

PROTOCOL ESTABLISHING A REDACTION REGIME

IN THE CASE OF THE PROSECUTOR *v.* JEAN-PIERRE BEMBA GOMBO, AIME KILOLO MUSAMBA, JEAN-JACQUES MANGENDA KABONGO, FIDELE BABALA WANDU AND NARCISSE ARIDO

1. This Protocol establishes a redaction regime governing the approval of exceptions to disclosure. It specifies the conditions under which the parties may redact information contained in disclosable material under Article 67(2) of the Rome Statute (the 'Statute') and Rules 76 to 79 of the Rules of Procedure and Evidence (the 'Rules').
2. The present Protocol aims to improve the efficiency of trial management and the expeditiousness of disclosure while ensuring that the proceedings are conducted with full respect for the rights of the accused and with due regard for the protection of witnesses, victims and other persons who might be at risk on account of the activities of the Court.

A. GENERAL PRINCIPLES

3. Under the present redaction regime, exceptions to disclosure are ruled upon by the Chamber by way of two procedures:
 - i. *Standard redactions.* Redactions corresponding to categories covered by standard justifications can be automatically applied by the disclosing party, the Chamber being informed of any dispute arising and seized with a request for relief on a case-by-case basis if needed; and
 - ii. *Non-standard redactions.* Redactions that do not fall under the above mentioned categories will be subject to a case-by-case review by the Chamber following receipt of an application justifying the requested redactions (the 'application-based procedure').

4. Whenever a timeline for lifting redactions is triggered (either by date or circumstances), the disclosing party will lift redactions and disclose the relevant material without seeking the prior leave of the Chamber, unless such an application is necessary under Regulation 42 of the Regulations of the Court (the 'Regulations'). The disclosing party will give notice to the Chamber by way of a disclosure note that redactions have been lifted.

5. Should the receiving party consider that in relation to specific information a redaction should be lifted, it shall raise the request as quickly as possible on an *inter partes* basis with the disclosing party. The parties shall then consult in good faith with a view to resolving the matter and shall inform the Chamber of the outcome of the discussions. In the event of inability to agree, the receiving party may seek the Chamber's intervention through a written application, thereby creating an obligation for the disclosing party to justify the redaction in question following, *mutatis mutandis*, the procedure specified at paragraphs 48-50 below.

6. Unless otherwise provided, any deadline established by the Protocol shall be calculated in accordance with Regulations 33 and 34 of the Regulations.

B. EXISTING REDACTIONS

7. The Prosecution shall conduct a review of the redactions already approved by the Pre-Trial Chamber, in the context of the current proceedings, or another Chamber, in previous proceedings. When the existing redactions are covered by standard justifications, it shall: (i) provide a chart to the Defence that includes the relevant letter codes; and (ii) lift redactions in accordance with the corresponding timeline. Existing redactions approved by the Pre-Trial Chamber which do not fall under the categories approved in this Protocol shall, subject to paragraph 9 below, be lifted and the Prosecution shall clearly identify, in the material disclosed, which information is newly available to the Defence.

8. In respect of redactions authorised by another Chamber, the Prosecution shall also review such redactions to determine whether the circumstances justifying their application in the previous case are relevant in the context of the current proceedings. If not, the Prosecution shall make appropriate applications pursuant to Regulation 42 of the Regulations for the lifting of the redactions for the purposes of the proceedings in this case. Redactions authorised by another Chamber which are not covered by the categories approved in this Protocol but are retained by reason of Regulation 42 of the Regulations do not require approval of the Chamber but shall be marked with letter code 'D'.

9. In the event the Prosecution wishes to maintain existing redactions not covered by Regulation 42 of the Regulations or falling outside the standard categories, it shall follow, *mutatis mutandis*, the application-based procedure specified at paragraphs 48-50 below.

C. STANDARD REDACTIONS

10. Redactions under the eleven categories identified below are covered by standard justifications and can be applied automatically by the disclosing party. Each category is labelled under one of the two sets of justifications (Rule 81(2) and (4) of the Rules) and has been assigned a specific letter code (categories A.1., A.2., A.3., A.4., A.5., A.6., A.7., B.1., B.2., B.3., B.4.). The procedure for an additional third set of justifications is also provided (Rule 81(1)).

11. When a specific redaction falls under a category covered by one of these standard justifications, the disclosing party shall include the relevant letter code in the redaction box without repeating the justification for each redaction falling under this category.¹ This format will allow the reader to immediately recognise the type of underlying information that is redacted in the text and the corresponding standard justification. In the event that

¹ The redaction will not alter the form of the document to enable the reader to see the extent of the redacted information.

the information redacted falls under more than one category, all relevant letter codes are to be indicated.

