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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-01/04-01/07-902)**

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 Eric MacDonald, Senior Trial Lawyer

Counsel for the Defence of Germain

Katanga
Mr David Hooper
Mr Andreas O'Shea

Counsel for Mathieu Ngudjolo Chui

Mr Jean-Pierre Kilenda Kakengi Basila
Mr Jean-Pierre Fofé Djofia Malewa

Legal Representatives of the Victims

Ms Carine Bapita Buyangandu
Mr Joseph Keta
Mr Jean-Louis Gilissen
Mr Hervé Diakiese
Mr Jean Chrysostome Mulamba
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Mr Fidel Nsita Luvengika
Mr Vincent Lurquin
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Legal Representatives of the Applicants

The Office of Public Council for Victims

Ms Paolina Massida

The Office of Public Council for the Defence

States' Representatives

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 application (“the Application”) submitted by the Prosecutor on 16 February 2009 to redact documents under article 67(2) of the Statute and rule 77 of the Rules.¹ The Application was submitted in accordance with the Chamber’s *Decision on the Redaction Process*.² By an application which he sought to amend on 31 March 2009,³ the Prosecutor is requesting permission to redact some of the information contained in these documents under rules 81(2) and 81(4) of the Rules.

2. On 23 February 2009, the Defence for Mathieu Ngudjolo submitted observations on the Application,⁴ unlike the Defence for Germain Katanga, which did not respond.

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, conformément à l’Ordonnance fixant le calendrier de communication des éléments de preuve à charge et à décharge avant le process*”, 16 February 2009, ICC-01/04-01/07-902, with confidential and *ex parte* annexes 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, “*Requête en modification de la « 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, conformément à l’Ordonnance fixant le calendrier de communication des éléments de preuve à charge et à décharge avant le procès »*” (ICC-01/04-01/07-902 16 February 2009), 30 March 2009, ICC-01/04-01/07-1010-Conf-Exp, only available to the Prosecutor.

⁴ Mathieu Ngudjolo’s Defence Team, “*Réponse unique de la Défense aux soumissions 893 et 902 de l’Accusation*”, 23 February 2009, ICC-01/04-01/07-911.

II. The Chamber's analysis

3. The Chamber emphasises once again⁵ 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;⁶ 2) the existence of a link between the source of the risk and the accused;⁷ 3) the infeasibility or insufficiency of less restrictive protective measures;⁸ 4) an assessment of whether the requested redactions are prejudicial to or inconsistent with the rights of the accused to a fair and impartial trial;⁹ and 5) the obligation to periodically review the decision authorising the redactions should circumstances change.¹⁰

4. As the Chamber has had occasion to point out more than once,¹¹ any application for redactions is subject to strict judicial scrutiny on a case-by-case basis. Any decision by which the Chamber authorises non-disclosure to the Defence of part of a document 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

⁵ *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 to Maintain Redactions or Reinstate Redacted Passages* (ICC-01/04-01/07-859, ICC-01/04-01/07-860 and ICC-01/04-01/07-882), 25 March 2009, ICC-01/04-01/07-987-Conf-Exp-tENG, para. 4

⁶ 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.

⁷ ICC-01/04-01/07-475, para. 71.

⁸ 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.

⁹ ICC-01/04-01/06-773, para. 34.

¹⁰ ICC-01/04-01/07-475, para. 73.

¹¹ *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, para. 9; ICC-01/04-01/07-819-tENG, 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-tENG, para. 5.

accused in order 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 review of each request for redaction on the basis of the criteria set out in the previous paragraph.

5. In order better to assess the redactions sought on a case-by-case basis, the Chamber has drawn a distinction between those redactions 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 family (rule 81(4) of the Rules).

6. The Chamber notes that the Prosecutor's arguments regarding 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.

7. The Prosecutor mentions the state of insecurity prevailing in the Democratic Republic of the Congo ("the DRC") and, more specifically, in Ituri. He also mentions the incidence of crime, the remote possibility that security forces will intervene on the ground and threats to persons cooperating with the Court.¹²

8. Furthermore, he draws the attention of the Chamber to threats allegedly made against [REDACTED].¹³ 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 DRC, both for the Prosecutor's further and ongoing investigations and for the safety of witnesses, victims and members of their families.¹⁴

¹² ICC-01/04-01/07-902, para. 16.

