



Original: **French**

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

Date: **4 May 2009**

TRIAL CHAMBER II

Before: Judge Bruno Cotte, Presiding Judge
Judge Fatoumata Dembele Diarra
Judge Hans-Peter Kaul

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

Public document

**Decision on the Prosecutor's Application to Redact Information under
Article 67(2) of the Statute or Rule 77 of the *Rules of Procedure and Evidence*
(ICC-01/04-01/07-971-Conf-Exp)**

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

The Office of the Prosecutor

Mr Luis Moreno-Ocampo, Prosecutor
Ms Fatou Bensouda, Deputy Prosecutor
Mr Éric MacDonald, Senior Trial Lawyer

**Counsel for the Defence of Germain
Katanga**

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Mr Andreas O'Shea

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Amicus Curiae

REGISTRY

Registrar

Ms Silvana Arbia

Defence Support Section

**Victims Participation and Reparations
Section**

Detention Section

Other

Trial Chamber II of the International Criminal Court (“the Chamber” and “the Court” respectively), acting pursuant to articles 54, 67 and 68 of the *Rome Statute* (“the Statute”) and rules 77 and 81 of the *Rules of Procedure and Evidence* (“the Rules”), decides as follows:

I. Procedural history

1. This decision arises from the Prosecutor’s application (“the Application”) to redact documents under article 67(2) of the Statute and rule 77 of the Rules.¹ The Application was filed “Confidential *ex parte*, only available to the Prosecutor” and submitted in accordance with the Chamber’s *Decision on the Redaction Process*.² The Prosecutor subsequently filed a confidential version thereof.³

2. The Application was submitted on 20 March 2009, after the prescribed time limit had expired. The Chamber had, in fact, ordered the Prosecutor to file all applications to redact documents under article 67(2) of the Statute and rule 77 of the Rules before 4 p.m. on 16 February 2009.⁴ Given the [TRANSLATION] “physical incapacity [of the Prosecutor] to file [...] all the requests for redactions [by that date]”,⁵ at an *ex parte* hearing held on 15 February 2009, the Chamber granted him a further period of three weeks, i.e. until 23 March 2009.⁶

¹ Office of the Prosecutor, “*Requête de l’Accusation aux fins d’expurgations d’informations dans certains éléments de preuve relevant de l’Article 67(2) ou de la Règle 77*”, 13 March 2009, ICC-01/04-01/07-957-Conf, with confidential, *ex parte* Annexes A to E only available to the Prosecutor.

² *Decision on the Redaction Process*, 12 January 2009, ICC-01/04-01/07-819-tENG.

³ Office of the Prosecutor, “*Version confidentielle expurgée du document ICC-01/04-01/07-971-Conf-Exp du 20 mars*”, 25 March 2009, ICC-01/04-01/07-990-Conf, with confidential and *ex parte* annexes only available to the Prosecutor.

⁴ *Order Fixing the Schedule for Pre-Trial Disclosure of Incriminatory and Exculpatory Evidence and the Date of a Status Conference*, 23 January 2009, ICC-01/04-01/07-846-tENG, para. 12.

⁵ Office of the Prosecutor, “*Requête de l’Accusation aux fins d’expurgations d’informations relevant de l’article 67-2 ou la règle 77 conformément à l’Ordonnance fixant le calendrier de communication des éléments de preuve à charge et à décharge avant le procès*”, 16 February 2009, ICC-01/04-01/07-902, para. 3.

⁶ ICC-01/04-01/07-T-60-CONF-EXP-ENG ET 25-02-2009 1-28 SZ T, p. 18, lines 6 to 13 and p. 23, lines 11 to 20.

3. The Prosecutor is seeking authorisation to redact certain information contained in these documents under rules 81(2) and 81(4) of the Rules. In addition, he refers to information falling under rule 81(1) of the Rules.

4. The Defence for Germain Katanga submitted observations on 3 April 2009⁷ and the Defence for Mathieu Ngudjolo did not respond.

