

**Cour
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**International
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Court**

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PRE-TRIAL CHAMBER I

Before: Judge Akua Kuenyehia, Single Judge

***SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO
IN THE CASE OF
THE PROSECUTOR v. GERMAIN KATANGA and MATHIEU NGUDJOLO CHUI***

Public Document

Public Redacted Version of the "Eighth Decision on Redactions"

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

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I, Judge Akua Kuenyehia, judge at the International Criminal Court ("the Court");

NOTING the "Prosecution's Submission of the Document Containing the Charge and List of Evidence"¹ ("the Prosecution's Charging Document") filed by the Prosecution on 21 April 2008;

NOTING the "Decision Establishing a Calendar According to the Date of the Confirmation Hearing: 27 June 2008"² ("Decision on the Calendar") issued by the Single Judge on 29 April 2008;

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;

NOTING the "Decision on the Prosecution Request for Authorisation to Redact Statements of Witnesses 4 and 9"⁴ ("the Second Decision on Redactions"), issued by the Single Judge on 21 December 2007;

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"⁵ ("the Third Decision on Redactions") issued by the Single Judge on 5 March 2008;

NOTING the "Fourth Decision on the Prosecution Request for Authorisation to Redact Documents related to Witnesses 166 and 233"⁶ ("the Fourth Decision on Redactions") issued by the Single Judge on 2 April 2008;

¹ ICC-01/04-01/07-422

² ICC-01/04-01/07-459

³ ICC-01/04-01/07-88-Conf-Exp, ICC-01/04-01/07-90

⁴ ICC-01/04-01/07-123-Conf-Exp, ICC-01/04-01/07-124-Conf, ICC-01/04-01/07-160

⁵ ICC-01/04-01/07-247-Conf-Exp-Corr, ICC-01/04-01/07-248-Corr and ICC-01/04-01/07-249

⁶ ICC-01/04-01/07-358-Conf-Exp, ICC-01/04-01/07-360-Conf, and ICC-01/04-01/07-361

NOTING the “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”⁷ (“the Fifth Decision on Redactions”) issued by the Single Judge on 21 April 2008;

NOTING “the Sixth Decision on the Prosecution Request for Authorisation to Redact Interview Transcripts of Witness 238”⁸ (“the Sixth Decision on Redactions”) issued by the Single Judge on 21 April 2008;

NOTING the “Judgement on the Appeal of the Prosecution Against the Decision of Pre-Trial Chamber I entitled ‘First Decision on the Prosecution Request for Authorisation to Redact Witness Statements’”⁹ (First Appeals Chamber Judgment”) issued by the Appeals Chamber on 13 May 2008;

NOTING the “Judgment on the appeal of Mr Germain Katanga against the decision of Pre-Trial Chamber I entitled “First Decision on the Prosecution Request for Authorisation to Redact Witness Statements””¹⁰ issued by the Appeals Chamber on 13 May 2008;

NOTING the “Registrar’s Report on the Protective Measures Afforded to Witness 132, 238 and 287”¹¹ (“the Registrar’s Report”), filed by the Registry on 19 May 2008;

⁷ ICC-01/04-01/07-405-Conf-Exp, ICC-01/04-01/07-427

⁸ ICC-01/04-01/07-413-Conf-Exp, ICC-01/04-01/07-425

⁹ ICC-01/04-01/07-475

¹⁰ ICC-01/04-01/07-476

¹¹ ICC-01/04-01/07-482-Conf-Exp

NOTING the “Prosecution’s Urgent Application for the Admission of the Evidence of Witness 132 and 287”¹² (“Prosecution Application”) filed by the Prosecution on 27 May 2008;

NOTING the “Seventh Decision on Redactions”¹³ issued by the Single Judge on 26 May 2008;

NOTING the “Decision on Prosecution’s Urgent Application for the Admission of the Evidence of Witness 132 and 287”¹⁴ (“the Decision”) issued by the Single Judge on 28 May 2008;

NOTING the “Prosecution’s Application for Redactions to Evidentiary Material of Witnesses 132 and 287 Pursuant to Rule 81(2) and Rule 81(4) and Request for Authorisation to Rely at the Confirmation Hearing on the Summary of the Statement of Witness 243”¹⁵ (“the Prosecution’s Request”) filed by the Prosecution on 2 June 2008;

NOTING the “Decision on the Temporary Replacement of the Single Judge”¹⁶ issued by the Chamber on 6 June 2008;

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”);

¹² ICC-01/04-01/07-516-Conf-Exp

¹³ ICC-01/04-01/07-511-Conf Exp ICC-01/04-01/07-526

¹⁴ ICC-01/04-01/07-523

¹⁵ ICC-01/04-01/07-540-Conf-Exp and Conf-Exp-Annexes

¹⁶ ICC-01/04-01/07-556

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 the statements, investigators' notes and related documents concerning certain witnesses on whom the Prosecution intends to rely at the confirmation hearing.

