

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 3 April 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

**Fourth Decision on the Prosecution Request for Authorisation to Redact
Documents related to Witnesses 166 and 233**

The Office of the Prosecutor
Mr Luis Moreno Ocampo, Prosecutor
Ms Fatou Bensouda, Deputy Prosecutor
Mr Eric MacDonald, Trial Lawyer
Ms Florence Darques-Lane, Legal Adviser

**Counsel for the Defence of
Germain Katanga**
Mr David Hooper
Mr Göran Sluiter
Ms Caroline Buisman

**Counsel for the Defence of
Mathieu Ngudjolo Chui**
Mr Jean-Pierre Kilenda Kakengi
Basila
Ms Maryse Alié
Ms Aurélie G. Roche

TABLE OF CONTENTS

I.	Introductory Remarks	9
II.	Categories of Redactions	12
A.	Names and Identifying Information of Family Members of Prosecution Witnesses	12
B.	Current Whereabouts of Family Members of Prosecution Witnesses	14
C.	Names and Identifying Information of Prosecution Witnesses Other than Witnesses 166 and 233	15
D.	Prosecution Sources	16
E.	Innocent Third Parties	17
F.	Names and Identifying Information of Victims of the alleged 24 February 2003 joint FRPI/FNI attack on Bogoro	18
G.	Names and Identifying Information of Family Members of Victims of the alleged 24 February 2003 joint FRPI/FNI attack on Bogoro	21
H.	Internal Documents prepared by the Prosecution	24
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	25

I, 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"), by 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 *ex parte*, closed session hearing with the Prosecution and the Victims and Witnesses Unit ("the VWU") held on 10 December 2007;⁴

NOTING the "Decision on the Prosecution Request for Leave to Appeal the First Decision on Redactions",⁵ 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

¹ ICC-01/04-01/07-1.

² ICC-01/04-02/07-1.

³ 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.

⁴ ICC-01/04-01/07-T-10-Conf-Exp-ENG ET.

⁵ ICC-01/04-01/07-108.

(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 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: “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”⁷ (“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;

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.

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"⁸ filed by the Prosecution on 15 January 2008;

NOTING the *ex parte*, closed session hearing held with the Prosecution and the VWU on 21 January 2008;⁹

NOTING the "Submission of the Document Containing the Charges and of the List of Evidence" ("the Prosecution's Charging Document against Germain Katanga") filed by the Prosecution on 29 January 2008;¹⁰

NOTING the *ex parte*, closed session hearing held with the Prosecution on 4 February 2008;¹¹

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, 0233, 0267, 0271 and 0132" filed by the Prosecution on 26 February 2008;¹²

NOTING the *ex parte* and closed session hearing held with the Prosecution and the VWU on 3 March 2008;¹³

⁸ ICC-01/04-01/07-145 and ICC-01/04-01/07-145-Conf-Exp-Anx1 to AnxP2.

⁹ ICC-01/04-01/07-T-14-Conf-Exp-ENG ET.

¹⁰ 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.

¹¹ ICC-01/04-01/07-T- 16-Conf-Exp ET 04-02-2008.

¹² ICC-01/04-01/07-240 and its confidential and *ex parte* annexes.

¹³ ICC-01/04-01/07-T-20-Conf-Exp-ENG ET.

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” (“the Third Decision on Redactions”)¹⁴ 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;

NOTING the “Prosecution's Submission regarding the Written Consents of Witnesses 166, 233 and [REDACTED]”¹⁵ filed by the Prosecution on 10 March 2008 and by which the Prosecution *inter alia*:

- (i) filed the written and signed consents from Witness 166 and Witness 233 in which they agree to (a) have their statements used in the proceedings of the cases of *The Prosecutor v. Germain Katanga* and *The Prosecutor v. Mathieu Ngudjolo Chui* and disclosed to both defence teams as well as the suspects and (b) have their identity disclosed to the suspects and their respective defence teams; and
- (ii) requested authorisation to redact, pursuant to rule 81 (2) of the Rules of Procedure and Evidence, the names and signatures of current members of the Prosecution from Witnesses 166 and 233's written consents (“the written consents”);

¹⁴ ICC-01/04-01/07-247-Conf-Exp-Corr ; ICC-01/04-01/07-248-Corr and ICC-01/04-01/07-249.

