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**International
Criminal
Court**

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PRE-TRIAL CHAMBER I

Before: Judge Sylvia Steiner, Single Judge

Registrar: Mr Bruno Cathala

**SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO
IN THE CASE OF
THE PROSECUTOR *v.* GERMAIN KATANGA**

Public Redacted Version

**Corrigendum to the Third Decision on the Prosecution Request for Authorisation
to Redact materials related to the statements of Witnesses 7, 8, 9, 12 and 14**

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I, Sylvia Steiner, judge at the International Criminal Court (“the Court”),

NOTING the “First Decision on the Prosecution Request For Authorisation to Redact Witness Statements”¹ (“First Decision on Redactions”), by which the Single Judge partially grants the Prosecution's request for authorisation to redact information in the interview notes and statements of witnesses 1, 3, 7, 8, 12, 13 and 14;

NOTING the “Prosecution's Application for Leave to Appeal and Urgent Application for Confined Variation of the First Decision on Redaction of Witness Statements” (“the Prosecution Request for Leave to Appeal the First Decision on Redactions”) filed by the Prosecution on 10 December 2007;²

NOTING the *ex parte*, closed session hearing with the Prosecution and the Victims and Witnesses Unit (“VWU”) held on 10 December 2007;³

NOTING the “Decision on Urgent Application for Confined Variation of the First Decision on Redactions”⁴ issued by the Single Judge on 11 December 2007, by which the Single Judge authorised the Prosecution to provisionally maintain those redactions to the interview notes and statements of witnesses 1, 3, 7, 8, 12, 13 and 14 relating to third innocent parties, the identities of OTP and VWU personnel present during the interviews of such witnesses, and the location of the interviews;

¹ ICC-01/04-01/07-84-US-Exp, filed on 3 December 2007, the confidential, *ex parte* version, available only to the Office of Prosecutor and the Defence (ICC-01/04-01/07-88-Conf-Exp), issued on 6 December 2007, and the public redacted version (ICC-01/04-01/07-90), filed on 7 December 2007.

² ICC-01/04-01/07-92-Conf.

³ ICC-01/04-01/07-T-10-Conf-Exp-ENG ET 10-12-2007.

⁴ ICC-01/04-01/07-94.

NOTING the "Decision Establishing Time Limits for Decisions on Protective Measures and Requests for Redactions",⁵ issued by the Single Judge on 12 December 2007;

NOTING the "Defence Motion for Leave to Appeal the First Decision on the Prosecution Request for Authorisation to Redact Witness Statements"⁶ filed by the Defence on 13 December 2007;

NOTING the "Decision on the Prosecution Request for Leave to Appeal the First Decision on Redactions"⁷, issued on 14 December 2007 and by which the Single Judge granted leave to appeal in relation to the following issues:

- (a) whether "Article 54(3)(f) authorises the Prosecution to seek, and Rule 81(4) read in conjunction with that article empower the Chamber to authorise redactions for the protection of 'innocent third parties', i.e. persons who are not victims, current or prospective Prosecution witnesses or sources, or members of their families"; and
- (b) whether the Single Judge erred in the application of the test prescribed by the Appeals Chamber in its 14 December 2006 Decisions by refusing to authorise the redaction of the location of interviews of witnesses, and the identifying information of current and former staff members of the Office of the Prosecutor ("the OTP") and the VWU at this particular stage of the proceedings;

NOTING the "Decision on the Defence Motion for Leave to Appeal the First Decision on Redactions"⁸ issued on 19 December 2007, by which the Single Judge

⁵ ICC-01/04-01/07-97-Conf-Exp-Corr.

⁶ ICC-01/04-01/07-99.

⁷ ICC-01/04-01/07-108.

⁸ ICC-01/04-01/07-116.

granted leave to appeal in relation to the issue: "whether the Single Judge enlarged the scope of application of rule 81(2) of the Rules by considering as Prosecution sources those individuals - whose identity and identifying information could be redacted pursuant to the said rule - who, despite not being Prosecution witnesses for the purpose of the confirmation hearing, have been or are about to be interviewed by the Prosecution";

NOTING the "Decision on the Prosecution Request for Authorisation to Redact Statements of Witnesses 4 and 9" ("the Second Decision on Redactions"), ⁹ issued by the Single Judge on 21 December 2007, by which the Single Judge (i) partially granted the Prosecution's request for authorisation to redact information in the interview notes and statements of witnesses 4 and 9 and (ii) authorised the Prosecution to provisionally maintain those redactions to the interview notes and statements of Witnesses 4 and 9 which the Prosecution requested in order to protect innocent third parties, the identities of OTP and VWU staff present during the interviews of such witnesses, and the location of the interviews, until the Prosecution's interlocutory appeal relating to such redactions is decided upon;

NOTING the "Prosecution's Application Pursuant to Rule 81(2) and Rule 81(4) for Redactions to Statements of Witnesses and Related Materials to Be Relied Upon at the Confirmation Hearing"¹⁰ filed by the Prosecution on 15 January 2008;

NOTING the "Corrigendum to Prosecution's Application Pursuant to Rule 81(2) and Rule 81(4) for Redactions to Statements of Witnesses and Related Materials to Be

⁹ ICC-01/04-01/07-123-Conf-Exp, the confidential redacted version available to the Defence (ICC-01/04-01/07-124-Conf), issued on 21 December 2007, and the public redacted version (ICC-01/04-01/07-160), filed on 23 January 2008

¹⁰ ICC-01/04-01/07-145 and ICC-01/04-01/07-145-Conf-Exp-Anx1 to AnxP2.

