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

Date: **8 July 2009**

TRIAL CHAMBER II

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

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

**IN THE CASE OF
THE PROSECUTOR *v.* GERMAIN KATANGA AND MATHIEU NGUDJOLO
CHUI**

Public Document

Public Redacted Version of the *Decision on the Prosecutor's Application for Protective Measures and the Redaction of Information Contained in Rule 77 Material (Witnesses 132, 249 and 287) (ICC-01/04-01/07-1194)* of 2 July 2009 (ICC-01/04-01/07-1265-Conf-Exp)

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

The Office of the Prosecutor

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

**Counsel for the Defence of Germain
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Mr David Hooper
Mr Andreas O'Shea

**Counsel for the Defence of Mathieu
Ngudjolo Chui**

Mr Jean-Pierre Kilenda Kakengi Basila
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Legal Representatives of the Victims

Ms Carine Bapita Buyangandu
Mr Joseph Keta
Mr Jean-Louis Gilissen
Mr Hervé Diakiese
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Legal Representatives of the Applicants

**The Office of Public Counsel for
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States' Representatives

Amicus Curiae

REGISTRY

Registrar

Ms Silvana Arbia

Defence Support Section

Victims and Witnesses Unit

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 21, 54, 64, 67 and 68 of the Rome Statute (“the Statute”), rules 77 and 81 of the Rules of Procedure and Evidence (“the Rules”), and regulations 35(2) and 54 of the Regulations of the Court, decides as follows:

I. Procedural History

1. This Decision addresses the Prosecutor’s Application of 5 June 2009 for protective measures and the redaction of information in documents falling under rule 77 of the Rules (“the Application”).¹ This Application was submitted pursuant to the Chamber’s *Decision on the Redaction Process*.²

2. The Application was filed after the expiry of the time limit, 16 February 2009, set for the filing of requests for redactions relating to material falling under rule 77.³ The Prosecutor invokes regulation 35 of the Regulations of the Court as a basis for his request for an extension of the time limit.

3. The Prosecutor requests leave from the Chamber for protective measures in relation to third parties and to the public in respect of transcripts of the records of medical examinations on the basis of which three expert medico-legal reports were prepared and submitted on 13 February 2009, although the transcripts were completed only at the end of April 2009.⁴ The three reports contain medical information on Witnesses 132, 249 and 287,⁵ which was disclosed to the Defence on

¹Office of the Prosecutor, “*Requête de l’Accusation aux fins de mesures de protection et aux fins d’expurgation d’informations dans des éléments de preuve relevant de la règle 77 (témoins P-132, P-249 et P-287)*”, 5 June 2009, ICC-01/04-01/07-1194, with confidential annexes A, B, C, *ex parte*, only available to the Prosecutor.

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

³*Order Fixing the Schedule for Pre-Trial Disclosure of Incriminatory and Exculpatory Evidence and the Date of a Status Conference (rule 132 of the Rules of Procedure and Evidence)*, 23 January 2009, ICC-01/04-01/07-846-t-ENG.

⁴ICC-01/04-01/07-1194, para. 4.

⁵Office of the Prosecutor, “*Requête du Bureau du Procureur aux fins d’obtention de mesures de protection à l’égard des tiers et du public concernant trois rapports d’expertise médico-légale*”, 13 February 2009, ICC-01/04-01/07-898.

8 April 2009 as incriminatory evidence,⁶ after the Chamber had granted leave for protective measures in relation to third parties and to the public.⁷

4. Under rule 81(4) of the Rules, the Prosecutor also requests leave to redact various items of information contained in some of the transcripts.

5. The Defence for Germain Katanga filed observations on 18 May 2009;⁸ no observations were filed by the Defence for Mathieu Ngudjolo.

6. The Chamber asked the Prosecutor to submit a reply to the Defence observations;⁹ the Prosecutor filed his reply on 26 June 2009.¹⁰ In his reply, the Prosecutor also stated that he wished to withdraw from his Application of 5 June a transcript of an interview with Witness 249.¹¹

II. The Chamber's Analysis

a) Leave for extension of the time limit for the filing of an application for redactions

6. Pursuant to regulation 35(2) of the Regulations of the Court, the Prosecutor seeks leave from the Chamber to disclose the transcripts of the recordings of conversations held between the three witnesses and Doctor Baccard, the doctor who examined them, with the protective measures and redactions that he seeks.¹² He states that, because he did not have these transcripts in his possession on

⁶ ICC-01/04-01/07-1194, para. 3.