¹⁵ ICC-01/04-01/07-256-Conf-Exp; ICC-01/04-01/07-256-Conf-Exp-Anx1; ICC-01/04-01/07-256-Conf-Exp-Anx2 and ICC-01/04-01/07-256-Conf-Exp-Anx3.

NOTING the “Decision on the Joinder of the Cases against Germain KATANGA and Mathieu NGUDJOLO CHUI” issued by the Chamber on 10 March and by which the Chamber decided to join the cases of *The Prosecutor v. Germain Katanga* and *The Prosecutor v. Mathieu Ngudjolo Chui*;¹⁶

NOTING the “Decision Establishing a Calendar in the Case against Germain KATANGA and Mathieu NGUDJOLO CHUI” (“the Decision Establishing a Calendar”),¹⁷ 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

¹⁶ ICC-01/04-01/07-257 and ICC-01/04-02/07-48 [ICC-01/04-01/07-307].

¹⁷ ICC-01/04-01/07-259.

request for redactions concerning the statements, interview notes, interview transcripts and documents relating to those witnesses under (a) above;

NOTING the “Corrigendum to the Prosecution’s Submission regarding the Written Consents of Witnesses 166, 233 and [REDACTED]”¹⁸ filed by the Prosecution on 13 March 2008 and by which the Prosecution requested authorisation to redact information pursuant to rule 81(2) of the Rules of the Rules of Procedure and Evidence;

NOTING the “Prosecution’s Application Pursuant to Rules 81(1), 81(2) and 81(4) for Redactions to the Statements of Witnesses 166 and 233 and to the Transcript of [REDACTED] Witness [REDACTED]”¹⁹ filed by the Prosecution on 13 March 2008;

NOTING the “Registrar’s report on the status of assessment and implementation of protective measures”²⁰ filed by the Registry on 31 March 2008;

NOTING the “Prosecution’s Report on the Status of Witness Protection and Request for the Postponement of the 1 April 2008 Deadline in Regards to the Admissibility of the Statement, Interview Notes, Interview Transcripts and Documents Relating to Witness 163”²¹ filed by the Prosecution on 31 March 2008;

NOTING the *ex parte* and closed session hearing held with the Prosecution and the VWU on 1 April 2008;²²

¹⁸ ICC-01/04-01/07-320-Conf-Exp and ICC-01/04-01/07-320-Conf-Exp-AnxA.

¹⁹ ICC-01/04-01/07-321-Conf-Exp and its confidential and *ex parte* annexes.

²⁰ ICC-01/04-01/07-347-Conf-Exp.

²¹ ICC-01/04-01/07-349-Conf-Exp.

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

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 Procedure and Evidence* ("the Rules");

I. Introductory Remarks

1. In its various applications pursuant to rules 81 (1), (2) and (4) of the Rules, the Prosecution requests certain redactions in relation 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. However, as the Single Judge has already stated, her ruling on a number of these pending requests for redactions depends on whether the relevant witnesses are accepted into the Court's witness protection program and on the subsequent implementation of the protective measures, if any, accorded to them by the Registrar.²³ Considering that the Single Judge has been informed, notably during the hearing held on 1 April 2008, of the status of assessments and implementation of protective measures and that, according to the Decision Establishing a Calendar, the Prosecution has (i) until 4 April 2008 to file 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 and for whom protective measures have been implemented by 1 April 2008, and (ii) until 8 April 2008 to file its final requests for redactions concerning the statements, interview notes, interview transcripts and documents relating to those witnesses for whom protective measures cannot be implemented. As a result, the Single Judge 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.²⁴

²³ ICC-01/04-01/07-172, pp.6-7; *Third Decision on Redactions*, para.1.

²⁴ ICC-01/04-01/07-172, pp.6-7; *Third Decision on Redactions*, para.1.