II. The Chamber's analysis

5. The Chamber emphasises once again⁸ the requirements laid down by the Appeals Chamber: 1) the existence of an objectively justifiable risk to the safety of the person concerned or which may prejudice further or ongoing investigations;⁹ 2) the existence of a link between the source of the risk and the accused;¹⁰ 3) the infeasibility or insufficiency of less restrictive protective measures;¹¹ 4) an assessment of whether the redactions sought are prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial;¹² and 5) the obligation to periodically review the decision authorising the redactions should circumstances change.¹³

⁷ Germain Katanga's Defence Team, "Defence Response to Prosecution's « *Requête aux fins d'expurgation d'informations dans certains éléments de preuve relevant de l'Article 67-2 ou de la Règle 77* »", 3 April 2009, ICC-01/04-01/07-1024-Conf.

⁸ *Grounds for the Oral Decision on the Prosecutor's Application to Redact the Statements of Witnesses* 001, 155, 172, 280, 281, 284, 312 and 323 and the Investigator's Note concerning Witness 176 (rule 81 of the Rules of Procedure and Evidence), 10 February 2009, ICC-01/04-01/07-888-Conf-Exp-tENG and ICC-01/04-01/07-889-Conf-tENG, para. 4; *Decision on three Prosecutor's Applications for the Maintenance of Redactions or Reinstatement of Redacted Passages* (ICC-01/04-01/07-859, ICC-01/04-01/07-860 and ICC-01/04-01/07-862), 25 March 2009, ICC-01/04-01/07-987-Conf-Exp, para. 4

⁹ Appeals Chamber, *Judgment on the appeal of the Prosecutor against the decision of Pre-Trial Chamber I entitled First Decision on the Prosecution Request for Authorisation to Redact Witness Statements*, 13 May 2008, ICC-01/04-01/07-475, paras. 71 and 97.

¹⁰ ICC-01/04-01/07-475, para. 71.

¹¹ Appeals Chamber, *Judgment on the Prosecutor's appeal against the decision of Pre-Trial Chamber I entitled Decision Establishing General Principles Governing Applications to Restrict Disclosure pursuant to Rule 81(2) and (4) of the Rules of Procedure and Evidence*, 13 October 2006, ICC-01/04-01/06-568, para. 37; Appeals Chamber, *Judgment on the appeal of Mr Thomas Lubanga Dyilo against the Decision of Pre-Trial Chamber I entitled First Decision on the Prosecution Requests and Amended Requests for Redactions under Rule 81*, 14 December 2006, ICC-01/04-01/06-773, para. 33.

¹² ICC-01/04-01/06-773, para. 34.

¹³ ICC-01/04-01/07-475, para. 73.

6. As the Chamber has had occasion to point out more than once,¹⁴ any application for redactions is subject to strict judicial scrutiny on a case-by-case basis. Any decision by which the Chamber authorises the non-disclosure of part of a document to the Defence must be sufficiently reasoned in light of, *inter alia*, the arguments submitted by the Prosecutor in support of his application. The Chamber has a duty to balance the various interests at stake, as stipulated in rule 81 of the Rules, whilst ensuring that the process includes safeguards that would protect the interests of the accused persons so as to comply, to the fullest extent possible, with the requirements of adversarial proceedings and the principle of equality of arms. The Chamber has undertaken a detailed examination of each redaction sought on the basis of the criteria set out in the previous paragraph.

7. In order to better assess the redactions sought on a case-by-case basis, the Chamber has drawn a distinction between those redactions justified by the Prosecutor on the basis of rule 81(1) of the Rules, those whose purpose is to avoid prejudicing further or ongoing investigations (rule 81(2) of the Rules) and those which aim to protect the safety of witnesses and members of their families (rule 81(4) of the Rules).

8. The Chamber notes that the Prosecutor's arguments pertaining to the existence of an objectively justifiable risk are identical, both for the redactions sought under rule 81(2) of the Rules and for those sought under rule 81(4). It therefore seems appropriate to furnish a joint response on this issue.

