

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

No.: ICC-01/04-01/10

Date: 20 May 2011

**PRE-TRIAL CHAMBER I**

**Before: Judge Sanji Mmasenono Monageng, Single Judge**

**SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO**

**IN THE CASE OF  
THE PROSECUTOR V. CALLIXTE MBARUSHIMANA**

**URGENT**

**Public**

**With Confidential *ex parte*, Prosecutor and VWU only, Annexes I and II  
Decision on the Prosecution's applications for redactions pursuant to Rule 81(2) and  
Rule 81(4)**

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

Ms Fatou Bensouda

Mr Anton Steynberg, Senior Trial Lawyer

**Counsel for the Defence**

Mr Nicholas Kaufman

Ms Yael Vias Gvirsman

**Legal Representatives of Victims**

**Legal Representatives of Applicants**

**Unrepresented Victims**

**Unrepresented Applicants for  
Participation/Reparation**

**The Office of Public Counsel for  
Victims**

**The Office of Public Counsel for the  
Defence**

**States Representatives**

**Amicus Curiae**

**REGISTRY**

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**Registrar**

Ms Silvana Arbia

**Deputy Registrar**

Mr. Didier Preira

**Victims and Witnesses Unit**

Maria Luisa Martinod-Jacome

**Detention Section**

**Victims Participation and Reparations  
Section Other**

I, Judge Sanji Mmasenono Monageng, the Single Judge of Pre-Trial Chamber I of the International Criminal Court (“Chamber” and “Court” respectively) responsible for carrying out the functions of the Chamber in relation to the Case of *The Prosecutor v. Callixte Mbarushimana*;<sup>1</sup>

NOTING the *ex parte* hearing held in closed session with the Prosecutor on 17 February 2011 (“Hearing”);<sup>2</sup>

NOTING the “Decision on issues relating to disclosure”<sup>3</sup>, filed on 30 March 2011, (“Decision on Disclosure”), wherein the Chamber *inter alia* ordered the Prosecutor to submit to the Chamber, as soon as practicable and no later than 18 April 2011, any requests for redactions under rule 81 of the Rules of Procedure and evidence (“Rules”);

NOTING the “Prosecution’s request for extension of time limit for redaction applications”<sup>4</sup>, filed on 15 April 2011 (“Prosecutor’s Request”), wherein the Prosecutor sought an extension of the deadline set for the filing of applications for redactions in relation to a number of transcripts of witness interviews, indicating that on 18 April 2011, he would file an application for authorisation to redact five witness statements and the transcripts of recorded interviews with three other witnesses;

NOTING the “Defence Response to the Prosecution’s request for extension of the time limit for redaction applications”<sup>5</sup>, filed on 18 April 2011, wherein the Defence submitted that the Prosecutor’s Request should be rejected;

NOTING the “Decision on the ‘Prosecution’s request for extension of time limit for redaction applications’”<sup>6</sup>, filed on 18 April 2011, whereby the Chamber partially granted

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<sup>1</sup> Oral Decision of the Chamber, 28 January 2011, ICC-01/04-01/10-T-1-ENG, p. 11.

<sup>2</sup> Transcript of hearing on 17 February 2011, ICC-01/04-01/10-T-3-Conf-Exp-ENG.

<sup>3</sup> ICC-01/04-01/10-87.

<sup>4</sup> ICC-01/04-01/10-103.

<sup>5</sup> ICC-01/04-01/10-108.

<sup>6</sup> ICC-01/04-01/10-110.

the Prosecutor's Request and, *inter alia*, ordered the Prosecutor (i) to file, on 18 April 2011, the his first application for redactions and (ii) to file the remaining of his requests for redactions of the recorded transcripts of any other witnesses on which he intends to rely at the Confirmation Hearing by 4 May 2011 at the latest;

**NOTING** the "Prosecution's first application for redactions to witness statements pursuant to Rule 81(2) and Rule 81(4)"<sup>7</sup> ("First Application") and annexes thereto<sup>8</sup>, filed on 18 April 2011;

