

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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PRE-TRIAL CHAMBER I

Before: Judge Silvia Fernández de Gurmendi, Single Judge

**SITUATION IN THE REPUBLIC OF CÔTE D'IVOIRE
IN THE CASE OF
THE PROSECUTOR V. LAURENT GBAGBO**

Public

With CONFIDENTIAL Annex, *EX PARTE*, only available to the Prosecutor

**Decision on the "Prosecution's request 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

Fatou Bensouda, Prosecutor

James Stewart, Deputy Prosecutor

Counsel for the Defence

Emmanuel Altit

Agathe Bahi Baroan

Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
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Defence**

States Representatives

Amicus Curiae

REGISTRY

Registrar

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Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

Judge Silvia Fernández de Gurmendi, Single Judge for Pre-Trial Chamber I (the “Chamber”) of the International Criminal Court (the “Court”), responsible for carrying out the functions of the Chamber in relation to the situation in the Republic of Côte d’Ivoire and the cases emanating therefrom,¹ hereby issues the decision on the “Prosecution’s request for redactions pursuant to Rule 81(2) and Rule 81(4)” (the “Request”).²

I. Procedural history

1. On 24 January 2012, the Single Judge issued the “Decision establishing a disclosure system and a calendar for disclosure” (the “Decision on Disclosure”).³

2. On 27 March 2012, the Single Judge issued the “First decision on the Prosecutor’s requests for redactions and other protective measures” (the “First Decision on Redactions”).⁴

3. On 3 June 2013, the Chamber issued the “Decision adjourning the hearing on the confirmation of charges pursuant to article 61(7)(c)(i) of the Rome Statute”, in which it decided to adjourn the confirmation of charges hearing and requested the Prosecutor to consider providing further evidence or conducting further investigation.⁵ The Chamber ordered the Prosecutor to submit “as soon as practicable and no later than Tuesday, 15 October 2013 any requests for redactions with regard to the evidence she has collected in the

¹ ICC-02/11-01/11-61.

² ICC-02/11-01/11-537-Conf and annexes, confidential, *ex parte*, only available to the Prosecutor.

³ ICC-02/11-01/11-30 and annexes.

⁴ ICC-02/11-01/11-74-Conf-Exp. A public redacted version has also been filed, see ICC-02/11-01/11-74-Red.

⁵ ICC-02/11-01/11-432, p. 22.

course of her further investigation and on which she intends to rely for the purposes of the confirmation of charges”.⁶

4. On 15 October 2013, the Prosecutor filed the Request, seeking authorisation of redactions, under rule 81(2) and (4) of the Rules of Procedure and Evidence (the “Rules”), to the content and metadata of certain documents that it wishes to rely on for the purposes of the confirmation of charges.⁷

5. On 25 October 2013, the Defence filed the “*Réponse de la Défense à la « Prosecution’s request for redactions pursuant to Rule 81(2) and Rule 81(4) » (ICC-02/11-01/11-537-Conf) déposée le 15 octobre 2013*” (the “Response”), submitting that the requests for redactions should be rejected and the Prosecutor ordered to immediately disclose the evidence concerned.⁸

II. Submissions of the parties

A. The Prosecutor

6. Pursuant to rule 81(2) of the Rules, the Prosecutor “seeks authorisation to redact (a) the identity of the investigators, psychosocial experts and interpreters; (b) the day, month and location of interviews; and (c) investigative leads”.⁹ The Prosecutor submits that redaction of this information is necessary because disclosure to the Defence “is likely to impact on the Prosecution’s ability to conduct its investigations, as it may unduly attract attention to the movement of Prosecution staff and by extension to (potential) witnesses and their security”.¹⁰

7. The Prosecutor adds that these redactions would ensure that she can continue to use during its investigations the limited number of investigators

⁶ *Ibid.*, p. 23.

⁷ Request, para. 2.

⁸ ICC-02/11-01/11-544-Conf, p. 13.

⁹ Request, para. 4.