Relied Upon at the Confirmation Hearing dated 14 January 2008 and Submission of Additional Materials”¹¹ filed by the Prosecution on 16 January 2008;

NOTING the “Prosecution’s Application Pursuant to Rule 81(2) and Rule 81(4) for Redactions to Documents to Be Relied Upon at the Confirmation Hearing”¹² filed by the Prosecution on 21 January 2008;

NOTING the “Second Corrigendum to Prosecution’s Application Pursuant to Rule 81(2) and Rule 81(4) for Redactions to Statements of Witnesses and Related Materials to Be Relied Upon at the Confirmation Hearing Dated 14 January 2008 and Submission of Additional Materials”¹³ filed by the Prosecution on 22 January 2008;

NOTING the “Submission of the Document Containing the Charges and of the List of Evidence” filed by the Prosecution on 29 January 2008;¹⁴

NOTING the *ex parte*, closed session hearing with the Prosecution on 4 February 2008;¹⁵

NOTING the “Amended Submission of Prosecution’s Application Pursuant to Rules 81(1), 81(2) and 81(4) for Redactions to Screening Notes and Transcripts of Witnesses 7, 8, 9 and 12 as Requested by the Single Judge”¹⁶ (“the Prosecution Amended Request”) filed by the Prosecution on 8 February 2008;

¹¹ ICC-01/04-01/07-147-Conf-Exp and ICC-01/04-01/07-147-Conf-Exp-AnxF1 to AnxF14, AnxJ12 to AnxJ15 and AnxK1 to AnxK6.

¹² ICC-01/04-01/07-151; ICC-01/04-01/07-151-Conf-Exp-AnxI and ICC-01/04-01/07-Conf-Exp-AnxA-AnxH.

¹³ ICC-01/04-01/07-155-Conf-Exp and ICC-01/04-01/07-145-Conf-Exp-AnxD4-Corr.

¹⁴ ICC-01/04-01/07-170; ICC-01/04-01/07-170-Conf and its confidential annexes and ICC-01/04-01/07-170-Conf-Exp and its confidential and *ex parte* annexes.

¹⁵ ICC-01/04-01/07-T- 16-Conf-Exp ET 04-02-2008.

¹⁶ ICC-01/04-01/07-190-Conf-Exp; ICC-01/04-01/07-190-Conf-Exp-AnxD1-AnxD4; ICC-01/04-01/07-190-Conf-Exp-AnxE1-AnxE2; ICC-01/04-01/07-190-Conf-Exp-AnxF1-AnxF13 and ICC-01/04-01/07-190-Conf-Exp-AnxI1-I13.

NOTING the *ex parte* and closed session hearing held with the Prosecution and the VWU on 3 March 2008;¹⁷

NOTING articles 54, 57 (3) (c), 61, 67 and 68 of the *Rome Statute* ("the Statute") and rules 15, 76, 77, 81 and 121 of the *Rules of Evidence and Procedure* ("the Rules")

I. Introductory Remarks

1. In its various applications pursuant to rules 81 (1), (2) and (4) of the Rules, the Prosecution is requesting certain redactions in relation to the statements, investigator notes and transcripts of interviews of a number of witnesses on which the Prosecution intends to rely at the confirmation hearing. However, as the Single Judge has already stated, her ruling on a number of these pending requests for redactions depends on the decision by the Registrar on whether the relevant witnesses will be accepted into the Court's witness protection program and on the subsequent implementation of the protective measures accorded to them.¹⁸ As a result, as the Single Judge has already stated, she is not, to date, in a position to rule on all Prosecution requests for redactions to the statements, investigator notes, transcripts of interviews and documents relating to a number of witnesses on which the Prosecution intends to rely at the confirmation hearing.¹⁹ Nevertheless, the Single Judge notes that some of the Prosecution's applications for redactions relate to materials provided by witnesses 8 and 14, for which protective measures have already been implemented as well as to the investigator's notes, screening notes and transcripts of the interviews of witnesses 7, 8 and 9, for which protective measures have also already been implemented.

¹⁷ ICC-01/04-01/07-T-20-Conf-Exp-ENG RT.

¹⁸ ICC-01/04-01/07-172, pp.6-7.

¹⁹ ICC-01/04-01/07-172, pp.6-7.

2. The Single judge recalls her First and Second Decisions on Redactions in which she authorised certain redactions to interview notes and statements of witnesses 7, 8, 9 and 14 and ordered the Prosecution to disclose, with the authorised redactions, the aforementioned materials pursuant to rule 76 of the Rules. The Single judge notes that the redactions now requested by the Prosecution in the investigator's notes, screening notes and transcripts of the interviews of Witnesses 7, 8, 9 and 14 as well as to the materials provided by these witnesses are, to an important extent, similar to those previously requested and partially granted by the Single Judge.