⁷ *Décision relative à la requête du Procureur concernant trois rapports d'expertise médico-légale*, 25 March 2009, ICC-01/04-01/07-988.

⁸ Defence Team for Germain Katanga, "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.

⁹ *Ordonnance enjoignant au Procureur de présenter une réplique (norme 24-5 du Règlement de la Cour)*, 24 June 2009, ICC-01/04-01/07-1242.

¹⁰ Office of the Prosecutor, "*Réplique du Bureau du Procureur à la réponse de Germain Katanga relative à la 'Requête de l'Accusation aux fins de mesures de protection et aux fins d'expurgation d'informations dans des éléments de preuve relevant de la règle 77 (Témoignage P-132, P-249 et P-287) (ICC-01/04-01/07-1194)'*", 26 June 2009, ICC-01/04-01/07-1247.

¹¹ DRC-OTP-1041-0049 to DRC-OTP-1041-0066. See ICC-01/04-01/07-1247, para. 25.

¹² ICC-01/04-01/07-1194, para. 5.

16 February 2009, and did not know when they would be completed, he was unable, for reasons outside his control, to prepare an application for an extension, so as to be able to file his application for redactions within the existing time limit.¹³ The Prosecutor adds that he had informed the Chamber, on 30 January and 3 February 2009, that the transcripts of these conversations were in the process of preparation.¹⁴ It is thus his view that the criteria required by regulation 35(2) are satisfied.¹⁵

7. The Prosecutor further considers that the disclosure of these documents does not cause any prejudice to the Defence; in this regard, he points out that the transcripts are not lengthy, that they do not deal with new issues, since the Defence teams received the medical reports on 8 April 2009, and that the Defence teams will have sufficient time to familiarize themselves with the material and be able to make use of it before the commencement of the trial.¹⁶

8. Pursuant to article 64(3)(c) of the Statute, the Chamber is obliged to provide for the disclosure of documents or information sufficiently in advance of the commencement of the trial to enable adequate preparation for trial. Article 67(1)(b) enshrines the right of the accused to have adequate time to prepare his or her defence, a right for which article 64(2) requires the Chamber to ensure respect. It is therefore incumbent upon the Chamber to ensure that the Defence does not suffer any prejudice in this instance, and to this end it will consider the amount of material involved and decide whether it raises new issues, and whether the Defence has adequate time to make use of it and prepare for trial.¹⁷

9. In this respect, the Chamber recalls that the Prosecutor wishes to disclose transcripts that he did not have on 16 February 2009, and that he had expressly

¹³ ICC-01/04-01/07-1194, para. 21.

¹⁴ ICC-01/04-01/07-1194, para. 22.

¹⁵ ICC-01/04-01/07-1194, para. 21.

¹⁶ ICC-01/04-01/07-1194, para. 23.

¹⁷ *Decision on Witnesses 002, 030, 323 and 373*, 14 May 2009, ICC-01/04-01/07-1135-tENG, para. 2; *Decision on the Prosecutor's Application to Redact Information in the Second Statement of Prosecution Witness 249 (ICC-01/04-01/07-1078)*, 18 May 2009, ICC-01/04-01/07-1149-Conf-Exp-tENG, para.8.

indicated to the Chamber, prior to that date, that the said transcripts were in the process of being prepared. The Chamber notes that the medical reports have already been disclosed to the Defence as incriminatory evidence, that the essential part of the evidence on which the Prosecutor intends to rely at trial has thus already been disclosed and that, consequently, the evidence is not completely new to the Defence. The Chamber further considers that these documents are relevant and useful to the Defence, and that the latter will have sufficient time fully to familiarize itself with them before the commencement of the trial. Lastly, the Chamber points out that, since these documents are rule 77 material, it will not be possible for the Prosecutor to rely on them at trial as incriminatory evidence, unless he has obtained prior leave from the Chamber under regulation 35(2) of the Regulations of the Court. The Chamber considers that the condition provided for by the aforementioned regulation 35(2) has been duly met, and grants leave for extension of the time limit originally set at 16 February 2009.