12. In addition, any person redacted under categories A.2. to A.6. shall be assigned a unique pseudonym, which will accompany the relevant redaction code(s). The purpose of such pseudonyms is to allow the reader of the redacted material to identify whether the same person is referenced across multiple statements. A pseudonym need not be included if doing so would defeat the purpose of the underlying redaction, but the disclosing party must make clear which redactions do not include pseudonyms on this basis.

13. Standard redactions shall be lifted by: (i) the disclosing party in accordance with the timeline set out below; (ii) an agreement between the parties; or (iii) an order of the Chamber deciding otherwise. If the information falls under more than one category, the redaction is to be lifted when all deadlines have expired.

14. When a disclosing party wishes to maintain redactions after the relevant deadline for lifting of the redaction, it shall follow the application-based procedure specified at paragraphs 48-50 below. Redactions implicated by such requests shall be marked by combining the previously assigned letter code with the 'D' code.

A. RULE 81(2) REDACTIONS: PROTECTION OF FURTHER AND ONGOING INVESTIGATIONS

Category A.1. Locations of witness interviews/accommodation

15. *Justification:* Disclosure unduly attracts attention to the movements of the parties' staff and witnesses, and poses an objective risk to ongoing or future investigations. Redaction allows the parties to continue using these locations safely. The information is in principle not relevant to the other party.

16. *Timeline.* Redactions to this information shall be lifted when the location is no longer used in ongoing or future investigations.

Category A.2. Identifying and contact information of parties' staff (specifically, translators, interpreters, stenographers and psycho-social experts and excluding investigators), and VWU or other Court staff members (including VWU partners), who travel frequently to, or are based in, the field

17. *Justification.* Disclosure of this information may put the persons and/or the ongoing investigation at risk. In view of the ongoing or future work in the field of those individuals, any interference with them would jeopardise ongoing and/or further investigations.

18. *Timeline.* Redactions to this information shall be ongoing.

19. In addition to the obligation set out at paragraph 12 above, the disclosing party will indicate staff members in accordance with the following category-codes:

- A.2.1.: Translators and interpreters;
- A.2.2.: Stenographers;
- A.2.3.: Medical experts; and
- A.2.4.: Any other staff member falling within the category.

Category A.3. Identifying and contact information of translators, interpreters, stenographers and psycho-social experts assisting during interviews who are not prosecution staff members but who travel frequently to, or are based in, the field

20. *Justification.* Disclosure of this information may put the persons and/or the ongoing investigation at risk. In view of the ongoing or future work in the field of those individuals, and the difficulty in finding suitable qualified interpreters and psycho-social experts, any interference with them would jeopardise investigations. The information is in principle not relevant to the other party.

21. *Timeline.* Redactions to this information shall be ongoing.

22. In addition to the obligation set out at paragraph 12 above, the disclosing party will indicate professionals in accordance with the following category-codes:

- A.3.1.: Translators and interpreters;
- A.3.2.: Stenographers;

- A.3.3.: Medical experts; and
- A.3.4.: Any other expert falling within the category.

Category A.4. Identifying and contact information of investigators

23. *Justification.* The parties have a limited pool of investigators. In the course of their employment, Prosecution investigators in particular work on multiple cases involving multiple situation countries and multiple accused persons. Disclosure of the investigators' identity may put the persons and/or the ongoing investigation at risk. It may also pose security risks to witnesses they interview or contact.

24. *Timeline for contact information.* Redactions to this information shall be ongoing.

25. *Timeline for identifying information.* Redactions to this information shall be lifted when the identity of the last witness interviewed or contacted by that investigator is disclosed. Prior to the lifting of redactions, the disclosing party, in accordance with paragraph 12 above, will indicate the unique pseudonym of the investigator, in addition to the category code (e.g. A.4.1. for investigator number 1, A.4.2. for investigator number 2, etc.).

Category A.5. Identifying and contact information of intermediaries

26. *Justification.* Disclosure of this information may put the persons and/or the ongoing investigation at risk. Non-disclosure ensures that intermediaries can continue assisting the disclosing party in the investigation in a safe and effective manner.

27. *Timeline.* Redactions to this information shall be ongoing. In accordance with paragraph 12 above, the disclosing party will indicate the unique pseudonym of the intermediary, in addition to the category code (e.g. A.5.1. for intermediary number 1, A.5.2. for intermediary number 2, etc.).

Category A.6. Identifying and contact information of leads and sources

28. *Justification.* To ensure they are not intimidated or interfered with which, in turn, could prejudice ongoing or further investigations.

29. *Timeline.* Redactions to this information shall be ongoing. Where a lead provides material that is disclosed, and provided there are no additional security concerns, the lead will be disclosed as the source in the context of that disclosure.