3. In the First and Second Decisions on Redactions the Single judge further underlined that the Prosecution's request for authorisation for redactions in relation *inter alia* to witnesses 7, 8 and 9 constitutes a change in the approach adopted by the Prosecution during the proceedings leading up to the confirmation hearing in the case of *The Prosecutor v. Thomas Lubanga Dyilo*.²⁰ In those proceedings, the Prosecution did not request authorisation for any redactions to the statements of the six child soldiers who were accepted into the VWU's protection programme.²¹ As a result, the Single Judge emphasized that:

Only in a few instances where the Single Judge has found compelling reasons to depart from the practice in the case ICC-01/04-01/06 will the Single Judge authorise the requested redactions. Such redactions will be authorised after ensuring that the requirements set out by the Appeals Chamber in its two 14 December 2006 decisions are met.²²

Hence, in order for any redaction in any given statement to be authorised, the Single Judge must, first and foremost, have reached the conclusion that there is a risk that the disclosure to the Defence – at least at this stage of the proceedings – of the information sought to be redacted could (i) prejudice further or ongoing investigations by the Prosecution (rule 81(2) of the Rules); (ii) affect the confidential character of the information under articles 54, 72 and 93 of the Statute (rule 81(4) of the Rules); or (iii) affect the safety of witnesses, victims or members of their families (rule 81(4) of the Rules). Moreover, after ascertaining the existence of such a risk, the Single Judge will analyse whether (i) the requested redactions are adequate to eliminate, or at least, reduce such a risk; (ii)

²⁰ *First Decision on Redactions*, paras. 2 -4 and *Second Decision on Redactions*, paras. 5-6.

²¹ ICC-01/04-01/07-T-7-Conf-Exp-ENG [30Oct2007Edited], p. 3, lines 4-18.

²² *First Decision on Redactions*, para 3. See also, ICC-01/04-01/06-773 and ICC-01/04-01/06-774.

there is no less intrusive alternative measure that can be taken to achieve the same goal at this stage; and (iii) the requested redactions are not prejudicial to or inconsistent with the rights of the arrested person and a fair and impartial trial. Only when these three additional questions have been answered in the affirmative will the Single Judge authorise the redactions requested by the Prosecution.²³

4. The Single Judge also recalls that Witness 12 has died and that requests for redactions to his statement pursuant to rule 81 (2) and (4) of the rules have already been made by the Prosecution and decided upon in the First Decision on Redactions. In this regard, the Single Judge emphasizes that (i) since Witness 12 was never informed by the Prosecution that his statement would be used in the case against Germain Katanga²⁴ and (ii) as the statement of Witness 12 was included as supporting material in the Prosecution's Application for the issuance of a warrant of arrest for Germain Katanga, and was relied upon by the Chamber in issuing the relevant warrant of arrest, the Single Judge was of the view that such a statement was material for the Defence's preparation for the confirmation hearing within the meaning of rule 77 of the Rules. As a result, after partially granting the Prosecution request for redactions to the statement of Witness 12, the Single Judge ordered the Prosecution to make his statement available to the Defence through the system of pre-inspection and inspection provided for in rule 77 of the Rules and followed in the case 01/04-01/06.²⁵

5. The Single Judge notes that the Prosecution has expressed its intention to rely upon Witness 12's statement for the purpose of the confirmation hearing²⁶ and has requested the Single Judge to suspend all admissibility questions until a final ruling of the Chamber on the joinder of the cases of *The Prosecutor v. Germain Katanga* and *The Prosecutor v. Mathieu Ngudjolo Chui*.²⁷

²³ *First Decision on Redactions*, para. 4. See also, ICC-01/04-01/06-773, paras. 21, 33 and 34; ICC-01/04-01/06-774, paras. 31-33.

²⁴ *First Decision on Redactions*, para.12. See also ICC-01/04-01/07-T-8-Conf-Exp-ENG [31Oct2007Edited], p. 7, lines 22-25 and p. 8, lines 1-16.

²⁵ *First Decision on Redactions*, para.12.

²⁶ See the "Submission of the Document Containing the Charges and of the List of Evidence" filed by the Prosecution on 29 January 2008 (ICC-01/04-01/07-170 and its Annexes; ICC-01/04-01/07-190-Conf-Exp, p.5

²⁷ ICC-01/04-01/07-T-18-Conf-ENG ET, page 43, lines 3-10.

6. The Single Judge also observes that on 16 and 22 January 2008, the Prosecution filed two corrigenda to its request for redactions to investigator's notes, screening notes and interview transcripts relating to, *inter alia*, the statements of witnesses 7 and 9. Moreover, in light of the hearing held on 4 February 2008, the Prosecution amended its requests for redactions to the screening notes and transcripts related to witnesses 7, 8, 9 and 12.²⁸ As the Prosecution Amended Application alters the initial requests for redactions to the aforementioned materials, all references to the witness statements and interview notes in the present decision and in its Annex I shall refer to the Prosecution Amended Request filed on 8 February 2008.

