

**Cour
Pénale
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**International
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Court**

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PRE-TRIAL CHAMBER I

Before: Judge Sylvia Steiner, Single Judge

Registrar: Mr Bruno Cathala

**SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO
IN THE CASE OF
THE PROSECUTOR *v.* GERMAIN KATANGA**

Public Redacted Version

**Decision on the Prosecution Request for Authorisation to Redact Statements of
Witnesses 4 and 9**

The Office of the Prosecutor

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I, Sylvia Steiner, judge at the International Criminal Court (“the Court”),

NOTING the “Warrant of Arrest for Germain Katanga”,¹ issued by Pre-Trial Chamber I (“the Chamber”) on 2 July 2007;

NOTING the “Decision Rejecting the Prosecution Urgent Request and Establishing a Calendar for the Disclosure of the Supporting Materials of the Prosecution Application for a Warrant of Arrest against Germain Katanga”,² issued by the Single Judge on 6 July 2007;

NOTING the “Decision Altering the Calendar for the Submission of Formatted Version of the Arrest Warrant Application and Redacted Witness Statements”,³ issued by the Single Judge on 10 July 2007;

NOTING the “Decision on the Prosecution’s Request for the Variation of the Calendar for Requesting Redactions to Statements or Interview Notes of Witnesses”,⁴ issued by the Single Judge on 29 August 2007;

NOTING the “Prosecution’s Amended Application Pursuant to Rule 81(2) and Rule 81(4)”,⁵ filed by the Prosecution on 10 September 2007, in which the Prosecution requested the authorisation of the Single Judge to redact certain parts of the statements of Witnesses 7, 13 and 14;⁶

¹ ICC-01/04-01/07-1.

² ICC-01/04-01/07-5-US-Exp.

³ ICC-01/04-01/07-9-US-Exp. Pursuant to Decision ICC-01/04-01/07-53 dated 5/11/2007, this document has been reclassified as public.

⁴ ICC-01/04-01/07-17-US-Exp.

⁵ ICC-01/04-01/07-18-US-Exp and ICC-01/04-01/07-17-US-Exp-Anx1-4. Pursuant to Decision ICC-01/04-01/07-53 dated 5/11/2007, this document has been reclassified as confidential and “*ex parte* Prosecution only”.

⁶ ICC-01/04-01/07-18-Conf-Exp and ICC-01/04-01/07-18-Conf-Exp-Anx1-4. Pursuant to Decision ICC-01/04-01/07-53 dated 5/11/2007, this document has been reclassified as Confidential and “*ex parte* Prosecution only”.

NOTING the “Information on the Status of the Referrals and on the Assessments”,⁷ filed by the Registry on 13 September 2007;

NOTING the *ex parte*, closed session hearing⁸ held with the Prosecution and the Victims and Witnesses Unit (“the VWU”) on 17 October 2007;

NOTING the “Decision Modifying the Calendar for the Disclosure of the Supporting Materials of the Prosecution Application for a Warrant of Arrest against Germain Katanga”,⁹ issued by the Single Judge on 18 October 2007;

NOTING the “Prosecution’s Application Pursuant to Rule 81(2) and Rule 81(4) to Statements of Witnesses 1 and 9, and Interview Notes of Witnesses 9 and 12”,¹⁰ filed by the Prosecution on 22 October 2007;

NOTING the “Prosecution’s Application Pursuant to Rule 81(2) and Rule 81(4) to Statements of Witnesses 3, 8 and 11”,¹¹ filed by the Prosecution on 24 October 2007;

NOTING the *ex parte*, closed session hearings with the Prosecution and the VWU held on 25,¹² 30¹³ and 31¹⁴ October 2007;

⁷ ICC-01/04-01/07-19-US-Exp. Pursuant to Decision ICC-01/04-01/07-53 dated 5/11/2007, this document has been reclassified as Confidential and “*ex parte* Prosecution only”.

⁸ ICC-01/04-01/07-T-3-US-Exp-ENG [17Oct2007Edited].

⁹ ICC-01/04-01/07-28-US-Exp. Pursuant to Decision ICC-01/04-01/07-53 dated 5/11/2007, this document has been reclassified as Confidential.

¹⁰ ICC-01/04-01/07-42-Conf-Exp and ICC-01/04-01/07-42-Conf-Exp-Anx1-4. Pursuant to Decision ICC-01/04-01/07-53 dated 5/11/2007, this document has been reclassified as Confidential and “*ex parte* Prosecution only”.

¹¹ ICC-01/04-01/07-43-Conf-Exp and ICC-01/04-01/07-43-Conf-Exp-Anx1-4. Pursuant to Decision ICC-01/04-01/07-53 dated 5/11/2007, this document has been reclassified as Confidential and “*ex parte* Prosecution only”.

¹² ICC-01/04-01/07-T-06-Conf-Exp-ENG [25Oct2007Edited].

