

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original : English

No.: ICC-01/04-01/07

Date: 21 April 2008

PRE-TRIAL CHAMBER I

Before: Judge Sylvia Steiner, Single judge

**SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO
IN THE CASE OF
*THE PROSECUTOR v. Germain Katanga and Mathieu Ngudjolo Chui***

**URGENT
Public Redacted Version**

**Fifth Decision on the Prosecution Request for Authorisation to Redact Statements,
Investigators' Notes, Written Consents and documents relating to Witnesses
157,161, 268, 279, 280 and 311 and Other Documents**

Decision to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

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**Unrepresented Applicants for
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Registrar, acting

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Defence Support Section

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**Victims Participation and Reparations
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Other

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I, Judge Sylvia Steiner, judge at the International Criminal Court ("the Court");

NOTING the "Warrant of Arrest for Germain Katanga",¹ issued by Pre-Trial Chamber I ("the Chamber") on 2 July 2007;

NOTING the "Warrant of Arrest for Mathieu Ngudjolo Chui",² issued by the Chamber on 6 July 2007;

NOTING the "First Decision on the Prosecution Request For Authorisation to Redact Witness Statements"³ ("the First Decision on Redactions"), issued by the Single Judge on 14 December 2007, in which the Single Judge partially granted 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 "Decision on the Prosecution Request for Leave to Appeal the First Decision on Redactions",⁴ issued on 14 December 2007 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

¹ ICC-01/04-01/07-1.

² ICC-01/04-02/07-1 [ICC-01/04-01/07-260].

³ ICC-01/04-01/07-84-US-Exp; ICC-01/04-01/07-88-Conf-Exp; and ICC-01/04-01/07-90.

⁴ ICC-01/04-01/07-108.

Prosecutor and the Victims and Witnesses Unit (“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”,⁵ issued on 19 December 2007, by which the Single Judge 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”⁶ (“the Second Decision on Redactions”), 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 Prosecution 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 Documents to Be Relied Upon at the Confirmation Hearing”⁷ (“the Prosecution's Application”), filed by the Prosecution on 21 January 2008, in which

⁵ ICC-01/04-01/07-116.

⁶ ICC-01/04-01/07-123-Conf-Exp; ICC-01/04-01/07-124-Conf; ICC-01/04-01/07-160.

⁷ ICC-01/04-01/07-151 and its confidential and *ex parte* annexes (ICC-01/04-01/07-151-Conf-Exp-Anx1, ICC-01/04-01/07-151-Conf-Exp-AnxA-H).

the Prosecution requested the authorisation of the Single Judge to redact certain parts of documents the Prosecution intends to rely upon at the confirmation hearing;

NOTING the "Submission of the Document Containing the Charges and of the List of Evidence"⁸ ("the Prosecution's Charging Document against Germain Katanga") filed by the Prosecution on 29 January 2008;

NOTING the *ex parte* and closed session hearing held with the Prosecution on 4 February 2008;⁹

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 2, 5, 6, 10, 0163, 0238, 0287, 0233, 0267, 0271 and 0132",¹⁰ filed by the Prosecution on 26 February 2008, in which the Prosecution requested the authorisation of the Single Judge to redact certain parts of the screening notes and transcripts of Witnesses 2, 5, 6, 10, 0163, 0238, 0287, 0233, 0267, 0271 and 0132;

NOTING the "Third Decision on the Prosecution Request for Authorisation to Redact materials related to the statements of Witnesses 7, 8, 9, 12 and 14"¹¹ ("the Third Decision on Redactions") issued by the Single Judge on 5 March 2008 and by which the Single Judge (i) partially granted the Prosecution's request for authorisation to redact information in materials related to the statements of witnesses 7, 8, 9, 12 and 14; and (ii) authorised the Prosecution to provisionally maintain those redactions which the Prosecution requested in order to protect innocent third parties, the identities of current members of the Prosecution present during the interviews of the above-mentioned witnesses, and the location of the interviews, until the Prosecution's interlocutory appeal relating to such redactions is decided upon;

⁸ 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.

⁹ ICC-01/04-01/07-T-16-Conf-Exp ET 04-02-2008.

¹⁰ ICC-01/04-01/07-240; and its confidential and *ex parte* annexes (ICC-01/04-01/07-240-Conf-Exp-Anx1, ICC-01/04-01/07-240-Conf-Exp-AnxA-Q).

¹¹ ICC-01/04-01/07-247-Conf-Exp-Corr; ICC-01/04-01/07-248-Corr and ICC-01/04-01/07-249.

NOTING the “Decision on the Joinder of the Cases against Germain KATANGA and Mathieu NGUDJOLO CHUI”,¹² issued by the Chamber on 10 March 2008 and by which the Chamber decided to join the cases of *The Prosecutor v. Germain Katanga* and *The Prosecutor v. Mathieu Ngudjolo Chui*;

NOTING the “Decision Establishing a Calendar in the Case against Germain KATANGA and Mathieu NGUDJOLO CHUI”¹³ (“the Decision Establishing a Calendar”), issued by the Single Judge on 10 March 2008 and by which the Single Judge, *inter alia*, decided:

- (i) to give the Registrar until 1 April 2008 to decide and, if accorded, to implement those protective measures already requested by the Prosecution for witnesses on whom it intends to rely at the confirmation hearing in the case of *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*;
- (ii) that the Prosecution shall file by 4 April 2008 its final requests for redactions concerning the statements, interview notes, interview transcripts and documents relating to those witnesses on whom the Prosecution intends to rely at the confirmation hearing for whom protective measures will be implemented after the issuance of this decision and prior to the expiration of the above-mentioned 1 April 2008 deadline; and
- (iii) that the Prosecution shall (a) review by 8 April 2008 whether it still intends to rely at the confirmation hearing in the case of *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui* on the statements, interview notes, interview transcripts and documents relating to those witnesses for whom protective measures cannot be implemented by 1 April 2008; and (b) file by 8 April 2008 its final request for redactions concerning the statements, interview notes, interview transcripts and documents relating to those witnesses under (a) above;

¹² ICC-01/04-01/07-257; and ICC-01/04-02/07-48 [ICC-01/04-01/07-307].