¹⁰ *Ibid.*, para. 4.

that she currently has at her disposal, without any need to replace them, which would have negative implications both on the expeditious conduct of the investigations, as well as on the resources required to conduct such investigations.¹¹ The Prosecutor further submits that “absent some showing of a specific need or justification for the disclosure of the identities of investigators, the OTP seeks, as a matter of practice, to maintain their confidentiality”.¹²

8. In addition, the Prosecutor states that her investigations are conducted confidentially, and that “[i]n order to maintain the confidentiality of its investigation and protect the reliability of its ongoing evidence collection, the Prosecution seeks to redact investigative leads”.¹³

9. Furthermore, the Prosecutor submits that the redactions sought pursuant to rule 81(2) of the Rules would not result in unfairness to Mr Gbagbo at the confirmation of charges, since they do not relate to information that is relevant to the preparation of the Defence.¹⁴ The Prosecutor adds that the redactions sought are consistent with the Chamber’s prior decisions authorising redactions in this matter, and that the need to request their lifting will be periodically reviewed.¹⁵

10. Furthermore, and pursuant to rule 81(4) of the Rules, the Prosecutor “seeks authorisation to redact (a) identifying information of third parties at risk on account of the activities of the Court (also referred to as ‘innocent third

¹¹ *Id.*

¹² *Ibid.*, para. 5.

¹³ *Ibid.*, para. 6.

¹⁴ *Ibid.*, para. 7.

¹⁵ *Id.*

parties’); (b) identifying information and whereabouts of family members of any witnesses; and (c) contact details of witnesses”.¹⁶

11. The Prosecutor submits that these redactions “do not have any impact on the fairness of the proceedings and the rights of the Defence, as they do not cover any information that is relevant for the preparation of the case of the Defence”, and that similar redactions have been authorised by the Chamber in prior decisions.¹⁷

12. In addition to the redactions to the content of the evidence, the Prosecutor seeks authorisation to redact, under rule 81(2) of the Rules, certain information in the metadata of documents that she intends to disclose, in particular relating to the identity of investigators, the specific dates of interviews, and the identity of sources.¹⁸

B. The Defence

13. The Defence submits that the Prosecutor has failed to inform the Defence of the underlying legal and factual basis of his requests for redactions in compliance with the Decision on Disclosure, and has presented requests for redactions which are too general and insufficiently reasoned.¹⁹

14. Referring to jurisprudence of the Appeals Chamber, the Defence argues that the Chamber must thoroughly assess the interest of the Defence in obtaining the information proposed for redaction, and that if the information could be, in any way, potentially useful to the Defence, it must be disclosed to it.²⁰ The Defence submits that the Chamber must determine the requests for redactions case by case basis, on the basis of the arguments presented by the

¹⁶ *Ibid.*, para. 8.

¹⁷ *Id.*

¹⁸ *Ibid.*, para. 9.

¹⁹ Response, paras 11-12.

²⁰ *Ibid.*, paras 13-14; see also para. 15.

Prosecutor in support of each requested redaction, and argues that a general request such as that submitted by the Prosecutor is not acceptable.²¹

15. The Defence argues that the Prosecutor should present during the confirmation of charges procedure her evidence as completely and transparently as possible, to provide the Defence with the necessary information to engage in a genuine adversarial debate.²² In the view of the Defence, this must be kept in mind by the Chamber when determining requests for redactions.²³ Additionally, the Defence contends that the finding of the Adjournment Decision concerning the insufficiency of evidence presented by the Prosecutor makes the Defence's access to information all the more crucial.²⁴

16. In relation to the proposed redactions of the identities of investigators, the Defence responds that redactions cannot be authorised as a matter of practice, as suggested by the Prosecutor.²⁵ The Defence submits that proposals for redactions must be properly justified on an individual basis.²⁶

17. The Defence goes on to argue that the Prosecutor has failed to demonstrate that the proposed redactions of the names of her staff are necessary because of an objective prejudice that would arise from disclosure to the Defence, and has failed to show that such redactions would not be prejudicial to the Defence, instead basing her requests entirely on logistical reasons.²⁷ In addition, the Defence submits that the argument of the Prosecutor is illogical, since the Defence investigators encounter more

²¹ *Ibid.*, para. 16.

²² *Ibid.*, paras 17-18.

²³ *Ibid.*, para. 19.

²⁴ *Ibid.*, para. 20.

²⁵ *Ibid.*, paras 21-22.

²⁶ *Ibid.*, paras 23-24.