¹³ ICC-01/04-01/07-T-07-Conf-Exp-ENG[30Oct2007Edited].

¹⁴ ICC-01/04-01/07-T-08-Conf-Exp-ENG[31Oct2007Edited].

NOTING the "Prosecution's Supplemental Brief in Respect of the Prosecution's Applications Pursuant to Rule 81(2) and Rule 81(4)",¹⁵ filed by the Prosecution on 5 November 2007;

NOTING the *ex parte*, closed session hearing with the Prosecution and the VWU held on 20 November 2007;¹⁶

NOTING the "Prosecution's Amended Application Pursuant to Rule 81(2) and Rule 81(4) to Statements of Witnesses 1, 7, 9, 11, 13 and 14, and Interview Notes of Witnesses 9 and 12",¹⁷ filed by the Prosecution on 21 November 2007.

NOTING the "First Decision on the Prosecution Request For Authorisation to Redact Witness Statements"¹⁸ ("First Decision on Redactions"), issued by the Single Judge on 14 December 2007, by which the Single Judge partially granted the Prosecution's request for authorisation to redact information in the interview notes and statements of witnesses 1, 3, 7, 8, 12, 13 and 14;

NOTING the "Decision on the Prosecution Request for Leave to Appeal the First Decision on Redactions"¹⁹, by which the Single Judge granted leave to appeal in relation to the following issues:

- (a) whether "Article 54(3)(f) authorises the Prosecution to seek, and Rule 81(4) read in conjunction with that article empower the Chamber to authorise, redactions for the protection of 'innocent third parties', i.e. persons who are

¹⁵ ICC-01/04-01/07-51-Conf-Exp.

¹⁶ ICC-01/04-01/07-T9-Conf-Exp-ENG ET 20-11-2007.

¹⁷ ICC-01/04-01/07-83-Conf-Exp and ICC-01/04-01/07-83-Conf-Exp-Anx1-7.

¹⁸ ICC-01/04-01/07-84-US-Exp, filed on 3 December 2007, the confidential, *ex parte* version, available only to the Office of Prosecutor and the Defence (ICC-01/04-01/07-88-Conf-Exp), issued on 6 December 2007, and the public redacted version (ICC-01/04-01/07-90), filed on 7 December 2007.

¹⁹ ICC-01/04-01/07-108.

not victims, current or prospective Prosecution witnesses or sources, or members of their families"; and

- (b) whether the Single Judge erred in the application of the test prescribed by the Appeals Chamber in its 14 December 2006 Decisions by refusing to authorise the redaction of the location of interviews of witnesses, and the identifying information of current and former staff members of the Office of the Prosecutor ("the OTP") and the VWU at this particular stage of the proceedings;

NOTING the *ex parte*, closed session hearing with the Prosecution and the VWU held on 10 December 2007;²⁰

NOTING the "Decision Establishing Time Limits for Decisions on Protective Measures and Requests for Redactions",²¹ issued by the Single Judge on 12 December 2007;

NOTING the "Prosecution's Application Pursuant to Rule 81(2) and Rule 81(4) to Statement of Witness 4",²² filed by the Prosecution on 13 December 2007.

I. Introductory Remarks

1. The Prosecution is requesting certain redactions in relation to the statements and interview notes of Witnesses 4 and 9.
2. Witness 4 gave a statement to the Prosecution on [REDACTED], which is restricted to the alleged FRPI/FNI attack on Bogoro on 24 February 2003, in which he

²⁰ ICC-01/04-01/07-T-10-Conf-Exp-ENG ET 10-12-2007.

²¹ ICC-01/04-01/07-97-Conf-Exp-Corr.

²² ICC-01/04-01/07-98, ICC-01/04-01/07-98-Conf-Exp-AnxA and ICC-01/04-01/07-98-Conf-Exp-AnxB

claims to have been injured by [REDACTED] wounds²³ and to have lost [REDACTED].²⁴ The statement of Witness 4 was used in the Prosecution Application for a warrant of arrest for Germain Katanga and was relied upon by Pre-Trial Chamber I when it issued the warrant of arrest for Germain Katanga. Although Witness 4 gave his consent for his statement to be used in the Court's proceedings concerning crimes within the jurisdiction of the Court allegedly committed in the situation in the DRC, he was unaware that his statement would be used for the purpose of requesting a warrant of arrest for Germain Katanga, since the Prosecution request was made under seal.

3. [REDACTED].²⁵ Moreover, in the Prosecution's last telephone conversation with him, Witness 4 stated that he no longer wants to cooperate with the Prosecution and the Court in general and that he does not want his statement to be used as evidence for the purpose of the confirmation hearing in the case of *The Prosecutor v. Germain Katanga*.²⁶

4. As a result, [REDACTED] to Witness 4. Moreover, as the statement of Witness 4 was included as supporting material in the Prosecution's Application for the issuance of a warrant of arrest for Germain Katanga, and was relied upon by the Chamber when it issued the relevant warrant of arrest, the Single Judge considers that such a statement is material for the Defence's preparation for the confirmation hearing within the meaning of rule 77 of the Rules. Therefore, the Single Judge is of the view that, once a decision is issued in respect of the Prosecution's request for authorisation to redact the statement of Witness 4, the statement must be made available to the Defence through the system of pre-inspection and inspection

²³ ICC-01/04-01/07-98-Conf-Exp-AnxA, para. 30.

