

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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

Date: 11 March 2008

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 and Mathieu Ngudjolo Chui***

Public Redacted Version

Decision on the Prosecution requests for redactions pursuant to rule 81(2) and 81(4) of the Rules and for an Extension of Time pursuant to regulation 35 of the Regulations of the Court

The Office of the Prosecutor

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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 "Decision on Urgent Application for Confined Variation of the First Decision on Redactions"³ 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 innocent third parties, the identities of personnel of the Office of the Prosecutor ("the OTP") and of the Victims and Witnesses Unit ("the VWU") present during the interviews of such witnesses, and the location of the interviews;

NOTING the "Defence Motion for Leave to Appeal the First Decision on the Prosecution Request for Authorisation to Redact Witness Statements"⁴ filed by the Defence on 13 December 2007;

¹ ICC-01/04-01/07-88-Conf-Exp and ICC-01/04-01/07-90.

² ICC-01/04-01/07-92-Conf.

³ ICC-01/04-01/07-94.

⁴ ICC-01/04-01/07-99.

NOTING the “Decision on the Prosecution Request for Leave to Appeal the First Decision on Redactions”,⁵ 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 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”⁶ issued on 19 December 2007, by which the Single Judge granted leave to appeal in relation to 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 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”),⁷ issued by the Single Judge on 21 December 2007, by which the Single Judge (i) partially granted

⁵ ICC-01/04-01/07-108.

⁶ ICC-01/04-01/07-116.

⁷ 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.

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 those witnesses, and the location of the interviews, until the Prosecution's interlocutory appeal relating to such redactions is decided upon;

NOTING the "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" ("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 in the above mentioned documents which the Prosecution requested in order to protect innocent third parties, the identities of OTP 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;⁸

NOTING the "Prosecution's Submission requesting Redactions pursuant to Rules 81 (2) and 81 (4) of the Rules and for an Extension of Time pursuant to Regulation 35 of the Regulations of the Court"⁹ ("The Prosecution Submission") filed by the Prosecution on 10 March 2008 in which the Prosecution requests to:

- i) "make redactions to relevant interview notes, statements and transcripts of interview of witnesses [REDACTED]("Witness 7"); [REDACTED]("Witness 8"); [REDACTED]("Witness 9") and [REDACTED] ("Witness 12"), pursuant to prior decision on redactions

⁸ ICC-01/04-01/07-247-Conf-Exp-Corr ; ICC-01/04-01/07-248-Corr and ICC-01/04-01/07-249.

⁹ ICC-01/04-01/07-258-Conf-Exp.

issued by the Single Judge and Rules 81 (2) and (4) of the Rules of Procedure and Evidence" ("Prosecution First Request"); and

- ii) "grant an extension of time for disclosure and inspection to the Defence, as ordered by the Single Judge; pending the decision of the Single Judge on these requests for redactions, pursuant to Regulation 35 of the Regulations of the Court" ("The Prosecution Second Request").

NOTING articles 54, 57 (3) (c), 61, 67 and 68 of the *Rome Statute* ("the Statute"), rules 15, 76, 77, 81 and 121 of the *Rules of Evidence and Procedure* ("the Rules") and regulation 35 of the *Regulations of the Court* ("the Regulations");

CONSIDERING that in respect to the Prosecution First Request, the Prosecution is now submitting additional information in relation to a person named [REDACTED]; that redactions in relation to [REDACTED] were initially rejected by the Single Judge in the Third Decision on Redactions insofar as the requested redactions were categorised as "current staff members of the Prosecution"; and that nevertheless, the Prosecution was authorised to provisionally maintain those redactions in relation to [REDACTED] until the Prosecution's interlocutory appeal relating to redactions on the identities of staff members of the Prosecution present during the interviews of witnesses is decided upon;

CONSIDERING that the Prosecution is now clarifying that the redactions requested in relation to [REDACTED] be considered as falling under the category of Prosecution Sources insofar as (i) [REDACTED] is an intermediary hired temporarily by the Prosecution for specific tasking [REDACTED]; and (ii) the redactions are necessary pursuant to rule 81 of the Rules to prevent prejudice to further or ongoing investigations;

CONSIDERING that as the Single Judge has already held in the First, Second and Third Decisions on Redactions:

[...] 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.¹⁰

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.¹¹

CONSIDERING that, in the view of the Single Judge, the concept of "intermediaries" is too vague; and that the Single Judge cannot authorise, pursuant to rule 81 (2) of the Rules, redactions in relation to each and every person that gives information to the Prosecution in relation to witnesses or victims that could be contacted by the Prosecution;

CONSIDERING, further, that the Prosecution submits that [REDACTED] is temporarily contracted by the Prosecution; that he has been [REDACTED]; and that he is [REDACTED];¹²

CONSIDERING that, in the view of the Single Judge, the situation of [REDACTED] is similar to that of the [REDACTED] hired temporarily by the Prosecution

¹⁰ ICC-01/04-01/07-88-Conf-Exp, para. 41; ICC-01/04-01/07-123-Conf-Exp, para. 50; and ICC-01/04-01/07-248-Conf-Corr, para. 26.

¹¹ ICC-01/04-01/07-88-Conf-Exp, para. 42; ICC-01/04-01/07-123-Conf-Exp, para. 50, and ICC-01/04-01/07-248-Conf-Corr, para. 26.

¹² ICC-01/04-01/07-258-Conf-Exp, para.4.

