



Original: **French**

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

Date: **23 June 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 Redacted Version of the *Decision on the Prosecutor's Application to Redact
Information Falling under Rule 77 of the Rules of Procedure and Evidence*
(Witnesses 007 and 294) of 17 June 2009
(ICC-01/04-01/07-1214-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 Germain Katanga

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Mr Andreas O'Shea

Counsel for Mathieu Ngudjolo Chui

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Ms Carine Bapita Buyangandu
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Legal Representatives of the Applicants

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REGISTRY

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Ms Silvana Arbia

Defence Support Section

Victims and Witnesses Unit

Mr Simo Vaatainen

Detention Section

Victims Participation and Reparations Section

Other

Trial Chamber II of the International Criminal Court (“the Chamber” and “the Court” respectively), acting pursuant to articles 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 addresses the Prosecutor’s application of 2 April 2009 to redact documents falling under rule 77 of the Rules and relating to Witnesses 7 and 294 (“the Application”).¹ That Application was filed as “[TRANSLATION] Confidential *ex parte*, only available to the Prosecutor”, and submitted in accordance with the Chamber’s *Decision on the Redaction Process*.² A public redacted version was submitted on 8 May 2009.³

2. The Prosecutor requests leave under paragraphs 2 and 4 of rule 81 of the Rules to redact certain information contained in the statements of these witnesses, as well as in other documents.

3. The Defence for Germain Katanga submitted observations on 18 May 2009,⁴ and the Defence for Mathieu Ngujolo has not submitted any observations.

4. On 11 May 2009, the Office of Public Counsel for Victims (“OPCV”) brought to the Chamber’s attention two redactions in the annexes relating to Witness 7,⁵ on

¹ Office of the Prosecutor, “*Requête aux fins d’expurgation d’informations dans certains éléments de preuve relevant de la Règle 77 (W-007 et W-294)*”, 2 April 2009, ICC-01/04-01/07-1018-Conf-Exp, with confidential *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, Public redacted version of document ICC-01/04-01/07-1018-Conf-Exp dated 2 April 2009, “*Requête aux fins d’expurgation d’informations dans certains éléments de preuve relevant de la Règle 77 (W-007 et W-294)*”, 8 May 2009, ICC-01/04-01/07-1118 with confidential *ex parte* annexes, only available to the Prosecutor.

⁴ Germain Katanga’s Defence Team, “Defence Response to Prosecution’s *Requête aux fins d’expurgation d’informations dans certains éléments de preuve relevant de la Règle 77 (W-007 et W-294)*”, 18 May 2009, ICC-01/04-01/07-1146.

⁵ Office of Public Counsel for Victims, “*Éléments d’information relatifs au document DRC-OTP-0207-0130*”, 11 May 2009; ICC-01/04-01/07-1126, with a confidential *ex parte* annex, for the OPCV only.

which the Chamber had requested additional information.⁶ On 20 May 2009, the OPCV also expressed the wish to appear before the Chamber in order to address specific issues relating to this witness.⁷

5. On 28 May 2009, the Office of the Prosecutor also submitted an addendum to its application for redactions of 2 April 2009.⁸

II. The Chamber's Analysis

6. The Chamber wishes to emphasise once again⁹ 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 ongoing or further investigations;¹⁰ 2) the existence of a link between the source of the risk and the accused;¹¹ 3) the infeasibility or insufficiency of less restrictive protective measures;¹² 4) an assessment of whether the redactions sought are prejudicial to or inconsistent with the rights of the Defence and the requirements of a fair and impartial trial;¹³ and 5) the obligation

⁶ E-mail exchange between the Legal Adviser of the Trial Division and the Office of the Prosecutor on 4 and 7 May 2009.

⁷ Office of Public Counsel for Victims, "*Demande du BCPV afin d'être autorisé en vertu de la norme 81-4-b du Règlement de la Cour à comparaître devant la Chambre dans le cadre de questions spécifiques liées aux mesures de protection au bénéfice du témoin W-007*", 20 May 2009, ICC-01/04-01/07-1160.