2. Firstly, the Single Judge notes that the Prosecution requests authorisation to redact the name and identifying information of Witness 243 from the transcript of [REDACTED] Witness 243.

3. The Single Judge observes that in the "Decision on the Use of Summaries of the Statements of Witnesses 267 and 243", issued by the Single Judge on 3 April 2008, the Single Judge:

a. Highlighted that Witness 243 [REDACTED];¹⁷

b. Found that in the current security situation and context in the DRC, and particularly in the Ituri District:

"[REDACTED] at this stage of the proceedings, the use of summaries of these witnesses' statements, interview notes and interview transcripts is not prejudicial to, or inconsistent with the rights of the suspects, since they will nevertheless have access (i) to the information relevant to the case at hand and (ii) to the potentially exculpatory or exonerating information that may be contained in the statements, interview notes and interview transcripts"¹⁸

c. Explained that:

[...] in the view of the Single Judge, the burden of providing the relevant incriminating information in the summaries as well as the obligation to provide all potentially exculpatory or exonerating information in such summaries lies with the Prosecution; and that, therefore, the Single Judge will not analyse the content of the summaries presented by the Prosecution in its Application for the Use of Summaries;¹⁹

¹⁷ ICC-01/04-01/07-263-Conf-Exp, p 6

¹⁸ ICC-01/04-01/07-263-Conf-Exp, p 7

¹⁹ ICC-01/04-01/07-263-Conf-Exp, 8

- d. Granted “the anonymity of the summaries of the statements, interview notes and interview transcripts of Witnesses 243 and 267 for the purpose of the Confirmation Hearing.”²⁰

4. Therefore, if the Prosecution decides to include in the Prosecution List of Additional Evidence the transcript of [REDACTED] witness 243, it could only rely on it at the confirmation hearing in a summary form, which would have to:

- a. be prepared according to the guidance given in the “Decision on the Use of Summaries of the Statements of Witnesses 267 and 243”; and
- b. be disclosed to the Defence by no later than 12 June 2008.

5. Secondly, the Single Judge notes that the Prosecution has stated that it intends to rely at the confirmation hearing on the investigators’ notes, statements and related documents concerning Witnesses 132 and 287, who, according to the Prosecution and the Victims and Witnesses Unit (“the VWU”), have been accepted in the Court’s Witness Protection Programme and have been relocated.²¹

6. In this regard, the Single Judge has already emphasised in the seven previous 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

²⁰ ICC-01/04-01/07-263-Conf-Exp 9

²¹ ICC-01/04-01/07-516-Conf-Exp

affirmative will the Single Judge authorise the redactions requested by the Prosecution.²²

7. The Single Judge also observes the further guidance given by the First Appeals Chamber Judgment, in particular at paragraphs 71 to 73, 98, 99 and 111, in which the Appeals Chamber underlines that:

In the circumstances under consideration in the present case, non-disclosure pursuant to rule 81(4) may only be authorised if, first of all, disclosure of the information concerned would pose a danger to the particular person. In such circumstances, the Pre-Trial Chamber should consider the following factors in relation to the alleged risk of danger:

- a) the alleged danger must involve an objectively justifiable risk to the safety of the person concerned;
- b) the risk must arise from disclosing the particular information to the Defence, as opposed to disclosing the information to the public at large. The Chamber should consider, *inter alia*, whether the danger could be overcome by ruling that the information should be kept confidential between the parties. In making this assessment, the circumstances of the individual suspect should be considered, including, *inter alia*, whether there are factors indicating that he or she may pass on the information to others or otherwise put an individual at risk by his or her actions.²³

If the Pre-Trial Chamber concludes that it has been demonstrated that the risk addressed above in fact exists, it should proceed to assess whether the proposed redactions could overcome or reduce the risk. If not, the redactions should not be granted. If so, the following factors should be considered in determining whether the rights of the suspect will be restricted only as far as strictly necessary:

- a) the Pre-Trial Chamber should consider whether an alternative measure short of redaction is available and feasible in the circumstances. If a less restrictive protective measure is sufficient and feasible, that measure should be chosen;
- b) the Pre-Trial Chamber should bear in mind that the non-disclosure is sought at the stage of the proceedings in relation to the hearing to confirm the charges. The Appeals Chamber refers, in this context, to paragraph 68 above;
- c) the Pre-Trial Chamber should carefully assess the relevance of the information in question to the Defence. If, having carried out that assessment, the Chamber concludes that the information concerned is not relevant to the Defence, that is likely to be a significant factor in determining whether the interests of the person potentially placed at risk outweigh those of the Defence. If, on the other hand, the information may be of assistance to the case of the suspect or may affect the credibility of the case of the Prosecutor, the Pre-Trial Chamber will need to take particular care when balancing the interests at stake;
- d) if non-disclosure would result in the hearing to confirm the charges, viewed as a whole, to be unfair to the suspect, the requested redactions should not be authorised.²⁴

The following additional factors should be taken into account:

- a) in balancing the various interests at stake, the Pre-Trial Chamber must make sure that adequate safeguards are in place to protect the interests of the suspect so as to comply, as far as possible, with the requirements of adversarial proceedings and equality of arms;

²² *First Decision on Redactions*, para 4, *Second Decision on Redactions*, para 6, *Third Decision on Redactions*, para 3, *Fourth Decision on Redactions*, para 6, *Fifth Decision on Redactions*, para 8, *Sixth Decision on Redactions*, para 5 and *Seventh Decision on Redactions*, para 6. See also, ICC-01/04-01/06-773, paras 21, 33 and 34, ICC-01/04-01/06-774, paras 31-33.

²³ *First Appeals Chamber Judgment*, para 71.

²⁴ *First Appeals Chamber Judgment*, para 72.

- b) prior to ruling on the application for redactions, the Pre-Trial Chamber should give the Defence the greatest possible opportunity to make submissions on the issues involved, necessarily without revealing to the Defence the information which the Prosecutor alleges should be protected;
- c) even if it is determined that certain information should not be disclosed, such determination should be kept under review by the Pre-Trial Chamber. It may be necessary to disclose the withheld information subsequently, should circumstances change. The Prosecutor should assist the Pre-Trial Chamber in this regard by bringing to its attention factors that may cause it to reconsider its ruling on non-disclosure.²⁵

8. Furthermore, the Single Judge recalls that the First Appeals Chamber Judgement reversed the decision of the Pre-Trial Chamber to reject the requests of the Prosecutor to authorise redactions, *inter alia*, "relating to the place of the interviews and to the identities of the staff members of the Office of the Prosecutor and of the Victims and Witnesses Unit present at these interviews."²⁶ As a result, the Appeals Chamber remitted to the Pre-Trial Chamber for a new determination, on a case-by-case basis, the requests of the Prosecution in relation to that category of redactions. In the present decision, the Single Judge carries out a case-by-case analysis of such a category of redactions in the manner provided for by the First Appeals Chamber Judgment.

9. Moreover, as the Single Judge has already stated:

- a. "the Prosecution has the burden of providing the necessary information for the Single Judge to conduct the type of analysis requested by the Appeals Chamber";²⁷ and
- b. If the Prosecution does not provide a detailed justification for each of the redactions requested, "the Prosecution's request for redactions will be rejected *in limine*."²⁸

10. As a result, the Single Judge will only analyse the merits of the Prosecution's requests in those instances in which it has provided the Pre-Trial Chamber with the

²⁵ *First Appeals Chamber Judgment*, para 73

²⁶ ICC-01/04-01/07-475, para 110

²⁷ ICC-01/04-01/07-479, p 10

²⁸ ICC-01/04-01/07-493, p 5

necessary information to conduct the type of analysis requested by the Appeals Chamber in the First Appeals Chamber Judgment.

11. In carrying out her analysis, the Single Judge has classified the redactions requested by the Prosecution into the following five 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 victims of the alleged 24 February 2003 joint FRPI/FNI attack on Bogoro; (d) internal documents prepared by the Prosecution; and (e) 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.