**NOTING** the "Prosecution's second application for redactions to witness statements pursuant to Rule 81(4)"<sup>9</sup> ("Second Application") and annexes thereto,<sup>10</sup> filed on 4 May 2011;

**NOTING** the addendum to the First Application filed by the Prosecutor on 13 May 2011 ("Addendum")<sup>11</sup> whereby he submits that (i) "highlights identifying the redactions requested for two pages of Annex A2 to the First Application were inadvertently omitted," which he accordingly resubmits with the requested redactions visible, and (ii) "two pages that ought to have been included in Annex G4 to the First Application were also inadvertently omitted," which he submits in an annex to his submission;

**NOTING** the "Prosecution's request for variation of time limit and third application for redactions to witness statements pursuant to Rule 81(2) and Rule 81(4)"<sup>12</sup> ("Third Application") filed on 13 May 2011 whereby the Prosecutor withdraws certain requests for redactions made in his First Application and further submits in relation to a witness (witness 683) on whose evidence he intends to rely at the confirmation hearing that (i) his signed statement was registered as evidence when the interview team returned from

<sup>7</sup> ICC-01/04-01/10-112-Conf-Exp; ICC-01/04-01/10-112-Red.

<sup>8</sup> ICC-01/04-01/10-112-Conf-Exp-Anx1 to Anx8 and AnxA to AnxH.

<sup>9</sup> ICC-01/04-01/10-135-Conf-Exp.

<sup>10</sup> ICC-01/04-01/10-135-Conf-Exp-Anx1-22 and AnxA-N.

<sup>11</sup> ICC-01/04-01/10-148 and Conf-Exp-AnxA and Anx G.

<sup>12</sup> ICC-01/04-01/10-151-Conf-Exp and ICC-01/04-01/10-151-Conf-Exp-Anx1-3 and AnxA-C.

mission which occurred after the expiry date for submitting requests for redactions; (ii) the timing of the interview results from the need to make all security and logistic arrangements necessary to protect witnesses and Court staff, and (iii) accordingly requests a variation of the time limit to submit his request for redactions in relation to the statement of witness 683 which he has attached to the filing;

**NOTING** the “Defence Response to Prosecution Filing ICC-01/04-01/10-151” filed on 18 May 2011, whereby the Defence requests the Chamber to reject the Prosecutor’s request for a variation of the time limit to submit a request for redactions in relation to another witness statement;<sup>13</sup>

**NOTING** articles 54, 57(3)(c), 61, 67 and 68 of the Rome Statute (“Statute”), rules 15, 76, 77, 81 and 121 of the Rules and regulation 35(2) of the Regulations of the Court;

**HEREBY RENDER THIS DECISION,**

**I. Request of 13 May 2011 for variation of the time limit**

1. The Single Judge notes that pursuant to regulation 35(2) of the Regulations of the Court, “the Chamber may extend or reduce a time-limit if good cause is shown” and “after the lapse of a time-limit, an extension of time may only be granted if the participant seeking the extension can demonstrate that he or she was unable to file the application within the time limit for reasons outside his or her control”. Regulation 35(2) of the Regulations of the Court further requires the Single Judge, “where appropriate” and before a decision to extend or reduce a time limit is issued, to give “the participants an opportunity to be heard.”

2. The Single Judge is of the view that the reasons provided in the Third Application regarding (i) the time when the interview with witness 683 was completed and subsequently registered and (ii) the fact that the delay resulted from the need to ensure

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<sup>13</sup> ICC-01/04-01/10-161.

all security and logistical arrangements to protect the witnesses and Court's staff, can be considered as falling outside the Prosecutor's control and thus justifying a request of extension of time after the lapse of the time-limit pursuant to regulation 35(2) of the Regulations of the Court.

3. The Single Judge further considers that should this request be granted, the extension of the time-limit would not result in any prejudice to the Defence since the witness' statement attached thereto can be disclosed to the Defence before the deadline for the filing of the Prosecutor's Document Containing the Charges and list of evidence, namely 1 June 2011.