¹³ ICC-01/04-01/07-902-Conf-Exp-Anxs A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T.

¹⁴ 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-tENG, para. 10.

9. 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) Protection of further or ongoing investigations (rule 81(2))

i) Sources of the Office of the Prosecutor

10. The Prosecutor seeks permission to redact references to three non-governmental organisations (“NGOs”) under rule 81(2) of the Rules: [REDACTED],¹⁵ [REDACTED]¹⁶ and [REDACTED],¹⁷ as well as other information appearing in several documents that would allow these organisations and their employees to be identified. The Prosecutor believes that the redactions sought are necessary insofar as these organisations, which operate in the region, are sources for his Office. He also points out, with respect to the NGO [REDACTED].¹⁸

11. The Prosecutor also requests the redaction of the name “[REDACTED]”, which is that of a Prosecution source in another case before the Court.¹⁹ The Prosecutor notes that intermediaries or NGO members are not covered by the Court’s protection programme and generally have to remain in the DRC or in bordering countries.²⁰

12. According to the Prosecutor, the redaction of these names is necessary insofar as the persons concerned act as intermediaries and facilitate contact between witnesses and his Office. He considers that these persons and organisations are vital to the conduct of his operations and that, without their cooperation, his investigations would be slowed down considerably, if not made impossible.²¹ Yet, according to the Prosecutor, cooperation by intermediaries or NGOs is directly

¹⁵ ICC-01/04-01/07-902-Conf-Exp-Anx B.

¹⁶ ICC-01/04-01/07-902-Conf-Exp-Anxs D, T.

¹⁷ ICC-01/04-01/07-902-Conf-Exp-Anxs K, L, N, O.

¹⁸ ICC-01/04-01/07-902-Conf-Exp-Anxs B, D, K, L, N, O, T.

¹⁹ ICC-01/04-01/07-902-Conf-Exp-Anx C.

²⁰ ICC-01/04-01/07-902, para. 17.

²¹ ICC-01/04-01/07-902, para. 20.

linked to ensuring their safety and capability to conduct their activities on the ground.²² He therefore considers that disclosing their identity could jeopardise their safety and the safety of the witnesses and, hence, prejudice ongoing investigations.²³

13. Regarding the NGO [REDACTED], the Chamber notes that the Prosecutor has based his request for redactions on both rule 81(2) of the Rules and article 54(3)(e) of the Statute. The Chamber invited the Prosecutor to clarify his position and in the end he indicated that his request was also being submitted under article 54(3)(e) of the Statute and that it was on that basis that he would submit the matter to the Chamber 45 days prior to the commencement of the trial.²⁴ The Chamber will then assess whether the redaction should be maintained and, if so, on what basis.

14. According to the Prosecutor, it is necessary to maintain the redaction of the names of these sources, together with their particulars, for the duration of the trial,²⁵ which means that in some instances he has requested permanent redactions.²⁶ The Prosecutor is of the view that effectively balancing the interests of these intermediaries and of the NGOs, on the one hand, and those of the Defence, on the other, involves permanently redacting their identity.²⁷

15. Where the nature of the redacted information cannot be inferred from the text, the Prosecutor suggests specifying that it involves the name of an intermediary, as well as providing information enabling his or her identification.²⁸

16. The Defence for Mathieu Ngudjolo claims that the Prosecutor is not supplying objective information to justify the risk incurred by these persons.²⁹ Moreover, it

²² ICC-01/04-01/07-902, para. 21.

²³ ICC-01/04-01/07-902, paras. 22 and 23.

²⁴ Office of the Prosecutor, communication to the Chamber by e-mail, received by the Legal Adviser to the Trial Section on 27 March 2009.

²⁵ ICC-01/04-01/07-902-Conf-Exp-Anxs B, D, K, L, N, O.

²⁶ ICC-01/04-01/07-902-Conf-Exp-Anx T.

²⁷ ICC-01/04-01/07-902, para. 24.