9. The Prosecutor draws the attention of the Chamber to threats allegedly made [REDACTED].¹⁵

¹⁴ Order Instructing the Registry to File Documents on the Influence that the Accused may have Retained in the DRC and on the Pressure that they Might Currently Exert on Victims and Witnesses, 18 December 2008, ICC-01/04-01/07-800-tENG, para. 9; ICC-01/04-01/07-819, paras. 1 and 7; ICC-01/04-01/07-888-Conf-Exp-tENG and ICC-01/04-01/07-889-Conf-tENG, para. 3; ICC-01/04-01/07-987-Conf-Exp, para. 5.

¹⁵ ICC-01/04-01/07-971-Conf-Exp-Anxs A, B, C, D, E, F, G.

10. The Chamber has already acknowledged that there is an objectively justifiable risk resulting from the state of insecurity prevailing in Ituri and, more generally, in the Democratic Republic of the Congo (DRC), both for the Prosecutor's ongoing and further investigations and for the safety of witnesses, victims and members of their families.¹⁶

11. This general observation does not, however, prejudice the existence of an objectively identifiable risk of which the Chamber must satisfy itself when reviewing each of the redactions sought on a case-by-case basis.

a) Non-disclosure of internal documents of the Office of the Prosecutor (rule 81(1))

12. The Prosecutor requests, pursuant to rule 81(1) of the Rules, that a passage in an investigator's note pertaining to witness 170 be redacted.¹⁷ He submits that the passage in question contains internal comments of the Office of the Prosecutor and considers that, as such, they fall under rule 81(1) of the Rules.

13. The Defence for Germain Katanga raises no objection to these redactions, provided the Chamber carefully assesses those passages which the Prosecutor considers as falling within this category.¹⁸

14. The Chamber takes note of the request, but points out that the provisions of rule 81(1) of the Rules cannot provide a valid legal basis for the submission of requests for redactions. The Chamber suggests, once again, to the Prosecutor that, in future, he should set out in a separate document everything which falls strictly under rule 81(1) of the Rules, such that only the information which should be disclosed may be the subject of requests for redactions.¹⁹ Finally, it ensured that the information for

¹⁶ ICC-01/04-01/07-888-Conf-Exp-tENG; ICC-01/04-01/07-889-Conf-tENG, para. 9; ICC-01/04-01/07-987-Conf-Exp, para. 10.

¹⁷ ICC-01/04-01/07-957-Conf-Exp-Anx E.

¹⁸ ICC-01/04-01/07-1024-Conf, para. 3.

¹⁹ ICC-01/04-01/07-888-Conf-Exp-tENG; ICC-01/04-01/07-889-Conf-tENG, para. 10; ICC-01/04-01/07-987-Conf-Exp, para. 14.

which redaction is sought did indeed constitute an internal comment within the meaning of rule 81(1) of the Rules.

b) Protection of further or ongoing investigations (rule 81(2))

i) Locations where interviews were conducted

15. The Prosecutor requests, pursuant to rule 81(2), that references to the location where interviews were conducted, namely “[REDACTED]” in the transcript of the statement of Witness 38,²⁰ “[REDACTED]” in the statement of Witness 95²¹ and “[REDACTED]” and “[REDACTED]” in the investigator’s note about Witness 170²² be redacted.

16. Noting the existence of threats to persons who cooperate with the Court, the Prosecutor wishes that the name of these locations be temporarily removed in order to avoid obstruction of his activities by persons who are hostile to the Court’s action. He recalls that he is in the process of concluding his investigation and that it is accordingly necessary for these locations to remain confidential. He suggests that the redacted information be disclosed 30 days prior to the commencement of the trial.²³

17. The Defence for Germain Katanga does not object to the redaction of the name of the locations where interviews were conducted, provided such redactions are strictly limited and temporary. It therefore requests that this information be disclosed to it at least 30 days prior to the commencement of the trial, pointing out that this information is relevant to the Defence because it details the circumstances in which the witness statements were taken.²⁴

²⁰ ICC-01/04-01/07-971-Conf-Exp-Anx B.

²¹ ICC-01/04-01/07-971-Conf-Exp-Anx D.

²² ICC-01/04-01/07-971-Conf-Exp-Anx E.