⁸ Office of the Prosecutor, "*Addendum du Bureau du Procureur à la Requête aux fins d'expurgation d'informations dans certains éléments de preuve relevant de la règle 77 (W-007 et W-294)*- ICC-01/04-01/07-1018-Conf-Exp", 28 May 2009, ICC-01/04-01/07-1177.

⁹ *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-01/04-01/07-862)*, 25 March 2009, ICC-01/04-01/07-987-Conf-Exp-tENG, para. 4.

¹⁰ 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.

¹¹ ICC-01/04-01/07-475, para. 71.

¹² 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.

¹³ ICC-01/04-01/06-773, para. 34.

to periodically review the decision authorising the redactions should circumstances change.¹⁴

7. As the Chamber has had occasion to point out a number of times,¹⁵ 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 a part of a document must be properly reasoned, in light, in particular, of the arguments submitted by the Prosecutor in support of his application. The Chamber has a duty to balance the various interests at stake as set out in rule 81 of the Rules, whilst ensuring that the proceedings include safeguards to protect the interests of the accused, 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 review of each redaction sought on the basis of the criteria set out in the previous paragraph.

8. In order better to assess the redactions sought on a case-by-case basis, the Chamber has drawn a distinction between those whose purpose is to avoid prejudicing ongoing or further investigations by the Prosecutor (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). It will also consider information relating to redactions authorised by Trial Chamber I, in relation to which the OPCV has asked that they be maintained.

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

¹⁴ ICC-01/04-01/07-475, para. 73.

¹⁵ [REDACTED], ICC-01/04-01/07-800-Conf-tENG, para. 9; ICC-01/04-01/07-819-tENG, paras. 1 and 7; ICC-01/04-01/07-888-Conf-Exp-tENG; ICC-01/04-01/07-889-Conf-tENG, para. 3; ICC-01/04-01/07-987-Conf-Exp-tENG, para. 5.

10. The Prosecutor draws the Chamber's attention to threats allegedly made against [REDACTED]. He states that there are serious grounds to believe that [REDACTED].¹⁶ 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 ("the DRC"), both for the Prosecutor's ongoing and further investigations and for the safety of witnesses, victims and members of their families.¹⁷

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

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

i) Locations where interviews were conducted

12. In his application of 2 April 2009, the Prosecutor requests that references to "[REDACTED]" be redacted from the transcript of the statement of Witness 294.¹⁸ In his addendum of 28 May 2009, he explains to the Chamber that he recently realised that this redaction had already been authorised on a permanent basis by Trial Chamber I in an oral decision of 18 January 2008.¹⁹ He cites regulation 42 of the

¹⁶ ICC-01/04-01/07-1018-Conf-Exp-Anxs A and B.

¹⁷ ICC-01/04-01/07-888-Conf-Exp-tENG and ICC-01/04-01/07-889-Conf-tENG, para. 9; ICC-01/04-01/07-987-Conf-Exp-tENG, para. 10; *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), 7 April 2009, ICC-01/04-01/07-1036-Conf-Exp-tENG, para. 8; *Décision concernant la requête du Procureur aux fins d'expurgations d'informations relevant de l'article 67-2 ou la règle 77 du Règlement de procédure et de preuve* (ICC-01/04-01/07-916), 8 April 2009, ICC-01/04-01/07-1040-Conf-Exp, para. 8; *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), 8 April 2009, ICC-01/04-01/07-1042-Conf-Exp-tENG, para. 10; *Decision on the Prosecutor's Application to Redact Information and to Maintain and Reinstate Redacted Passages in Certain Documents under Rule 77 of the Rules of Procedure and Evidence* (Witnesses 26, 36, 158 and 180) (ICC-01/04-01/07-981-Conf), 8 April 2009, ICC-01/04-01/07-1046-Conf-Exp-tENG, para. 8.

¹⁸ ICC-01/04-01/07-1018-Conf-Exp-AnxB.