²⁸ ICC-01/04-01/07-902-Conf-Exp-Anxs B, C, D, K, L, N, O, T.

²⁹ ICC-01/04-01/07-911, para. 15.

claims that the role played by the NGOs in Ituri and their cooperation with the Court are common knowledge in the DRC and yet they have never been molested.³⁰ It is of the view that the non-disclosure of the names of intermediaries who potentially hold crucial information constitutes an infringement of the rights of the accused to a fair trial and, specifically, of his right to have adequate time for the preparation of his defence, which is enshrined in article 67(1)(b) of the Statute.³¹

17. The Chamber has already referred to the risk incurred by those persons residing in Ituri who cooperate with the Court. It considers that the disclosure of the identity of these intermediaries would only increase the threats hanging over them. Accordingly, it considers that it is necessary to permit the redaction of the names of persons and bodies acting as intermediaries 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, if their names were disclosed. The redaction of their names is therefore necessary for the protection of the investigations and there seems to be no possibility of resorting to less restrictive measures.

18. 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, it is of the view that it cannot authorise the redaction of this information 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 utility and relevance of this information for the Defence. In fact, the Defence is responsible for undertaking this assessment given that it is up to the Defence and the Defence alone to determine the strategy it intends to adopt.

³⁰ ICC-01/04-01/07-911, para. 30.

³¹ ICC-01/04-01/07-911, para. 21.

19. In this case, the Defence has not, until now, had the opportunity to fully assess the value of this information because the applications only provide a general description thereof. It will have the opportunity to analyse and assess the usefulness and relevance of the redacted documents once it has received them and it may then, if necessary, submit an application for reconsideration to the Chamber prior to the commencement of the trial. In that case, the Chamber will assess the actual impact of the redactions sought, in 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, request that these redactions be maintained and refer the matter to the Chamber, if necessary, on the basis of article 54(3)(e) of the Statute regarding the situation of the NGO [REDACTED], referred to at paragraph 13 above.

20. 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.

ii) Surnames, first names, initials and signatures of interpreters present at the taking of witness statements

21. The Prosecutor requests, under rule 81(2) of the Rules, the redaction of the surname and first name of the interpreter who was present when the statement of Witness 305 was taken.³²

22. He submits that disclosing the names of the interpreters, like disclosing those of his Office's sources, might prejudice ongoing investigations, since the interpreters who service the interviews and statement-taking live in the DRC with their families. He also refers to the limited number of Congolese interpreters currently available to take part in the investigations, as well as the qualification levels of these personnel, which makes them difficult to replace. He therefore considers that the redactions

³² ICC-01/04-01/07-902, para. 26; ICC-01/04-01/07-902-Conf-Exp-Anx H.

requested are preventive measures which are necessary to ensure that these interpreters are protected.³³

23. The Prosecutor adds that the information regarding the names of the interpreters could be disclosed 30 days prior to the commencement of the trial and that there are no other less restrictive protective measures.³⁴

24. The Chamber takes note of the difficulty in finding suitably qualified persons to provide quality interpretation services *in situ*. It also considers that it is necessary to protect the interpreters who participate in the interviews and in the taking of statements, given their small number and the ease with which they may be identified. It notes that relocating them with their family is not a feasible option, and considers that disclosing their names and the risk of pressure to which they may be exposed would compromise the conduct of the Prosecutor's investigations.³⁵

25. The Chamber notes that the redaction requested does not affect the intelligibility of the document. It therefore considers that this does not infringe the right to a fair and impartial trial. The Defence will indeed be able to know the identity of the interpreter 30 days prior to the trial, which safeguards the rights of the accused. Accordingly, the Chamber is in favour of the proposed redactions.

³³ ICC-01/04-01/07-902-Conf-Exp-Anx H.

³⁴ ICC-01/04-01/07-902, para. 27; ICC-01/04-01/07-902-Conf-Exp-Anx H.