4. Accordingly, the Single Judge is of the view that the request for an extension of the time-limit shall be granted and, as a result, the request for redactions to the statement of witness 683, attached thereto, will be assessed by the Single Judge in the present decision together with the First and the Second Applications.

## II. General remarks

5. The Single Judge will address the Prosecutor's Applications bearing in mind (i) the principles established in the previous cases before the Chamber<sup>14</sup> as well as (ii) the guidance provided by the Appeals Chamber in its judgments relating to redactions issues.<sup>15</sup> The Single Judge will also take into consideration the information provided by the Prosecutor during the Hearing and in his three Applications in relation to witnesses' security assessment as well as information pertaining to the Prosecutor's further or ongoing investigations.

6. In particular the Single Judge first recalls that the overriding principle is that of full disclosure, the authorization of non-disclosure of information being therefore the exception. In addition, for the sake of clarity, the Single Judge emphasizes that for any redaction to be authorised pursuant to rule 81(2) and (4) of the Rules, she must first and

<sup>14</sup> See *inter alia* ICC-01/04-01/07-561; ICC-02/05-02/09-58.

<sup>15</sup> Judgment of 14 December 2006, ICC-01/04-01/06-773; Judgment of 13 May 2008, ICC-01/04-01/07-475 and Judgment of 27 May 2008, ICC-01/04-01/07-521.

foremost, reach the conclusion that the disclosure to the Defence of the information sought to be redacted, at this stage of the proceedings, could (i) prejudice further or ongoing investigations by the Prosecutor (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) pose a danger to a particular person (rule 81(4) of the Rules). After having ascertained the existence of such risk, the Single Judge will assess whether the requested redactions are necessary in the sense that the redactions sought could overcome or reduce the risk and that at this stage there are no less intrusive alternative protective measures available. The Single Judge will further determine whether the redactions are not prejudicial to or inconsistent with the rights of the suspect, including the right to a fair and impartial trial. In so doing, the Single Judge will pay particular attention to the relevance of the information sought to be redacted to the Defence and will ensure at all times that the non-disclosure of such information “would not result in the confirmation of the charges, viewed as a whole, to be unfair to the suspect.”<sup>16</sup>

7. Redactions will only be granted if the Single Judge is satisfied that the abovementioned conditions are met. The Single Judge also underlines that information that has been withheld may need to be subsequently disclosed, should circumstances change. The Prosecutor should therefore bring to the attention of the Chamber any factors that may warrant a variation of its ruling on non-disclosure.

8. The Single Judge further underscores the fact that the Prosecutor has the burden of providing the information which is necessary for the Chamber to conduct the type of analysis required by the Appeals Chamber.<sup>17</sup> Accordingly, failure by the Prosecutor to provide a detailed and appropriate justification for each of the redactions requested may result in the unjustified requests being rejected *in limine*.

9. Finally, the Single Judge notes that the Prosecutor has requested redactions with respect to the following five categories:

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<sup>16</sup> Judgment of 13 May 2008, ICC-01/04-01/07-475, para.72.

<sup>17</sup> Judgment of 14 December 2006, ICC-01/04-01/06-773.

- (a) names and identifying information of witnesses for whom anonymity is sought, pursuant to rule 81(4) of the Rules;
- (b) location and contact details of witnesses, pursuant to rule 81(4) of the Rules;
- (c) identifying information and/or current location of family members of witnesses pursuant to rule 81(4) of the Rules;
- (d) names, identifying information and contact details of persons at risk on account of the activities of the Court, pursuant to rule 81(4) of the Rules; and
- (e) location of witness' interviews pursuant to rule 81(2) of the Rules.

10. The overall reasons for granting or rejecting the requests for redactions within each category will be provided in the present decision. In Annex I and Annex II, which are *ex parte* and only available to the Prosecutor and the Victims and Witnesses Unit, the Single Judge, in compliance with the procedure prescribed by the Appeals Chamber,<sup>18</sup> will specify to which each of the five abovementioned categories each requested redaction belongs and whether the redaction is granted or rejected. Furthermore, when the specific nature of the requested redaction so requires, the Single Judge will further provide an additional explanation in Annexes I and II of her decision.