²⁴ ICC-01/04-01/07-98-Conf-Exp-AnxA, para. 23.

²⁵ ICC-01/04-01/07-T-10-Conf-Exp-ENG ET 10-12-2007, p. 31, lines 17-19; p. 33, 1-3.

²⁶ ICC-01/04-01/07-T-10-Conf-Exp-ENG ET 10-12-2007, p. 31, lines 19-25.

provided for in rule 77 of the Rules and applied in the case of *The Prosecutor v. Thomas Lubanga Dyilo*.²⁷

5. In relation to Witness 9, the Prosecution has stated that it intends to rely on his statement and interview notes at the confirmation hearing. Moreover, according to the Prosecution and the VWU, protective measures have already been granted and implemented for Witness 9. As a result, the Prosecution's request for authorisation for redactions in relation to Witness 9 constitutes a change in the approach adopted by the Prosecution during the proceedings leading up to the confirmation hearing in the case of *The Prosecutor v. Thomas Lubanga Dyilo*. In those proceedings, the Prosecution did not request authorisation for any redactions in the statement of any of the six child soldiers who were accepted into the VWU's protection programme.²⁸

6. As the Single Judge stated in the First Decision on Disclosure:

Only in a few instances where the Single Judge has found compelling reasons to depart from the practice in the case ICC-01/04-01/06 will the Single Judge authorise the requested redactions. Such redactions will be authorised after ensuring that the requirements set out by the Appeals Chamber in its two 14 December 2006 decisions are met.²⁹

Hence, in 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

²⁷ ICC-01/04-01/06-T-9-ENG[23JUN2006Edited], p. 49, lines 14-25; p. 50, lines 1-17 and p. 51, lines 1-3.

²⁸ ICC-01/04-01/07-T-7-Conf-Exp-ENG [30Oct2007Edited], p. 3, lines 4-18.

²⁹ ICC-01/04-01/07-84-US-Exp, para.3; ICC-01/04-01/07-88-Conf-Exp, para.3; ICC-01/04-01/07-90, para.3. See also, ICC-01/04-01/06-773 and ICC-01/04-01/06-774.

affirmative will the Single Judge authorise the redactions requested by the Prosecution.³⁰

7. In order to carry out her analysis, the Single Judge has classified the redactions requested by the Prosecution into the following seven categories: (a) names and identifying information of Victims; (b) current whereabouts of Victims; (c) names and identifying information of family members of prosecution witnesses; (d) current whereabouts of family members of Prosecution witnesses; (e) potential Prosecution witnesses; (f) innocent third parties; and (g) further and ongoing investigations pursuant to rule 81(2) of the Rules.

8. Due to the fact that the reasons for granting or rejecting the Prosecution's Applications in relation to those redactions included within the same category are very similar, the Single Judge – following the practice of this Chamber 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.

9. In Annex I to this decision, which is issued *ex parte* and available only to the Prosecution, the Single Judge, following the procedure prescribed by the Appeals Chamber,³¹ specifies, statement by statement, to which of the seven categories each of the redactions requested by the Prosecution belongs. Moreover, in those instances in which the specific nature of the redactions requested by the Prosecution so requires, the Single Judge has provided in Annex I to this decision an additional explanation of her decision concerning specific redactions.

10. Finally, in the view of the Single Judge, the security situation and context in which the Prosecution requests are made is the same as the one described in paragraphs 13 to 22 of the First Decision on Redactions.

³⁰ ICC-01/04-01/07-84-US-Exp, para.4; ICC-01/04-01/07-88-Conf-Exp, para. 4; ICC-01/04-01/07-90, para. 4. See also, ICC-01/04-01/06-773, paras. 21, 33 and 34; ICC-01/04-01/06-774, paras. 31-33.

³¹ ICC-01/04-01/06-773, para. 22.

II. Categories of Redactions

A. Names and identifying information of Victims

11. The Single Judge realizes that the Prosecution is requesting authorisation under rule 81(4) of the Rules to redact in the statement of Witness 9 the names and identifying information of three alleged victims of sexual offences who were victimised in events other than the alleged joint FRPI/FNI attack on Bogoro on 24 February 2003.

12. The Single Judge observes that 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.

13. 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.

14. Moreover, this Chamber has repeatedly held that the status of victim in situation and case proceedings is linked to the object of such proceedings.³² Hence, whenever a cases 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

³² ICC-01/04-101-tEN, in particular paras.97-100; ICC-01/04-01/06-172-tEN; ICC-01/04-177-tEN; ICC-01/04-417.