¹³ ICC-01/04-01/07-259.

NOTING the “Registrar's report on the status of assessment and implementation of protective measures”,¹⁴ filed by the Registry on 31 March 2008;

NOTING the *ex parte* and closed session hearing held with the Prosecution and the VWU on 1 April 2008;¹⁵

NOTING the “Prosecution's Application Pursuant to Rules 81(2) and 81(4) for Redactions to an Additional Witness Statement and an Additional Document to Be Relied upon at the Confirmation Hearing and Final Redactions to the Statements of Witnesses 161, 268 and 279”,¹⁶ filed by the Prosecution on 1 April 2008;

NOTING the “Fourth Decision on the Prosecution Request for Authorisation to Redact Documents related to Witnesses 166 and 233”¹⁷ (“the Fourth Decision on Redactions”) issued by the Single Judge on 2 April 2008, in which the Single Judge (i) partially granted the Prosecution's request for authorisation to redact information in materials related to the statements of witnesses 166 and 233 as well as to their written consents; (ii) authorised the Prosecution to provisionally maintain those redactions which the Prosecution requested in relation to Witnesses 2, 5 and 287; and (iii) authorised the Prosecution to provisionally maintain those redactions which the Prosecution requested in order to protect innocent third parties, the identities of current members of the Prosecution present during the interviews of the above-mentioned witnesses, and the location of the interviews, until the Prosecution's interlocutory appeal relating to such redactions is decided upon;

NOTING the “Decision on the Use of Summaries of the Statements of Witnesses 267 and 243”¹⁸ issued by the Single Judge on 3 April 2008 and by which the Single Judge

¹⁴ ICC-01/04-01/07-347-Conf-Exp.

¹⁵ ICC-01/04-01/07-T-22-Conf-Exp-ENG ET.

¹⁶ ICC-01/04-01/07-355 and its confidential *ex parte* Annexes.

¹⁷ ICC-01/04-01/07-358-Conf-Exp; ICC-01/04-01/07-360-Conf; and ICC-01/04-01/07-361.

¹⁸ ICC-01/04-01/07-362-Conf-Exp.

inter alia granted anonymity of the summary of the statement, interview notes and interview transcripts of Witnesses 243 for the purpose of the Confirmation Hearing;

NOTING the “Decision on the Defence Application for Leave to Appeal the “Decision on the Prosecution Request for Authorisation to Redact Statements of Witnesses 4 and 9””,¹⁹ issued by the Single Judge on 4 April 2008, in which the Single Judge granted leave to appeal in relation to whether the Single Judge erred in law in finding that alleged victims of sexual offences not connected to the charges in the relevant case can be considered victims for the purpose of redactions pursuant to rule 81(4) of the *Rules of Procedure and Evidence* (“the Rules”);

NOTING the “Corrigendum to Prosecution’s Application Pursuant to Rule 81(2) and Rule 81(4) for Redactions to Documents to Be Relied Upon at the Confirmation Hearing”,²⁰ filed by the Prosecution on 4 April 2008, in which the Prosecution requested further redactions which have been inadvertently omitted in the Prosecution’s Application;

NOTING the “Registrar’s further report on the status of assessment and implementation of protective measures”,²¹ filed by the Registry on 4 April 2008;

NOTING the “Prosecution’s Submission of Information on the Preventive Relocation of Witnesses 132, 163, 238 and 287”,²² filed by the Prosecution on 7 April 2008;

NOTING the “Prosecution’s Submission of Information Pursuant to the Decision Establishing a Calendar in the Case against Germain KATANGA and Mathieu NGUDJOLO CHUI Dated 10 March 2008”,²³ filed by the Prosecution on 8 April 2008;

¹⁹ ICC-01/04-01/07-365.

²⁰ ICC-01/04-01/07-368-Conf-Exp.

²¹ ICC-01/04-01/07-369-Conf-Exp.

²² ICC-01/04-01/07-374-Conf-Exp.

²³ ICC-01/04-01/07-375-Conf-Exp; and a corrigendum filed thereto on 9 April 2008 (ICC-01/04-01/07-375-Conf-Exp-Corr).