b) Protective measures concerning the transcripts of the medico-legal reports

10. The Prosecutor requests that the transcripts be disclosed only to the Defence lawyers and legal assistants, as well as to the accused, to the exclusion of the investigators. The Prosecutor also considers that the Defence must not be granted leave to disclose the content of the transcripts to third parties, with the exception of medical experts or ballistics specialists. It is also his view, however, that he should be notified of the identity of these experts prior to disclosure, in order to allow him to make any necessary observations. He also considers that any further disclosure by the Defence to third parties, for the purposes of its investigation, must be authorized by the Chamber. Lastly, the Prosecutor requests that only the Legal Representatives, to the exclusion of the victims whom they represent, be granted access to the transcripts and that they should seek leave from the Chamber should they wish to disclose the content of these to victims or to third parties.¹⁸ The Chamber notes that

¹⁸ ICC-01/04-01/07-1194, para. 8.

the Prosecutor sought the same protective measures for the expert medico-legal reports.¹⁹

11. The Defence for Germain Katanga objects to the non-disclosure of the transcripts to its investigators.²⁰ In its view, the transcripts, which represent statements made by witnesses, are thus inherently different from actual medical reports, which emanate exclusively from a doctor. The Defence considers that the transcripts contain information concerning the three Prosecution witnesses which may affect their credibility.²¹ It also notes that the Prosecutor has not given reasons justifying such a restriction,²² and recalls that the Defence investigators are bound by confidentiality agreements, which they have respected to date.²³

12. At the Chamber's request, the Prosecutor responded to these observations in his reply dated 26 June 2009. He points out that the transcripts in question are not testimony given to the Office of the Prosecutor by the persons examined,²⁴ but that they are of the same nature as the expert reports already disclosed.²⁵ The Prosecutor thus submits that, although the transcripts contain some factual statements by the witnesses about the circumstances in which their injuries were inflicted, this information forms an integral part of the medical reports and the conversations of a strictly medico-legal nature between Doctor Baccard and the persons being examined.²⁶ He stresses that the purpose of these statements was in no sense to give an account of the events for which the accused are being prosecuted, and that the medico-legal expert had clearly explained this to the witnesses. He therefore considers that it is necessary to apply protective measures similar to those already

¹⁹ See ICC-01/04-01/07-898, paras. 6 and 7.

²⁰ ICC-01/04-01/07-1210, para. 3.

²¹ *Ibid.*, paras. 3 and 4.

²² *Ibid.*, para. 5.

²³ *Ibidem.*

²⁴ ICC-01/04-01/07-1247, para. 5.

²⁵ *Ibid.*, para. 7.

²⁶ *Ibid.*, para. 6.

authorized in respect of the medical reports, so that the effectiveness of these is not diminished.²⁷

13. The Prosecutor emphasizes that these transcripts contain personal, specific and intimate information on the psychological state of the witnesses, and that they make greater reference to private personal data than the reports.²⁸ Lastly, the Prosecutor stresses that this information, which is of a purely private nature, was given in all confidence in the context of the doctor-patient relationship,²⁹ and that this information would not be of any use to the investigators.³⁰

14. The Chamber has already accepted that, pursuant to article 68(1) of the Statute, it is necessary to authorize measures which seek to protect the privacy of witnesses and to safeguard their psychological well-being.³¹ This is information which needs to be handled with great caution, given the importance of the protection of the right to privacy and dignity of the person, which are internationally recognized human rights within the meaning of article 21(3) of the Statute.³²

15. The Prosecutor considers that the restriction which he requests does not cause any prejudice to the rights of the Defence because the investigators already have the information of a medical nature contained in the statements made by the witnesses to his Office, thus enabling them to focus the direction of their investigations.³³ He recalls, furthermore, that the lawyers and legal assistants are able to access the transcripts.³⁴ Lastly, he emphasizes that, if the Defence considers that a specific item of information merits verification by its investigators, the Defence is entitled to

²⁷ *Ibid.*, para. 10.

²⁸ *Ibid.*, para. 12.

²⁹ *Ibid.*, para. 16.

³⁰ *Ibid.*, paras. 14 and 15.

³¹ ICC-01/04-01/07-988, para. 5.

³² These rights are set out in 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 in Articles 1 and 7 of the Charter of Fundamental Rights of the European Union (2000).

³³ ICC-01/04-01/07-1247, para. 17.