12. For the purpose of her analysis, the Single Judge considers that the security situation and context, in which the Prosecution's requests are made, remain the same as that mentioned in the First Decision on Redactions.²⁹

13. Finally, 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.

14. 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,³⁰ specifies which of the five categories each of the redactions requested by the Prosecution belongs to. The explanation regarding the last category is given in the text of the present decision. Furthermore, in those instances in which the specific nature of the redactions requested by the Prosecution so requires, the

²⁹ ICC-01/04-01/07-88-Conf-Exp, ICC-01/04-01/07-90, paras 13 to 22, confirmed in all the Single Judge's decisions on redactions, see for example ICC-01/04-01/07-123-Conf-Exp, ICC-01/04-01/07-124-Conf, ICC-01/04-01/07-160, para 10, ICC-01/04-01/07-405-Conf-Exp, ICC-01/04-01/07-427, para 10, ICC-01/04-01/07-511-Conf-Exp, ICC-01/04-01/07-526, para 9

³⁰ ICC-01/04-01/06-773, para 22

Single Judge has provided an additional explanation of her decision concerning those requests for redactions in Annex I to this decision.

II. Categories of Redactions

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

15. 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 132 and 287.

16. The Single Judge is of the view that the above-mentioned 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.³¹ As a result, disclosing the names and identifying information of family members of Witnesses 132 and 287 [REDACTED] in the security situation and context referred to in the First Decision on Redactions poses an objectively justifiable risk to their 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 this information would not “result in the hearing to confirm the charges, viewed as a whole, to be unfair to the suspect[s]”³² insofar as (i) the Defence will have access to the identities of Witnesses 132 and 287 who gave the statements; and (ii) the family members of Witnesses 132 and 287 referred to in this subsection, are not Prosecution sources or witnesses and are not referred to as having any further information or knowledge of

³¹ *First Decision on Redactions*, para 32-33

³² *First Appeals Chamber Judgment*, para. 72.

the crimes set out in the Prosecution's Charging Document against Germain Katanga and Mathieu Ngudjolo Chui.

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 the family members of Witnesses 132 and 287 as detailed in Annex I to this decision.

B. Current Whereabouts of Family Members of Prosecution Witnesses

20. The Prosecution requests authorisation pursuant to rule 81(4) of the Rules to redact the current whereabouts or the information that could lead to the identification of the current whereabouts of family members of Witnesses 132 and 287.

21. 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 132 and 287 [REDACTED]poses an objectively justifiable 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 132 and 287 are not disclosed to the Defence.

22. Moreover, the Single Judge considers that the redactions requested by the Prosecution, which are limited to the current whereabouts of family members of Witnesses 132 and 287 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.

23. Furthermore, in the view of the Single Judge, the redaction of this information would not “result in the hearing to confirm the charges, viewed as a whole, to be unfair to the suspect[s]” insofar as (i) the Defence will have access to the identities of Witnesses 132 and 287 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 Mathieu Ngudjolo Chui.

24. For these reasons, the Single Judge grants authorisation for the redactions to the current whereabouts of the family members of Witnesses 132 and 287 or to information that could lead to the identification of such whereabouts, as detailed in Annex I to this decision.

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

25. 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 related documents concerning Witnesses 132 and 287, the names and identifying information of alleged victims of the alleged 24 February 2003 joint FRPI/FNI attack on Bogoro who are not deceased.

26. As the Single Judge has already emphasised:

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.³³

27. The Single Judge considers that the individuals referred to in the investigators' notes, statements and documents relating to Witnesses 132 and 287 - 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 related documents concerning Witnesses 132 and 287, they *prima facie* suffered, at the very least, moral harm as a result of the attack.

28. The Single Judge is of the view that in the security situation and context referred to in the First Decision on Redactions, there is an objectively justifiable risk to the security and well-being of victims of the alleged joint 24 February 2003 FRPI/FNI attack on Bogoro [REDACTED] if their names and any identifying information are disclosed to the Defence. 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.

29. The Single Judge cannot exclude the possibility that authorising the redaction of the victims' 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 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

³³ *Second Decision on Redactions*, paras 12-14 *Third Decision on Redactions*, para 34 See also ICC-01/04-01/07-357

as the one referred to in the Section I of the present decision, 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. Even if this prejudice materialises, the Single Judge considers that, given the limited scope of the confirmation hearing, it would not “result in the hearing to confirm the charges, viewed as a whole, to be unfair to the suspect[s].”

30. 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 related documents concerning Witnesses 132 and 287 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.

D. Internal Documents prepared by the Prosecution

31. 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.

32. 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.

33. 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 in their screening notes of Witness 132.