30. In addition to the obligation set out at paragraph 12 above, the disclosing party will indicate leads and sources in accordance with the following category-codes:

- A.6.1.: Individual sources;
- A.6.2.: Non-profit organisations / governmental agencies;
- A.6.3.: Academic institutions;
- A.6.4.: Private companies; and
- A.6.5.: Other sources.

Category A.7. Means used to communicate with witnesses

31. *Justification.* Disclosure may compromise investigative techniques and the location of witnesses. The information is in principle not relevant to the other party.

32. *Timeline.* Redactions to this information shall be ongoing.

B. RULE 81(4) REDACTIONS: PROTECTION OF VICTIMS, WITNESSES, MEMBERS OF THEIR FAMILIES AND OTHER PERSONS AT RISK ON ACCOUNT OF THE ACTIVITIES OF THE COURT

Category B.1. Recent contact information of witnesses

33. *Justification.* Non-disclosure is necessary to protect the safety, dignity, privacy and well-being of the witness.

34. *Type of information.* Recent contact information, including phone numbers, specific addresses and email addresses. Such information does not include contact information relating to the time period of the charges. When the witness' contact information at the

time of any events relevant to the charges is also his/her current contact information, such contact information falls outside the scope of this category.

35. *Timeline.* Redactions to this information shall be ongoing.

Category B.2. Identifying and contact information of family members of witnesses

36. *Justification.* Family members of witnesses are extremely vulnerable given they have not agreed to be part of the Court process (and may not even be aware of it) and are at risk of being associated with the Court. Non-disclosure is necessary to protect the safety, dignity, privacy and well-being of the family members.

37. *Type of information.* Identifying information of family members, including photographs, as well as contact information including phone numbers, specific addresses and email addresses.

38. *Timeline for contact information.* Redactions to this information shall be ongoing.

39. *Timeline for identifying information.* For family members whose identifying information is redacted solely to protect a witness for whom redactions are no longer justified, redactions shall be lifted when the identity of the witness is disclosed. For family members whose identifying information is redacted on the basis of their own security and who are of no relevance to any known issue in the case, redactions shall be ongoing. The application-based procedure laid out at paragraphs 48-50 shall be followed for any family member falling outside these two scenarios.

Category B.3. Identifying and contact information of 'other persons at risk as a result of the activities of the Court' (also known as 'innocent third parties')

40. *Justification.* These individuals have not agreed to be part of the Court process (and may not even be aware of it) and are at risk of risk of being perceived as potential witnesses or collaborators with the Court. Non-disclosure is necessary to protect their safety, dignity, privacy and well-being.

41. *Type of information.* Identifying and contact information including phone numbers, specific addresses, email addresses and photographs.

42. *Timeline for contact information.* Redactions to this information shall be ongoing.

43. *Timeline for identifying information.* For individuals who are of no relevance to any known issue in the case, redactions shall be ongoing. The application-based procedure laid out at paragraphs 48-50 shall be followed for any individual falling outside this scenario.

Category B.4. Location of witnesses who are admitted in the ICCPP and information revealing the places used for present and future relocation of these witnesses (including before they enter the ICCPP)

44. *Justification.* The confidentiality of these places needs to be maintained to avoid compromising the protection programme and the security of witnesses. The information is in principle not relevant to the other party.

45. *Timeline.* Redactions to this information shall be ongoing.

C. RULE 81(1) REDACTIONS - PROTECTION OF INTERNAL WORK PRODUCT

46. *Legal basis.* In accordance with Rule 81(1) of the Rules, internal work product is not subject to disclosure. Such redactions do not require approval of the Chamber but shall be identified as Rule 81(1) redactions in the material disclosed.

47. *Timeline.* Redactions to this information shall be ongoing.

D. NON-STANDARD REDACTIONS

48. Any other redactions that do not fall under the standard categories will be subject to an application to the Chamber.

49. When the disclosing party seeks to apply redactions which are not based on the standard categories discussed above, disclosure of the relevant material must be accompanied by an application justifying the requested redactions. To that end, the relevant material shall be disclosed in redacted form and each redaction that does not fall under the standard categories shall be marked with letter code 'D'. The application

to the Chamber shall include a chart indicating the location of the redaction, its category and the justification. A redacted version of this application shall be provided to the receiving party, and any observation by the receiving party shall be submitted to the Chamber in accordance with Regulation 34 of the Regulations.

50. Upon receiving these observations, the Chamber will examine the requested redactions on a case-by-case basis in light of the justifications provided by the disclosing party and the observations formulated by the receiving party and thereafter the Chamber will rule on the requested redactions.