³⁴ *Ibid.*, para. 20.

request leave from the Chamber for the disclosure of specifically identified items of information.³⁵

16. The Chamber considers that the measures sought do not infringe the rights of the Defence. Thus the Defence will receive these transcripts and will be in a position to forward them to medical experts or ballistics specialists, whose identities and *curricula vitae* will require prior disclosure to the Office of the Prosecutor. Regarding the transcripts recording the conversations relating to the medical examinations, it would seem justified to restrict access to these in the case of persons other than the experts from whom the Defence teams might seek a medical or ballistics opinion. Furthermore, the possibility of the investigators having access to these transcripts is not completely precluded, since the Defence could still submit an application to the Chamber to this end, explaining and justifying the reasons therefor. The Chamber accordingly considers that the proposed restrictions are proportionate to the aim pursued, and do not infringe the right of the accused to have adequate time for the preparation of their defence in accordance with article 67(1)(b) of the Statute.

c) Requests for the redaction of information concerning the identities of witnesses and of information relating to witnesses and to members of their families (rule 81(4))

17. The Chamber recalls once again³⁶ 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;³⁷ (2) the existence of a link between the source of the risk and the accused persons;³⁸ (3) the

³⁵ Ibid., paras. 21 and 22.

³⁶ *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-t-ENG and ICC-01/04-01/07-889-Conf-t-ENG, 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-t-ENG, para. 4.

³⁷ 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.

³⁸ ICC-01/04-01/07-475, para. 71.

infeasibility or insufficiency of less restrictive protective measures;³⁹ (4) an assessment of whether the requested redactions are prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial;⁴⁰ and (5) the obligation to review periodically the decision authorizing the redactions should circumstances change.⁴¹

18. As the Chamber has had occasion to point out a number of times,⁴² any application for redactions is subject to detailed judicial scrutiny on a case-by-case basis. Any decision whereby the Chamber authorizes non-disclosure to the Defence of part of a document must be sufficiently 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.

19. The Prosecutor calls the Chamber's attention to threats that have allegedly been made against [REDACTED]. He indicates that he has serious grounds to believe that [REDACTED].⁴³ The Chamber has already acknowledged that there is an objectively justifiable risk resulting from the state of insecurity prevailing in Ituri

³⁹ 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.

⁴⁰ ICC-01/04-01/06-773, para. 34.

⁴¹ ICC-01/04-01/07-475, para. 73.

⁴² *Order Instructing the Registry to File Documents on the Influence that the Accused may have Retained in the DRC and on the Pressure that they Might Currently Exert on Victims and Witnesses*, 18 December 2008, ICC-01/04-01/07-800-tENG, para. 9; ICC-01/04-01/07-819-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.

⁴³ ICC-01/04-01/07-1194-Conf-Exp-Anxs B and C.

and, more generally, in the Democratic Republic of the Congo (“the DRC”), both for the Prosecutor’s further and ongoing investigations and for the safety of witnesses, victims and members of their families.⁴⁴

20. This general finding does not, however, prejudge the question of the existence of an objectively identifiable risk, as to which the Chamber must satisfy itself when reviewing each of the redactions sought on a case-by-case basis.

21. Pursuant to rule 81(4) of the Rules, the Prosecutor requests leave from the Chamber to redact permanently the names of the husband and children of Witness [REDACTED]⁴⁵ and the names and place of residence of the children of Witness [REDACTED],⁴⁶ who are all taking part in the Court’s Protection Programme. The Prosecutor also requests the permanent redaction of the name of the sister of Witness [REDACTED] and the references to the location of her family, which has not been relocated,⁴⁷ as well as the place of residence of the family members of Witness [REDACTED].⁴⁸

22. According to the Prosecutor, the redaction of this information, which would enable the family members of Witnesses 132⁴⁹ and 249⁵⁰ to be identified or located, is necessary in order to ensure that their relocation is successful. He further states that

⁴⁴ ICC-01/04-01/07-888-Conf-Exp-tENG and ICC-01/04-01/07-889-Conf-Exp-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 dans certains éléments de preuve relevant de l’article 67-2 du Statut ou de 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.

⁴⁵ ICC-01/04-01/07-1194-Conf-Exp-Anx A.

⁴⁶ ICC-01/04-01/07-1194-Conf-Exp-Anx B.

⁴⁷ ICC-01/04-01/07-1194-Conf-Exp-Anx B.