2. The Single Judge however notes that Witnesses 166 and 233 were referred by the Prosecution to the VWU and were consequently assessed at the mission concluded on [REDACTED]. During the assessment mission, Witnesses 166 and 233 indicated to the VWU that [REDACTED].²⁵ In this respect, Witnesses 166 and 233 have also indicated that [REDACTED].²⁶

3. Therefore, the Registrar, [REDACTED].²⁷ In this regard, the Single Judge requested the Prosecution to obtain the written consents from Witnesses 166 and 233 for their statements to be used for the purposes of the confirmation of charges hearing in the former cases of *The Prosecutor v. Germain Katanga* and *The Prosecutor v. Mathieu Ngudjolo Chui*.²⁸

4. On 10 and 13 March 2008, the Prosecution filed the written consents of Witnesses 166 and 233 by which the witnesses: (i) agreed to have their statements used in the proceedings of the joint case of *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui* and disclosed to both defence teams as well as the suspects; (ii) agreed to have their identity disclosed to the suspects and their respective defence teams, and (iii) [REDACTED].²⁹

5. Hence, [REDACTED] the Prosecution is not seeking any redaction of Witnesses 166 and 233's names and identifying information. The Prosecution, however, requests authorisation to redact, pursuant to rules 81(1), (2) and (4) of the Rules, information other than the names and identifying information of Witnesses 166 and 233 in the statements, investigators' notes and documents relating to Witnesses 166 and 233 as well as in their written consents.

²⁵ ICC-01/04-01/07-138-Conf-Exp, para.6.

²⁶ ICC-01/04-01/07-T-14-Conf-Exp-ENG ET, p.7, lines 2-5.

²⁷ ICC-01/04-01/07-T-14-Conf-Exp-ENG ET, p.7, lines 9-11.

²⁸ ICC-01/04-01/07-T-14-Conf-Exp-ENG ET, p.8, lines 8-14 and ICC-01/04-01/07-T-20-Conf-Exp-ENG ET, p.12, lines 21-24.

²⁹ ICC-01/04-01/07-256-Conf-Exp-Anx1 and ICC-01/04-01/07-256-Conf-Exp-Anx2. See also ICC-01/04-01/07-320-Conf-Exp-AnxA.

6. In this regard, the Single judge has already emphasised in the First, Second and Third Decisions on Redactions that:

[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.³⁰

7. In carrying out her analysis, the Single Judge has classified the redactions requested by the Prosecution into the following nine categories: (a) names and identifying information of family members of Prosecution witnesses; (b) current whereabouts of family members of Prosecution witnesses; (c) names and identifying information of Prosecution witnesses other than Witnesses 166 and 233; (d) Prosecution sources; (e) innocent third parties; (f) names and identifying information of victims of the alleged 24 February 2003 joint FRPI/FNI attack on Bogoro; (g) names and identifying information of family members of victims of the alleged 24 February 2003 joint FRPI/FNI attack on Bogoro; (h) internal documents prepared by the Prosecution 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.

³⁰ *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.

8. Moreover, for the purpose of her analysis, the Single Judge considers that the security situation and context, in which the Prosecution requests, remain the same as that mentioned in the First Decision on Redactions.³¹

9. 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.

10. 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,³² 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.

II. Categories of Redactions

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

11. 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 Witness

³¹ *First Decision on Redactions*, paras. 13 to 22

³² ICC-01/04-01/06-773, para. 22.

166 (apart from those of [REDACTED]) and Witness 233 (apart from those of [REDACTED])).³³

12. Nevertheless, in the view of the Single Judge, [REDACTED] of the family members of Witnesses 166 and 233 – namely [REDACTED]- in addition to being family members of the said witnesses are also victims of the alleged 24 February 2003 joint FRPI/FNI attack on Bogoro insofar as they *prima facie* suffered, at least, moral harm as a result of the attack. In addition, the Single Judge notes that these family members are [REDACTED] and that according to the information at her disposal, they [REDACTED].

