

**Cour
Pénale
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**International
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Court**

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PRE-TRIAL CHAMBER II

Before: Judge Ekaterina Trendafilova, Single Judge

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

**IN THE CASE OF
*THE PROSECUTOR V. BOSCO NTAGANDA***

Public

Redacted Third Decision on the Prosecutor's Requests for Redactions

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
Marc Desalliers

Legal Representatives of the Victims
Sarah Pellet
Dmytro Suprun

Legal Representatives of the 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

Other

REGISTRY

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Defence Support Section

Victims and Witnesses Unit
Patrick Craig

Detention Section

**Victims Participation and Reparations
Section**

Other

Judge Ekaterina Trendafilova, acting as Single Judge on behalf of Pre-Trial Chamber II (the “Chamber”) of the International Criminal Court (the “Court”),¹ hereby renders the “Third Decision on the Prosecutor’s Requests for Redactions”.

I. Procedural History

1. At the outset, the Single Judge clarifies that the present decision is rendered subsequent to, *inter alia*, the “First Decision on the Prosecutor’s Requests for Redactions and Other Related Requests” (the “First Decision on Redactions”) dated 1 October 2013² and the “Second Decision on the Prosecutor’s Requests for Redactions” (the “Second Decision on Redactions”) dated 15 November 2013.³ The Single Judge, therefore, makes reference to and hereby incorporates the procedural history set out in the First and Second Decision on Redactions and recalls only relevant procedural steps for the purposes of this decision.

2. On 1 October 2013, the Single Judge rendered the First Decision on Redactions, in which she, *inter alia*, summarized the guiding principles with respect to the non-disclosure of information, including redactions, and addressed the Prosecutor’s proposals for non-disclosure of information. More specifically, the Single Judge granted the request to withhold the identity of witnesses P-0018, P-0019 and P-0113 from the Defence.⁴ Further, the Prosecutor was authorized to disclose the redacted statements of witnesses P-0290 and P-0027 no later than 1 November 2013.⁵

¹ Pre-Trial Chamber II, “Decision Designating a Single Judge”, 21 March 2013, ICC-01/04-02/06-40.

² Pre-Trial Chamber II, “First Decision on the Prosecutor’s Requests for Redactions and Other Related Requests”, 1 October 2013, ICC-01/04-02/06-117-Conf-Exp, with two confidential *ex parte* annexes. A confidential redacted version of the decision is also available: ICC-01/04-02/06-117-Conf-Red.

³ Pre-Trial Chamber II, “Second Decision on the Prosecutor’s Requests for Redactions”, 15 November 2013, ICC-01/04-02/06-145-Conf-Exp, with two confidential *ex parte* annexes. A confidential redacted version of the decision is also available: ICC-01/04-02/06-145-Conf-Red.

⁴ Pre-Trial Chamber II, “First Decision on the Prosecutor’s Requests for Redactions and Other Related Requests”, 1 October 2013, ICC-01/04-02/06-117-Conf-Exp, paras. 35-39.

⁵ Pre-Trial Chamber II, “First Decision on the Prosecutor’s Requests for Redactions and Other Related Requests”, 1 October 2013, ICC-01/04-02/06-117-Conf-Exp, paras. 70-74.

3. On 25 October 2013, the Single Judge rendered the “Decision on the Prosecutor’s Request for Additional Redactions to the Statements of Witness P-0290”,⁶ in which she granted additional redactions to the statements of said witness. The Single Judge also held that the Prosecutor had the obligation to inform the Chamber of the existence of any translation of witness statements or other material and request the Chamber to authorize that the redactions sought be extended to any translation.⁷

4. On 31 October 2013, the Single Judge issued the “Decision on the ‘Prosecution’s Request pursuant to Regulation 35 to Vary the Time Limit for Two Items of Evidence’”⁸ and authorized the Prosecutor to submit redaction proposals in relation to statements of two witnesses on 6 November 2013 and 15 November 2013 respectively.

5. On 1 November 2013, the Prosecutor submitted the “Prosecution’s Third Application for Redactions”,⁹ to which she submitted corrigenda of Annexes A5 and A15 on 8 November 2013¹⁰ (collectively, the “Third Application”).