### III. Categories of Redactions

#### A. Request for anonymity

11. In his Applications, the Prosecutor requests authorisation, pursuant to rule 81(4) of the Rules to redact references to the identity and other identifying information of witnesses 650, 655, 656, 673, 674 and 683. He submits that the disclosure of their identities would pose an unjustifiable risk to their safety and that there is no less restrictive measure that can be taken to avoid this risk. He also contends that the redactions sought would not affect the intelligibility of the statements and that he "aims

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<sup>18</sup> ICC-01/04-01/06-773, para.22.



to disclose their identities prior to the trial, once an adequate protective strategy can be put in place in coordination with the Registry's Victims and Witnesses Unit."<sup>19</sup>

12. The Single Judge underlines that the risk caused to the six witnesses by the disclosure of their identities to the Defence must be assessed with regard to each individual witness taking into account his or her specific situation. The full details of such assessment can only be provided separately in Annexes I and II to the Decision, as disclosing the detailed information could lead to the identification of the witnesses and of their whereabouts, thus defeating the purpose of the request for anonymity itself.

13. Suffice it to say that in the present decision the Single Judge, in reaching her decision, has given particular weight to (i) the witness' particular circumstances; (ii) the relevant security situation where the witness currently resides and (iii) whether the witness benefits from any protective measures other than the requested redactions.

14. For the foregoing reasons which are further developed in the annexes to the Decision, the Single Judge is of the view that disclosing the names of witnesses 650, 655, 656, 673, 674 and 683 would pose an unjustifiable risk to their safety and/or physical and psychological well-being.

15. In relation to the proportionality of such measure in light of the possible prejudice that might be caused to the rights of the suspect and a fair and impartial trial, the Single Judge recalls the pre-trial nature of the proceedings in which the anonymity is sought. In this respect, as held by the Appeals Chamber, "[a]s such it may be permissible to withhold the disclosure of certain information from the defence prior to confirming the charges that could not be withheld prior to trial."<sup>20</sup> In light of their personal circumstances and their current location, as specified in Annexes I and II, the Single Judge considers that there are no alternative measures short of anonymity which are available and feasible at this stage of the proceedings to protect these witnesses.

16. Thus, the Single Judge grants the request for anonymity in relation to witnesses 650, 655, 656, 673, 674 and 683. Accordingly, the Single Judge authorizes the Prosecutor,

<sup>19</sup> First Application, paras 13-14; Third Application, paras 16-17.

<sup>20</sup> Judgment of 13 May 2008, ICC-01/04-01/07-475, para.68.

pursuant to rule 81(4) of the Rules, to redact the names and other identifying information of witnesses 650, 655, 656 and 683. The redactions that fall within this category will be marked in the annexed charts with the letter A.

17. In relation to witnesses 673 and 674 for whom anonymity is also granted, the Single Judge is not satisfied, for the reasons developed in Annex I, that the redactions of their names and identifying information will be sufficient to adequately protect them. As a result, the Single Judge is of the view that the redacted form of their statements, as requested by the Prosecutor, will not adequately minimize risks to their safety.

18. The Single Judge nonetheless notes that article 68(5) of the Statute allows the Prosecutor, for the purposes of any proceedings conducted prior to the commencement of the trial, to withhold such evidence or information which may lead to the grave endangerment of the security of a witness or his or her family and instead to submit a summary thereof. Such measure shall however be exercised in a manner that is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.

19. In this respect, the Appeals Chamber held that “the presentation of summaries at the confirmation hearing without disclosure of the identities of the relevant witnesses to the defence [...] is not *per se* prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.”<sup>21</sup>

20. The Single Judge is accordingly of the view that in light of their personal circumstances and of the relevant security situation, at this stage of the proceedings, there are no less intrusive alternative measures short of anonymity and the use of the summaries of their statements which are available and feasible to protect witnesses 673 and 674. Such measures are not prejudicial to or inconsistent with the rights of the suspect since the Prosecutor is directed to include in these summaries (i) the information relevant to the Case at hand and (ii) the potentially exculpatory or exonerating information that may be contained in these statements.