7. The Single Judge further notes that in its filing of 8 February 2008, the Prosecution brought to the attention of the Single Judge that two of the transcripts of the interview of Witness 12 have inadvertently been filed with redactions. This concerns the following documents: (i) ICC-01/04-01/07-190-Conf-Exp-AnxI4 (DRC-OTP-0173-0616), page 15, line 435, where the redacted word is "parade" and (ii) ICC-01/04-01/07-190-Conf-Exp-AnxI9 (DRC-OTP-0173-0788) page 19, line 615, where the redacted word is "douzième".

8. In carrying out her analysis, the Single Judge has classified the redactions requested by the Prosecution into the following eight categories: (a) names and identifying information of family members of Prosecution witnesses; (b) current whereabouts of family members of Prosecution witnesses; (c) potential Prosecution witnesses; (d) innocent third parties; (e) name and identifying information of victims of sexual offences; (f) information related to present and future protective measures; (g) internal documents prepared by the Prosecution, and (h) place where the interviews were conducted, and the names, initials and signatures of the persons present when the witness statements were taken.

²⁸ ICC-01/04-01/07-190-Conf-Exp.

9. Moreover, for the purpose of her analysis, the Single Judge considers that the security situation and context in which the Prosecution requests are made are the same as the ones mentioned in the First²⁹ and Second³⁰ Decisions on Redactions.

10. Due to the fact that the reasons for granting or rejecting the Prosecution's requests in relation to those redactions included within the same category are very similar, the Single Judge – following the practice of Pre-Trial Chamber I in Annex I to the *Decision on the Confirmation of Charges* in the case of *The Prosecutor v. Thomas Lubanga Dyilo* – has decided to provide a full explanation of her decision with respect to each category of redactions.

11. In Annex I to this decision, which is issued *ex parte* and available only to the Prosecution, the Single Judge, following the procedure prescribed by the Appeals Chamber,³¹ specifies to which of the eight categories each of the redactions requested by the Prosecution belongs. Furthermore, in those instances in which the specific nature of the redactions requested by the Prosecution so requires, the Single Judge has provided in Annex I to this decision an additional explanation of her decision concerning specific redactions.

II. Categories of Redactions

A. Names and Identifying Information of Family Members of Prosecution Witnesses

12. The Prosecution requests authorisation pursuant to rule 81 (4) of the Rules to redact the names and any identifying information of all family members of Witnesses [REDACTED] and [REDACTED].³²

²⁹ *First Decision on Redactions*, paras. 13 to 22

³⁰ *Second Decision on Redactions*, para. 10.

³¹ ICC-01/04-01/06-773, para. 22.

³² ICC-01/04-01/07-T-7-Conf-Exp-ENG [30Oct2007Edited], p. 11, lines 16-20.

13. The Single Judge has already held that:

“for the purpose of rule 81(4) of the Rules, the notion of “members of [the] family” of witnesses should be considered as including guardians. In this regard, the Single Judge points out that (i) guardians exercise parental powers and responsibilities over the minors under their guardianship and that consequently (ii) the risk to their safety and/or physical and psychological well-being as a result of disclosing to the Defence the identities of those Prosecution witnesses under guardianship is not less than the risk faced by close relatives of such witnesses.”³³

14. In the security situation and context referred to in the First and Second Decisions on Redactions, the Single Judge is of the view that disclosing the names and identifying information of family members of Prosecution witnesses (including guardians), particularly of those currently located in the Ituri district and the Kinshasa area, could pose a risk to their safety and/or physical and psychological well-being.

15. Nevertheless, the Single Judge recalls that some witnesses are very close to Germain Katanga and that if the names of the Prosecution witnesses are revealed to Germain Katanga, he will be in a position to immediately identify their family members. This is the case for Witness [REDACTED]³⁴ and of Witness [REDACTED].³⁵

16. Moreover, the Single Judge has already considered that:

“some Prosecution witnesses are public figures and that if their identities are revealed to Germain Katanga, he will be in a position to immediately identify their family members, save for those cases in which the relevant family members are minors and thus have no connection with the activities of their parents.”³⁶

17. As the Single Judge already held, Witnesses [REDACTED] and [REDACTED] are neither public figures nor very close to Germain Katanga³⁷, and thus disclosing the names and identifying information of family members of Witnesses [REDACTED] and [REDACTED], particularly of those currently located in the Ituri

³³ *First Decision on Redactions*, para.30.

³⁴ [REDACTED] and ICC-01/04-01/07-T-7-Conf-Exp[30Oct2007Edited], p. 7, line 22.

³⁵ ICC-01/04-01/07-T9-Conf-Exp-ENG ET 20-11-2007, p. 36, lines 12-19.

³⁶ *First Decision on Redactions*, paras.33 and 34.

³⁷ *First Decision on Redactions*, para 34 and *Second Decision on Redactions*, para.43.

district or in the Kinshasa area, in the security situation and context referred to in the First and Second Decisions on Redactions, could pose a risk to their safety and/or physical and psychological well-being.