6. On 8 November 2013, the Victims and Witnesses Unit (the “VWU”) presented the “Victims and Witnesses Unit’s Observations on the Prosecution’s Third Application for Redactions (ICC-01/04-02/06-134-Conf-Exp)”.¹¹

7. On 15 November 2013, the Single Judge rendered the Second Decision on Redactions in which she, *inter alia*, addressed the Prosecutor’s proposals for non-disclosure of information with respect to annex A13 to the Third Application. In addition, the Single Judge granted the request to withhold the identity of witness P-

⁶ Pre-Trial Chamber II, “Decision on the Prosecutor’s Request for Additional Redactions to the Statements of Witness P-0290”, 25 October 2013, ICC-01/04-02/06-129-Conf-Exp. A confidential redacted version is also available: ICC-01/04-02/06-129-Conf-Red.

⁷ Pre-Trial Chamber II, “Decision on the Prosecutor’s Request for Additional Redactions to the Statements of Witness P-0290”, 25 October 2013, ICC-01/04-02/06-129-Conf-Red, para. 10 and p. 5.

⁸ Pre-Trial Chamber II, “Decision on the ‘Prosecution’s Request pursuant to Regulation 35 to Vary the Time Limit for Two Items of Evidence’”, 31 October 2013, ICC-01/04-02/06-133-Conf-Exp. A confidential redacted version is also available: ICC-01/04-02/06-133-Conf-Red.

⁹ ICC-01/04-02/06-134-Conf-Exp, with confidential *ex parte* annexes A1-A17, B and C.

¹⁰ ICC-01/04-02/06-134-Conf-Exp-AnxA15-Corr-Anx1.

¹¹ ICC-01/04-02/06-138-Conf-Exp.

0800, authorized the Prosecutor to refrain from disclosing the statement of said witness, and ordered the Prosecutor to submit a meaningful summary thereof.¹²

8. On 15 November 2013, the Prosecutor submitted the "Prosecution's application for redactions to the statement of witness DRC-OTP-P-0317" (the "15 November 2013 Request").¹³

9. On 19 November 2013, the Prosecutor submitted the "Prosecution's urgent application for extension of a previously authorised rule 81(2) redaction to an annex to witness DRC-OTP-P-0017's statement".¹⁴

10. On 21 November 2013, the Single Judge issued the "Decision on the Prosecutor's 'urgent application for extension of a previously authorized rule 81(2) redaction to an annex to witness DRC-OTP-P-0017's statement'",¹⁵ in which an additional redaction to the handwritten notes of said witness was authorized.

11. On 22 November 2013, the VWU presented the "Victims and Witnesses Unit's Observations on the Prosecution's application for redactions to the statement of witness DRC-OTP-P-0317 (ICC-01/04-02/06-142-Conf-Exp)".¹⁶

II. Preliminary Remarks

12. The Single Judge clarifies that this decision is made subsequent to and in line with the First Decision on Redactions and Second Decision on Redactions. The Single Judge, therefore, recalls by reference the principles set out, in particular, in the First Decision on Redactions.¹⁷

¹² Pre-Trial Chamber II, "Second Decision on the Prosecutor's Requests for Redactions", 15 November 2013, ICC-01/04-02/06-145-Conf-Exp, paras. 24-25.

¹³ ICC-01/04-02/06-142-Conf-Exp, with one confidential *ex parte* annex.

¹⁴ ICC-01/04-02/06-149-Conf-Exp, with one confidential *ex parte* annex.

¹⁵ Pre-Trial Chamber II, "Decision on the Prosecutor's 'urgent application for extension of a previously authorized rule 81(2) redaction to an annex to witness DRC-OTP-P-0017's statement'", 21 November 2013, ICC-01/04-02/06-152-Conf.

¹⁶ ICC-01/04-02/06-153-Conf-Exp.

¹⁷ Pre-Trial Chamber II, "First Decision on the Prosecutor's Requests for Redactions and Other Related Requests", 1 October 2013, ICC-01/04-02/06-117-Conf-Exp, paras 33-64.

13. Accordingly, the present decision is taken with respect to all witness statements and material submitted by the Prosecutor in the Third Application, with the exception of annex A13, as well as the 15 November 2013 Request. The relevant authorization of the redactions granted is separately set out in Annex II to the present decision.