²³ ICC-01/04-01/07-971-Conf-Exp-Anxs B, D, E.

²⁴ ICC-01/04-01/07-1024-Conf, para. 8.

18. The Chamber has already accepted that, because of the prevailing instability in Ituri and the resulting danger, disclosing the interview locations could indeed impede ongoing investigations.²⁵ It notes that redacting the names of the interview locations or premises does not affect the intelligibility or the use of the documents by the Defence because the redactions are limited to the specific interview locations. Moreover, the proposed redactions are limited in time. Because of this double limitation, it does not seem feasible, at this stage, to have recourse to measures which are less restrictive than those proposed. Accordingly, the Chamber approves the redactions requested by the Prosecutor until the thirtieth day prior to the commencement of the trial.

ii) Sources of the Office of the Prosecutor and ICC field staff

19. The Prosecutor also requests that the name of one of his sources, “[REDACTED]”, together with his telephone number be redacted.²⁶ He also requests the redaction of the name of the non-governmental organisation (“NGO”) “NGO [REDACTED]”²⁷ together with other information which enables its employees to be identified. In order to protect his investigations, he also seeks the redaction of the name of an ICC staff member who works locally.²⁸

20. According to the Prosecutor, the redaction of these names is necessary insofar as the persons concerned act as intermediaries and facilitate contacts between the witnesses and his Office. He considers that these persons and organisations are vital to the conduct of his activities and that, without their cooperation, his investigations would be slowed down considerably, if not made impossible.²⁹

²⁵ ICC-01/04-01/07-888-Conf-Exp-tENG, ICC-01/04-01/07-889-Conf-tENG, para. 15, ICC-01/04-01/07-987-Conf-Exp, para. 20.

²⁶ ICC-01/04-01/07-971-Conf-Exp-Anx E.

²⁷ ICC-01/04-01/07-971-Conf-Exp-Anx F.

²⁸ ICC-01/04-01/07-971-Conf-Exp-Anx G.

²⁹ ICC-01/04-01/07-971, para. 14.

21. The Prosecutor points out that intermediaries or ICC staff are not covered by the Court's protection programme and generally need to stay in the DRC or in bordering countries. Accordingly, he considers that disclosing their identity could jeopardise their safety and, hence, prejudice ongoing investigations. He also points out, with respect to the NGO [REDACTED].³⁰

22. According to the Prosecutor, the services of these intermediaries will be required throughout the pre-trial phase or during the trial itself. He therefore requests the redaction of the names of these sources for the duration of the trial.³¹

23. Where the nature of the redacted information cannot be inferred from the text, the Prosecutor suggests specifying that it involves an "intermediary of the Office of the Prosecutor".³²

24. The Defence for Germain Katanga maintains that a general statement that there is a prevailing state of insecurity in Ituri is not sufficient to justify the permanent redaction of the names of the intermediaries. It considers that such redactions should only be allowed on an exceptional basis, after it has been demonstrated that these intermediaries are in fact in danger. Moreover, the Defence fails to understand why the accused would want to threaten persons who do not provide incriminating evidence. Furthermore, the Defence objects to the redactions being authorised on a permanent basis, given that these intermediaries have information that could be relevant to its preparation.³³

25. The Defence for Germain Katanga also believes that the redaction of the names of ICC staff is excessive and unjustified. It maintains that for the sake of transparency, its employees should not be working under the cover of anonymity but

³⁰ ICC-01/04-01/07-971-Conf-Exp-Anxs E, F, G.

³¹ ICC-01/04-01/07-971-Conf-Exp-Anxs E, F, G.

³² ICC-01/04-01/07-971-Conf-Exp-Anxs E, F.