18. Therefore, in the view of the Single Judge, the disclosure of the names and identifying information of the family members of Witnesses [REDACTED] and [REDACTED] will increase the risk that they could be identified, and hence will pose an additional risk to their security and well-being. Moreover, the Single Judge considers that the redactions requested are adequate to minimize this risk and that, at this stage, there is no less intrusive alternative measure that can be taken to achieve the same goal. Furthermore, in the view of the Single Judge, the redaction of this information is not prejudicial to or inconsistent with the rights of the Defence and a fair and impartial trial insofar as (i) the Defence will have access to the identities of the witnesses who gave the statements; and (ii) the family members are not referred to as having any knowledge of the crimes set out in the Prosecution's Charging Document against Germain Katanga.

19. For these reasons, the Single Judge grants authorisation for the redactions relating to the names and identifying information of the family members of Witnesses [REDACTED] and [REDACTED] as detailed in Annex I to this decision.

B. Current whereabouts of family members of Prosecution Witnesses

20. The Prosecution submits that the family members [REDACTED] and could [REDACTED] thus, tracked down by members of the FNI/FRPI.³⁸

21. Considering the security situation and context referred to in the First and Second Decision on Redactions, the Single Judge is of the view that disclosing to the Defence information that could lead to the identification of the current whereabouts of the family members of Prosecution witnesses, particularly those currently located

³⁸ ICC-01/04-01/07-T-7-Conf-Exp-ENG [30Oct2007Edited], p. 11, lines 16-20; p. 42, lines 21-25 and p. 43, lines 1-2.

in the Ituri district or in the Kinshasa area, could pose an additional risk to their safety and/or physical well-being. The Single Judge considers that this will be the case both in those situations where the identities of the Prosecution witnesses' family members are known to the Defence (such as in the cases of the family members of witnesses [REDACTED] and [REDACTED]) and in those other situations in which such identities are not known (such as in the cases of the family members of witnesses [REDACTED] and [REDACTED]). In addition, in those instances where the identities of the family members are not known, the current whereabouts of the Prosecution witnesses' family members can also constitute identifying information.

22. Moreover, the Single Judge considers that the redactions requested by the Prosecution, which are limited to the current whereabouts of family members of witnesses [REDACTED] and [REDACTED] or to information that could lead to the identification of such whereabouts, are adequate to minimize this risk and that, at this stage, there is no less intrusive alternative measure that can be taken to achieve the same goal. Furthermore, in the view of the Single Judge, the redaction of this information is not prejudicial to or inconsistent with the rights of the Defence and a fair and impartial trial insofar as (i) the Defence will have access to the identities of the witnesses who gave the statements; (ii) and the family members are not referred to as having any knowledge concerning the crimes included in the Prosecution's Charging Document against Germain Katanga.

23. For these reasons, the Single Judge grants authorisation for the redactions relating to the current whereabouts of the family members of Witnesses [REDACTED] and [REDACTED] as detailed in Annex I to this decision.

C. Potential Prosecution Witnesses

24. The Prosecution requests authorisation to redact in the transcript of the interview of Witness [REDACTED] any identifying information concerning individuals who have already been interviewed by the Prosecution or whom the

Prosecution intends to interview in the near future, and in relation to whom the Prosecution has not yet decided whether they will become Prosecution witnesses.

25. The Prosecution's request concerning this type of redactions was originally made under rule 81(4) of the Rules because the Prosecution considered that the term "witnesses" in the context of this provision extends to "prospective witnesses", that is, any individual contacted, or intended to be contacted by the Prosecution, and who may or may not become a Prosecution witness at a later stage. Nevertheless, at the hearing held on 20 November 2007, the Prosecution also requested, in the alternative, that the redactions which fall within this category be authorised pursuant to rule 81(2) of the Rules, because the individuals affected could also be considered to be Prosecution sources, and ongoing and further investigations could be prejudiced if they were to be threatened, intimidated or interfered with.³⁹

26. As the Single Judge has already held:

[...] in the proceedings leading to the confirmation hearing, only those individuals on whose statements the Prosecution intends to rely at the confirmation hearing can be considered "witnesses" within the meaning of rule 81(4) of the Rules. Any other individual who has already been interviewed by the Prosecution, or whom the Prosecution intends to interview in the near future, in relation to the case at hand is more appropriately characterised as a "Prosecution source" rather than as a "Prosecution witness". Hence, any redaction relating to their identities must be justified by the need to ensure the confidentiality of information pursuant to rule 81(4) of the Rules or to avoid any prejudice to further or ongoing investigations pursuant to rule 81(2) of the Rules.⁴⁰

The Single Judge observes that the Prosecution does not allege that the redactions falling under this category are needed to ensure the confidentiality of information under rule 81(4) of the Rules. Nevertheless, the Single Judge notes that, as opposed to the so-called "innocent third parties" dealt with in the next section, the individuals concerned by this category of redactions have been interviewed by the Prosecution, or are about to be interviewed by the Prosecution, in relation to the case against Germain Katanga or in relation to further Prosecution investigations. Therefore, the Prosecution's further or ongoing investigations could be prejudiced if such individuals were to be threatened, intimidated or interfered with.⁴¹

³⁹ *First Decision on Redactions*, paras.39-42, *Second Decision on Redactions*, para.49. See also ICC-01/04-01/07-T9-Conf-Exp-ENG ET 20-11-2007, p. 7, lines 8-25 and p. 8, lines 1-11 and ICC-01/04-01/07-T9-Conf-Exp-ENG ET 20-11-2007, p. 22, lines 4-20.