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

15. As the warrant of arrest for Germain Katanga is restricted to crimes committed during and in the aftermath of the alleged FRPI/FNI attack on Bogoro on 24 February 2003, the Single Judge considers that the three above-mentioned alleged victims of sexual offences which are unrelated to the Bogoro attack cannot, in principle, be considered as victims for the purpose of rule 81(4) of the Rules.

16. Moreover, the Single Judge cannot authorise the redaction of the identities and identifying information of those alleged victims pursuant to rule 81(2) of the Rules, insofar as the Prosecution has made it clear that they are not Prosecution sources and that they are in no way involved in any ongoing or further Prosecution investigation.

17. Nevertheless, the Single Judge is aware that the drafters of the Statute and the Rules included a number of provisions specifically governing the protection of alleged victims of sexual offences as a result of crimes within the jurisdiction of the Court. In this regard, the Single Judge notes that under article 68(1) of the Statute the Court is required to take appropriate measures to protect victims and witnesses, and to have regard to all relevant factors, “in particular, but not limited to, where the crime involves sexual or gender violence or violence against children”. Furthermore, pursuant to article 54(1)(b) of the Statute, the Prosecution, in investigating any crimes, is required to respect the interests and personal circumstances of victims and witnesses, and take into account the nature of the crime, “in particular where it involves sexual violence, gender violence or violence against children”.

18. The Single Judge also recalls rule 86 of the Rules, under which a Chamber is required, “in making any direction or order [...] [to] take into account the needs of all victims and witnesses in accordance with article 68, in particular [...] victims of sexual or gender violence”. Furthermore, under rule 88 of the Rules, special

³³ ICC-01/04-01/06-172-tEN, pp. 6-8. See also ICC-01/04-01/06-228-tEN.

protective measures can be granted to a traumatised victim, in particular victims of sexual violence, when called to give oral testimony before the Court. Finally, the Single Judge also recalls rule 70 of the Rules, which provides for very specific principles of evidence in cases of sexual violence.

19. As a result, the Single Judge considers that a systematic and teleological interpretation of rule 81(4) of the Rules – in light of the particular emphasis placed by the drafters of the Statute and the Rules on the protection of alleged victims of sexual offences resulting from crimes within the jurisdiction of the Court – leads to the conclusion that, on an exceptional basis and only for the purpose of their protection by means of the redaction of their names and identifying information, the notion of “victim” under rule 81(4) of the Rules would also cover alleged victims of sexual offences which are unrelated to the charges in the case at hand.

20. In light of the foregoing, the Single Judge shall, in Annex I to this decision, address the application of the criteria prescribed by the Appeals Chamber in its two 14 December 2006 Decisions in relation to the three alleged victims of sexual offences referred to in the statement of Witness 9, which are unrelated to the Bogoro attack, and whose names and identifying information the Prosecution is seeking authorisation to redact.

21. The Single Judge also notes that the Prosecution is requesting the redaction of the name and any identifying information of Witness 4 in order to ensure his safety.³⁴

22. In the opinion of the Single Judge, Witness 4 can no longer be considered a witness for the purpose of the application of rule 81(4) of the Rules because he withheld consent for his statement to be used as evidence by the Prosecution for the purpose of the confirmation hearing in the case of *The Prosecutor v. Germain Katanga*.³⁵

³⁴ ICC-01/04-01/07-98-Conf-Exp-AnxB.

³⁵ ICC-01/04-01/07-T-10-Conf-Exp-ENG ET 10-12-2007, p. 31, lines 17-25.

23. Moreover, as Witness 4 refuses to continue cooperating with the Prosecution, he can no longer be considered a Prosecution source for the purpose of rule 81(2) of the Rules.

24. Nevertheless, the Single Judge considers that Witness 4 falls within the category of "victims" under rule 81(4) of the Rules because, according to his statement, (i) he was present during the alleged joint attack on Bogoro by the FNI/FRPI, during which he first sought refuge [REDACTED] until the UPC was overthrown; (ii) he subsequently fled to the mountain where he hid for two days; and (iii) during the attack on Bogoro he suffered [REDACTED] wounds³⁶ and [REDACTED].³⁷

25. According to the Prosecution and the VWU [REDACTED] to Witness 4.³⁸ Moreover, according to his statement, Witness 4 is [REDACTED] in the Ituri district,³⁹ [REDACTED].⁴⁰

26. The Single Judge considers that, under the current circumstances in the Ituri district, as referred to in Section II of the First Decision on Redactions, disclosing to the Defence the name or other information that could lead to the identification of Witness 4 could pose an additional risk to his safety and/or physical well-being.

27. The Single Judge is of the view that the redaction of the name and any identifying information of Witness 4 is sufficient to minimise the risk to his safety, and that, at this stage of the proceedings, there is no less intrusive alternative measure that can be taken to achieve the same goal.