¹⁹ ICC-01/04-01/07-1177, para. 3.

Regulations of the Court in order to indicate to the Chamber that he wishes to withdraw this request for redaction.²⁰

13. The Chamber notes that regulation 42 of the said Regulations provides that “[p]rotective measures once ordered in any proceedings in respect of a victim or witness shall continue to have full force and effect in relation to any other proceedings before the Court”. It considers that a question of this kind must be debated in adversarial proceedings, given the potential consequences that the answer thereto may have for the disclosure of documents to the Defence, and for this reason, by an Order dated 12 June 2009, it has invited the parties, the participants and the OPCV to submit their written observations on the matter.²¹ Accordingly, it will rule at a later date on the requests for redactions relating to the locations where interviews were conducted.

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

14. The Prosecutor requests leave to redact the name “[REDACTED]” from the investigator’s note relating to Witness 7.²² The Prosecutor believes that the redaction sought is necessary, since this person acts as a source for his Office and facilitates contact between the Office and witnesses. He also points out that [REDACTED] following threats from [REDACTED], who had learnt that they were co-operating with the Court.²³

15. The Prosecutor considers that intermediaries are vital for the conduct of his activities and that, without their co-operation, his investigations would be slowed down considerably, if not rendered impossible. He points out that intermediaries will generally stay in the DRC. Accordingly, he considers that disclosing their identity could endanger their safety and, hence, prejudice ongoing investigations.

²⁰ *Ibid.*, para. 4.

²¹ *Ordonnance relative à la soumission d’écritures sur l’interprétation de la norme 42 du Règlement de la Cour (norme 28 du Règlement de la Cour)*, 12 June 2009, ICC-01/04-01/07-1205.

²² ICC-01/04-01/07-1018-Conf-Exp-AnxA.

²³ ICC-01/04-01/07-1018-Conf-Exp-AnxA.

He therefore requests that the names of these sources be redacted for the duration of the trial.²⁴ Where the proposed redaction does not allow the nature of the information in question to be deduced from the text, the Prosecutor proposes that it be stated that it relates to an “intermediary of the Office of the Prosecutor”.²⁵

16. The Prosecutor also refers “[TRANSLATION] to the explanations put forward in his previous briefs in relation to sources and intermediaries of the Office of the Prosecutor”,²⁶ referring *inter alia* to the arguments set out in his application of 16 April 2009 requesting leave to appeal the Chamber’s decision of 10 February 2009.²⁷ The Chamber considers that any application for leave to redact must contain all of the information required in order to assess it, and it emphasises that reference to general arguments or to those relating to other requests can only be of very limited value. Furthermore, it notes that, if the Prosecutor deems it necessary to refer to arguments set out in other applications, he must give precise references for these. Nevertheless, it considers that the material submitted by him in the present case is sufficient to enable the Chamber to decide whether his requests are justified.

17. The Defence for Germain Katanga opposes any request for permanent redactions and refers to the principles set out by the Chamber in its previous decisions.²⁸

18. The Chamber considers that disclosing the identity of intermediaries could indeed only increase the threats hanging over them as a result of their co-operation with the Court and presence in the DRC. Accordingly, it considers it necessary to permit the redaction of the names of persons 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 effective conduct of investigations

²⁴ ICC-01/04-01/07-1018-Conf-Exp-AnxA.

²⁵ ICC-01/04-01/07-1018-Conf-Exp-AnxA.

²⁶ ICC-01/04-01/07-1018-Conf-Exp, para. 13.

²⁷ ICC-01/04-01/07-1018-Conf-Exp, p. 5, footnote 8.

²⁸ ICC-01/04-01/07-1146, p. 3.

and of the risk that they might refuse to continue to co-operate with the Office of the Prosecutor and, more generally, with the Court, if their names were disclosed. Redaction of their names is therefore necessary in order to safeguard the investigations, and it is not possible to have recourse to less restrictive measures.