14. The present decision is classified as confidential *ex parte* as it refers to the existence of documents and, as the case may be, to a limited extent to their content, which have been submitted and are currently treated as confidential, *ex parte* Prosecutor and VWU only. For reasons of fairness of proceedings *vis-à-vis* the Defence, this decision is shared with it, albeit in confidential redacted form. To this end, the Single Judge considers that the references made in the present decision are required by the principle of judicial reasoning. They have been kept to a minimum and have been made without endangering the interests concerned and defeating the very purpose of redactions.

III. The Prosecutor's Requests for Redactions

15. The Single Judge notes articles 21, 57(3)(c), 67 and 68(1) and (5) of the Rome Statute (the "Statute"), rules 81(2) and (4) and 121 of the Rules of Procedure and Evidence (the "Rules"), and article 8 of the Code of Professional Conduct for counsel.

16. The present decision covers the statements of and material relating to witnesses P-0018, P-0019, P-0055, P-0108, P-0113, P-0290, P-0315, P-0317, P-0758, P-0761, P-0768, P-0773, P-0792, P-0804, P-0805, and P-0806. It is recalled that, in the First Decision on Redactions, the Single Judge assessed the security situation of, *inter alia*, witnesses P-0018, P-0019, P-0108, P-0113, and P-0290 individually and separately reflected her findings in Annex I to that decision.¹⁸ Absent any new information to support changed circumstances, the individual risk assessments of these witnesses as

¹⁸ Pre-Trial Chamber II, "First Decision on the Prosecutor's Requests for Redactions and Other Related Requests", 1 October 2013, ICC-01/04-02/06-117-Conf-Exp-AnxI, paras 22-26, 27-31, 52-55, 56-60, 77-81.

stipulated in Annex I to the First Decision on Redactions remain valid. Accordingly, the Single Judge provides her assessment in relation to the security situation of witnesses P-0055, P-0758, P-0761, P-0768, P-0773, P-0792, P-0804, P-0805, and P-0806 who have not been treated previously.¹⁹ Their individual risk assessment is reflected separately in Annex I to this decision.

17. Redactions of different types of information are sought in the witness statements and material pursuant to rules 81(2) and (4) of the Rules. It is recalled that the Single Judge previously categorized the information for which redactions are sought in the First Decision on Redactions (categories A, B, C and D).²⁰ These redaction categories continue to be applied to the evidence subject to this decision.²¹

18. In light of the principles set out in the First Decision on Redactions, the Single Judge grants in part and orders *proprio motu* the redactions specified in Annex II to the present decision. They also extend to (i) any corresponding text in any translation;²² (ii) any corresponding information in the metadata linked to the evidence concerned; and (iii) any corresponding audio-/videotapes related to the material concerned.²³ In the following, the Single Judge addresses particular aspects of the Third Application.

¹⁹ The Single Judge clarifies that a security assessment of witnesses P-0315 and P-0317 is not provided in this decision as the redactions sought in the evidence relating to these witnesses only concern information which would fall under rule 81(2) of the Rules.

²⁰ Pre-Trial Chamber II, "First Decision on the Prosecutor's Requests for Redactions and Other Related Requests", 1 October 2013, ICC-01/04-02/06-117-Conf-Red, paras 37, 44, 50 and 55.

²¹ The Single Judge clarifies that certain information designated by the Prosecutor as "source/lead" is treated under category D.

²² ICC-01/04-02/06-134-Conf-Exp, para. 42. See also the section entitled "*Translations*" in the present decision.

²³ ICC-01/04-02/06-134-Conf-Exp, footnote 17 and ICC-01/04-02/06-134-Conf-Exp-AnxA17. See also the section entitled "*Transcription of Audio Recordings of Interviews Pursuant to Article 55(2)*" in the present decision.

1. Restrictions on Disclosure Pursuant to Rule 81(1) of the Rules

19. The Single Judge noticed that parts of the evidence are intended to be withheld on the basis of rule 81(1) of the Rules.²⁴ As the Single Judge clarified in the First Decision on Redactions, “the Prosecutor is not under an obligation to disclose any internal documents to the Defence”.²⁵ Having reviewed the content of the information concerned, the Single Judge is of the view that this particular non-disclosure does not require her approval and, accordingly, she will not rule upon this matter.