13. The Single Judge is of the view that Witness 166 is not a public figure and is not very close to Germain Katanga or Mathieu Ngudjolo Chui within the meaning given in the First Decision on Redactions.³⁴ The Single Judge is of the opinion that Witness 166 being only [REDACTED], Germain Katanga and Mathieu Ngudjolo Chui would not necessarily know the identity of his family members. Likewise, Witness 233 cannot be seen as a public figure or very close to Germain Katanga or Mathieu Ngudjolo Chui. As a result, disclosing the names and identifying information of family members of Witnesses 166 and 233 - [REDACTED] - 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.

14. 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 the witnesses who gave the statements; and (ii) the family members, although [REDACTED] of them are referred

³³ ICC-01/04-01/07-321-Conf-Exp; ICC-01/04-01/07-321-Conf-Exp-AnxC1-C6 and ICC-01/04-01/07-321-Conf-Exp-AnxM1-M6.

³⁴ *First Decision on Redactions*, para.32-33.

to as having 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, are not Prosecution sources or witnesses and are not referred to as having any further information.

15. For these reasons, the Single Judge grants authorisation for the redactions relating to the names and identifying information of the family members of Witnesses 166 and 233 as detailed in Annex I to this decision.

B. Current Whereabouts of Family Members of Prosecution Witnesses

16. 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 166 and 233.³⁵

17. The Prosecution also requests authorisation pursuant to rule 81(4) of the Rules to redact, in the statement of Witness 166, the information on the current whereabouts of family members of Witness 1 who currently live in [REDACTED].

18. 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 1, 166 and 233 - [REDACTED] - 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 1, 166 and 233 are not disclosed to the Defence.

³⁵ ICC-01/04-01/07-256-Conf-Exp-Anx1 and ICC-01/04-01/07-256-Conf-Exp-Anx2.

19. Moreover, the Single Judge considers that the redactions requested by the Prosecution, which are limited to the current whereabouts of family members of Witnesses 1, 166 and 233, 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.

20. 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 for whom redaction of their current whereabouts is requested are not referred to as having any knowledge concerning the crimes included in the Prosecution's Charging Document against Germain Katanga and in the Warrant of Arrest for Mathieu Ngudjolo Chui.

21. For these reasons, the Single Judge grants authorisation for the redactions relating to the current whereabouts of the family members of Witnesses 1, 166 and 233 as detailed in Annex I to this decision.

C. Names and Identifying Information of Prosecution Witnesses Other than Witnesses 166 and 233

22. The Prosecution requests, pursuant to rule 81(4) of the Rules, authorisation to redact in the investigators' notes, statements and documents relating to Witnesses 166 and 233, the names and identifying information of Witnesses [REDACTED], 4, [REDACTED] and [REDACTED].

23. The Single Judge notes that the Prosecution already submitted that it no longer intends to rely on Witness 4's statement for the purpose of the confirmation hearing in the present case. Therefore, for the purpose of the Prosecution's request for authorisation to redact the name and identifying information of Witness 4 in the

investigators' notes, statements and documents relating to Witnesses 166 and 233, the Single Judge recalls that Witness 4 was considered in the Second Decision on Redactions as a victim of the alleged 24 February 2003 joint FRPI/FNI attack on Bogoro.³⁶ Thus, the redactions requested by the Prosecution in relation to Witness 4 will be considered below in the section on "names and identifying information of victims of the alleged 24 February 2003 joint FRPI/FNI attack on Bogoro."

24. The Single Judge further notes that the Prosecution's request in relation to Witnesses [REDACTED], [REDACTED] and [REDACTED] concerns witnesses on whom the Prosecution still intends to rely for the purposes of the confirmation of charges hearing and in relation to whom (i) the 1 April 2008 deadline given to the Registrar by the Single Judge in the Decision Establishing a Calendar applies as protective measures have not been accorded or implemented yet; and (ii) the Prosecution has until 8 April 2008 to file its final request on redactions according to the Decision Establishing a Calendar;

25. In the view of the Single Judge, only when the Prosecution has filed its final request on redactions concerning Witnesses [REDACTED], [REDACTED] and [REDACTED], will the Single Judge be in a position to take a final decision on the requested redactions in the various Prosecution's requests relating to the investigator's notes, statements and documents relating to Witnesses 166 and 233. In the meanwhile, the Single Judge provisionally authorises the Prosecution to disclose to the Defence the investigator's notes, statements and documents relating to Witnesses 166 and 233 with the requested redactions relating to Witnesses [REDACTED], [REDACTED] and [REDACTED].