²⁷ *Ibid.*, paras 26-27.

difficulties conducting their activities in Côte d'Ivoire than the investigators of the Prosecutor.²⁸

18. The Defence adds that it is important for it to know the names of the Prosecutor's staff who obtained documentary evidence or took witness statements, in order to be able to verify their chain of custody and metadata.²⁹

19. Finally in this regard, the Defence submits that the Prosecutor has not justified the request to redact the identities of psychosocial experts, and that it is fundamental for the Defence to know their identities in order to be able to evaluate the quality of their contribution.³⁰

20. The Defence equally opposes the redactions of the dates of meetings with witnesses, submitting that this information is essential is essential for it to verify the situation of a witness at any given time, the possible evolution of his or her statements, and the time elapsed between the interview and the disclosure of the statements to the Defence.³¹ The Defence insists that the Prosecutor has not presented any justification for her requests.³²

21. Concerning the redactions to investigative leads, the Defence submits that they inevitably affect the Defence ability to conduct investigations, and submits that following the Adjournment Decision, it is to be feared that the Prosecutor might try to conceal the paucity of her evidence by withholding certain information from the Defence, thereby affecting the fair conduct of the proceedings.³³

²⁸ *Ibid.*, para. 27.

²⁹ *Ibid.*, para. 28.

³⁰ *Ibid.*, para. 29.

³¹ *Ibid.*, para. 30.

³² *Ibid.*, para. 31.

³³ *Ibid.*, paras 32-33.

22. The Defence also opposes the redactions requested under rule 81(4) of the Rules, stating that the Prosecutor has failed to demonstrate how disclosure of the identity of a person would give rise to a risk for that person.³⁴ In addition, the Defence recalls that information related to third parties and/or family members of witnesses can be of importance for the purpose of verifying the veracity of information and the credibility of witnesses.³⁵

23. The Defence submits that any redaction impacts on its ability to evaluate the evidence disclosed by the Prosecutor and consequently, on its capacity to discuss the arguments advanced by the Prosecutor.³⁶ The Defence submits that greatest caution is necessary when determining the requests for redactions, in particular following the Adjournment Decision which laid bare the weakness of the Prosecutor's evidence.³⁷ The Defence also refers to the disproportionality between its means, and the means of the Prosecutor.³⁸

24. The Defence states that it is unable, due to the fact that the documents submitted to the Chamber have not been made available to it, to make submissions on the gravity of the implications of the proposed redactions, and invites the Chamber to assess each requested redaction on a case by case basis.³⁹ The Defence also states that it regrets not having been provided by the Prosecutor with the evidence underlying the Request in its redacted form, so as to be able to make submissions on the justification provided by the Prosecutor.⁴⁰

³⁴ *Ibid.*, para. 34.

³⁵ *Ibid.*, para. 37.

³⁶ *Ibid.*, para. 39.

³⁷ *Ibid.*, para. 40.

³⁸ *Ibid.*, para. 41.

³⁹ *Ibid.*, para. 43.

⁴⁰ *Ibid.*, para. 46.

III. Analysis

25. The Single Judge notes articles 54(3)(f), 57(3)(c), 61, 67 and 68(1) of the Rome Statute, and rule 81 of the Rules.

26. The Single Judge makes reference to the Decision on Disclosure, wherein the procedure related to requests for redactions to incriminating evidence under rule 81 of the Rules has been established,⁴¹ and to the First Decision on Redactions, wherein the overall reasons for granting or rejecting redactions have been provided.⁴² For the present decision, the Single Judge has adhered to the same approach.

A. Defence arguments in relation to the procedure related to requests for redactions to incriminating evidence

27. The Defence emphasises in its Response that there is a need that the Chamber fully appreciate the competing interests of the Defence when adjudicating the proposals for redactions presented by the Prosecutor.⁴³ The Single Judge shares the view that this is an important general principle, and notes that it has been recognised in the First Decision on Redactions:

The Single Judge will also 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, particular attention will be given to the relevance of the information sought to be redacted to the Defence as well as the stage of the proceedings, 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.”⁴⁴

28. It appears from the Response that the Defence considers that the Adjournment Decision has a bearing on the balance of the relevant interests and should inform the Single Judge’s adjudication of the Request.⁴⁵ In this regard, the Single Judge emphasises that the need to limit exemptions from

⁴¹ Decision on Disclosure, paras 52-57.

⁴² First Decision on Redactions, paras 55-102.

⁴³ See Response, paras 13-14.

⁴⁴ First Decision on Redactions, para. 58.