⁴⁰ *First Decision on Redactions*, para. 41.

⁴¹ *First Decision on Redactions*, para. 42.

27. Hence, the Single Judge shall discuss each of the redactions included under this specific category separately in Annex I to the present decision, insofar as the individuals concerned are currently located in different places and have been contacted or are to be contacted in the near future by the Prosecution in relation to different incidents.

28. Finally, the Single Judge is mindful that that the issue of “whether the Single Judge enlarged the scope of application of rule 81(2) of the Rules by considering as Prosecution sources those individuals – whose identities and identifying information could be redacted pursuant to the said rule – who, despite not being Prosecution witnesses for the purpose of the confirmation hearing, have been or are about to be interviewed by the Prosecution” is currently pending before the Appeals Chamber; and that, therefore, any authorisation for redactions of the names and identifying information of potential Prosecution witnesses in the transcripts of the interview of Witness [REDACTED] is subject to the final decision of the Appeals Chamber on this matter.

D. Innocent Third Parties

29. The Prosecution requests authorisation pursuant to rule 81(4) of the Rules to redact all identifying information concerning a number of individuals referred to as “innocent third parties” by the Prosecution. In this regard, the Single Judge stated in the First Decision on Redactions:

“[w]hen acting pursuant to article 54(3)(f) of the Statute, the Prosecution is not entitled to redact *proprio motu*, but can only request authorisation to do so from the competent Chamber pursuant to rule 81 of the Rules.”⁴²

30. However, the Single Judge has already ruled that:

“[r]edactions concerning individuals other than Prosecution witnesses, victims or members of their families may only be authorised (i) if they are needed to ensure the confidentiality of information pursuant to rule 81(4) of the Rules; or (ii) in order not to prejudice further or ongoing Prosecution investigations because such individuals are Prosecution sources pursuant to rule 81(2) of the Rules. Otherwise,

⁴² *First Decision on Redactions*, para. 52.

the use of redactions is not a measure that is available to ensure the protection of these individuals.”⁴³

31. Since the Prosecution explicitly states that none of the individuals referred to as “innocent third parties” is a Prosecution source or is in any way involved in any ongoing or further Prosecution investigation, and that the relevant redactions have been only requested because such individuals could erroneously be perceived as Prosecution sources or witnesses, the Single Judge cannot authorise those redactions requested by the Prosecution in relation to “innocent third parties”.

32. However, the Single Judge realizes that the issue of whether “article 54(3)(f) authorises the Prosecution to seek, and rule 81(4) read in conjunction with that article empower the Chamber to authorise, redactions for the protection of “innocent third parties”, i.e. persons who are not victims, current or prospective Prosecution witnesses or sources, or members of their families” is currently pending before the Appeals Chamber, and that, therefore, in order to preserve the effectiveness of the decision of the Appeals Chamber on this matter, it is necessary to authorise the Prosecution to provisionally maintain those redactions in the investigator’s notes, screening notes and transcripts of interviews of Witnesses [REDACTED] and [REDACTED] and in the materials provided by Witness [REDACTED] which the Prosecution requested in order to protect innocent third parties, until the Appeals Chamber rules on the abovementioned issue.

E. Name and identifying information of Victims of Sexual Offences

33. The Single Judge observes that the Prosecution requests authorisation, under rule 81(4) of the Rules, to redact in the transcripts of the interview of witness [REDACTED], the name and identifying information of an alleged victim of sexual offences who was victimised in events other than the alleged joint FRPI/FNI attack on Bogoro on 24 February 2003.

⁴³ *First Decision on Reductions*, para. 55.

34. The Single Judge has already held in the Second Decision on Redactions that:

“Rule 81(4) of the Rules empowers the competent Chamber to provide for the non-disclosure of identity as a possible protective measure for witnesses, victims and members of their families prior to the commencement of the trial.⁴⁴

The Single Judge considers that the Statute and the Rules do not embrace two different notions of “victims”, one for protection purposes pursuant to article 68(1) and rules 81, 87 and 88 of the Statute, and the other for the purpose of participation in situation and case proceedings. On the contrary, in the view of the Single Judge, the notion of “victim” is the same both in respect of protection and participation in the proceedings.

Moreover, this Chamber has repeatedly held that the status of victim in situation and case proceedings is linked to the object of such proceedings. Hence, whenever a cases arises, the procedural status of victim in case proceedings held before the Pre-Trial Chamber can be granted only to those for whom there are reasonable grounds to believe that they have suffered physical or moral harm as a result of a crime within jurisdiction of the Court expressly included in the warrant of arrest or summons to appear – and, subsequently, in the charging document”.⁴⁵

35. As the Prosecution Charging Document for Germain Katanga is restricted to crimes committed during and in the aftermath of the alleged FRPI/FNI attack on Bogoro on 24 February 2003, the Single Judge considers that the above-mentioned alleged victim of sexual offences, which are unrelated to the Bogoro attack, could not, in principle, be considered as a victim for the purpose of rule 81(4) of the Rules.