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<sup>21</sup> ICC-01/04-01/06-773, para.50.

21. In the result and in light of the information presented by the Prosecutor, should the Prosecutor decide to rely on witnesses 673 and 674 for the purposes of the confirmation of charges hearing, the Single Judge, pursuant to article 57(3)(c) of the Statute, orders the use of anonymous summaries *in lieu* of a redacted version of their statements, that as mentioned above would put them at risk. Accordingly, the Single Judge will not engage in an assessment of each request for redaction made by the Prosecutor with respect to the statements of witnesses 673 and 674 as well as in the documents attached to the Addendum.<sup>22</sup>

## **B. Location and contact details of Witnesses**

### *a. Witnesses for whom anonymity has been granted*

22. The Single Judge recalls that anonymity was granted with respect of witnesses 650, 655, 656 and 683 in light of their particular situation.

23. The Single Judge is of the view that disclosing their specific current whereabouts to the Defence could lead to their identification and thus put these witnesses at risk. Moreover, the Single Judge is of the view that the redactions requested by the Prosecutor are adequate to minimize such risk and that at this stage, there is no less intrusive alternative measure that can be taken to achieve that goal of protection. Such redactions are not prejudicial to the rights of the suspect because they are limited to the current whereabouts and any information that could lead to the identification of such whereabouts and the Defence will thus have access to the information relevant to the Case at hand.

24. For these reasons, the Single Judge authorizes, pursuant to rule 81(4) of the Rules, the redaction of the current whereabouts or information that could lead to the identification of the whereabouts of witnesses 650, 655, 656 and 683. The redactions that fall within this category will be marked in the annexed charts with the letter B.

### *b. Witnesses for whom anonymity was not requested*

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<sup>22</sup> ICC-01/04-01/10-148-Conf-Exp-AnxG.

25. The Single Judge notes that the Prosecutor intends to disclose the identity of witnesses 526, 527, 528, 530, 542, 552, 559, 562, 564, 587 and 632. However, the Prosecutor submits that disclosing the name and contact or other details pertaining to the current or intended location of these witnesses would pose an unjustifiable risk to their safety and/or physical and psychological well-being and privacy of witnesses.

26. In light of the reasons articulated in Annex II to the Decision, the Single Judge is of the view that disclosing the current whereabouts of witnesses 526, 527, 528, 530, 542, 552, 559, 562, 564, 587 and 632 could put the witnesses' safety and/or physical and psychological well-being at risk. Moreover, the Single Judge is of the view that the redactions requested by the Prosecutor are adequate to minimize such risk and that at this stage there is no less intrusive alternative measure that can be taken to achieve that goal of protection. Such redactions are not prejudicial to the rights of the suspect because (i) they are limited to the current whereabouts of these witnesses and any information that could lead to the identification of such whereabouts and (ii) the Defence will have access to the identity of each of these witnesses as well as the information relevant to the Case at hand.

27. For these reasons, the Single Judges authorizes, pursuant to rule 81(4) of the Rules, the redactions of the current whereabouts or information that could lead to the identification of the current whereabouts of witnesses 526, 527, 528, 530, 542, 552, 559, 562, 564, 587 and 632. The redactions falling within this category will be marked in the annexed charts with the letter B.

### **C. Identifying information and/or location of family members of witnesses**

28. The Prosecutor requests the redactions of any identifying information of family members of witnesses 529, 530, 544, 552, 559, 562, 632, 650, 655 and 656 as well as their location.

29. At the outset, the Single Judge notes that the redactions are sought *vis-à-vis* family members who are not involved in any way in the activities of the Court. In light of the

current security situation, the Single Judge is of the view that disclosing their names and identifying information would pose an unjustifiable risk to their safety and/or physical and psychological well-being. The Single Judge further considers that the requested redactions are adequate to minimize this risk and that, at this stage, there is no less intrusive alternative measure that can be taken to achieve that goal. Moreover, the redaction of this information would not result in the confirmation hearing, viewed as a whole, being unfair to the suspect insofar as (i) none of these family members is a witness or otherwise a source for the Prosecutor and (ii) none of them is referred to as having further information or knowledge of the events relevant to the present Case. In addition, the requested redactions do not affect the intelligibility of the statements or the transcripts of interview of the witnesses.