2. Names and Identifying Information of Witnesses

20. In the Third Application, the Prosecutor requests, pursuant to rule 81(4) of the Rules, the non-disclosure of the identities of seven witnesses she intends to rely on for the purposes of the confirmation of charges hearing, namely P-0018, P-0019, P-0758, P-0761, P-0773, P-0806 and P-0804 with a view to “[protecting] their safety, psychological well-being, dignity and privacy”.²⁶

21. The Single Judge notes that the Prosecutor submitted a renewed request for the non-disclosure of the identity of witnesses P-0018 and P-0019 in the expert clinical assessments pertaining to them as attached to the Third Application.²⁷ The Single Judge recalls that she has already ruled on the request for anonymity of witnesses P-0018 and P-0019 in the First Decision on Redactions.²⁸ It is, therefore, not necessary to render a ruling on this specific request again. Consequently, the Single Judge’s authorization of redactions of identifying information concerning witnesses P-0018

²⁴ See Annex A8, DRC-OTP-2052-0522, at 0522 and 0524; Annex A9, DRC-OTP-2053-0010, at 0010 and 0012; Annex A10, DRC-OTP-2055-0254, at 0257; Annex A12, DRC-OTP-2058-0237, at 0237; Annex A14, DRC-OTP-2069-0040, at 0040 and 0043; and Annex A15, DRC-OTP-2058-0243, at 0243 and 0246-0247.

²⁵ Pre-Trial Chamber II, “First Decision on the Prosecutor’s Requests for Redactions and Other Related Requests”, 1 October 2013, ICC-01/04-02/06-117-Conf-Exp, para. 27.

²⁶ ICC-01/04-02/06-134-Conf-Exp, paras 15-23. The Single Judge clarifies that the request for non-disclosure with regard to witness P-0800 was already addressed in the Second Decision on Redactions.

²⁷ ICC-01/04-02/06-134-Conf-Exp, para. 15.

²⁸ Pre-Trial Chamber II, “First Decision on the Prosecutor’s Requests for Redactions and Other Related Requests”, 1 October 2013, ICC-01/04-02/06-117-Conf-Exp, para. 36.

and P-0019 in the expert clinical assessments pertaining to them, as well as related metadata, is set out in Annex II to the present decision.

22. As explained above, the security situation for witnesses P-0758, P-0761, P-0773, P-0804 and P-0806 is individually assessed and separately reflected in Annex I to this decision. However, as the basis for the Single Judge's assessment is confidential, *ex parte* Prosecutor and VWU only, it is of importance that the following minimum information be shared with the Defence in this decision.

23. The Prosecutor purports that witness P-0758 was abducted when she was 14 years old in August 2002.²⁹ It is further alleged that witness P-0758 was militarily trained at a training camp of the *Union des Patriotes Congolais* (the "UPC")/*Forces Patriotiques pour la Libération du Congo* (the "FPLC") and that she participated in battles with the UPC/FPLC.³⁰ In addition, the Prosecutor asserts, *inter alia*, that witness P-0758 was repeatedly raped during the time she spent with the UPC/FPLC, that she [REDACTED]

[REDACTED]³¹ and that she provides information about killings and rape by UPC/FPLC forces.³² [REDACTED]

[REDACTED]
[REDACTED]³³

24. In addition, the Prosecutor informs the Single Judge that witnesses P-0761, P-0773 and P-0806 are [REDACTED]
[REDACTED].³⁴ In particular with regard to witness P-0761, the Prosecutor submits that [REDACTED]
[REDACTED].³⁵ Above and beyond the security

²⁹ ICC-01/04-02/06-134-Conf-Exp, para. 16.

³⁰ ICC-01/04-02/06-134-Conf-Exp, para. 16.

³¹ ICC-01/04-02/06-134-Conf-Exp, para. 17.

³² ICC-01/04-02/06-134-Conf-Exp, para. 16.

³³ ICC-01/04-02/06-134-Conf-Exp, para. 17.

³⁴ ICC-01/04-02/06-134-Conf-Exp, para. 18.