³³ ICC-01/04-01/07-1024-Conf, para. 7.

should be assuming the risks associated with their jobs.³⁴ If the Chamber is persuaded that the redaction of these names is necessary, the Defence is of the view that it could restrict access to such information to the Defence teams only. The fact that the accused are not in a position to take any action against these persons from the Detention Centre in The Hague would justify this second option.³⁵

26. The Chamber considers that disclosing the identity of these intermediaries or ICC staff could only increase the threats hanging over any person in the DRC who cooperates with the Court. Accordingly, it considers that it is necessary to redact the names of persons and organisations who act in this capacity between the Court and potential witnesses in order to ensure their protection. It is also mindful of the important role played by these sources in the proper conduct of the investigations and of the risk that they might refuse to continue to cooperate with the Office of the Prosecutor and, more generally, with the Court, in the event that their names were disclosed. Redacting their names is therefore necessary for the protection of the investigations, and it does not appear feasible to resort to less restrictive measures.

27. The Chamber considers that these redactions do not interfere with the overall intelligibility of the documents. The Defence will, in fact, have access to most of the information contained therein. However, the Chamber is of the view that it cannot authorise the redactions until the end of the trial as it does not believe that such a measure, under the circumstances, takes sufficient account of the rights of the Defence. At this stage, it is difficult for the Chamber to conclusively assess the usefulness and relevance of such information for the Defence. It is actually up to the Defence to make such an assessment, since it is the Defence and the Defence alone which determines the strategy it intends to adopt.

28. In this case, the Defence has so far been unable to fully assess the value of this information, as the applications only describe it in general terms. It will have the

³⁴ ICC-01/04-01/07-1024-Conf, para. 5.

³⁵ ICC-01/04-01/07-1024-Conf, para. 6.

opportunity to analyse and assess the usefulness and relevance of the redacted documents once it has received them, and, if necessary, will be able to submit an application for reconsideration to the Chamber prior to the commencement of the trial. In that event, the Chamber will assess the actual impact of the redactions sought, in the light of the arguments advanced by the Defence. For his part, the Prosecutor may, no later than 45 days prior to the commencement of the trial, also request that these redactions be maintained.

29. Having thus weighed the interests at stake, the Chamber finds that the redactions sought are justified until the thirtieth day prior to the commencement of the trial.

iii) Means of communication

30. The Prosecutor seeks permission to redact information pertaining to the means of communication he uses to contact witnesses. In his view, these redactions are necessary to prevent the risk of revealing the technique he uses to communicate with the witnesses, or of locating them. The purpose of these redactions is therefore to protect the investigations as well as those persons who cooperate with the Office of the Prosecutor. He requests that these redactions be permanent, since he does not deem them material to the preparation of the Defence.³⁶

31. The Chamber agrees with the Prosecutor concerning the possibility of reprisals against persons who cooperate with the Court. In fact, the disclosure of any of the means of communication that he uses could facilitate the identification of witnesses. Consequently, this information must be redacted pursuant to rules 81(2) and 81(4) of the Rules. The Chamber notes that the redactions sought do not interfere with the intelligibility of the document in question and do not prejudice the fairness of the trial. Nevertheless, adopting the same position as set forth at paragraphs 27 and 28 of this decision, the Chamber authorises the redactions sought until the

³⁶ ICC-01/04-01/07-971-Conf-Exp-Anx G.

thirtieth day prior to the date of the trial. For his part, the Prosecutor may also, no later than 45 days prior to the commencement of the trial, request that these redactions be maintained.

c) Identity of witnesses and information about their family members (rule 81(4))

32. The Prosecutor requests, under rule 81(4) of the Rules, leave from the Chamber to permanently redact the names of the family members of Witnesses 4,³⁷ 38,³⁸ 41,³⁹ 95,⁴⁰ 170⁴¹ and 314⁴² as well as information enabling the family members of Witnesses 38,⁴³ 41,⁴⁴ 95⁴⁵ and 170⁴⁶ to be located. He also seeks the redaction of the place of residence of Witness 314.⁴⁷

33. According to the Prosecutor, the mere fact that these witnesses have provided a written statement to him identifies them as persons working with the Court. Lastly, he points out that, while witnesses assume risks by cooperating with the Court, they do not however intend that their action would have repercussions on their families.⁴⁸

34. The Prosecutor submits that information pertaining to relatives is of limited interest and is not material to the preparation of the Defence given that they are not his witnesses and were only mentioned by witnesses incidentally.⁴⁹ Thus, the Prosecutor is of the view that to reveal the identity of family members would

³⁷ ICC-01/04-01/07-971-Conf-Exp-Anx A.