⁴⁵ Response, paras 20, 40.

disclosure to what is strictly necessary, in order not to prejudice the rights of the Defence, is an overarching principle that has been taken into account throughout the proceedings in the present case, both before and after the Adjournment Decision.⁴⁶

29. Similarly, the Single Judge shares the view put forward by the Defence that each requested redaction must be assessed individually, on a case by case basis.⁴⁷ This has also been a guiding principle that has been applied throughout the proceedings in the case as announced in the First Decision on Redactions:

The Single Judge will set forth in the present decision the approach taken in the assessment of each requested redaction and will make it available to the Defence to the extent that they can be revealed to it without endangering the interests concerned and defeating the very purpose of redactions process. Accordingly, the overall reasons for granting or rejecting the requests for redactions within each category will be provided in the present decision. In the Annex, which is *ex parte* and only available to the Prosecutor and the VWU, the Single Judge, in compliance with the procedure prescribed by the Appeals Chamber, will specify to which of the five abovementioned categories each of the requested redactions 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 the Annex of her decision.⁴⁸

30. The Single Judge notes the Defence objection that the requests for redactions by the Prosecutor are too general and insufficiently reasoned,⁴⁹ and its remark that redactions of a general and systematic nature have previously been authorised in the case.⁵⁰ However, as recognised by the Defence in its Response,⁵¹ it necessarily follows from the redactions procedure that the details of the Prosecutor's requests for redactions as well as the individual

⁴⁶ See also Pre-Trial Chamber I, "Decision on the "Prosecution's request for redactions pursuant to Rule 81(2) and Rule 81(4) and to the new disclosure calendar", 27 September 2013, ICC-02/11-01/11-514 (the "Decision of 27 September 2013"), para. 17.

⁴⁷ Response, paras 16, 43.

⁴⁸ First Decision on Redactions, para. 61.

⁴⁹ Response, para. 12.

⁵⁰ *Ibid.*, para. 44.

⁵¹ *Ibid.*, para. 43.

assessment by the Chamber of each requested redaction are not to be communicated to the Defence. In this regard, the Single Judge recalls that, in accordance with the Decision on Disclosure⁵² and the First Decision on Redactions,⁵³ the Single Judge receives and reviews the individual requested redactions *ex parte* in order not to defeat the purpose of the requested redactions.⁵⁴ Notwithstanding this limitation, the Single Judge is of the view that the information made available to the Defence in the Request and in the present decision is appropriate in light of the nature of the redactions requested. The Single Judge is of the view that the provision of additional information in respect of individual requests for redactions would defeat their purpose.

B. Redactions requested under rule 81(2) of the Rules

31. The Single Judge turns first to the request to redact the identities of investigators, psychosocial experts and interpreters.

32. The Single Judge notes the argument of the Prosecutor that “absent some showing of a specific need or justification for the disclosure of the identities of the investigators, the OTP will seek as a matter of practice to maintain their confidentiality”.⁵⁵

33. In this regard, the Single Judge emphasises, as also submitted by the Defence,⁵⁶ that redactions are an exceptional remedy and cannot be authorised

⁵² Decision on Disclosure, paras 54-56.

⁵³ First Decision on Redactions, para. 61.

⁵⁴ See also 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. 66; 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, para. 52.

⁵⁵ Request, para. 5.

⁵⁶ Response, para. 22.

in a systematic manner, or “as a matter of practice”. Rather, redactions need to be assessed individually and can be authorised only in specific circumstances when disclosure would give rise to an objectively justifiable prejudice to the further or ongoing investigations of the Prosecutor.⁵⁷

34. Nevertheless, the Single Judge observes that, notwithstanding her submission, the Prosecutor requests the redaction of identities of individual investigators, a psychosocial expert and an interpreter and that, consistent with the approach of the First Decision on Redactions,⁵⁸ she does not request the redactions of names of members of her staff who have previously attended public hearings in the case.⁵⁹ The Prosecutor also does not request redaction of the name of an investigator who is no longer working in her Office.⁶⁰

35. Upon analysis of the individual requests for redactions, the Single Judge concludes that disclosure to the Defence of the identities of certain investigators, a psychosocial expert and an interpreter currently working in the field would give rise to an objectively justifiable prejudice to the Prosecutor’s investigations still ongoing in Côte d’Ivoire, as it is reasonable to believe that their presence, if their identities were to be disclosed, could become easily traced, and, as a consequence, the investigation could be interfered with. The Single Judge is also of the view that, at this stage of the proceedings, the non-disclosure of the identities of the concerned persons is adequate and necessary to reduce the prejudice, and is the least restrictive protective measure available.

