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TRIAL CHAMBER VII

Before: Judge Bertram Schmitt, Presiding Judge
Judge Marc Perrin de Brichambaut
Judge Raul Pangalangan

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 Redacted Document
with**

Confidential, *EX PARTE*, only available to Prosecution Annex A

**Public redacted version of "Prosecution's Submissions on Protective Measures in
relation to an Anonymous Informant", 25 March 2014,
ICC-01/05-01/13-292-Conf-Exp**

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. Pursuant to the 20 March 2014 Order of the Single Judge,¹ the Office of the Prosecutor (“Prosecution”) hereby files its Submission elaborating on the protective measures sought for the anonymous informant.

II. Confidentiality

2. This Submission is filed *ex parte* and confidentially, as it relates to a filing and decision of the same designation.

III. Submissions

3. The anonymous informant communicated with the Prosecution by e-mail from [REDACTED].² Throughout this period, the informant never expressly [REDACTED]³ [REDACTED] in this case. It is thus difficult to assess [REDACTED] presently. However, the e-mail exchanges make clear that the informant [REDACTED].⁴ In this context, a careful approach has to be taken.

4. The Prosecution has handled the information provided in the e-mail communications of the informant on a strictly confidential basis until now.⁵ Should the Single Judge order the disclosure of the e-mails, the following information should be redacted to protect the informant’s identity, pursuant to Articles 54(3)(f) and 68 of the Rome Statute (“Statute”), and Rules 81(2) and 81(4) of the Rules of Procedure and Evidence (“Rules”):

- [REDACTED]⁶, since it may be known in the community or to the suspects;

¹ ICC-01/05-01/13-278-Conf.

² A copy of the e-mail exchanges between the Prosecution and the anonymous informant were submitted to the Single Judge on 19 March 2014 as ICC-01/05-01/13-273-Conf-Exp-AnxA.

³ Assuming the individual is [REDACTED].

⁴ ICC-01/05-01/13-273-Conf-Exp-AnxA, p. 21: « [REDACTED] ».

⁵ *Idem*, p. 4: « [REDACTED] ».

⁶ *Idem*, pp. 2-4, 7-17 and 21.

- The e-mail address (i.e., “[REDACTED]”)⁷, since the informant could have used this e-mail address to [REDACTED];
- Any indication of the informant’s (possible) whereabouts (e.g., “[REDACTED]”) and travel plans,⁸ which could constitute an identifying element, especially taken together with other information; and
- References to [REDACTED],⁹ since this could reveal his proximity to the informant (it is uncertain how many individuals – at the time – would have been aware of the [REDACTED]).

5. Pursuant to Articles 54(3)(f) and 68 of the Statute and Rule 81(4) of the Rules, the Prosecution may justifiably propose redactions to ensure the safety of witnesses, their family members and third persons who may be at risk on account of the Court’s activities.¹⁰ According to the Appeals Chamber, “Article 54(3)(f) [...] expressly authorises the Prosecutor to take necessary measures, or to request that necessary measures be taken, to ensure ‘the protection of *any person*’ (emphasis added). This article demonstrates an intention that protection should, in principle, be available to anyone put at risk by the investigations of the Prosecutor”.¹¹ Moreover, pursuant to Rule 81(2) of the Rules, the Prosecution may properly seek redactions to the identities or identifying information of (amongst others) Prosecution sources and Prosecution leads if the disclosure could lead to the intimidation of or interference with these individuals.¹²

6. The information that the Prosecution seeks to redact causes no prejudice to the

⁷ *Idem*, pp. 2, 4, 5, 7, 8, 10, 11, 13-17, 19 and 21.

⁸ *Idem*, pp. 9-11.

⁹ *Idem*, pp. 5, 6, 8-10, 18.

¹⁰ ICC-01/04-01/07-475 OA, para. 43: In addition to Rule 81(4) of the Rules, “there are 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) of the Statute, and Rules 16-18, 59(2) and 87(1) of the Rules.

¹¹ ICC-01/04-01/07-475 OA, para. 44.

¹² The Appeals Chamber stated the principle in respect of potential prosecution witnesses at ICC-01/04-01/07-476 OA, para. 49. Pre-Trial Chamber I reiterated the principle in respect of Prosecution sources and leads: ICC-02/11-01/11-74-Red, para. 100.

Defence.¹³ The Defence teams have access to all of the substantive evidence stemming from the Prosecution's pursuit of the lead-information provided by the informant. In sum, the e-mails at issue contain no material information to which the Defence does not already have access.

7. The proposed redactions are further limited in scope and restricted to that necessary for the protection of the safety of the informant, especially in light of the nature of the charges brought against the suspects in this case and the broad network of their supporters and contacts internationally.¹⁴

8. In this respect, [REDACTED].¹⁵ There is no reason to believe that (1) Bemba poses any lesser such risk, or (2) he or Babala, having shown a proclivity towards circumventing the Registry's communication restrictions, could not indirectly make good on any intended retaliation.

IV. Relief Sought

9. For the foregoing reasons, the Prosecution requests the Single Judge to grant the redactions as highlighted in Confidential, *Ex parte* Annex A of this Application.



Fatou Bensouda, Prosecutor

Dated this 8th Day of July 2016
At The Hague, The Netherlands

¹³ ICC-01/04-01/07-475 OA, para. 72; See also, ICC-02/11-01/11-74-Red, para. 101: "The Single Judge considers furthermore that authorising the requested redactions would not result in the hearing to confirm the charges, viewed as a whole, to be unfair to the Defence insofar as the Defence will still have access to the substantial information contained in the witness statements and have the possibility to challenge them."

¹⁴ As confirmed by the Single Judge in the framework of their requests for interim release: ICC-01/05-01/13-259, paras. 20, 22, 24; ICC-01/05-01/13-258, para. 17; ICC-01/05-01/13-261, paras. 29, 34, 35, 38.

¹⁵ ICC-01/05-01/13-206-Conf-AnxI, p. 2: «[REDACTED]».