D. Prosecution Sources

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

³⁶ *Second Decision on Redactions*, para.24.

27. The Single Judge notes that the organisations - whose names the Prosecution requests authorisation to redact - have been 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. The Single Judge is therefore of the view that the Prosecution's further or ongoing investigations could be prejudiced if the representatives of such organisations were to be threatened, intimidated or interfered with.

28. 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 organisations concerned are currently located in different places and its representatives have been contacted in relation to the Prosecution's further or ongoing investigations.

E. 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."³⁷

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, the use of redactions is not a measure that is available to ensure the protection of these individuals."³⁸

³⁷ *First Decision on Redactions*, para. 52.

³⁸ *First Decision on Redactions*, para. 55.

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 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”.

32. However, the Single Judge reminds 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, statements and documents relating to Witnesses 166 and 233 which the Prosecution requested in order to protect innocent third parties, until the Appeals Chamber rules on the abovementioned issue.

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

33. The Single Judge observes that the Prosecution requests authorisation, pursuant to rule 81(4) of the Rules, to redact in the investigators’ notes, statements and documents relating to Witnesses 166 and 233, the names and identifying information of alleged victims of the alleged 24 February 2003 joint FRPI/FNI attack on Bogoro who are not deceased.

34. In addition, the Single Judge notes that the Prosecution claims that its requests for authorisation to redact the names and identifying information of individuals who are alleged victims of sexual assault were also allegedly victimised during the alleged 24 February 2003 joint FRPI/FNI attack on Bogoro. The only

exception is the person referred to in paragraph 109 of Annex C.1³⁹, who, according to the information provided by Witness 166, was [REDACTED]. Accordingly, the Single Judge considers that this information is not sufficient to *prima facie* consider this individual either as a victim of a sexual offence or as a victim of the alleged 24 February 2003 joint FRPI/FNI attack on Bogoro. As a result, this individual must be considered as an “innocent third party” for the purpose of the redactions requested by the Prosecution at paragraph 109 of Annex C.1.

35. As the Single Judge has already emphasised⁴⁰:

“Rule 81(4) of the Rules empowers the competent Chamber to provide for the nondisclosure 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”.

36. The Single Judge considers that the individuals referred to in the investigators’ notes, statements and documents relating to Witnesses 166 and 233 - 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, statements and documents relating to Witnesses 166 and 233, they *prima facie* suffered, at least, moral harm as a result of the attack.

³⁹ ICC-01/04-01/07-321-Conf-Exp-AnxC1.

⁴⁰ *Second Decision on Redactions*, paras.12-14. *Third Decision on Redactions*, para.34. See also ICC-01/04-01/07-357.

37. 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, [REDACTED], 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.

38. 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.

39. For these reasons, the Single Judge grants authorisation, pursuant to rule 81 (4) of the Rules, for the redactions in the investigators' notes, statements and documents relating to Witnesses 166 and 233 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.

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

40. The Single Judge observes that the Prosecution requests authorisation, pursuant to rule 81(4) of the Rules, to redact in the investigators' notes, statements and documents relating to Witnesses 166 and 233, the names and identifying information of family members of victims of the alleged 24 February 2003 joint FRPI/FNI attack on Bogoro.

41. In addition, the Single Judge is aware that the Prosecution requests authorisation to redact [REDACTED]⁴¹ to protect, pursuant to rule 81 (4) of the Rules, family members of the said victims. However, the Single Judge observes that [REDACTED] the persons referred to [REDACTED] are in the majority of the cases family members of victims; however, [REDACTED] there are also cases [REDACTED] who are not family members. Hence, the Single Judge notes that not all names [REDACTED] are family members of the victims [REDACTED].