³⁵ See also ICC-01/04-01/07-888-Conf-Exp-tENG and ICC-01/04-01/07-889-Conf-tENG, para. 27; ICC-01/04-01/07-987-Conf-Exp-tENG, para. 36.

b) Safety of witnesses, members of their families and persons incurring a risk as a result of the activities of the Court (rule 81(4))

i) Identity of witnesses and information about them

26. The Prosecutor requests that the initials and signature of Witness 4 be redacted.³⁶ He also seeks leave from the Chamber to redact the surname and first name of Witness 40.³⁷

27. On 16 March 2009, the Prosecutor informed the Chamber that Witness 4 had agreed to the disclosure of his/her identity.³⁸ He also indicated on 30 March 2009 that “[TRANSLATION] there is no specific security issue in connection with the present case”,³⁹ which resulted in him withdrawing his request for redaction.⁴⁰

28. With regard to Witness 40, the Chamber notes that, on 13 March 2009, the Prosecutor filed a brief informing the Chamber that he wished to disclose to the Defence the statements of five witnesses subject to redactions authorised by Trial Chamber I.⁴¹ In its decision of 24 April 2008, Trial Chamber I had asked the Registry to contact these witnesses in order to determine whether or not they were prepared to cooperate with the Court.⁴² The statement of Witness 40 was provided as Annex D

³⁶ ICC-01/04-01/07-902-Conf-Exp-Anx I.

³⁷ ICC-01/04-01/07-902-Conf-Exp-Anx J.

³⁸ Office of the Prosecutor, “*Information de la Chambre en vue de l’audience ex parte du 16 mars 2009 – sur l’état de l’avancement de la communication à la Défense des déclarations de témoins relevant de l’Article 67-2 ou de la Règle 77 justifiant de potentielles expurgations*”, 16 March 2009, ICC-01/04-01/07-960-Conf-Exp, para. 6 and Anx A.

³⁹ ICC-01/04-01/07-1010-Conf-Exp, para. 3.

⁴⁰ ICC-01/04-01/07-1010-Conf-Exp, paras. 4 and 8.

⁴¹ Office of the Prosecutor, “*Mémoire aux fins d’information de la Chambre de première instance II concernant la communication à la Défense en vertu de l’Article 67-2 et de la Règle 77 des dépositions de 5 témoins faisant l’objet de mesures de protection/expurgations ordonnées par la Chambre de première instance I*”, 13 March 2009, ICC-01/04-01/07-958-Conf-Exp, with Confidential *ex parte* annexes, only available to the Prosecutor.

⁴² Trial Chamber I, *Decision on Disclosure Issues, Responsibilities for Protective Measures and other Procedural Matters*, 24 April 2008, public redacted version, ICC-01/04-01/06-1311-Anx 2, para. 100.

and the Chamber notes that Trial Chamber I had authorised the redaction of the name of that witness.⁴³

29. At the hearing of 16 March 2009, the Chamber stated that it did not oppose the disclosure of witness statements with the redactions authorised by Trial Chamber I,⁴⁴ but insisted on the need for the Prosecutor to inform it of any revision or change that that Chamber might make to decisions involving these witnesses.⁴⁵

30. The Prosecutor also seeks the redaction of the telephone number of Witness 168, which appears in an interview note, in order to prevent any improper use thereof.⁴⁶ This redaction is sought on a permanent basis.

31. The Chamber considers that a witness's telephone number is personal information and, as such, is protected under international human rights treaties.⁴⁷ Furthermore, the Chamber considers that the Defence teams may not contact this witness directly, and must consequently obtain the witness's consent through the Office of the Prosecutor if they consider that it is necessary to do so for their preparation.⁴⁸ The Chamber therefore authorises this redaction on a permanent basis.

ii) Identity of and information about family members of witnesses

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 16, 24, 31, 43, 57, 149 and 305 together with information enabling them to be identified.

⁴³ ICC-01/04-01/07-958-Conf-Exp, paras. 1 to 4 ; ICC-01/04-01/06-1311-Anx 2, para. 102.

⁴⁴ ICC-01/04-01/07-T-62-CONF-EXP-ENG ET 16-03-2009, p. 20, lines 12 to 17.

⁴⁵ *Ibid.*, lines 18 to 22.

⁴⁶ ICC-01/04-01/07-902-Conf-Exp-Anx G.