⁴⁸ ICC-01/04-01/07-1194-Conf-Exp-Anx C.

⁴⁹ ICC-01/04-01/07-1194-Conf-Exp-Anx A.

⁵⁰ ICC-01/04-01/07-1194-Conf-Exp-Anx B.

the redaction of information relating to the family members of witnesses is intended as a safeguard for any witness who chooses to collaborate with the Office of the Prosecutor, without thereby endangering his or her family or having to be concerned for the safety of family members.⁵¹ The Prosecutor submits that the information relating to a witness' family is of limited interest and is not material to the preparation of the Defence.⁵²

23. The Prosecutor proposes other forms of redaction where it is not clearly apparent from the text that the information in question concerns witnesses' family members. Thus, he suggests referring to the "[TRANSLATION] husband's first name" and "[TRANSLATION] first names of the children of the witness" [REDACTED],⁵³ and to the "[TRANSLATION] place of residence of the witness and family members"; to the "[TRANSLATION] name of the sister" of Witness [REDACTED]⁵⁴ and the "[TRANSLATION] place of residence of the family members" of Witness [REDACTED].⁵⁵ The Chamber welcomes this proposal, which enables the Defence to appreciate the nature of the redacted information.

24. The Defence for Germain Katanga does not object to these temporary redactions, and refers once again to the principles laid down by the Chamber in its previous rulings.⁵⁶

25. The Chamber concurs with the Prosecutor that disclosing the identity of witnesses' family members, and information enabling them to be identified or located, might compromise their safety, in particular in cases where they are present in Ituri. Moreover, it considers that, even though the witnesses' family members are not participating in the case, individuals seeking to exert influence over the witnesses might use them to put pressure on the latter.

⁵¹ ICC-01/04-01/07-1194-Conf-Exp-Anxs A, B and C.

⁵² ICC-01/04-01/07-1194-Conf-Exp-Anxs A, B and C.

⁵³ ICC-01/04-01/07-1194-Conf-Exp-Anx A.

⁵⁴ ICC-01/04-01/07-1194-Conf-Exp-Anx B.

⁵⁵ ICC-01/04-01/07-1194-Conf-Exp-Anx C.

⁵⁶ ICC-01/04-01/07-1210, p.2.

26. Moreover, the Chamber is of the view that some of the redactions sought constitute an appropriate measure to reduce that risk, and that no other less restrictive measure would produce the same result, since, with the exception of the husband and children of Witness [REDACTED] and the children of Witness [REDACTED], the other family members of the witnesses in question are not participating in the Court's Protection Programme.

27. The Chamber considers that the redactions sought in the form suggested 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 the redactions sought, but is of the view that it can only redact the passages in question on a temporary basis and not through to the end of the trial, as such a measure appears to the Chamber to be excessive having regard to the exercise of the rights of the Defence. It has, however, already granted leave, in previous decisions, for the permanent redaction of the names of family members of Witnesses 132 and 249 and the names of the places to which they have been relocated,⁵⁷ in order to ensure that this measure is successful. The Chamber therefore once again grants leave for the redaction of any reference to this relocation through to the end of the trial, and all the other redactions until the thirtieth day prior to the date of the trial.

FOR THESE REASONS, THE CHAMBER

- 1) **AUTHORIZES** the extension of the time limit for the filing of the application seeking authorization for the redaction of the transcripts of the medical reports on Witnesses 132, 249 and 287;
- 2) **GRANTS** the Application as regards the protective measures sought, while reserving the right to authorize access to third parties at a later date, subject to a properly justified request by the Defence;

⁵⁷ See ICC-01/04-01/07-987-Conf-Exp-tENG, para. 44; ICC-01/04-01/07-1149-Conf-Exp-tENG, para. 27.

- 3) **GRANTS** the Application as regards the redactions sought, while reserving the right to review the authorized redactions periodically, either *proprio motu* or following an application submitted for this purpose; and
- 4) **AUTHORIZES** all of the redactions sought until the thirtieth day prior to the date of commencement of the trial, unless the Prosecutor requests, not less than 45 days prior to that date, that they be maintained, with the exception of the redaction authorized on a permanent basis in paragraph 27 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] 8/7/09 ____

Judge Hans-Peter Kaul

Dated this 8 July 2009,

At The Hague, The Netherlands