36. Moreover, the Single Judge cannot authorise the redaction of the identity and identifying information of this alleged victim pursuant to rule 81(2) of the Rules, insofar as the Prosecution has made it clear that she is not a Prosecution source and that she is in no way involved in any ongoing or further Prosecution investigation.

37. Nevertheless, the Single Judge has already highlighted that:

“a systematic and teleological interpretation of rule 81(4) of the Rules – in light of the particular emphasis placed by the drafters of the Statute and the Rules on the protection of alleged victims of sexual offences resulting from crimes within the jurisdiction of the Court – leads to the conclusion that, on an exceptional basis and only for the purpose of their protection by means of the redaction of their names and identifying information, the notion of “victim” under rule 81(4) of the Rules

⁴⁴ *Second Decision on Redactions*, para 12

⁴⁵ *Second Decision on Redactions*, paras.12-14.

would also cover alleged victims of sexual offences which are unrelated to the charges in the case at hand.”⁴⁶

38. The Single Judge considers that, although there is no information on her current whereabouts, the above-mentioned alleged victim of sexual offences is originally from [REDACTED] and there is no indication that she has left this [REDACTED] after the events. Furthermore, she is currently [REDACTED].

39. Under these circumstances, and in light of the security situation and context referred to in the First and Second Decisions on Redactions, the Single Judge is of the view that disclosure of the name and any identifying information of the above-mentioned alleged victim of sexual offences, including her current whereabouts, will pose an additional risk to her security and well-being. The Single Judge considers that redacting her name and any identifying information will certainly minimize this risk.

40. Furthermore, at this stage of the proceedings, there is no less intrusive alternative measure that can be taken to achieve the same goal. In addition, the redaction of this information is not prejudicial to or inconsistent with the rights of the Defence and a fair and impartial trial insofar as (i) the Defence will have access to the identity of Witness [REDACTED]; (ii) the alleged victim of sexual offences was not victimised in the alleged FRPI/FNI attack on Bogoro on 24 February 2003; and (iii) the alleged victim of sexual offences is not referred to in transcripts of interview with Witness [REDACTED] as having any knowledge of the crimes included in the Prosecution Charging Document against Germain Katanga.

41. For these reasons, the Single Judge grants authorisation for the redaction in the transcript of the interview of Witness [REDACTED] of the name and identifying information of the above-mentioned alleged victim of sexual offences.

⁴⁶ *Second Decision on Redactions*, para.19.

F. Information related to present and future protective measures

42. The Prosecution requests, pursuant to rule 81 (2) of the Rules, authorisation to redact in the transcripts of the interview of Witness 12 information revealing [REDACTED] used for present and future [REDACTED] of witnesses. The Prosecution requests these redactions because revealing [REDACTED] will undermine present and future protective measures and therefore will impact on the Prosecution's ongoing investigation.

43. In the view of the Single Judge, disclosing [REDACTED] used for present and future [REDACTED] could seriously undermine the effectiveness of the protective measures already implemented, or to be implemented in the near future, in relation to witnesses on which the Prosecution intends to rely at the confirmation hearing in the case of *The Prosecutor v. Germain Katanga*.

44. Therefore, the Single Judge considers that the above-mentioned redactions requested by the Prosecution to the transcripts of the interview of Witness 12 are necessary in order to protect the safety of the said witnesses. Furthermore, in the view of the Single Judge, no less intrusive alternative measure can be taken to achieve the same goal at this stage, and the redaction of this information is not prejudicial to or inconsistent with the rights of the Defence and a fair and impartial trial insofar as the Defence will have access not only to the identity of witness 12 – who has died – but also to the identities of the witnesses who have been [REDACTED] and on which the Prosecution intends to rely at the confirmation hearing.

45. As the Prosecution requested the redactions addressed in this section pursuant to rule 81 (2) of the Rules, but the Single Judge is of the view that they are justified under rule 81(4) of the Rules, the Single Judge will grant them acting on its own motion, as provided for in this last provision.

G. Internal documents prepared by the Prosecution

46. The Prosecution requests, pursuant to rule 81 (1) of the Rules, the redaction of information which constitutes internal work of the Office of the Prosecution.

47. The Single Judge notes that rule 81 (1) of the Rules provides that:

“[r]eports, memoranda or other internal documents prepared by a party, its assistants or representatives in connection with the investigation or preparation of the case are not subject to disclosure”.

48. The Single Judge considers that the information for which the Prosecution is seeking redactions is strictly confined to the conclusions and the recommendations made by the investigators of the Office of the Prosecutor at the end of the interviews with the relevant witnesses.