⁵⁷ See also Decision of 27 September 2013, para. 21.

⁵⁸ First Decision on Redactions, para. 86.

⁵⁹ See ICC-02/11-01/11-537-Conf-Exp-Anx03, ICC-02/11-01/11-537-Conf-Exp-Anx04, ICC-02/11-01/11-537-Conf-Exp-Anx05, ICC-02/11-01/11-537-Conf-Exp-Anx08.

⁶⁰ See Request, para. 13.

36. In addition, the Single Judge is of the view that redaction of the identities of investigators, a psychosocial expert and an interpreter is not incompatible with Mr Gbagbo's fair trial rights, also taking into account the present stage of the proceedings in the case, as the Defence will still be in position to identify possible faults in the evidence itself and bring them to the attention of the Chamber. The Single Judge notes that redactions are to be authorised only to the names and identifying information, and not to the specific professions of the persons concerned.⁶¹ Furthermore, the Single Judge notes that in the First Decision on Redactions, the Prosecutor was ordered, in order to enable the Defence to identify more efficiently possible faults, to provide to the Defence with information as to which statements have been taken by the same investigator or in the presence of the same interpreter, translator or of another member of the Prosecutor's staff,⁶² and considers that it is appropriate to require the Prosecutor to update this information when disclosing the evidence subject to the present Decision.

37. Accordingly, the Single Judge grants authorisation to redact the identities of certain investigators, a psychosocial expert and an interpreter, in the evidence to be disclosed and in the accompanying metadata as specified in the Annex to the present decision, confidential, *ex parte*, only available to the Prosecutor.

38. Next, the Prosecutor requests the redaction of the specific dates of interviews, and of the specific location of one interview. The Single Judge considers that disclosing to the Defence the specific dates, *i.e.* the day and month, of witness interviews that were conducted in Côte d'Ivoire may attract attention to the movement of the Prosecutor's staff as well as the witnesses interviewed, thus making possible interference with the investigation. The

⁶¹ First Decision on Redactions, para. 89.

⁶² *Ibid.*, para. 89 and p. 37.

same applies to the specific reference to the location of one witness interview. In the assessment of the Single Judge, disclosure of this information, in the present circumstances, and at this stage in the proceedings, would give rise to an objectively identifiable prejudice to the further or ongoing investigations. The Single Judge is also of the view that redaction is adequate and necessary to address the prejudice to the further or ongoing investigations, and is the least restrictive protective measure available. Finally in this regard, the Single Judge is of the view that such non-disclosure will not result in the confirmation of charges hearing, as a whole, being unfair to Mr Gbagbo, as the Defence will still have access to the substance of the witness statements concerned.

39. Thus, the Single Judge grants authorisation to redact the specific dates of the interviews, *i.e.* the day and month, and in one instance the specific location of an interview, in the evidence to be disclosed and in the accompanying metadata as specified in the Annex to the present decision, confidential, *ex parte*, only available to the Prosecutor.

40. Finally under rule 81(2) of the Rules, the Prosecutor requests authorisation to redact investigative leads. The Single Judge has assessed individually, on a case by case basis, the requests for redactions of investigative leads, and considers that disclosure to the Defence of this information may interfere with ongoing evidence collection and thereby give rise to an objectively identifiable prejudice to the ongoing or further investigations of the Prosecutor. The Single Judge is of the view that redaction of the investigative leads is appropriate to address this risk, and does not consider that a less restrictive measure can be envisaged.

41. The Single Judge is aware that, in principle, information concerning investigative leads may be relevant to the preparation of the Defence.

However, the Single Judge is of the view that in the present circumstances the redaction of the investigative leads proposed in the Request will not result in the confirmation of charges hearing, as a whole, being unfair to Mr Gbagbo. The Single Judge notes in particular that the requested redactions are very limited and do not prejudice the Defence ability to understand the substance of the evidence disclosed. In these circumstances, the concern of the Defence that the Prosecutor might try to conceal the paucity of her evidence by withholding certain information from the Defence⁶³ is, in the view of the Single Judge, unfounded.

42. Accordingly, the Single Judge grants authorisation to redact certain investigative leads as specified in the Annex to the present decision, confidential, *ex parte*, only available to the Prosecutor.