30. The Single Judge considers that the abovementioned reasoning equally applies to the current whereabouts of family members of witnesses which disclosure could lead to their identification.

31. For these reasons, the Single Judge grants, pursuant to rule 81(4) of the Rules, authorization to redact names and other identifying information, including the whereabouts of the family members of the Prosecutor's witnesses 529, 530, 544, 552, 559, 562, 632, 650, 655 and 656. The redactions that fall within this category will be marked in the annexed charts with the letter C.

**D. Names, identifying information or contact details of persons at risk on account of the activities of the Court**

32. The Prosecutor requests, pursuant to article 54(3)(f) of the Statute and rule 81(4) of the Rules, authorisation to redact from the statements of the Prosecutor's witnesses 557, 650 and 655, the names and identifying information of persons who are not witnesses or otherwise related to the Case.

33. The Single Judge further notes that the Prosecutor intends to disclose, pursuant to article 67(2) of the Statute, the statements from nine other persons interviewed by the

German Federal Criminal Police Office, the *Bundeskriminalamt* ("BKA statements"). These nine BKA witnesses are identified by the Prosecutor as "innocent third parties" as they are not the Prosecutor's witnesses.

34. The Single Judge will hereunder examine these two groups of redactions.

*(a) redactions sought in the statements of Prosecutor's witnesses*

35. The Prosecutor contends that disclosure of the names and identifying information of persons who are not witnesses or otherwise related to the Case might lead to the wrong perception that these persons are cooperating with the Prosecutor or the Court and thus creating an unjustifiable risk to their safety.

36. The Single Judge recalls that any requests for redactions will be assessed on a case by case basis. Accordingly, she will authorise the requested redactions in light of (i) the principle established at paragraph 6 of the Decision and of (ii) the context in which the relevant information appears and only if such information may lead to the identification of a person who, in this specific context, may be wrongly perceived as cooperating with the Court.

37. The Single Judge further ascertains that the redactions of the names, identifying information or contact details, when granted, are strictly limited to what is necessary to ensure the safety of those persons who can be put at risk on the account of the activities of the Court. Further the Defence is not prevented from accessing substantial elements contained in the statements or transcripts of interviews of Prosecutor's witnesses 557, 650 and 655.

38. Accordingly, whenever the abovementioned conditions are met, the Single Judge grants authorization to redact, in the statements or transcripts of interviews of witnesses 557, 650 and 655, pursuant to article 54(3)(f) of the Statute and rule 81(4) of the Rules, names, identifying information or contact details relating to persons who are not the Prosecutor's witnesses and are otherwise unrelated to the Case. In addition, the Single Judge, for the reasons articulated in Annex II of the Decision, *proprio motu* orders the

Prosecutor to redact in the statement of witness 559, information pertaining to contact details of certain individuals.

39. The redactions falling within this category will be marked in the annexed charts with the letter D.

*(b) redactions sought in the statements of the BKA witnesses*

40. The Single Judge notes, in light of the redaction charts submitted by the Prosecutor, that he is seeking the redaction of the whereabouts and contact details of nine BKA witnesses and of their family members. The Prosecutor is seeking these redactions pursuant to article 54(3)(f) of the Statute and rule 81(4) of the Rules as he submits that these persons are to be considered to be “innocent third parties.”

41. Of note in this context is the Appeals Chamber’s finding that article 54(3)(f) of the Statute “expressly authorises the Prosecutor to take necessary measures, or to request that necessary measures be taken, to ensure ‘the protection of *any person*’”<sup>23</sup> and that other “specific provisions of the Statute and the Rules for the protection not only of witnesses and victims and members of their families, but also of others at risk on account of the activities of the Court are indicative of an overarching concern to ensure that persons are not unjustifiably exposed to risk through the activities of the Court”.<sup>24</sup>

42. The Single Judge notes that the abovementioned Appeals Chamber’s findings were made in relation to requests for redaction of information appearing in the statements of witnesses interviewed by the Prosecutor. Notwithstanding this fact,<sup>25</sup> the Single Judge is of the view that these findings apply *mutatis mutandis* to cases where such information does not appear in the statements of witnesses that have been interviewed by the Prosecutor, the activities of the Prosecutor including the collection of evidence, unjustifiably exposed to risk persons who are not witnesses and victims and members of their families.