NOTING the “Prosecution's Application Pursuant to Rules 81(2) and 81(4) for Redactions to the Written Consents of Witnesses 161, 267 and 271”,²⁴ filed by the Prosecution on 8 April 2008, in which the Prosecution requested the authorisation of the Single Judge to redact certain parts of written consents of Witnesses 161, 267 and 271;

NOTING the “Defence Motion for Leave to Appeal the Fourth Decision on the Prosecution Request for Authorisation to Redact Documents related to Witnesses 166 and 233”,²⁵ filed by the Defence for Germain Katanga, in which the Defence Counsel asserts that the Single Judge has incorrectly interpreted and wrongfully widened the scope of Rule 81(2) of the Rules in holding that it also covers the names of organisations approached by the Prosecution for the specific purpose of obtaining information in relation to the ongoing investigations in the case of *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui* or in relation to future Prosecution investigations;

NOTING the “Order Requesting the Prosecution to Clarify and Review its Application pursuant to Rule 81(2) and (4) of the Rules of Procedure and Evidence”,²⁶ issued by the Single Judge on 10 April 2008, in which the Single Judge ordered the Prosecution to clarify and review its requests for redactions and to resubmit, in light of its clarification and review, Annex H to the Prosecution's Application by Friday 11 April 2008;

NOTING the “Prosecution's Response to Order Requesting the Prosecution to Clarify and Review its Application pursuant to Rule 81(2) and (4) of the Rules of Procedure and Evidence”,²⁷ filed by the Prosecution on 11 April 2008;

²⁴ ICC-01/04-01/07-376; and its confidential *ex parte* annexes (ICC-01/04-01/07-376-Conf-Exp-Anx1; and ICC-01/04-01/07-376-Conf-Exp-Anx1A-1C).

²⁵ ICC-01/04-01/07-380.

²⁶ ICC-01/04-01/07-386; and its confidential and *ex parte* annex (ICC-01/04-01/07-386-Conf-Exp-Anx1).

²⁷ ICC-01/04-01/07-388-Conf-Exp.

NOTING the “Order Requesting the Prosecution to Clarify and Review its Application pursuant to Rule 81(2) and (4) of the Rules of Procedure and Evidence in relation to Witness 268” issued by the Single Judge on 11 April 2008, in which the Single Judge ordered the Prosecution to clarify and review its requests for redactions and to resubmit Annex A and A 1 of its Application by Monday 14 April 2008;

NOTING the “Prosecution's Response to Order Requesting the Prosecution to Clarify and Review its Application pursuant to Rule 81(2) and (4) of the Rules of Procedure and Evidence”,²⁸ filed by the Prosecution on 14 April 2008;

NOTING the *ex parte* and closed session hearing held with the Prosecution and the VWU on 15 April 2008;²⁹

NOTING the “Prosecution’s Application Pursuant to Rule 81(4) for the Redactions to one Additional Document to Be Relied upon at the Confirmation Hearing”,³⁰ filed by the Prosecution on 16 April 2008 and by which the Prosecution informed the Single Judge that because of a clerical error it did not submit the document before the 1 April 2008 deadline provided for in the Decision Establishing a Calendar;

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;

I. Introductory Remarks

1. In its various applications pursuant to rules 81 (2) and (4) of the Rules, the Prosecution requests certain redactions in relation to documents as well as to the statements, investigators’ notes, and written consents of witnesses on which the Prosecution intends to rely at the confirmation hearing. The Single Judge observes

²⁸ ICC-01/04-01/07-391Conf-Exp.

²⁹ ICC-01/04-01/07-T-23-Conf-Exp-ENG ET.

³⁰ ICC-01/04-01/07-401-Conf-Exp and ICC-01/04-01/07-401-Conf-Exp-AnxA.

that the witnesses for whom redactions are requested to their statements, investigators' notes and written consents are (i) under the Court protection programme; or (ii) are not under the Court protection programme and have agreed for their statements and identities to be disclosed to both Defence teams; (iii) are not under the Court protection programme and the Prosecution is requesting authorisation to redact their names and identifying information; or (iv) for which the anonymity of the summary of the witness' statement on which the Prosecution intends to rely on for the purpose of the confirmation hearing has been granted by the Single Judge.

2. Firstly, the Single Judge notes that the Prosecution has stated that it intends to rely on the investigators' notes and statements of Witnesses 268, 279 and 280 at the confirmation hearing. Moreover, according to the Prosecution and VWU, protective measures have been granted and implemented for Witnesses 268, 279 and 280. Nevertheless, the Prosecution is requesting authorisation to redact, pursuant to rule 81 (2) and (4) of the Rules, certain information in the investigators' notes and statements of the abovementioned Witnesses. As a result, the Prosecution's request for authorisation for redactions in relation to Witnesses 268, 279 and 280 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*. In those proceedings, the Prosecution did not request authorisation for any redactions in the statement of any of the [REDACTED] who were accepted into the VWU's protection programme.³¹

3. As the Single Judge stated in the First Decision on Redactions:

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.³²

³¹ ICC-01/04-01/07-T-7-Conf-Exp-ENG [30Oct2007Edited], p. 3, lines 4-18.

³² ICC-01/04-01/07-84-US-Exp, para.3; ICC-01/04-01/07-88-Conf-Exp, para.3; ICC-01/04-01/07-90, para.3. See also, ICC-01/04-01/06-773 and ICC-01/04-01/06-774.

4. Secondly, the Single Judge notes that the Prosecution also intends to rely on the statement of Witness 161 at the confirmation hearing. The Single Judge observes that Witness 161 has been referred to the VWU by the Prosecution. On 14 March 2008, the VWU informed the Prosecution that the Registrar had, *inter alia*, rejected the application on behalf of Witness 161 for admission into the Court's witness protection programme.³³ In this regard, the Prosecution has informed the Single Judge that Witness 161 [REDACTED].³⁴ On 8 April 2008, the Prosecution filed the written consent of Witness 161 in which the witness: (i) agreed to have his statement used in the proceedings against Germain Katanga and Mathieu Ngudjolo Chui and disclosed to both Defence teams as well as the suspects; (ii) agreed to have his identity disclosed to the suspects and their respective Defence teams; and (iii) refused, for the time being, any kind of [REDACTED] and emphasised that if he reconsiders his position, he will immediately contact the representatives of the Prosecution.³⁵

5. Hence, although Witness 161 [REDACTED], the Prosecution is not seeking any redaction of Witness 161's name and identifying information. The Prosecution, however, requests authorisation to redact, pursuant to rules 81(2) and (4) of the Rules, information other than the name and identifying information of Witness 161 in his statement, written consents and investigators' notes.