³⁸ ICC-01/04-01/07-971-Conf-Exp-Anx B.

³⁹ ICC-01/04-01/07-971-Conf-Exp-Anx C.

⁴⁰ ICC-01/04-01/07-971-Conf-Exp-Anx D.

⁴¹ ICC-01/04-01/07-971-Conf-Exp-Anx E.

⁴² ICC-01/04-01/07-971-Conf-Exp-Anx G.

⁴³ ICC-01/04-01/07-971-Conf-Exp-Anx B.

⁴⁴ ICC-01/04-01/07-971-Conf-Exp-Anx C.

⁴⁵ ICC-01/04-01/07-971-Conf-Exp-Anx D.

⁴⁶ ICC-01/04-01/07-971-Conf-Exp-Anx E.

⁴⁷ ICC-01/04-01/07-971-Conf-Exp-Anx G.

⁴⁸ ICC-01/04-01/07-971, para. 21.

⁴⁹ ICC-01/04-01/07-971, para. 20.

jeopardise the situation of the witnesses and their families, a situation that is not offset by a manifest interest of the accused.⁵⁰

35. The Prosecutor proposes, in certain cases, other forms of redaction where it is not clear from the text that the information in question pertains to the families of witnesses. Accordingly, he suggests that reference be made to the “place of residence of the family members” of Witness 38⁵¹ and to the “place of residence of the witness” and “place of study” of Witness 314.⁵² The Chamber welcomes this proposal, which enables the Defence to assess the nature of the redacted information.

36. The Defence for Germain Katanga maintains that the redaction of the names and whereabouts of the family members of witnesses is not justified since they are not participating in the case. Furthermore, it objects to any permanent redaction⁵³ and to the redaction of information pertaining to witnesses who are in possession of exculpatory evidence, as this means that it would be unable to contact them.⁵⁴

37. The Chamber considers, as does the Prosecutor, that disclosing the identity of the family members of witnesses as well as information enabling them to be identified or located might jeopardise their safety, especially where they are located in Ituri. It also considers that, even if the family members of witnesses are not involved in this case, persons wishing to exert influence on the witnesses could use the family members to exert pressure on them.

38. Moreover, the Chamber is of the opinion that some of the redactions sought constitute an appropriate measure to lessen that risk, and that no other less restrictive measure would achieve the same result since, apart from the family members of Witness 41, the other witnesses are not covered by the Court’s protection

⁵⁰ ICC-01/04-01/07-971, para. 22.

⁵¹ ICC-01/04-01/07-971-Conf-Exp-Anx B.

⁵² ICC-01/04-01/07-971-Conf-Exp-Anx G.

⁵³ ICC-01/04-01/07-1024-Conf, paras. 10 and 11.

⁵⁴ ICC-01/04-01/07-1024-Conf, para. 12.

programme.⁵⁵ Furthermore, the Prosecutor requests the redaction of the name of [REDACTED] of Witness 41 in order to preserve his anonymity and his successful relocation as a result.⁵⁶

39. The Chamber considers that the redactions sought in the format suggested by the Prosecutor do not prejudice the rights of the accused, since the documents can be read, understood and used by the Defence. The Chamber is therefore in favour of authorising the redactions sought, but is of the view that it can only redact the passages in question on a temporary basis and not through to the end of the trial, as, in its opinion, such a measure seems excessive with regard to the exercise of the rights of the Defence. It considers that only those redactions intended to protect the successful relocation of the family of Witness 41 may be authorised on a permanent basis. It therefore authorises the last-named redactions until the end of the trial, and all other redactions only until the thirtieth day prior to the date of the trial.

d) Information pertaining to the safety of witnesses (rules 81(2) and 81(4))

40. The Prosecutor requests the redaction of information pertaining to the assessment of the safety of Witness 314 in the transcript of the witness's statement. He points out that this witness is covered by the Court's protection programme and that this information pertains to the assessment of the witness's safety with a view to the implementation of the Initial Response System and the protection programme. According to the Prosecutor, if "[TRANSLATION] this information were disclosed, [it would] undermine the measures implemented under the Court's protection programme".⁵⁷

41. Having reviewed the redactions sought, the Chamber notes that they apparently go beyond the objective sought. It therefore intends to ask the Prosecutor,

⁵⁵ ICC-01/04-01/07-971-Conf-Exp-Anx A, B, C, D, E, G.