49. In the view of the Single Judge, this information can be considered as “reports, memoranda or other internal documents” prepared by the Prosecution in the preparation of the case against Germain Katanga,, and hence, as provided for in Rule 81 (1) of the Rules, the Prosecution is under no obligation to disclose it to the Defence.

H. The place where the interviews were conducted and the names, initials and signatures of the persons present when the witness statements were taken

50. The Single Judge notes that the authorisation for redactions requested by the Prosecution pursuant to rule 81(2) of the Rules mainly concerns those redactions requested in order not to prejudice the ongoing investigation against Germain Katanga and include: (i) the places in which the statements of the witnesses were taken and (ii) the names, initials and signatures of current staff members of the Office of the Prosecutor who were present when the statements were taken, as well as the

names of [REDACTED] who assisted in the process of taking the statement from the witnesses.

51. The Single Judge considers that, for the reasons given in the First and Second Decisions on Redactions,⁴⁷ (i) the authorisation for redactions requested by the Prosecution in relation to the names, initials, signatures and any other identifying information of current staff members of the Office of the Prosecutor present when the witness statements were taken must be denied; (ii) the authorisation for the redaction of the names, initials, signatures and any other identifying information of [REDACTED] and [REDACTED] for the purpose of assisting in the process of interviewing witnesses and taking their statements must be granted and (iii) the authorisation for the redaction of the place where the interviews were taken must be denied unless it refers to a specific place or building, and revealing this location to the Defence might prevent the Prosecution from using such place for further interviews, thus, causing prejudice to the Prosecution's ongoing or further investigations.

52. Nevertheless, the Single Judge realizes that the issue of "whether the Single Judge erred in the application of the test prescribed by the Appeals Chamber in its 14 December 2006 Decisions when rejecting to authorise the redaction of the location of interviews of witnesses, and the identifying information of current and former staff members of the OTP and VWU at this particular stage of the proceedings" is currently pending before the Appeals Chamber, and that, therefore, in order to preserve the effective application of the Decision of the Appeals Chamber on this matter, it is necessary to authorise the Prosecution to provisionally maintain those redactions in the investigator's notes, screening notes and transcripts of interviews of Witnesses 7, 8, 9 and 12 and the material provided by Witness 8 requested by the Prosecution to protect the identities of current staff members of the Prosecution present during the interviews of the aforementioned witnesses, and the location of

⁴⁷ *First Decision on Redactions*, paras. 57-64. See also the *Second Decision on Redactions*, paras.57-60.

the interviews, until such time as the Appeals Chamber issues a decision on the above-mentioned issue.

FOR THESE REASONS,

DECIDE to partially grant the Prosecution's requests for authorisation for redactions to the interview notes, investigator notes and transcripts of the interviews of Witnesses 7, 8, 9 and 12, as specified in Annex I to this decision;

DECIDE to authorise the Prosecution to provisionally maintain those redactions to the interview notes, investigator notes and transcripts of the interviews of Witnesses 7, 8, 9 and 12 and to the materials provided by Witnesses 8 and 14 which the Prosecution requested in order to protect innocent third parties, the identities of current staff members of the Prosecution present during the interviews of the abovementioned witnesses, and the location of the interviews, until such time as the Appeals Chamber issues a decision on whether the redactions should be maintained;

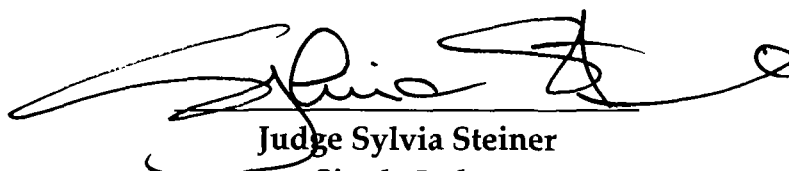
DECIDE that, pursuant to rule 76 of the Rules, the Prosecution shall, by no later than 10 March 2008, disclose to the Defence the interview notes, investigator notes and transcripts of interview with Witnesses 7, 8, and 9 and the materials provided by Witnesses 8 and 14 with the redactions authorised by the Single Judge, as specified in Annex I to the present decision;

DECIDE that, pursuant to rule 121(2) of the Rules, the Prosecution shall, no later than 10 March 2008, file the originals of the interview notes, investigator notes and transcripts of the interviews of Witnesses 7, 8, and 9 and the materials provided by

Witnesses 8 and 14 in the record of the case of *The Prosecutor v. Germain Katanga* following the guidance given at the hearing held before the Single Judge on 14 December 2007;

DECIDE that, pursuant to rule 77 of the Rules, the Prosecution shall, no later than 10 March 2008, make available to the Defence the twelve interview transcripts of Witness 12 through the system of pre-inspection and inspection provided for in rule 77 of the Rules and applied in the case 01/04-01/06, with the redactions authorised by the Single Judge as specified in Annex I to the present decision, and that the Prosecution shall immediately afterwards file a pre-inspection report and, if need be, an inspection report in the record of the case of *The Prosecutor v. Germain Katanga*.

Done in both English and French, the English version being authoritative.



Judge Sylvia Steiner
Single Judge

Dated this Wednesday 5 March 2008

At The Hague,

The Netherlands