6. Thirdly, the Single Judge notes that the Prosecution intends as well to rely on the statement of Witness 311 [REDACTED] Witness 157. Although Witness 157 is under the Court's protection programme, Witness 311 [REDACTED]. Witness 311 has consented for [REDACTED] statement to be used for the purpose of the confirmation hearing only in order to clarify [REDACTED], but does not wish to appear as a witness before the Court. Hence, the Prosecution requests authorisation to redact the name and identifying information of Witness 311 as well as the names

³³ ICC-01/04-01/07-349-Conf-Exp, para.3

³⁴ ICC-01/04-01/07-T-22-Conf-Exp-ENG ET 01 04 2008, p.23, lines 20-21.

³⁵ ICC-01/04-01/07-376-Conf-Exp-AnxIA.

and identifying information of the Witness [REDACTED], except for the references to Witness 311 [REDACTED], Witness 157.

7. Finally, the Single Judge recalls that she has granted the anonymity of the summary of Witness 267's statement for the purpose of the confirmation hearing and has underlined that (i) at this stage of the proceedings, the use of summaries that corroborates other evidence is not prejudicial to, or inconsistent with the rights of the suspects; (ii) redactions to his statement would not adequately protect him from a risk of harm, since the disclosure of his statement even in a redacted form would undoubtedly reveal his identity; and that, accordingly, the witness is entitled to protective measures; and (iii) in this security situation and context, no protective measure other than the use of summaries would ensure Witness 267's safety.³⁶

8. As she has already emphasised in the four previous Decisions on Redactions, the Single Judge underlines that regardless of the situation of the abovementioned witnesses and in relation to all other materials on which the Prosecution intends to rely on at the confirmation hearing :

[i]n 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) 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.³⁷

9. In carrying out her analysis, the Single Judge has classified the redactions requested by the Prosecution into the following nine categories: (a) name and

³⁶ ICC-01/04-01/07-362-Conf-Exp.

³⁷ *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.

identifying information of Witnesses 311 and 267; (b) current whereabouts of Witness 311; (c) names and identifying information of family members of Prosecution witnesses; (d) current whereabouts of family members of Prosecution witnesses; (e) Prosecution sources; (f) innocent third parties; (g) names and identifying information of victims of the alleged 24 February 2003 joint FRPI/FNI attack on Bogoro; (h) names and identifying information of family members of victims of the alleged 24 February 2003 joint FRPI/FNI attack on Bogoro; and (i) places where the interviews were conducted, and the names, initials and signatures of the persons present when the witness statements and written consents were taken.

10. Moreover, for the purpose of her analysis, the Single Judge considers that the security situation and context, in which the Prosecution requests are made, remain the same as that mentioned in the First Decision on Redactions.³⁸

11. Considering 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.

12. In Annex I to the present decision, which is issued *ex parte* and available only to the Prosecution, the Single Judge, following the procedure prescribed by the Appeals Chamber,³⁹ specifies to which of the nine 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 those requests for redactions.

³⁸ *First Decision on Redactions*, paras. 13 to 22

³⁹ ICC-01/04-01/06-773, para. 22.

II. Categories of Redactions

A. Names and Identifying Information of Witnesses 311 and 267

13. The Prosecution requests authorisation to redact pursuant to rule 81 (4) of the Rules the names and identifying information of Witness 311.

14. The Single Judge notes that Witness 311 is [REDACTED] Witness 157 who is under the Court's protection programme⁴⁰ and whose statement and identity has been disclosed to both Defence teams pursuant to the First Decision on Redactions and to the Decision Establishing a Calendar. However, although Witness 311 has met with VWU [REDACTED], [REDACTED] has [REDACTED] and is therefore [REDACTED]. Witness 311 is not willing to appear as a witness before the Court but has however consented for [REDACTED] statement to be used for the purpose of the confirmation hearing only in order to clarify [REDACTED]⁴¹

15. The Single Judge stresses out that Witness 311's statement is strictly confined to clarify [REDACTED], Witness 157.

16. The Single Judge notes that Witness 311 currently lives [REDACTED] in the Ituri district. The Single Judge is of the view that disclosing the identity of Witness 311 in the security situation and context referred to in the First Decision on Redactions, could pose an additional risk to the Witness safety and/or physical and psychological well-being.

17. Moreover, the Single Judge considers that the requested redactions are adequate to minimise this risk and that, at this stage, there is no less intrusive alternative measure that can be taken to achieve the same goal.

18. Furthermore, in the view of the Single Judge, the redaction of [REDACTED] name and identifying information is not prejudicial to or inconsistent with the rights

⁴⁰ ICC-01/04-01/07-T-8-Conf-Exp-ENG[31Oct2007Edited], p.21, lines 16-17.

⁴¹ ICC-01/04-01/07-355-Conf-Exp-AnxA1, para.9.

of the Defence and a fair and impartial trial insofar as (i) Witness 311's statement is strictly confined to clarify [REDACTED], Witness 157 ; (ii) Witness 311 is not referred to as having any further information or knowledge of the crimes set out in the Prosecution's Charging Document against Germain Katanga and the Warrant of arrest against Mathieu Ngudjolo Chui and (iii) the Defence will have access to all information relevant to the case at hand.