⁴⁷ See article 17 of the *International Covenant on Civil and Political Rights* (1966), article 11 of the *American Convention on Human Rights* (1969), article 8 of the *European Convention on Human Rights* (1950), article 5 of the *African Charter on Human and Peoples' Rights* (1982) and articles 1 and 7 of the *Charter of Fundamental Rights of the European Union* (2000).

⁴⁸ See also, in this regard, Trial Chamber I, *Decision on the Prosecution's application for an order governing disclosure of non-public information to members of the public and an order regulating contact with witness*, 3 June 2008, ICC-01/04-01/06-1372, para. 11.

This information includes the names of the parents and wife of Witness 16;⁴⁹ the names of the family members of Witness 24;⁵⁰ the names of the parents and the twelve children of Witness 31;⁵¹ the names of the parents and the wife of Witness 43;⁵² the names of the mother and wife of Witness 57;⁵³ the names of the parents, wife and four children of Witness 149;⁵⁴ the name of the mother of Witness 305.⁵⁵

33. In addition to references to identity, the Prosecutor also proposes to permanently redact those references which would enable the family members of Witnesses 16,⁵⁶ 24,⁵⁷ 31,⁵⁸ 43⁵⁹ and 149⁶⁰ to be located.

34. According to the Prosecutor, these persons run a genuine risk, even though they are not family members of prosecution witnesses. In fact, he considers that the mere fact that these witnesses have provided a written statement identifies them as cooperating with his Office. Lastly, he notes that while the witnesses personally assume the risks involved in cooperating with the Court, they do not intend that their action should have repercussions on their families.⁶¹

35. The Prosecutor maintains that information pertaining to relatives is of limited interest and is not material to the preparation of the Defence, given that they are not prosecution witnesses and were mentioned by witnesses only incidentally.⁶² Thus, the Prosecutor is of the view that disclosing the identity of family members would

⁴⁹ ICC-01/04-01/07-902-Conf-Exp-Anx A.

⁵⁰ ICC-01/04-01/07-902-Conf-Exp-Anx B.

⁵¹ ICC-01/04-01/07-902-Conf-Exp-Anx C.

⁵² ICC-01/04-01/07-902-Conf-Exp-Anx D.

⁵³ ICC-01/04-01/07-902-Conf-Exp-Anx E.

⁵⁴ ICC-01/04-01/07-902-Conf-Exp-Anx F.

⁵⁵ ICC-01/04-01/07-902-Conf-Exp-Anx H.

⁵⁶ ICC-01/04-01/07-902-Conf-Exp-Anx A.

⁵⁷ ICC-01/04-01/07-902-Conf-Exp-Anx B.

⁵⁸ ICC-01/04-01/07-902-Conf-Exp-Anx C.

⁵⁹ ICC-01/04-01/07-902-Conf-Exp-Anx D.

⁶⁰ ICC-01/04-01/07-902-Conf-Exp-Anx F.

⁶¹ ICC-01/04-01/07-902, para. 30.

⁶² ICC-01/04-01/07-902, para. 29.

undermine the position of witnesses and their families, a situation that is not “[TRANSLATION] offset by a manifest interest on the part of the accused.”⁶³

36. The Prosecutor proposes, in certain cases, other forms of redaction where it is not clear from the text that the information pertains to the families of witnesses. The Chamber agrees with this proposal, which enables the Defence to assess the nature of the information which has been redacted.

37. The Chamber considers, as does the Prosecutor, that disclosing the identity of the family members of witnesses as well as information which enables them to be identified or located might jeopardise their safety, especially when they are in Ituri. Moreover, the Chamber is of the opinion that some of the redactions requested constitute an adequate measure to lessen that risk and that no other less restrictive measure could achieve the same result inasmuch as the family members of the witnesses in question are not covered by the Court’s witness protection programme.⁶⁴

38. The Chamber considers that the redactions sought in the format proposed by the Prosecutor do not prejudice the rights of the accused, since the documents can still 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 authorise them on a temporary basis and not until the end of the trial, as, in its opinion, such a measure seems excessive in relation to the exercise of the rights of the Defence. For the reasons stated at paragraph 19, the Chamber considers that the Defence will be able to examine the documents and see for itself whether or not it considers the redacted information to be necessary for the preparation of the case of the accused. It therefore authorises the redactions until the thirtieth day prior to the date of the trial.