[REDACTED]; that, for the purpose of assessing the Prosecution First Request, he cannot be considered just as an intermediary, but he must be considered as a temporary staff member of the Prosecution;¹³ and that therefore the redaction of his name and identifying information must be authorised in the same manner as the Single Judge has authorised in the First, Second and Third Decisions on Redactions the redaction of the names and identifying information of [REDACTED] hired by the Prosecution [REDACTED];

CONSIDERING that, in the Prosecution First Request, the Prosecution also brings to the attention of the Single Judge that it inadvertently omitted to request authorisation to redact:

- i) the term “[REDACTED]”,¹⁴ which refers to the place where the interview with Witness 8 was conducted;
- ii) the terms “[REDACTED]” in the transcript of interview with Witness 12,¹⁵ which refers to identifying information of a person who was working with [REDACTED];
- iii) the initials of current staff members of the Prosecution, namely “[REDACTED]”¹⁶ and “[REDACTED]”¹⁷ in the transcripts of interview with Witness 12;
- iv) the term “[REDACTED]”¹⁸ in the transcript of interview with Witness 12 insofar that this could lead to the identification of the place where the interview with Witness 12 was conducted; and
- v) the terms “[REDACTED]”¹⁹ and “[REDACTED]”²⁰ in the transcript of interview with Witness 9 insofar that such information could lead to

¹³ ICC-01/04-01/07-258-Conf-Exp, para. 4.

¹⁴ ICC-01/04-01/07-151-Conf-Exp-AnxG.

¹⁵ ICC-01/04-01/07-190-Conf-Exp-AnxII, line 255.

¹⁶ ICC-01/04-01/07-190-Conf-Exp-AnxII 1, line 146 and ICC-01/04-01/07-190-Conf-Exp-AnxI6, line 1022.

¹⁷ ICC-01/04-01/07-190-Conf-Exp-I3, line 87.

¹⁸ ICC-01/04-01/07-190-Conf-Exp-II0, lines 599 ; 620 and 625.

¹⁹ ICC-01/04-01/07-190-Conf-Exp-F2, line [REDACTED].

²⁰ ICC-01/04-01/07-190-Conf-Exp-F2, line [REDACTED].

the identification of the current whereabouts of Witness 9's
[REDACTED];

CONSIDERING that as the Single Judge already stated in her First, Second and Third Decisions on Redactions (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"; and (ii) "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;"²¹

CONSIDERING further that as the Single Judge already held in her First, Second and Third Decisions on Redactions:

"[redactions 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, the use of redactions is not a measure that is available to ensure the protection of these individuals."]²²

CONSIDERING in this respect that the Prosecution explicitly states that the person referred to in the transcript of interview with Witness 12²³ as "innocent third parties" is not a Prosecution source and is not in any way involved in any ongoing or further Prosecution investigation, and that the relevant redactions have been only requested because this individual could erroneously be perceived as a Prosecution source or

²¹ *First Decision on Redactions*, paras.59-64; *Second Decision on Redactions*, paras.57-60 and *Third Decision on Redactions*, para.51.

²² *First Decision on Redactions*, para.55 ; see also *Second Decision on Redactions*, para.30. *Third Decision on Redactions*, para.30.

²³ ICC-01/04-01/07-190-Conf-Exp-AnxI1, line 255.

witness; and that therefore the Single Judge cannot authorise the requested redaction in relation to “innocent third parties”;

CONSIDERING nevertheless that the Single Judge has authorised the Prosecution to provisionally maintain those redactions in the interview notes, statements, transcripts of interviews and documents relating to witnesses 7, 8, 9, 12 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 above-mentioned witnesses, and the location of the interviews, until such time as the Appeals Chamber issues a decision on the pending appeals concerning these types of redactions;

CONSIDERING in relation to the redactions requested in the transcript of the interview with Witness 9²⁴ in order to protect the current whereabouts of Witness 9’s [REDACTED] who is in [REDACTED], that the Single Judge has already granted redactions of the very same information in the transcript of interview of Witness 9; and that for the reasons provided in the Third Decision on Redactions, the requested redactions shall also be granted;²⁵

CONSIDERING that, in relation to the Second Prosecution Request, the Prosecution, as requested by Regulation 35 (2) of the Regulations, has shown good cause; and that therefore its request for extension of time is to be granted for an additional 24 hours;

FOR THESE REASONS

²⁴ ICC-01/04-01/07-190-Conf-Exp-F2, lines [REDACTED] and [REDACTED].

²⁵ *Third Decision on Redactions*, paras.20-23. See also Annex to the *Third Decision on Redactions*, pp.20-22 in relation to AnnexF2.

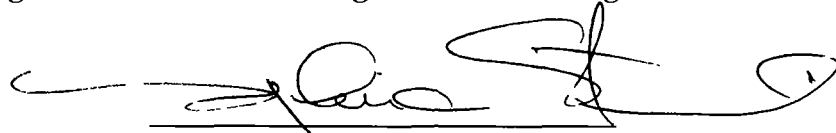
DECIDES to only authorise the redactions requested by the Prosecution in the Prosecution Submission in relation to:

- (i) the name and identifying information of "[REDACTED]";
- (ii) the terms "[REDACTED]"²⁶ and "[REDACTED]"²⁷ in the transcript of interview with Witness 9 insofar as they could lead to the identification of the current whereabouts of Witness 9's [REDACTED];

DECIDES to reject the remaining redactions requested by the Prosecution in the Prosecution Submission; and to authorise the Prosecution to provisionally maintain the rejected redactions until the Appeals Chamber issues a decision on the pending appeals concerning redactions requested 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.

DECIDES to grant the Prosecution request for extension of time and to give the Prosecution until Tuesday 11 March 2008 at 16h00 to make available to the Defence the relevant interview notes, statements, transcripts of interviews and related documents.

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



Judge Sylvia Steiner
Single judge

Dated this Tuesday 11 March 2008

At The Hague

The Netherlands

²⁶ ICC-01/04-01/07-190-Conf-Exp-F2, line [REDACTED].

²⁷ ICC-01/04-01/07-190-Conf-Exp-F2, line [REDACTED].