19. For these reasons, the Single Judge grants, pursuant to rule 81 (4) of the Rules, authorisation for the redactions relating to the names and identifying information of Witness 311.

20. In relation to Witness 267, the Prosecution is requesting authorisation to redact, pursuant to rule 81(4) of the Rules, the name and signature of Witness 267 in his written consent. The Single Judge recalls that she has already granted the anonymity of the summary of Witness 267's statement for the purpose of the confirmation hearing. For this reason, the Single Judge authorises, pursuant to rule 81 (4) of the Rules, the redaction of the name and signature of Witness 267.

B. Current whereabouts of Witness 311

21. The Prosecution requests authorisation, pursuant to rule 81(4) of the Rules to redact the current whereabouts and information that could lead to the identification of the current whereabouts of Witness 311.

22. Considering the security situation and context referred to in the First 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 Witness 311 - who is currently located [REDACTED] in the Ituri district - could pose an additional risk to the Witness' safety and/or physical well-being. Furthermore, the current whereabouts of Witness 311 can also constitute identifying information since the Witness' identity is not disclosed to the Defence.

23. Moreover, the Single Judge considers that the redactions requested by the Prosecution, which are limited to the current whereabouts of Witness 311 or to information that could lead to the identification of such whereabouts, are adequate to minimise this risk and that, at this stage, there is no less intrusive alternative measure that can be taken to achieve the same goal.

24. Furthermore, in the view of the Single Judge, the redaction of Witness 311's current whereabouts is not prejudicial to or inconsistent with the rights of the Defence and a fair and impartial trial insofar as (i) Witness 311's statement is strictly confined to clarify [REDACTED] Witness 157 ; (ii) Witness 311 is not referred to as having any further knowledge of the crimes set out in the Prosecution's Charging Document against Germain Katanga and the Warrant of arrest against Mathieu Ngudjolo Chui and (iii) the Defence will have access to all information relevant to the case at hand.

25. For these reasons, the Single Judge authorises, pursuant to rule 81(4) of the Rules, the redactions of the current whereabouts or information that could lead to the identification of the whereabouts of Witness 311.

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

26. 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 157, 161, 268, 279 and 280.

27. The Single Judge is of the view that the abovementioned Witnesses are not public figures and are not very close to Germain Katanga or Mathieu Ngudjolo Chui within the meaning given in the First Decision on Redactions.⁴² As a result, disclosing the names and identifying information of family members of Witnesses 157, 161, 268,

⁴² *First Decision on Redactions*, para.32-33.

279 and 280, and who are currently located in the Ituri district, in the security situation and context referred to in the First Decision on Redactions, could pose an additional risk to their safety and/or physical and psychological well-being.

28. Moreover, the Single Judge considers that the requested redactions are adequate to minimise 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 Witnesses 157, 161, 268, 279 and 280 who gave the statements; and (ii) the family members of Witnesses 157, 161, 268, 279 and 280, referred to in this subsection, are not Prosecution sources or witnesses and are not referred to as having any further information or knowledge of the crimes set out in the Prosecution's Charging Document against Germain Katanga and in the Warrant of Arrest for Mathieu Ngudjolo Chui.

29. Furthermore, the Single Judge notes that the Prosecution is also requesting authorisation to redact the names and identifying information of all family members of Witness 311. In this regard, the Single Judge recalls that for the reasons given in Section II.A of the present decision, the identity of Witness 311 will not be disclosed to the Defence.

30. The Single Judge is of the view that Witness 311 is a not public figure and is not very close to Germain Katanga or Mathieu Ngudjolo Chui within the meaning given in the First Decision on Redactions.⁴³ As a result, disclosing the names and identifying information of family members of Witness 311 - who are currently located in the Ituri district - in the security situation and context referred to in the First Decision on Redactions, could pose an additional risk to their safety and/or physical and psychological well-being.

⁴³ *First Decision on Redactions*, para.32-33.

31. Moreover, the Single Judge considers that the requested redactions are adequate to minimise 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 the family members of Witness 311 are not referred to as having any knowledge of the crimes set out in the Prosecution's Charging Document against Germain Katanga and in the Warrant of Arrest for Mathieu Ngudjolo Chui. In addition, the names and identifying information of family members of Witnesses whose identities are not disclosed, as in the case at hand, can also constitute identifying information of such a Witness.

32. In addition, the Single Judge notes that the Prosecution is requesting as well the redaction of the name and identifying information of Witness 3's family members in the statement of Witness 268. In this respect, the Single Judge notes that such redactions of Witness 3's family members have already been granted in the First Decision on Redactions.

33. For these reasons, the Single Judge grants authorisation for the redactions relating to the names and identifying information of the family members of Witnesses 3, 157, 161, 268, 279, 280 and 311 as detailed in Annex I to this decision.