28. However, the Single Judge notes that [REDACTED].

³⁶ ICC-01/04-01/07-98-Conf-Exp-AnxA, para. 30.

³⁷ ICC-01/04-01/07-98-Conf-Exp-AnxA, para. 23.

³⁸ ICC-01/04-01/07-T-10-Conf-Exp-ENG ET 10-12-2007, p.31, lines 5-25, p.32, lines 21-25 and p.33, lines 18.

³⁹ ICC-01/04-01/07-98-Conf-Exp-AnxA, para. 43.

⁴⁰ ICC-01/04-01/07-98-Conf-Exp-AnxA, paras. 13 and 43.

29. Hence, the Single Judge cannot exclude the possibility that authorising the redaction of Witness 4's name and identifying information would not cause any prejudice to the Defence, which may have an interest in contacting him to verify his version of the events.

30. However, in balancing this possible prejudice against the need to protect Witness 4 in a context as serious as the one referred to in Section II of the First Decision on Redactions, the Single Judge considers that the need for protection [REDACTED] which can be properly granted through the redaction of his name and identifying information overrides any prejudice that might be caused to the Defence at this stage.

31. In the view of the Single Judge, even if any prejudice is caused, this will not be inconsistent with the rights of the Defence and a fair and impartial trial because the redactions are only granted for the purpose of the proceedings leading up to the confirmation hearing – which is an early stage of the proceedings in the case of *The Prosecutor v. Germain Katanga* characterised by the limited scope of the confirmation hearing. Furthermore, Witness 4 has made it clear that he no longer wants to cooperate with the Prosecution and does not wish his statement to be used by the Prosecution as evidence for the purpose of the confirmation hearing in the case of *The Prosecutor v. Germain Katanga*.⁴¹

32. Accordingly, the Single Judge grants authorisation pursuant to rule 81(4) of the Rules for the redaction of Witness 4's name and identifying information in his statement.

B. Current Whereabouts of Victims

33. The Prosecution requests, pursuant to rule 81(4) of the Rules, the authorisation for certain redactions relating to the current whereabouts of Witness 4 and alleged

⁴¹ ICC-01/04-01/07-T-10-Conf-Exp-ENG ET 10-12-2007, p. 31, lines 19-25.

victims of sexual offences, who were victimised in events other than the alleged joint FRPI/FNI attack on Bogoro on 24 February 2003, in order to ensure their security.

34. For the reasons given in the previous subsection, the Single Judge considers that the alleged victims of sexual offences, who were victimised in events other than the alleged joint FRPI/FNI attack on Bogoro on 24 February 2003, fall within the category of "victims" under rule 81(4) of the Rules. Moreover, the Single Judge considers that, in the context described in Section II of the First Decision on Disclosure, disclosing to the Defence information that could lead to the identification of the whereabouts of these individuals could pose an additional risk to their safety and/or physical well-being.

35. The Single Judge is of the view that the redactions requested by the Prosecution, which are limited to the current whereabouts of the aforesaid individuals, or to information that could lead to the identification of such whereabouts, are (i) sufficient to minimize this risk and that, at this stage of the proceedings, there is no less intrusive alternative measure that can be taken to achieve the same goal and (ii) necessary to guarantee that these individuals [REDACTED] will not be identified

36. Furthermore, the Single Judge considers that the need for protection for these alleged victims of sexual offences in a context as serious as the one referred to in Section II of the First Decision on Redactions overrides any prejudice that might be caused to the Defence at this stage by the redaction of information that could lead to the identification of their current whereabouts; and that even if any prejudice is caused, this will not be inconsistent with the rights of the Defence and a fair and impartial trial as (i) the Defence will have access to the identity of Witness 9; (ii) the alleged victims of sexual offences were not victimised in the alleged FRPI/FNI attack on Bogoro on 24 February 2003; and (iii) the alleged victims of sexual offences are not referred to in the interview notes and statement of Witness 9 as having any knowledge of the crimes included in the warrant of arrest for Germain Katanga.

37. The Prosecution requests authorisation, pursuant to rule 81(4) of the Rules, for certain redactions relating to the current whereabouts of Witness 4 in order to ensure his safety.⁴²

38. For the reasons given in the previous subsection, the Single Judge considers that Witness 4 falls within the category of “victims” under rule 81(4) of the Rules. Moreover, the Single Judge considers that, in the context described in Section II of the First Decision on Disclosure, disclosing to the Defence information that could lead to the identification of the whereabouts of Witness 4 could pose an additional risk to his safety and/or physical well-being.

39. The Single Judge is of the view that the redactions requested by the Prosecution, which are limited to the current whereabouts of Witness 4 or to information that could lead to the identification of such whereabouts, are (i) sufficient to minimise this risk and that, at this stage of the proceedings, there is no less intrusive alternative measure which can be taken to achieve the same goal and (ii) necessary to guarantee that Witness 4 [REDACTED].