19. The Chamber considers that these redactions do not impair the overall intelligibility of the document. The Defence will in fact have access to most of the information it contains. However, the Chamber considers that it cannot authorise these redactions through to the end of the trial, since, in the Chamber's view, such a measure does not take sufficient account of the rights of the Defence. At this stage, it is difficult for it to make a definitive assessment of the usefulness and relevance of such information to the Defence. In effect, it is up to the Defence to conduct such an assessment, since it is for the Defence, and for the Defence alone, to decide on the strategy that it intends to adopt.

20. In this instance, the Defence has so far been unable fully to assess the value of this information, since the applications for redactions describe it only in general terms. It will have an opportunity to analyse and assess the usefulness and relevance of the redacted documents once it has received them, and, if necessary, it will be able to submit to the Chamber an application for review prior to the commencement of the trial. In that event, the Chamber will assess the practical impact of the redactions sought in the light of the Defence's arguments. For his part, the Prosecutor will also be able to request, not later than 45 days prior to the commencement of the trial, that the redactions be maintained.

21. Having thus balanced the interests at stake, the Chamber finds that the redactions sought are warranted, until the thirtieth day prior to the commencement of the trial.

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

22. The Prosecutor requests, under rule 81(2) of the Rules, that the last names, first names, signatures and initials and of the interpreters who were present at the taking of the statements of Witnesses 7²⁹ and 297³⁰ be redacted.

23. He submits that disclosing the names of the interpreters, like disclosing those of his Office's sources, might prejudice ongoing investigations, since the interpreters involved in the interviews and statement-taking reside in the DRC together with their families. He also refers to the limited number of Congolese interpreters currently available to take part in the investigations, as well as to the qualification levels of these personnel, which makes them difficult to replace. He therefore considers that the redactions requested are preventive measures which are necessary in order to ensure that these interpreters are protected.³¹

24. 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 available.³²

25. As with the other redactions, the Defence for Germain Katanga does not object to temporary redactions and refers once again to the principles set out by the Chamber in its previous decisions.³³

26. 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 families is not a feasible option,

²⁹ ICC-01/04-01/07-1018-Conf-Exp-AnxA.

³⁰ ICC-01/04-01/07-1018-Conf-Exp-AnxB.

³¹ ICC-01/04-01/07-1018-Conf-Exp-Anx A and B.

³² ICC-01/04-01/07-1018-Conf-Exp-Anx A and B.

³³ ICC-01/04-01/07-1146, p. 3.

and considers that disclosing their names and the risk of pressure to which they may be exposed might compromise the conduct of the Prosecutor's investigations.³⁴

27. The Chamber notes that the redaction sought 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 be able to know the interpreters' identities 30 days prior to the trial, which safeguards the rights of the accused. Accordingly, the Chamber is in favour of the proposed redactions.

c) Identity of and information about witnesses and their family members and individuals at risk as a result of the Court's activities (rule 81(4))

i) Identity of and information about family members of witnesses

28. The Prosecutor requests the Chamber's leave under rule 81(4) of the Rules to redact permanently the names of the father, mother, [REDACTED] of Witness 7,³⁵ and of the father, mother and [REDACTED] of Witness 294.³⁶ He also seeks the permanent redaction of the place of birth of Witness 7,³⁷ and of the place of residence of the families of Witnesses 7³⁸ and 294.³⁹

29. According to the Prosecutor, the mere fact that these witnesses have provided him with a written statement identifies them as persons collaborating with the Court, which puts their family members at risk. Lastly, he points out that, while witnesses personally assume risks by co-operating with the Court, it is not, however, their intention that their action could have repercussions on their families.⁴⁰

³⁴ 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; ICC-01/04-01/07-1036-Conf-Exp-tENG, para. 24; ICC-01/04-01/07-1040-Conf-Exp, para. 25; ICC-01/04-01/07-1041-Conf-Exp-tENG, para. 22; ICC-01/04-01/07-1145-Conf-Exp, para. 28.