34. The Single Judge finally notes that the Prosecution requests authorisation to redact the names and identifying information of all family members of an individual called [REDACTED]. According to the information provided by the Prosecution, the aforementioned individual (i) was screened as a potential witness and provided the Prosecution [REDACTED] and (ii) never gave a statement to the Prosecution due to his death by natural causes. The Prosecution requests authorisation to redact the names and identifying information of [REDACTED]'s family members, pursuant to

rule 81 (4) of the Rules, on the basis that they are to be considered family members of a Prosecution Witness. ⁴⁴

35. As already underlined by the Single Judge:

“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”⁴⁵

36. The Single Judge is therefore of the view that [REDACTED] falls within the category of Prosecution source. However, the Single Judge notes that the Prosecution is not requesting the redaction of the name and identifying information of [REDACTED] since he is deceased. The Prosecution only requests authorisation to redact pursuant to rule 81 (4) of the Rules the names and identifying information of his family members who are still alive. In this regard, the Single Judge is of the view that family members of a deceased Prosecution source must be considered as “innocent third parties” for the purpose of the redactions requested by the Prosecution and will therefore be dealt with in Section II.F of the present decision.

D. Current Whereabouts of Family Members of Prosecution Witnesses

37. The Prosecution requests authorisation pursuant to rule 81(4) of the Rules to redact the information that could lead to the identification of the current whereabouts of family members of Witnesses 157, 161, 268, 279 and 280.

38. Considering the security situation and context referred to in the First 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 Witnesses 157, 161, 268, 279 and 280 – family members who are

⁴⁴ ICC-01/04-01/07-T-23-Conf-Exp-ENG RT, p.17, lines 19-24.

⁴⁵ *First Decision on Redactions*, para.41.

currently located in the Ituri district - could pose an additional risk to their safety and/or physical well-being. Furthermore, as the Single Judge already stated, the current whereabouts of the Prosecution witnesses' family members can also constitute identifying information in the instances, like the case at hand, where the identities of the family members of Witnesses 157, 161, 268, 279 and 280 are not disclosed to the Defence.

39. Moreover, the Single Judge considers that the redactions requested by the Prosecution, which are limited to the current whereabouts of family members of Witnesses 157, 161, 268, 279 and 280 or to information that could lead to the identification of such whereabouts, are adequate to minimise this risk and that, at this stage, there is no less intrusive alternative measure that can be taken to achieve the same goal.

40. 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 Witnesses 157, 161, 268, 279 and 280 who gave the statements; and (ii) the family members for whom redaction of their current whereabouts is requested are not Prosecution sources or witnesses and are not referred to as having any further information or knowledge of the crimes set out in the Prosecution's Charging Document against Germain Katanga and in the Warrant of Arrest for Mathieu Ngudjolo Chui.

41. For these reasons, the Single Judge grants authorisation for the redactions relating to the current whereabouts of the family members of Witnesses 157, 161, 268, 279 and 280 as detailed in Annex I to this decision.

E. Prosecution Sources

42. The Prosecution requests authorisation to redact pursuant to rule 81(2) of the Rules information that could lead to the identification of Prosecution sources.

43. The Prosecution requests authorisation to redact in document ICC-01/04-01/07-151-Conf-Exp-AnxB, on which the Prosecution intends to rely at the confirmation hearing any identifying information concerning an individual who has already been interviewed by the Prosecution. The Single Judge notes that redaction of identifying information of the individual referred to in document ICC-01/04-01/07-151-Conf-Exp-AnxB, has already been granted pursuant to the First Decision on Redactions as this individual is to be considered a Prosecution Source.

44. The Single Judge further notes that the Prosecution also requests authorisation to redact identifying information of an individual in document ICC-01/04-01/07-151-Conf-Exp-AnxE. At the *ex parte* and closed session hearing held on 15 April 2008, the Prosecution informed the Single Judge that although this person has been interviewed by the Prosecution for events other than the alleged 24 February 2003 joint FRPI/FNI joint attack on Bogoro and has given a statement, it does not intend to rely on him for the purpose of the confirmation hearing in the case of *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*. Therefore, its request for redaction of the identifying information of the aforementioned individual is made pursuant to rule 81(2) of the Rules as this person has to be considered a Prosecution source.⁴⁶

45. 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.⁴⁷

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

⁴⁶ ICC-01/04-01/07-T-23-Conf-Exp-ENG ET, p.16, line 16.

⁴⁷ *First Decision on Redactions*, para. 41.

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.⁴⁸

46. 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 by the Prosecution in relation to different incidents.

47. Finally, the Single Judge is mindful 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 ICC-01/04-01/07-151-Conf-Exp-AnxB and ICC-01/04-01/07-151-Conf-Exp-AnxE is subject to the final decision of the Appeals Chamber on this matter.

F. Innocent Third Parties

48. The Prosecution requests authorisation pursuant to rule 81(4) of the Rules to redact in the investigators' notes and statement of Witnesses 161, 268 and 279, all identifying information concerning a number of individuals referred to as "innocent third parties" by the Prosecution. In this regard, 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

⁴⁸ *First Decision on Redactions*, para. 42.

not to prejudice further or ongoing Prosecution investigations because such individuals are Prosecution sources pursuant to rule 81(2) of the Rules. Otherwise, the use of redactions is not a measure that is available to ensure the protection of these individuals.⁴⁹

49. 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 ongoing or further Prosecution investigations, and that the relevant redactions have only been 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”.

50. However, the Single Judge is mindful 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 investigators’ notes and statement of Witnesses 161, 268 and 279 which the Prosecution requested in order to protect innocent third parties, until the Appeals Chamber rules on the abovementioned issue.

G. Names and Identifying Information of Victims of the alleged 24 February 2003 joint FRPI/FNI attack on Bogoro

51. The Single Judge observes that the Prosecution requests authorisation, pursuant to rule 81(4) of the Rules, to redact in the investigators’ notes and statements of Witnesses 161, 268 and 279, the names and identifying information of alleged victims of the alleged 24 February 2003 joint FRPI/FNI attack on Bogoro who are not deceased.