⁵⁶ ICC-01/04-01/07-971-Conf-Exp-Anx C.

⁵⁷ ICC-01/04-01/07-971-Conf-Exp-Anx G.

after consulting with the Victims and Witnesses Unit, to review the redactions sought by restricting them to those passages that are strictly necessary.

42. The Prosecutor also seeks the redaction from the transcript of the statement of Witness 314 [REDACTED].⁵⁸

43. The Prosecutor is of the view that it is necessary to redact this information in order to protect [REDACTED].⁵⁹

44. [REDACTED].

e) Information covered by article 54(3)(e) of the Statute and rule 82(1) of the Rules

45. The Prosecutor seeks the redaction in an investigator's note pertaining to Witness 300 of a reference to a document, and the contents and author thereof. The document in question is covered by article 54(3)(e) of the Statute and rule 82(1) of the Rules.⁶⁰ The Prosecutor notes that, in accordance with article 54(3)(e) of the Statute, he cannot disclose at any stage of the proceedings information obtained on the condition of confidentiality unless the provider of the information consents.⁶¹

46. He maintains that the length of the redaction is justified by the quantity and specificity of the details pertaining to the document which would enable its author to be identified and the content thereof to be ascertained. Furthermore, the information which the Prosecutor is seeking to have redacted reveals the existence of the document, whereas it is subject to a confidentiality requirement with which the Prosecutor must comply.⁶²

⁵⁸ *Idem.*

⁵⁹ *Idem.*

⁶⁰ ICC-01-04-01/07-971-Conf-Exp-Anx F.

⁶¹ *Idem.*

⁶² *Idem.*

47. The Defence for Germain Katanga points out that it is difficult for it to assess the merits of this request, given that it has not had access to the redacted documents.⁶³

48. The Chamber notes that the reference to the document covered by article 54(3)(e) of the Statute has only a very tenuous link with the contents of the investigator's note on Witness 300, which is covered by rule 77 of the Rules. Furthermore, this note does not contain any other redaction, which enables all the information covered by the afore-mentioned rule to be disclosed to the Defence. The Chamber therefore considers that the redaction sought does not prejudice the rights of the Defence, especially given that the Prosecutor does not intend to disclose the document mentioned in the investigator's note and that he states that this document contains no exculpatory evidence or information covered by rule 77 of the Rules.⁶⁴ The Chamber therefore grants permission for a permanent redaction.

FOR THESE REASONS, THE CHAMBER

- 1) **GRANTS** the Applications, whilst reserving the right to periodically review the redactions authorised, either *proprio motu* or upon an application brought for that purpose, with the exception of the request referred to at paragraph 41 of this decision, for which the Prosecutor must review the redactions sought, limiting them to those passages that are strictly necessary;
- 2) **DIRECTS** the Prosecutor to submit his new proposals no later than 4 p.m. on 14 April 2009; and
- 3) **AUTHORISES** all of the redactions sought until the thirtieth day prior to the commencement date of the trial, save that the Prosecutor may, no later than 45 days prior to the date of the commencement of the trial, request that they

⁶³ ICC-01-04-01/07-1024-Conf, paras. 13 and 14.

⁶⁴ Office of the Prosecutor, e-mail to the Chamber received by the Legal Advisor to the Trial Division on 6 April 2009.

be maintained, with the exception of the information mentioned in paragraphs 39 and 48 of this decision.

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

[signed]

Judge Bruno Cotte
Presiding Judge

[signed]

Judge Fatoumata Dembele Diarra

[signed] 4/5/09

Judge Hans-Peter Kaul

Dated this 4 May 2009

At The Hague, The Netherlands