in, the field, (ii) identifying and contact information of intermediaries and, (iii) identifying and contact information of leads and sources.

49. Considering the role played by intermediaries and of leads and sources during investigations, information relating thereto is of vital importance to the Defence. For example, intermediaries play a crucial role in contacting witnesses. In *Lubanga*, the Chamber ordered the disclosure of several intermediaries' identities as their role became an important issue relating to possible witness influencing.³⁵ Leads and sources provide the building blocks for the Prosecution's case; indeed, one single lead or source can heavily influence the Prosecution's case.³⁶ It is thus critical to the preparation of the case that the Defence be able to verify the reliability of these building blocks.

50. Considering the potential relevance of this information for the case preparation of the Defence, the Defence requests these redactions to be lifted no later than four months prior to the start of trial.

6. Observations on requests for redactions before the Trial Chamber

51. The Defence requests that the Trial Chamber instruct the parties, upon their inability to reach an agreement *inter-partes*, to apply for redactions on a case-by-case basis, and to justify each redaction individually in accordance with the criteria set out by the Appeals Chamber. Such application should be submitted within one month or less of the Prosecution taking possession of the document containing the said information.

³⁵ ICC-01/04-01/06-2434-Red2, para. 138; ICC-01/04-01/06-2597-Red, para. 46.

³⁶ ICC-02/11-01/11-737, para. 45.

52. Secondly, the Defence requests the Trial Chamber to direct the Prosecution to adopt the practice of filing two requests for redactions – one confidential *ex parte* request to the Chamber and another confidential redacted version for the Defence – after which the Defence may submit observations in accordance with Regulation 34 of the Regulations of the Court.³⁷ This practice would align with the Appeals Chamber’s ruling that, prior to rendering a decision on an application for redactions, a Chamber should “give the Defence the greatest possible opportunity to make submissions on the issues involved, necessarily without revealing to the Defence the information which the Prosecutor alleges should be protected”.³⁸ The Trial Chamber can use its powers under Regulation 34 of the RoC to order that Defence’s responses to redactions requests be filed within a shorter time limit.

53. Thirdly, should redaction requests be granted, the Defence submits that codes should be used to identify the category of information redacted, and respectfully requests permission to make further observations on this matter in response to individual Prosecution’s requests for redactions.

54. Fourthly, the Defence requests that the Trial Chamber, when granting a request for redaction, order the Prosecution to disclose the redacted version of the documents for which redactions were sought no later than three days following the notification of the Chamber's decision on the request for redactions.³⁹

7. Review of redactions

55. The Defence requests the Trial Chamber to direct the Prosecution to review all existing redactions and to either (i) lift them when redaction is no longer needed; (ii) replace them with the appropriate codes when they fall into categories of standard redactions; or (iii) apply for continued redaction according to the procedure for non-standard redactions.

³⁷ ICC-01/04-01/07-819-tENG, para. 10.

³⁸ ICC-01/04-01/07-475 OA, para. 73.

³⁹ ICC-01/05-01/13-T-2-Red-ENG, T. 32, l. 17-19; ICC-01/05-01/13-T-3-Red-ENG, T. 13, l. 6-8.

56. The Defence submits the Prosecution should do so within one month of the decision of the Trial Chamber regarding the redaction regime.⁴⁰ After the expiration of this deadline, such review should take place on a monthly basis.

8. Disputes

57. The Defence included in the Prosecution's Proposed Protocol a section detailing the applicable procedure in case of a dispute relating to the application of standard redactions. This section reflects the provisions of the redaction protocol adopted in *Ruto and Sang*.⁴¹

III. CONCLUSION

58. The Defence hereby respectfully requests the Trial Chamber to order an *inter partes* approach to redactions wherein the redacting party shall directly provide to the receiving party (i) the redacted material and (ii) an explanation thereof, which explanation concerns each redaction in detail, and which approach shall involve the Trial Chamber only where the parties disagree as to the redactions and no agreement can be reached.

59. In the alternative, should the Trial Chamber decide to adopt a redaction protocol, the Defence requests that:

- a. The information covered by categories A.1, A.2.1, A.2.2, A.2.3, A.2.6, A.3.1, A.3.2, A.4, A.5, A.6, A.7, as per the Prosecution's Proposed Protocol (ICC-01/05-01/13-825-AnxB) should be treated as non-standard redactions;
- b. In case information falling in the standard redactions categories falls under Article 67 (2) or Rule 78, a request for redaction should be filed before the Trial Chamber;
- c. Any redaction should be lifted no later than four months prior to the start of the trial;

⁴⁰ ICC-01/09-02/11-495-AnxA-Corr, para. 14 and ICC-01/09-01/11-458-AnxA-Corr, para. 14.

⁴¹ ICC-01/09-01/11-458-AnxA-Corr, paras 16-20.

- d. The redaction of information related to investigators should be lifted when the identify of the last witness interviewed or contacted by them is disclosed;
- e. The lifting deadline for redactions under categories A.2, A.3, A.5 and A.6 should be set to four months prior to the start of the trial;
- f. The Trial Chamber order the Prosecution to review all existing redactions with a view to assess whether they are still justified, and to lift them, replace them with appropriate codes or apply for continued redactions, within one month of its decision on the redaction regime.

60. Should the Trial Chamber reject the Defence's propositions regarding the categories of information falling under the standard redactions qualification, the Defence requests that it adopts the protocol as amended by the Defence, contained in public Annex A.

Respectfully submitted,



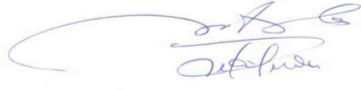
Melinda Taylor, Counsel for Jean-Pierre Bemba Gombo



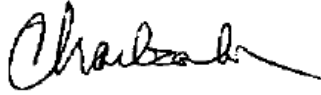
Paul Djunga Mudimbi, Counsel for Aimé Kilolo Musamba



Christopher Gosnell, Counsel for Jean-Jacques Mangenda Kabongo



Jean-Pierre Kilenda Kakengi Basila, Counsel for Fidèle Babala Wandu



Charles Achaleke Taku, Counsel for Narcisse Arido

Dated this 13th Day of April 2015

At The Hague, The Netherlands