⁴⁹ *First Decision on Redactions*, para. 55.

52. As the Single Judge has already emphasised⁵⁰:

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.

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.

"[t]his 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 case 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.

53. The Single Judge considers that the individuals referred to in the investigators' notes and statements of Witnesses 161, 268 and 279 - and for which the Prosecution is seeking redactions because they were allegedly victimised during the 24 February 2003 joint FRPI/FNI attack on Bogoro - fall within the category of "victims" under rule 81(4) of the Rules because, in light of the investigators' notes and statements of Witnesses 161, 268 and 279, they *prima facie* suffered, at least, moral harm as a result of the attack.

54. The Single Judge is of the view that in the security situation and context referred to in the First Decision on Redactions, disclosure of the names and any identifying information of victims of the alleged joint 24 February 2003 FRPI/FNI attack on Bogoro, who are currently in the Ituri District, could pose an additional risk to their security and well-being. Moreover, the Single Judge considers that the redactions of their names and identifying information are adequate to minimise this risk, and, at this stage of the proceedings, there is no less intrusive alternative measure that can be taken to achieve the same goal.

⁵⁰ *Second Decision on Redactions*, paras.12-14. *Third Decision on Redactions*, para.34. See also ICC-01/04-01/07-357.

55. The Single Judge cannot exclude the possibility that authorising the redaction of their names and identifying information could potentially cause some prejudice to the Defence, which may have an interest in contacting them as they are referred to as having knowledge of the crimes included in the Prosecution's Charging Document against Germain Katanga and in the Warrant of Arrest for Mathieu Ngudjolo Chui. However, in weighing this hypothetical prejudice against the real and concrete need to protect the aforementioned victims in the security situation and context as serious as the one referred to in the First Decision on Redactions, the Single Judge considers that the need for protection, which can be properly granted only by redacting their names and identifying information outweighs any possible prejudice to the Defence. In the view of the Single Judge, even if this prejudice materialises, it would not be inconsistent with the rights of the Defence and a fair and impartial trial since the redactions are granted only for the purposes of the proceedings leading to the confirmation hearing, which is an early stage of the proceedings in the case of *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui* and is characterised by its limited scope.

56. For these reasons, the Single Judge grants authorisation, pursuant to rule 81 (4) of the Rules, for the redactions in the investigators' notes and statements of Witnesses 161, 268 and 279 of the names and identifying information of victims of the alleged 24 February 2003 joint FRPI/FNI attack on Bogoro as detailed in Annex I to this decision.

57. The Single Judge further notes that the Prosecution also requests authorisation to redact, in the documents ICC-01/04-01/07-151-Conf-Exp-AnxD and ICC-01/04-01/07-151-Conf-Exp-AnxF, the names and identifying information of alleged victims unrelated to the alleged 24 February 2003 joint FRPI/FNI attack on Bogoro.⁵¹

58. As the Single Judge just recalled:

⁵¹ The Single Judge notes that the Prosecution requests was initially made pursuant to rule 81(4) of the Rules in order to protect witnesses who gave a "non-ICC statement" (See ICC-01/04-01/07-151-Conf-Exp-Anx1). The Prosecution has changed the legal basis of such a request in ICC-01/04-01/07-388-Conf-Exp (See paras.1 and 4).

[t]his 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 case 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.⁵²

59. Accordingly, the Single Judge considers that victims unrelated to the alleged 24 February 2003 joint FRPI/FNI attack on Bogoro must be considered as “innocent third parties” for the purpose of the redactions requested by the Prosecution. For the reasons provided for above in Section II. F of the present decision, the Single Judge does not authorise the redactions of the names and identifying information concerning these individuals. Nevertheless, as she already explained, the Single Judge authorises the Prosecution to provisionally maintain these redactions until the Appeals Chamber rules on the issue of redactions for “innocent third parties”.

H. Names and Identifying Information of Family Members of Victims of the alleged 24 February 2003 joint FRPI/FNI attack on Bogoro

60. The Single Judge observes that the Prosecution requests authorisation, pursuant to rule 81(4) of the Rules, to redact in the investigators’ notes and statement of Witness 161, the names and identifying information of family members of victims of the alleged 24 February 2003 joint FRPI/FNI attack on Bogoro.

61. The Single Judge notes that rule 81 (4) of the Rules empowers the competent Chamber to order the non-disclosure of the identity of individuals as a possible protective measure for victims as well as for members of their families prior to the commencement of the trial. The Single Judge also recalls that she has already held that:

Rule 89 (3) of the Rules limits the submission of applications on behalf of others to applications made on behalf of children under the age of 18 and disabled persons. There is however no provision that permits applications to be made on behalf of deceased persons. Furthermore, rule 89(3) of the Rules allows the submission of an application on behalf of a person, provided that the person has given his or her consent. The Single Judge notes that

⁵² *Second Decision on Redactions*, paras.12-14. *Third Decision on Redactions*, para.34.

such consent is impossible in the case of deceased persons. It is therefore the Single Judge's view that deceased persons do not fall within the meaning of natural persons" under rule 85 (a) of the Rules. However, close relations of deceased and disappeared persons may be considered to be victims under the Statute, the Rules and the *Regulations of the Court* provided they fulfil the necessary criteria.⁵³

62. The Single Judge is of the view that the individuals whom the Prosecution claims are family members of victims of the alleged 24 February 2003 joint FRPI/FNI attack on Bogoro for the purpose of its requests for redactions to the investigators' notes and statement of Witness 161 pursuant to rule 81 (4) of the Rules, fall within the meaning of either victims or family members of victims pursuant to rule 81 (4) of the Rules. Furthermore, in the view of the Single Judge, in light of the security situation and context referred to in the First Decision on Redactions, disclosure of the names and any identifying information of these individuals who are currently in the Ituri District, could pose an additional risk to their security and well-being. Moreover, the Single Judge considers that the redactions of their names and identifying information are adequate to minimise this risk, and, at this stage of the proceedings, there is no less intrusive alternative measure that can be taken to achieve the same goal.