42. Under these circumstances, the Single Judge is of the view that all individuals referred to [REDACTED] must be considered as "innocent third parties" for the purpose of the aforementioned redactions requested by the Prosecution, and that for the reasons given above in Section II.E, the said redactions are not authorised. Nevertheless, as already explained, the Single Judge authorises the Prosecution to provisionally maintain these redactions until the Appeals Chamber rules on the matter. Moreover, if the Prosecution is in a position to provide the necessary information to distinguish between family members of victims of the alleged 24 February 2003 joint FRPI/FNI attack on Bogoro and [REDACTED] before the Appeals

⁴¹ ICC-01/04-01/07-321-Conf-Exp-AnxC2.

Chamber renders a decision on the issue of “innocent third parties”, the Single Judge will review her decision concerning the individuals referred to [REDACTED].

43. The Single Judge notes that rule 81 (4) 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 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.⁴²

44. The Single Judge is of the view that, leaving aside the [REDACTED], 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, statements and documents relating of Witnesses 166 and 233 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 [REDACTED], 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.

⁴² ICC-01/04-423-Corr, para. 24. See also ICC-02/05-111-Corr, paras. 35 and 36.

45. 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 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.

46. For these reasons, except in relation to [REDACTED], the Single Judge grants authorisation for the redactions in the investigators' notes, statements and documents relating to Witnesses 166 and 233 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.

47. The Single Judge further notes that the Prosecution also requests authorisation to redact the names and identifying information of family members of victims unrelated to the alleged 24 February 2003 joint FRPI/FNI attack on Bogoro.

48. As the Single Judge previously recalled:

“[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”.⁴³

49. Accordingly, the Single Judge considers that family members of 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. E 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. Internal Documents prepared by the Prosecution

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

51. 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”.

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

53. As the Single Judge already held, 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 Mathieu Ngudjolo Chui,

⁴³ *Second Decision on Redactions*, paras.12-14, *Third Decision on Redactions*, para.34.

and hence, as provided for in Rule 81 (1) of the Rules, the Prosecution is under no obligation to disclose it to the Defence.⁴⁴

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

54. 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 written consents of Witnesses 166 and 233 were taken, as well as the names of [REDACTED] who assisted in the process of taking the witnesses' statements.

55. The Single Judge considers that, for the reasons given in the First, Second and Third Decisions on Redactions,⁴⁵ (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 redaction of the names, initials, signatures and any other identifying information of [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.

⁴⁴ *Third Decision on Redactions*, para.49.

⁴⁵ *First Decision on Redactions*, paras. 57-64. See also the *Second Decision on Redactions*, paras.57-60.

56. Nevertheless, the Single Judge realises 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 documents relating to Witnesses 166 and 233, 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, statements and documents relating to Witnesses 166 and 233 as well as to their written consents, as specified in Annex I to this decision;

DECIDE to provisionally maintain those redactions requested by the Prosecution in relation to Witnesses [REDACTED], [REDACTED] and [REDACTED] until the Single Judge issues a decision on the requests for redactions filed by the Prosecution by 8 April 2008;

DECIDE to authorise the Prosecution to provisionally maintain those redactions to the investigators' notes, statements and documents relating to Witnesses 166 and 233, as well as to their written consents 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;

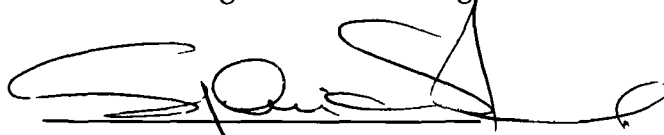
DECIDE that the Single Judge shall review her decision not to authorise the redactions requested by the Prosecution in [REDACTED] if the Prosecution provides the necessary information to distinguish between family members of victims of the alleged 24 February 2003 joint FRPI/FNI attack on Bogoro and [REDACTED] before the Appeals Chamber renders a decision on the issue of redactions for innocent third parties;

DECIDE that, pursuant to rule 76 of the Rules, the Prosecution shall, no later than 8 April 2008, disclose to the Defence the investigators' notes, statements and documents relating to Witnesses 166 and 233, as well as their written consents, 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 8 April 2008, file the originals of the investigators' notes, statements and documents relating to Witnesses 166 and 233, as well as their written consents, 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 Thursday 3 April 2008

At The Hague,

The Netherlands