34. 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,

and hence, as provided for in rule 81(1) of the Rules, the Prosecution is under no obligation to disclose it to the Defence.³⁴

35. The Single Judge also observes that a number of redactions are requested by the Prosecution in the screening note of Witness 132 in order not to prejudice further and ongoing investigations.³⁵ This second group includes information relating to Prosecution's screening objectives and techniques of investigation.

36. In the view of the Single Judge, this second group of requested redactions is strictly limited to information given by Prosecution's staff members for the purpose of preparing and conducting the interview with Witness 132. Indeed, the information refers to the goals to be achieved in the first meeting with the witness and the arrangements to be made for the holding of such meeting.

37. As a result, the Single Judge considers that all this information is to be considered as an internal information prepared by the Prosecution in connection with its investigation in the present case. Hence, it falls within the scope of rule 81(1) of the Rules of Procedure and Evidence, and therefore the Prosecution has no obligation to disclose this information to the Defence.

E. The names and initials of the persons present when the interviews were conducted and interview locations

(i) Interview Locations

38. The Prosecution requests authorisation to redact the references to [REDACTED] and [REDACTED] as locations where the interviews with Witnesses 132 and 287 occurred pursuant to rule 81(2) of the Rules.

³⁴ *Third Decision on Redactions*, para.49

³⁵ ICC-01/04-01/07-T-7-Conf-Exp-ENG[30Oct2007Edited], p 21, lines 19-25, p 22, lines 1-21 and p 23, lines 11-21

39. In the Seventh Decision on Redactions, the Single Judge stated that the size of [REDACTED] was “significantly smaller than the size of the [REDACTED]”³⁶ and that “[t]his along with the findings of the First Decision on Redactions on the security situation in the Ituri District [REDACTED] leads to the conclusion that disclosing to the Defence the fact that interviews often take place in these [REDACTED] locations involves an objectively justifiable risk to cause a prejudice to the Prosecution investigation.”³⁷

40. The Single Judge considers that, for the reasons given in the Seventh Decision on Redactions,³⁸ the authorisation for the redaction of the references to [REDACTED]³⁹ [REDACTED]⁴⁰ is granted.

41. In relation to [REDACTED], the Single Judge recalls that in the Seventh Decision on Redactions it rejected the redactions of the references to [REDACTED] “as they both are of a considerable size and are not located in or in the surroundings of the Ituri district.”⁴¹

42. The Single Judge notes that the Prosecution submits in relation to its request for authorisation to redact [REDACTED] as an interview location that:

[REDACTED]⁴²

43. Nevertheless, the Single Judge observes that, in its Appeals brief, the Prosecution stated that:

[REDACTED].⁴³

³⁶ ICC-01/04-01/07-511-Conf-Exp, para 39, ICC-01/04-01/07-525-Conf, para 39 and ICC-01/04-01/07-526, para 39

³⁷ ICC-01/04-01/07-511-Conf-Exp, para 39, ICC-01/04-01/07-525-Conf, para 39 and ICC-01/04-01/07-526, para 39

³⁸ ICC-01/04-01/07-511-Conf-Exp, paras 41-43, ICC-01/04-01/07-525-Conf, paras 41-43 and ICC-01/04-01/07-526, paras 41-43

³⁹ [REDACTED]

⁴⁰ [REDACTED]

⁴¹ ICC-01/04-01/07-511-Conf-Exp, para.40

⁴² ICC-01/04-01/07-540-Conf-Exp-Anx6, pp 2-4

⁴³ ICC-01/04-01/07-131-Conf, para 35

44. Furthermore, in footnote 58 of its Appeal Brief, the Prosecution highlighted that:

[REDACTED].⁴⁴

45. Under these circumstances, the Single Judge rejects the Prosecution's Request for the redaction of the references to [REDACTED] since, as acknowledged by the Prosecution, it has a considerable size and is not located in or in the surroundings of the Ituri district.⁴⁵

(ii) Current Prosecution staff members

46. The Single Judge notes that the Prosecution requests, pursuant to rule 81(2) of the Rules, authorisation to redact the names, initials and signature of the [REDACTED] who assisted in the process of taking the statements, written consents and related documents concerning Witnesses 132 and 287.