<sup>23</sup> Judgment of 13 May 2008, ICC-01/04-01/07-475, para.44.

<sup>24</sup> Judgment of 13 May 2008, ICC-01/04-01/07-475, para.54.

<sup>25</sup> Judgment of 13 May 2008, ICC-01/04-01/07-475, para.46.

43. In the Case at hand, the Single Judge highlights that the statements of the nine persons from which information is sought to be redacted have not been interviewed by the Office of the Prosecutor of the Court for the purposes of his investigations before the Court, but have been interviewed by the German Federal Criminal Police Office for the purposes of national proceedings. The Single Judge is accordingly of the view that these persons are not the Prosecutor's witnesses, victims or members of their family and are, at this stage of the proceedings, selected to be protected if the activities of the Court expose them to an unjustifiable risk.

44. Accordingly and in line with the methodology previously recalled in the Decision, the requests for redactions from the BKA statements will be assessed on a case-by-case basis.

45. First of all, the Single Judge notes that the redactions sought by the Prosecutor in these BKA statements are limited to the following information: (i) contact details of persons mentioned in a BKA statement;<sup>26</sup> (ii) names and contacts or other details pertaining to the current or intended whereabouts of BKA witnesses and (iii) names and contacts or other details pertaining to the current or intended whereabouts of family members of BKA witnesses.

46. The Single Judge is of the view that disclosing such information, for the reasons stated in Annex II of the Decision, would pose an unjustifiable risk to the safety and/or physical and psychological well-being and privacy of the abovementioned individuals. The Single Judge further believes that, at this stage, there is no less intrusive alternative measure that can be taken to achieve the goal of protection. The Single Judge has ensured that the limited number of redactions sought is restricted to what is strictly necessary to overcome the risk posed to these persons and that, at the same time, the Defence is not prevented from accessing the substantial information contained in the BKA statements.

47. The Single Judge is further convinced that granting the abovementioned redactions would not result in the confirmation hearing being unfair to the suspect insofar as he

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<sup>26</sup> DRC-OTP-2028-0174.



would have access to the identities of the BKA witnesses as well as the substantial information contained in their statements.

48. Accordingly, the Single Judge grants authorization to redact, from the nine BKA statements information pertaining to the contact details of persons mentioned therein;<sup>27</sup> as well as the names and contacts or other details pertaining to the current or intended whereabouts of BKA witnesses and of their family members.

49. The redactions falling within this category will be marked in the annexed charts with the letter D.

#### **E. Location of witness interview**

50. The Prosecutor requests authorisation to redact the location where the interviews with witnesses 650, 655, 656 and 683 were conducted.

51. As previously held by the Chamber:

disclosing specific information of the locations used by the OTP staff members for conducting their interviews with the witnesses (in particular, where a specific address or description of such locations is provided) might result in making it impossible or riskier for the OTP to use the same locations for future interviews.<sup>28</sup>

52. The Single Judge is thus of the view that, for the reasons developed in Annex II to the Decision, at this stage, there is no less intrusive alternative measure available that could achieve the same goal. She further considers that such redactions, at this stage of the proceedings, would not result in the confirmation hearing being unfair to the suspect as they do not affect the intelligibility of the statements and do not prevent the Defence from conducting its investigations, if any.

53. Accordingly, the Single Judge grants authorization to redact the location where the interviews of witnesses 650, 655 656 and 683 were conducted and any information which would render identifiable such location.

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<sup>27</sup> DRC-OTP-2028-0174.

<sup>28</sup> PTC I, First Decision on the Prosecutor's Requests for Redactions, ICC-02/05-03/09-58, para.5.