40. Furthermore, for the reasons given in the previous subsection, the Single Judge considers (i) that the need for protection for Witness 4 in a context as serious as the one referred to in Section II of the First Decision on Redactions overrides any prejudice that might be caused to the Defence at this stage by the redaction of information that could lead to the identification of his current whereabouts; and that (ii) even if any prejudice is caused, this will not be inconsistent with the rights of the Defence and a fair and impartial trial.

41. For these reasons, the Single Judge grants authorisation, pursuant to rule 81(4) of the Rules, for the redactions relating to the current whereabouts of Witness 4.

⁴² ICC-01/04-01/07-98-Conf-Exp-AnxB.

C. Names and identifying information of family members of prosecution witnesses

42. The Prosecution requests authorisation pursuant to rule 81(4) of the Rules to redact the names and any identifying information of all family members of Witness 9.

43. The Single Judge considers that Witness 9 is neither a public figure nor very close to Germain Katanga, and in the context referred to in Section II of the First Decision on Redactions, the Single Judge is of the view that disclosing the names and identifying information of family members of Witness 9, particularly of those currently located in the Ituri district, could pose a risk to their safety and/or physical and psychological well-being.

44. The Single Judge also considers that the redactions requested are sufficient to minimise this risk and that, at this stage of the proceedings, there is no less intrusive alternative measure that can be taken to achieve the same goal. Furthermore, in the view of the Single Judge, the redaction of this information is not prejudicial to or inconsistent with the rights of the Defence and a fair and impartial trial insofar as (i) the Defence will have access to the identity of Witness 9 and (ii) the family members of Witness 9 are not referred to in the interview notes and statement of Witness 9 as having any knowledge of the crimes set out in the warrant of arrest for Germain Katanga.

45. For these reasons, the Single Judge grants authorisation pursuant to rule 81(4) of the Rules for the redaction of the names and identifying information of the family members of Witness 9 as detailed in Annex I to this decision.

D. Current whereabouts of family members of prosecution witnesses

46. The Prosecution requests authorisation, pursuant to rule 81(4) of the Rules, to redact information relating to the current whereabouts of family members of

Witness 9. The Prosecution submits that the family members [REDACTED].⁴³ Considering the context mentioned in section II of 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 Witness 9, particularly those currently located in the Ituri district or in the Kinshasa area, could pose an additional risk to their safety and/or physical well-being. Furthermore, the current whereabouts of Witness 9's family members could also constitute identifying information.

47. The Single Judge also considers that the redactions requested by the Prosecution, which are limited to the current whereabouts of these individuals or to information that could lead to the identification of such whereabouts, are sufficient to minimise this risk and that, at this stage of the proceedings, there is no less intrusive alternative measure that can be taken to achieve the same goal. Furthermore, in the view of the Single Judge, the redaction of this information is not prejudicial to or inconsistent with the rights of the Defence and a fair and impartial trial insofar as (i) the Defence will have access to the identity of Witness 9; and (ii) the family members of Witness 9 are not referred to in his interview notes and statement as having any knowledge concerning the crimes included in the warrant of arrest for Germain Katanga.

48. For these reasons, the Single Judge grants authorisation, pursuant to rule 81(4) of the Rules, for the redaction of the information relating to the current whereabouts of the family members of Witness 9.

E. Potential Prosecution Witnesses

49. The Prosecution requests authorisation to redact any identifying information concerning individuals who have already been interviewed by the Prosecution or

⁴³ [REDACTED].

whom the Prosecution intends to interview in the near future, and in relation to whom the Prosecution has not yet decided whether they will become Prosecution witnesses. The Prosecution's request concerning this type of redactions was originally made under rule 81(4) of the Rules because the Prosecution considered that the term "witnesses" in the context of this provision extends to "prospective witnesses", that is, any individual contacted, or intended to be contacted by the Prosecution, and who may or may not become a Prosecution witness at a later stage.⁴⁴ However, at the hearing held on 20 November 2007, the Prosecution also requested, in the alternative, that the redactions which fall within this category be authorised pursuant to rule 81(2) of the Rules, because the individuals affected could also be considered to be Prosecution sources, and ongoing and further investigations could be prejudiced if they were to be threatened, intimidated or interfered with.⁴⁵

50. As the Single Judge has already held:

In the view of the Single Judge, in the proceedings leading to the confirmation hearing, only those individuals on whose statements the Prosecution intends to rely at the confirmation hearing can be considered "witnesses" within the meaning of rule 81(4) of the Rules. Any other individual who has already been interviewed by the Prosecution, or whom the Prosecution intends to interview in the near future, in relation to the case at hand is more appropriately characterised as a "Prosecution source" rather than as a "Prosecution witness". Hence, any redaction relating to their identities must be justified by the need to ensure the confidentiality of information pursuant to rule 81(4) of the Rules or to avoid any prejudice to further or ongoing investigations pursuant to rule 81(2) of the Rules.⁴⁶