³⁵ ICC-01/04-01/07-1018-Conf-Exp-AnxA.

³⁶ ICC-01/04-01/07-1018-Conf-Exp-AnxB.

³⁷ ICC-01/04-01/07-1018-Conf-Exp-AnxA.

³⁸ ICC-01/04-01/07-1018-Conf-Exp-AnxA.

³⁹ ICC-01/04-01/07-1018-Conf-Exp-AnxB.

⁴⁰ ICC-01/04-01/07-1018-Conf-Exp, para. 21.

30. The Prosecutor submits that information pertaining to relatives is of limited interest and is not material to the Defence's preparation, given that they are not Prosecution witnesses and were only mentioned by witnesses incidentally.⁴¹ Accordingly, the Prosecutor considers that revealing the identity of family members would jeopardise the situation of the witnesses and their families, a situation that is not "[TRANSLATION] counterbalanced by a manifest interest on the part of the accused".⁴²

31. He points out that Witness 7 [REDACTED]. [REDACTED]. Furthermore, disclosing this witness's birthplace could facilitate investigations for the purpose of identifying the witness's family members.⁴³

32. The Prosecutor further states that Witness 294 [REDACTED]. [REDACTED], the Prosecutor submits that disclosing this information could affect their safety and enable this witness to be located.⁴⁴

33. The Prosecutor proposes other forms of redactions where it is not clear from the text that the information pertains to witnesses' families. Accordingly, he suggests referring to the "[TRANSLATION] place of residence of family members" of Witness 294.⁴⁵ The Chamber welcomes this proposal, which makes the nature of the redacted information comprehensible to the Defence.

34. As with the other redactions, the Defence for Germain Katanga does not object to temporary redactions and refers once again to the principles set out by the Chamber in its previous decisions.⁴⁶

⁴¹ ICC-01/04-01/07-1018-Conf-Exp, para. 20.

⁴² ICC-01/04-01/07-1018-Conf-Exp, para. 22.

⁴³ ICC-01/04-01/07-1018-Conf-Exp-AnxA.

⁴⁴ ICC-01/04-01/07-1018-Conf-Exp-AnxB.

⁴⁵ ICC-01/04-01/07-1018-Conf-Exp-AnxB.

⁴⁶ ICC-01/04-01/07-1146, p. 3.

35. The Chamber concurs with the Prosecutor that disclosing the identity of witnesses' family members, and information enabling them to be identified or located, might jeopardise their safety, in particular where they are present in Ituri. It also considers that, even though witnesses' family members are taking no part in this case, persons wishing to exert influence on the witnesses could use their family members to exert pressure on them.

36. The Chamber is further 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, [REDACTED] Witness 7's [REDACTED] Witness 294's [REDACTED], [REDACTED].

37. The Chamber considers that the redactions sought in the form 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 considers that it can only authorise the redaction of the passages in question on a temporary basis and not through to the end of the trial, as such a measure appears to it to be excessive, having regard to the exercise of the rights of the Defence. It considers, however, that the redactions designed to safeguard [REDACTED] Witness 7 [REDACTED] Witness 294's [REDACTED] can be authorised on a permanent basis. It therefore authorises the last-named redactions through to the end of the trial, and all other redactions until the thirtieth day prior to the date of the trial.

ii) Persons at risk on account of the activities of the Court

38. The Prosecutor requests the permanent redaction of the names of witnesses [REDACTED], as cited by an investigator in a note relating to Witness 7, and the name of a friend of this witness. The Prosecutor indicates that these people are not

witnesses in the present case and that they are cited only because they were [REDACTED] as Witness 7.⁴⁷

39. He considers that the identities of these individuals must be protected, since disclosing them would put them at risk. He also notes that this information is of no value to the Defence. Accordingly, he requests leave to redact these names for the duration of the trial.⁴⁸