47. The Single Judge recalls that, according to the First Appeals Chamber Judgment, those findings made in relation to redactions sought pursuant to rule 81(4) of the Rules "apply *mutatis mutandis* to redactions sought pursuant to rule 81(2) of the Rules".⁴⁶ As a result, as it is highlighted in the First Appeals Chamber Judgement:

[...] pursuant to that rule, it will be for the Prosecutor seeking redactions to establish that such redactions are warranted and, in particular, that disclosure of the information for which redactions are sought "may prejudice further or ongoing investigations."⁴⁷

The guidance set out at paragraphs 68 to 73 above should be taken into account. In this context, for redactions to be granted, the Prosecutor will have to establish that the potential prejudice to investigations is objectively justifiable, would result from disclosure to the Defence (as opposed to the general public) and could be overcome or reduced by redactions. Dangers that cannot be overcome by redactions because they are inherent in the situation itself cannot, as such, provide a justification for redactions. By way of example, in the present case, the Pre-Trial Chamber would have to assess, on the basis of its knowledge of the factual

⁴⁴ ICC-01/04-01/07-131-Conf, para 35, footnote 58.

⁴⁵ [REDACTED]

⁴⁶ *First Appeals Chamber Judgment*, para 97

⁴⁷ *First Appeals Chamber Judgment*, para 97

situation as a whole, whether the danger sought to be protected could be overcome by redactions or arises simply from the fact that personnel of the OTP and of the VWU generally may be easily identifiable in the field.⁴⁸

Once it has been established that disclosure of the information to the Defence may prejudice ongoing or further investigations and that this risk could be overcome by authorising redactions, the Prosecutor will have to establish that the redactions restrict the rights of the suspect only as far as strictly necessary.⁴⁹

48. The Single Judge notes that the above-mentioned [REDACTED] for the purpose of assisting in the process of interviewing witnesses and taking their statements.

49. Under these circumstances and for the reasons given in the First, Second, Third, Fourth and Fifth Decisions on Redactions,⁵⁰ the Single Judge is of the view that disclosing the names, initials and signature of the [REDACTED] who assisted in the process of taking the statements, in the security situation and context referred to in the First Decision on Redactions, would pose an objectively justifiable risk to prejudice the Prosecution's further and ongoing investigations if that information was to be disclosed to the Defence. Moreover, the Single Judge considers that the requested redactions are (i) adequate to minimise this risk; (ii) are restricted to what is strictly necessary to overcome any risk of prejudice to the ongoing investigation against Germain Katanga and Mathieu Ngudjolo Chui; (iii) at this stage of the proceedings, there is no less intrusive alternative measure that can be taken to achieve the same goal; and (iv) would not "result in the hearing to confirm the charges, viewed as a whole, to be unfair to the suspect[s]".

50. For these reasons, the Single Judge grants authorisation, pursuant to rule 81(2) of the Rules, for the redactions of the names, initials and signature of the

⁴⁸ *First Appeals Chamber Judgment*, para 98

⁴⁹ *First Appeals Chamber Judgment*, para 99

⁵⁰ First Decision on Redactions, paras 57-64. See also the Second Decision on Redactions, paras 57-60, Third Decision on Redactions, para 51, Fourth Decision on Redactions, para 55 and Fifth Decision on Redactions, para 66

[REDACTED] who assisted in the process of taking the witness statements, written consents and related documents.⁵¹

FOR THESE REASONS

DECIDE to partially grant the Prosecution's Request for authorisation for redactions to the statements, investigator's notes and related documents concerning Witnesses 132 and 287, as specified in Annex I to the present decision;

DECIDE that the Prosecution, by no later than Thursday 12 June 2008 at 16h00, shall:

- (i) make available to the Defences for Germain Katanga and Mathieu Ngudjolo Chui the above-mentioned statements, investigator's notes and related documents concerning Witnesses 132 and 287 with the redactions granted in the present decision;
- (ii) file in the record of the case of *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, an electronic version of the said statements, investigator's notes and related documents concerning Witnesses 132 and 287 providing all details required by the Draft Protocol on the Presentation of Evidence;

DECIDE that, if the Prosecution decides to include in the Prosecution List of Additional Evidence the transcript of [REDACTED] Witness 243 included in the Prosecution's Request, it could only rely on it at the confirmation hearing in a summary form, which would have to:

- a. be prepared according to the guidance given in the "Decision on the Use of Summaries of the Statements of Witnesses 267 and 243"; and

⁵¹ ICC-01/04-01/07-540-Conf-Exp-AnxA1, AnxA2, AnxA3 AnxA4 and AnxB1

b. be disclosed to the Defence by no later than 12 June 2008 at 16h00.

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



Judge Akua Kuenyehia
Single Judge

Dated this Monday 9 June 2008

At The Hague, The Netherlands