The Single Judge observes that the Prosecution does not allege that the redactions falling under this category are needed to ensure the confidentiality of information under rule 81(4) of the Rules. Nevertheless, the Single Judge notes that, as opposed to the so-called "innocent third parties" dealt with in the next section, the individuals concerned by this category of redactions have been interviewed by the Prosecution, or are about to be interviewed by the Prosecution, in relation to the case against Germain Katanga or in relation to further Prosecution investigations. Therefore, the Prosecution's further or ongoing investigations could be prejudiced if such individuals were to be threatened, intimidated or interfered with.⁴⁷

⁴⁴ ICC-01/04-01/07-T9-Conf-Exp-ENG ET 20-11-2007, p. 7, lines 8-25 and p. 8, lines 1-11.

⁴⁵ ICC-01/04-01/07-T9-Conf-Exp-ENG ET 20-11-2007, p. 22, lines 4-20.

⁴⁶ ICC-01/04-01/07-84-US-Exp, para. 41; ICC-01/04-01/07-88-Conf-Exp, para. 41; ICC-01/04-01/07-90, para. 41.

⁴⁷ ICC-01/04-01/07-84-US-Exp, para. 42; ICC-01/04-01/07-88-Conf-Exp, para. 42; ICC-01/04-01/07-90, para. 42.

51. Hence, the Single Judge shall discuss each of the redactions included under this specific category separately in Annex I to the present decision, insofar as the individuals concerned are currently located in different places and have been contacted by the Prosecution in relation to different incidents.

52. Finally, the Single Judge is mindful that that the issue of “whether the Single Judge enlarged the scope of application of rule 81(2) of the Rules by considering as Prosecution sources those individuals – whose identities and identifying information could be redacted pursuant to the said rule – who, despite not being Prosecution witnesses for the purpose of the confirmation hearing, have been or are about to be interviewed by the Prosecution” is currently pending before the Appeals Chamber; and that, therefore, any authorisation for redactions of the names and identifying information of Prosecution sources in the interview notes and statements of Witnesses 4 and 9 is subject to the final decision of the Appeals Chamber on this matter.

F. Innocent Third Parties

53. The Prosecution requests authorisation pursuant to rule 81(4) of the Rules to redact all identifying information concerning a number of individuals referred to as “innocent third parties” by the Prosecution. In this regard, the Single Judge stated in the First Decision on Disclosure:

[w]hen acting pursuant to article 54(3)(f) of the Statute, the Prosecution is not entitled to redact *proprio motu*, but can only request authorisation to do so from the competent Chamber pursuant to rule 81 of the Rules.⁴⁸

54. However, the Single Judge has already ruled that:

[r]edactions concerning individuals other than Prosecution witnesses, victims or members of their families may only be authorised (i) if they are needed to ensure the confidentiality of information pursuant to rule 81(4) of the Rules; or (ii) in order not to prejudice further or ongoing Prosecution investigations because such

⁴⁸ ICC-01/04-01/07-84-US-Exp, para.52; ICC-01/04-01/07-88-Conf-Exp, para. 52; ICC-01/04-01/07-90, para. 52.

individuals are Prosecution sources pursuant to rule 81(2) of the Rules. Otherwise, the use of redactions is not a measure that is available to ensure the protection of these individuals.⁴⁹

55. Since the Prosecution explicitly states that none of the individuals referred to as “innocent third parties” is a Prosecution source or is in any way involved in any ongoing or further Prosecution investigation, and that the relevant redactions have been requested solely for their protection because they could erroneously be perceived as Prosecution sources or witnesses, the Single Judge decides not to authorise any redactions under the category of “innocent third parties”.

56. However, the Single Judge realizes that the issue of whether “article 54(3)(f) authorises the Prosecution to seek, and rule 81(4) read in conjunction with that article empower the Chamber to authorise, redactions for the protection of “innocent third parties”, i.e. persons who are not victims, current or prospective Prosecution witnesses or sources, or members of their families” is currently pending before the Appeals Chamber, and that, therefore, in order to preserve the effectiveness of the Decision of the Appeals Chamber on this matter, it is necessary to authorise the Prosecution to provisionally maintain those redactions to the interview notes and statements of 9, which the Prosecution requested in order to protect innocent third parties, until such time as the Appeals Chamber issues a decision on whether the redactions should be maintained until the Prosecution’s interlocutory appeal is decided upon.