63. The Single Judge cannot exclude the possibility that authorising the redaction of their names and identifying information could potentially cause some prejudice to the Defence, which may have an interest in contacting them as they are referred to as having knowledge of the crime included in the Prosecution's Charging Document against Germain Katanga and in the Warrant of Arrest for Mathieu Ngudjolo Chui. However, in weighing this hypothetical prejudice against the real and concrete need to protect the aforementioned victims and victims' family members in a security situation and context as serious as the one referred to in the First Decision on Redactions, the Single Judge considers that the need for protection, which can be properly granted only by redacting their names and identifying information, outweighs any possible prejudice to the Defence. In the view of the Single Judge, even if this prejudice materialises, it would not be inconsistent with the rights of the

⁵³ ICC-01/04-423-Corr, para. 24. See also ICC-02/05-111-Corr, paras. 35 and 36.

Defence and a fair and impartial trial since the redactions are granted only for the purposes of the proceedings leading up to the confirmation hearing, which is an early stage of the proceedings in the case of *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui* and is characterised by its limited scope.

64. For these reasons, the Single Judge grants authorisation for the redactions in the investigators' notes and statement of Witness 161 of the names and identifying information of those individuals whom the Prosecution claims are family members of victims of the alleged 24 February 2003 joint FRPI/FNI attack on Bogoro as detailed in Annex I to this decision.

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

65. 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 Mathieu Ngudjolo Chui 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 Prosecution who were present when the statements and/or written consents of Witnesses 161, 268, 279, 280 and 311 were taken, as well as the names, initials and signature of the interpreters and psychotherapists who assisted in the process of taking the witnesses' statements and written consents.

66. The Single Judge considers that, for the reasons given in the First, Second, Third and Fourth Decisions on Redactions,⁵⁴ (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 Prosecution present when the witness statements were taken is denied; (ii) the authorisation for the

⁵⁴ *First Decision on Redactions*, paras. 57-64. See also the *Second Decision on Redactions*, paras.57-60.

redaction of the names, initials, signatures and any other identifying information of the interpreters and psychotherapists [REDACTED] for the purpose of assisting in the process of interviewing witnesses and taking their statements is granted; and (iii) the authorisation for the redaction of the place where the interviews were taken is 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.

67. Nevertheless, the Single Judge is mindful 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 declining 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. Hence, 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 investigators' notes, statements and/or written consents of Witnesses 161, 268, 279, 280 and 311, as well as in their written consents, that have been requested to protect the identities of current staff members of the Prosecution present during the interviews of the aforementioned witnesses, and the location of the interviews, until such time as the Appeals Chamber issues a decision on the above-mentioned matters.

FOR THESE REASONS

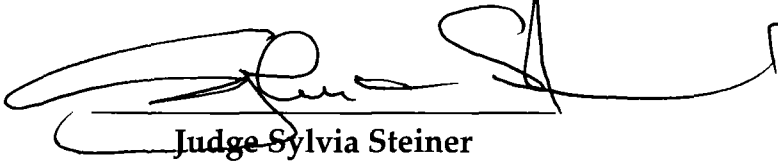
DECIDE to partially grant the Prosecution's requests for authorisation for redactions to the investigators' notes, written consents, statements and documents relating to Witnesses 157, 161, 268, 279, 280 and 311 as well as to documents ICC-01/04-01/07-151-Conf-Exp-AnxB, AnxD, AnxE, AnxF, AnxG and AnxH and ICC-01/04-01-07-401-Conf-Exp-AnxA;

DECIDE to authorise the Prosecution to provisionally maintain those redactions to the investigators' notes, statements and documents relating to Witnesses 157, 161, 268, 279, 280 and 311 as well as to documents ICC-01/04-01/07-151-Conf-Exp-AnxB, AnxD, AnxE, AnxF, AnxG and AnxH and ICC-01/04-01-07-401-Conf-Exp-AnxA 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 the matters concerning these types of redactions pending before it;

DECIDE that, pursuant to rule 76 of the Rules, the Prosecution shall, no later than 21 April 2008, disclose to the Defence the investigators' notes, written consents, statements and documents relating to Witnesses 157, 161, 268, 279, 280 and 311 as well as to documents ICC-01/04-01/07-151-Conf-Exp-AnxB, AnxD, AnxE, AnxF, AnxG and AnxH and ICC-01/04-01-07-401-Conf-Exp-AnxA 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 21 April 2008, file the originals of the investigators' notes, written consents, statements and documents relating to Witnesses 157, 161, 268, 279, 280 and 311 as well as to documents ICC-01/04-01/07-151-Conf-Exp-AnxB, AnxD, AnxE, AnxF, AnxG and AnxH and ICC-01/04-01-07-401-Conf-Exp-AnxA, in the record of the case of *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui* following the guidance given at the hearing held before the Single Judge on 14 December 2007.

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



Judge Sylvia Steiner
Single judge

Dated this Monday, 21 April 2008

At The Hague, The Netherlands