54. The redactions that fall within this category will be marked in the charts with the letter E.

**FOR THESE REASONS,**

**DECIDE** to grant the extension of the time limit for the submission of applications for redactions to the statement of witness 683 requested by the Prosecutor pursuant to regulation 35(2) of the Regulations of the Court;

**DECIDE** to grant the requests for anonymity for witnesses 650, 655, 656, 673, 674 and 683;

**DECIDE** that, if the Prosecutor decides *in fine* to rely on the account of anonymous witnesses 673 and 674, he shall rely for the purposes of the confirmation hearing, on a summary of their statements;

**DECIDE** to partially grant the Prosecutor's request for authorisation of redactions to the following transcripts of interviews and witness statements:

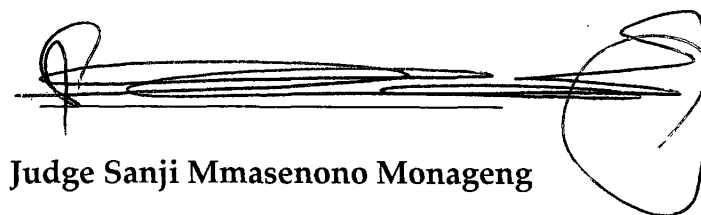
1. Transcript of interview of Witness 552 (ICC-01/04-01/10-112-Conf-Exp-AnxA and ICC-01/04-01/10-148-Conf-Exp-AnxA);
2. Statement of Witness 650 (ICC-01/04-01/10-112-Conf-Exp-AnxD);
3. Statement of Witness 655 (ICC-01/04-01/10-112-Conf-Exp-AnxE);
4. Statement of Witness 656 (ICC-01/04-01/10-112-Conf-Exp-AnxF);
5. Transcript of interview of Witness 526 (ICC-01/04-01/10-135-Conf-Exp-Anx1);
6. Transcript of interview of Witness 527 (ICC-01/04-01/10-135-Conf-Exp-Anx2);
7. Transcript of interview of Witness 528 (ICC-01/04-01/10-135-Conf-Exp-Anx3);
8. Transcript of interview of Witness 529 (ICC-01/04-01/10-135-Conf-Exp-Anx4);
9. Transcript of interview of Witness 530 (ICC-01/04-01/10-135-Conf-Exp-Anx5);
10. Transcript of interview of Witness 542 (ICC-01/04-01/10-135-Conf-Exp-Anx6);

11. Transcript of interview of Witness 544 (ICC-01/04-01/10-135-Conf-Exp-Anx7);
12. Transcript of interview of Witness 557 (ICC-01/04-01/10-135-Conf-Exp-Anx8);
13. Transcript of interview of Witness 559 (ICC-01/04-01/10-135-Conf-Exp-Anx9);
14. Transcript of interview of Witness 587 (ICC-01/04-01/10-135-Conf-Exp-Anx12);
15. Transcript of interview of Witness 632 (ICC-01/04-01/10-135-Conf-Exp-Anx13);
16. BKA statements (ICC-01/04-01/10-135-Conf-Exp-Anx14 to Anx22)
17. Transcript of interview of Witness 562 (ICC-01/04-01/10-112-Conf-Exp-AnxB and ICC-01/04-01/10-135-Conf-Exp-Anx10); and
18. Transcript of interview of Witness 564 (ICC-01/04-01/10-112-Conf-Exp-AnxC and ICC-01/04-01/10-135-Conf-Exp-Anx11);

as specified in Annex II to the present decision;

**DECIDE** that pursuant to rule 76 of the Rules and the Decision on Disclosure, the Prosecutor shall, no later than five days from the notification of the present decision, disclose to the Defence the above-listed transcripts of interviews and witness statements with the redactions authorised by the Single Judge, as specified in Annex II to the present decision.

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



**Judge Sanji Mmasenono Monageng**

**Single Judge**

Dated this Friday 20 May 2011

At The Hague, The Netherlands

No. **ICC-01/04-01/10**

19/19

**20 May 2011**