C. Redactions requested under rule 81(4) of the Rules

43. Under rule 81(4) of the Rules, the Prosecutor requests, first, the redaction of identifying information of third parties at risk on account of the activities of the Court. The Single Judge notes that, as specified in the Annex to the present decision, redactions of identifying information of third parties at risk are proposed only in relation to a single witness statement, while redaction of contact information of third parties is proposed in relation to two further documents.

44. The Single Judge recalls that rule 81(4) of the Rules has been interpreted by the Appeals Chamber as including the possibility to authorise redactions for the protection of “persons at risk on account of the activities of the Court”, who are not witnesses, victims or members of their families.⁶⁴

⁶³ Response., para. 33.

⁶⁴ 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

45. Upon individual review of the requests, the Single Judge considers that the third persons concerned are mentioned in witness statements in contexts that may make them appear as collaborating with the Court, which could in case of disclosure of their identities or contact information to the Defence, lead to an objectively identifiable risk to their safety. The Single Judge is of the view that the limited redaction of identifying or contact information of third persons will not unduly impact on the ability of the Defence to respond to the evidence, and considers that redaction of this information represents an adequate, proportionate and necessary protective measure, considering that no less restrictive measure is available.

46. On the basis of the above, the Single Judge grants authorisation to redact the names of third parties at risk on account of the activities of the Court as specified in the Annex to the present decision, confidential, *ex parte*, only available to the Prosecutor.

47. Second, the Prosecutor requests under rule 81(4) of the Rules the redaction of the identifying information and whereabouts of family members of witnesses.

48. As specified in the Annex to the present decision, confidential, *ex parte*, only available to the Prosecutor, the redactions of this category relate to the references to the witness' parents on the first page of seven witness statements, and, in four witness statements, also to other references to the witness' family members' names or other identifying information, including places of residence.

49. The Single Judge, upon review of each requested redaction, considers that if the names or identifying information, including places of residence, of

Redact Witness Statements", 13 May 2008, ICC-01/04-01/07-475, para. 52; see also First Decision on Redactions, para. 78.

family members of witnesses were disclosed to the Defence, this could have an impact on their safety, in particular as a consequence of the witnesses' cooperation with the Court. The Single Judge is additionally of the view that redaction of this information is an adequate measure to reduce this risk, and that no less restrictive protective measure is available.

50. The Single Judge notes the argument of the Defence that information concerning family members may be very important for the Defence to verify the credibility of witness testimony.⁶⁵ As far as the references to witnesses' parents on the initial pages of the witness statements are concerned, the Single Judge is of the view that this information is of no significance for the preparation of the Defence. Furthermore, even with respect to redactions of references to names, identifying information or whereabouts of witnesses' family members in the body of the witness statements, the Single Judge is of the view that these limited redactions, which do not affect the substance of the statements, will not result in undue prejudice to the Defence.

51. Accordingly, the Single Judge grants authorisation to redact the names and identifying information of family members of witnesses, as specified in the Annex to the present decision, confidential, *ex parte*, only available to the Prosecutor.

52. The Prosecutor also requests under rule 81(4) the redaction of the telephone number of one of her witnesses in one item of evidence.

53. The Single Judge is of the view that disclosure of the witness' phone number to the Defence could have a negative impact on his safety. In the view of the Single Judge, redaction of the phone number is adequate and necessary to address this risk. The Single Judge is further of the view that this proposed

⁶⁵ Response, para. 37.

redaction will not result in any prejudice to the Defence, which will be able to make full use of the item of evidence concerned.

54. Accordingly, the Single Judge grants authorisation to redact the phone number of one witness, as specified in the Annex to the present decision, confidential, *ex parte*, only available to the Prosecutor.

FOR THESE REASONS, THE SINGLE JUDGE

GRANTS the Prosecutor's requests for redactions as specified in the Annex to the present decision;

RECALLS that the Prosecutor shall disclose to the Defence the evidence dealt with in the present decision as soon as practicable and no later than 5 days upon notification of the present decision; and

ORDERS the Prosecutor to provide the Defence, at the time of disclosure of the witness statements dealt with in the present decision, with updated information as to which statements have been taken by the same investigator or in the presence of the same interpreter, translator or other OTP staff member.

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



Judge Silvia Fernández de Gurmendi

Single Judge

Dated this Thursday, 7 November 2013

At The Hague, The Netherlands