G. Further and ongoing investigations pursuant to rule 81(2) of the Rules

57. The Single Judge notes that the authorisation for redactions requested by the Prosecution pursuant to rule 81(2) of the Rules mainly concerns those redactions requested in order not to prejudice the ongoing investigation against Germain Katanga and include: (i) the places in which the statements of the witnesses were taken and (ii) the names, initials and signatures of current staff members of the Office

⁴⁹ ICC-01/04-01/07-84-US-Exp, para.55; ICC-01/04-01/07-88-Conf-Exp, para. 55; ICC-01/04-01/07-90, para. 55.

of the Prosecutor and of the VWU who were present when the statements were taken, as well as the names of [REDACTED] who assisted in the process of taking the statement from the witnesses.

58. The Single Judge is of the view that, for the reasons given in the First Decision on Redactions,⁵⁰ (i) the authorisation requested by the Prosecution in relation to the names, initials, signatures and any other identifying information of staff members of the Office of the Prosecutor and the VWU present when the witness statements were taken is denied; and (ii) authorisation for the redaction of the names, initials, signatures and any other identifying information of [REDACTED] for the purpose of assisting in the process of interviewing witnesses and taking their statements is granted.

59. Nevertheless, the Single Judge realizes that the issue of “whether the Single Judge erred in the application of the test prescribed by the Appeals Chamber in its 14 December 2006 Decisions when rejecting to authorise the redaction of the location of interviews of witnesses, and the identifying information of current and former staff members of the OTP and VWU at this particular stage of the proceedings” is currently pending before the Appeals Chamber, and that, therefore, in order to preserve the effective application of the Decision of the Appeals Chamber on this matter, it is necessary to authorise the Prosecution to provisionally maintain those redactions to the interview notes and statements of Witnesses 4 and 9 which the Prosecution requested in order to protect the identities of OTP and VWU staff present during the interviews of such witnesses, and the location of the interviews, until such time as the Appeals Chamber issues a decision on whether the redactions should be maintained until the Prosecution interlocutory appeal is decided upon.

⁵⁰ ICC-01/04-01/07-84-US-Exp, paras. 57-64, filed on 3 December 2007, the confidential, *ex parte* version, available only to the Office of Prosecutor and the Defence, paras. 57-64 (ICC-01/04-01/07-88-Conf-Exp) issued on 6 December 2007, and the public redacted version, paras. 57-64 (ICC-01/04-01/07-90), filed on 7 December 2007.

60. Finally, the Prosecution also requests that lines 2 to 4 of paragraph 150 of the interview notes concerning Witness 9 be redacted because they reveal how the Prosecution came into contact with the witness. According to the Prosecution, ongoing or further Prosecution investigations could be prejudiced as a result of revealing to the Defence this type of investigative techniques used by the Prosecution. However, having reviewed the information the Prosecution seeks to redact, the Single Judge does not see how disclosing such general information could in any way prejudice ongoing or further Prosecution investigations, and therefore denies authorisation to redact such information.

FOR THESE REASONS,

DECIDE to partially grant the Prosecution's requests for authorisation for redactions to the interview notes and statements of Witnesses 4 and 9, as specified in Annex I to this decision;

DECIDE to authorise the Prosecution to provisionally maintain those redactions to the interview notes and statements of Witnesses 4 and 9 which the Prosecution requested in order to protect innocent third parties, the identities of OTP and VWU staff present during the interviews of such witnesses, and the location of the interviews, until such time as the Appeals Chamber issues a decision on whether the redactions should be maintained until the Prosecution's interlocutory appeal is decided upon.

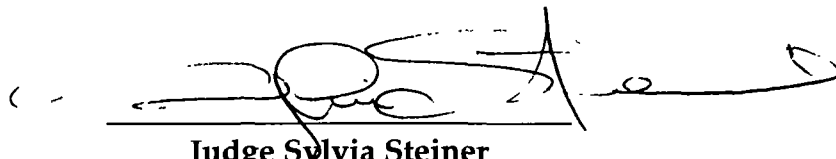
DECIDE that, pursuant to rule 76 of the Rules, the Prosecution shall, no later than Friday 4 January 2008, disclose to the Defence the statements and interview notes of

Witness 9 with the redactions authorised by the Single Judge, as specified in Annex I to the present decision.

DECIDE that, pursuant to rule 121(2) of the Rules, the Prosecution shall, no later than 4 January 2008, file the interview notes and statement of Witness 9 in the record of the case of *The Prosecutor v. Germain Katanga* following the guidance given at the hearing held before the Single Judge on 14 December 2007.

DECIDE that, pursuant to rule 77 of the Rules, the Prosecution shall, no later than 4 January 2007, make available to the Defence the statement of Witness 4 through the system of pre-inspection and inspection provided for in rule 77 of the Rules and applied in the case of *The Prosecutor v. Thomas Lubanga Dyilo*, with the redactions authorised by the Single Judge as specified in Annex I to the present decision, and that the Prosecution shall immediately afterwards file a pre-inspection report and, if need be, an inspection report in the record of the case of *The Prosecutor v. Germain Katanga*.

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



Judge Sylvia Steiner
Single Judge

Dated this Wednesday 23 January 2008

At The Hague, The Netherlands