⁶³ ICC-01/04-01/07-902, para. 31.

⁶⁴ See footnotes 47 to 58.

iii) **Persons at risk on account of the activities of the Court**

39. The Prosecutor requests the redaction of the surnames, first names and information which enables the addressee of a message from an NGO,⁶⁵ the author and the recipient of a document from an NGO,⁶⁶ persons cooperating with a Prosecution source⁶⁷ and the source of a document⁶⁸ to be identified. The Prosecutor also seeks leave not to disclose an image which shows an employee of the Congolese Red Cross.⁶⁹

40. The Prosecutor considers that the identity of these persons, whom he describes as “innocent third parties” must be protected, given that they are people who live in Ituri and, in some cases, are easily identifiable as influential members of the community.⁷⁰ Furthermore, these “innocent third parties” have, on occasion, made contact with Prosecution sources, which would place them in danger on account of indirect cooperation with the Court. Disclosure of their identity would also enable the identification of those Prosecution sources which are the subject of redactions.⁷¹ The Prosecutor seeks permission to redact these names either permanently⁷² or for the duration of the trial.⁷³

41. Where the nature of the redacted information cannot be inferred from the text, the Prosecutor suggests specifying that it involves the “name of a person”,⁷⁴ the “initials of a person”,⁷⁵ “the name of the author of the document”⁷⁶ or “the name of the recipient of the document”.⁷⁷

⁶⁵ ICC-01/04-01/07-902-Conf-Exp-Anx L, O.

⁶⁶ ICC-01/04-01/07-902-Conf-Exp-Anxs P, S.

⁶⁷ ICC-01/04-01/07-902-Conf-Exp-Anxs M, R.

⁶⁸ ICC-01/04-01/07-902-Conf-Exp-Anx Q.

⁶⁹ ICC-01/04-01/07-902-Conf-Exp-Anx I.

⁷⁰ ICC-01/04-01/07-902-Conf-Exp-Anxs L and P.

⁷¹ ICC-01/04-01/07-902-Conf-Exp-Anxs L, M, P, Q, R and S.

⁷² ICC-01/04-01/07-902-Conf-Exp-Anxs M and P.

⁷³ ICC-01/04-01/07-902-Conf-Exp-Anxs L, Q, R and S.

⁷⁴ ICC-01/04-01/07-902-Conf-Exp-Anxs L, R, S.

⁷⁵ ICC-01/04-01/07-902-Conf-Exp-Anx Q.

42. The Chamber recalls that the Appeals Chamber has stated that rule 81(4) of the Rules also applies to persons likely to be at risk on account of the activities of the Court.⁷⁶ Moreover, it considers that the redactions sought do not interfere with the overall intelligibility of the documents and, in that regard, refers to the reasoning at paragraph 19 of this decision, which it intends to apply *mutatis mutandis* without necessarily restating it. It therefore considers that the redactions sought are justified and grants permission for them to be implemented in the alternative format proposed up until the thirtieth day prior to the commencement of the trial.

FOR THESE REASONS, THE CHAMBER

- 1) **GRANTS** the Application, whilst reserving the right to periodically review the redactions authorised, either *proprio motu* or upon an application brought for that purpose; and
- 2) **AUTHORISES** all of the redactions requested until the thirtieth day prior to the commencement date of the trial, save that the Prosecutor may, no later than 45 days prior to that date, request that they be maintained.

⁷⁶ ICC-01/04-01/07-902-Conf-Exp-Anxs M, P.

⁷⁷ ICC-01/04-01/07-902-Conf-Exp-Anx P.

⁷⁸ ICC-01/04-01/07-475, paras. 43, 55 and 56.

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

[signed]

Judge Bruno Cotte
Presiding Judge

[signed]

Judge Fatoumata Dembele Diarra

[signed]

Judge Hans-Peter Kaul

Dated this 4 May 2009

At The Hague, The Netherlands