40. The Chamber recalls that the Appeals Chamber stated that rule 81(4) of the Rules also applies to persons liable to be at risk on account of the activities of the Court.⁴⁹ Moreover, it considers that the redactions sought do not impair the overall intelligibility of the documents and, in that regard, relies on the reasoning set out in paragraph 37 of the present Decision, which it intends to apply *mutatis mutandis*, without needing to restate it. It therefore considers that the redactions sought are justified and grants leave for them to be implemented, in the alternative form proposed, up until the thirtieth day prior to the commencement of the trial.

d) Requests for redaction from the OPCV

41. On 11 May 2009, the OPCV informed the Chamber that it was representing Witness 7 [REDACTED]. Furthermore, document DRC-OTP-0207-0130, included in Annex A of the Prosecutor's Application, contains redactions sought by the OPCV and authorised on a permanent basis by Trial Chamber 1.⁵⁰

42. The OPCV emphasises that Trial Chamber I authorised two types of redaction: that of the name and signature of the interpreter who assisted the Office

⁴⁷ ICC-01/04-01/07-1018-Conf-Exp, para. 24 and Anx A.

⁴⁸ ICC-01/04-01/07-1018-Conf-Exp-AnxA.

⁴⁹ ICC-01/04-01/07-475, paras. 43, 55 and 56.

⁵⁰ ICC-01/04-01/07-1126, paras. 3 to 5.

staff at the interview with Witness 7, and that of the place where the interview was conducted.⁵¹

43. In the OPCV's opinion, the redactions are necessary in order to protect the interpreter who was involved in the interview between Witness 7 and the witness's counsel. With regard to the location of the interview, the OPCV states that this redaction is necessary [REDACTED].⁵² The OPCV indicates that these redactions are part of the protective measures ordered by another Chamber, and that they should be respected by Trial Chamber II in accordance with regulation 42 of the Regulations of the Court.

44. With regard to the place where the interview with Witness 7 was conducted, the Chamber asked the OPCV for further information and was told that [REDACTED].⁵³ The Chamber will now give a ruling on this point, since it has already had occasion to authorise similar requests. It has thus accepted that references to the [REDACTED] fall within the scope of information that must be redacted permanently in order to ensure that these protective measures are successful.⁵⁴ It notes furthermore that the document is still readable and intelligible, and therefore usable by the Defence, and does not in any way prejudice the rights of the accused. Accordingly, it considers that this redaction must be authorised on a permanent basis.

45. Regarding the name of the interpreter who participated in the interview between the OPCV and the witness, the Chamber refers to what it said in paragraph 13 above, and recalls that the issue of the interpretation of regulation 42 will be addressed, if necessary, at a later stage in adversarial proceedings.

⁵¹ ICC-01/04-01/07-1126, para. 5.

⁵² ICC-01/04-01/07-1126, para. 7.

⁵³ E-mail dated 27 May 2009 from the OPCV to the Legal Adviser of the Trial Division.

⁵⁴ ICC-01/04-01/07-987-Conf-Exp-tENG, paras. 44 and 46; ICC-01/04-01/07-1042-Conf-Exp-tENG, para. 39; ICC-01/04-01/07-1119-Conf-Exp, para. 7; ICC-01/04-01/07-1149-Conf-Exp, para. 27.

FOR THESE REASONS, THE CHAMBER

1) GRANTS the Application – with the exception of the requests referred to in paragraphs 13 and 45 of this Decision, on which it will rule after receiving the requested filings on the effect of regulation 42 of the Regulations of the Court - while reserving the right periodically to review the redactions authorised, either *proprio motu* or upon an application submitted for that purpose;

2) AUTHORISES the redactions on which it has ruled until the thirtieth day preceding the date of commencement of the trial, unless the Prosecutor requests, not less than 45 days prior to that date, that they be maintained, and with the exception of the redaction authorised on a permanent basis in paragraphs 37 and 44 of this Decision.

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

[signed]

Judge Bruno Cotte
Presiding Judge

[signed]

Judge Fatoumata Dembele Diarra

[signed]

Judge Hans-Peter Kaul

Dated this 23 June 2009

At The Hague, The Netherlands