³⁵ ICC-01/04-02/06-134-Conf-Exp, para. 18.

concerns of these three witnesses, the Prosecutor also requests redaction of their identities "because disclosure would expose [REDACTED]".³⁶

25. Furthermore, according to the Prosecutor, P-0804 provides information about, *inter alia*, alleged UPC attacks on certain locations in the course of which crimes were purportedly committed.³⁷ The Prosecutor also contends that witness P-0804

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].³⁸

26. The Single Judge is also informed of the Prosecutor's intention to disclose the identities of these witnesses prior to the trial stage, should the charges be confirmed.³⁹

27. Upon careful review of all the information available, the Single Judge considers that the non-disclosure of the identities of witnesses P-0758, P-0761, P-0773, P-0804 and P-0806 is justified as disclosing such information to the Defence, at this stage, may put the witnesses at risk. The Single Judge furthermore believes that, in light of the limited scope of the confirmation of charges hearing, the anonymity is necessary and not prejudicial to or inconsistent with the rights of the suspect and fair and impartial proceedings as the Defence will have access to the relevant information contained in the witness statements and have the possibility to challenge them. More detailed reasons are contained in Annex I to this decision. As held in the First Decision on Redactions, the non-disclosure of information must be kept under

³⁶ ICC-01/04-02/06-134-Conf-Exp, para. 19.

³⁷ ICC-01/04-02/06-134-Conf-Exp-AnxB, pp. 83-84.

³⁸ ICC-01/04-02/06-134-Conf-Exp, para. 21.

³⁹ ICC-01/04-02/06-134-Conf-Exp, para. 23.

review.⁴⁰ It may be subsequently disclosed within reasonable time prior to the commencement of the confirmation of charges hearing should circumstances change.

28. In conclusion, the Single Judge authorizes, pursuant to rule 81(4) of the Rules, redactions to the names, identifying information and locations of these witnesses, as specified in Annex II to the present decision.

29. However, in relation to the statement of witness P-0758, the Single Judge is particularly concerned about the extent and nature of the redactions sought. The proposed redactions, if granted, would withhold from the Defence essential information which is crucial for an appropriate assessment of the charges and, more importantly, the Defence right to challenge the evidence presented by the Prosecutor pursuant to article 61(6)(b) of the Statute. The Single Judge, having due regard to the competing interests at stake, and in the exercise of her statutory duties and powers under articles 57(3)(c) and 68(1) of the Statute, reviewed and assessed the Prosecutor's redaction proposals and adopted a different approach to redact sensitive information by striking a balance between revealing crucial information to the Defence and protecting the witness concerned. In this regard, the Single Judge considers the information that witness P-0758 [REDACTED] [REDACTED] to be the main identifying feature in her statement. Withholding this information allows for better protection of the identity of the witness and for essential information to be disclosed to the Defence. The redactions granted or ordered *proprio motu* are set out in Annex II to the present decision.

3. *Locations of Interviews*

30. The Single Judge addresses the Prosecutor's renewed request to redact certain interview locations, namely [REDACTED]

[REDACTED]⁴¹

⁴⁰ Pre-Trial Chamber II, "First Decision on the Prosecutor's Requests for Redactions and Other Related Requests", 1 October 2013, ICC-01/04-02/06-117-Conf-Exp, para. 24.

⁴¹ ICC-01/04-02/06-134-Conf-Exp, para. 37.

31. The Single Judge recalls that, in the Second Decision on Redactions, authorization to redact [REDACTED] was granted,⁴² whilst authorization to redact [REDACTED] was denied.⁴³ Absent any new compelling information, the Single Judge's ruling in relation to those four interview locations remains valid and, as a consequence, extends to the material submitted with the Third Application. It is, therefore, not necessary to render a ruling on these specific requests again. Accordingly, the Prosecutor is ordered to comply with the order set out in the Second Decision on Redactions.

32. With respect to the proposed redaction of [REDACTED] the Single Judge takes note of the size of the location when assessing whether revealing the name of the interview location could entail that the "further or ongoing investigation" is endangered, as explicated in the First Decision on Redactions.⁴⁴ This factor influences the assessment whether the disclosure of the name of the location constitutes an "objectively identifiable risk" to the protected interest. The Single Judge is of the view that, following this rationale, the interview location [REDACTED] must also be redacted, having regard to the modest size of this town and the limited number of suitable interview locations available.

33. In light of the foregoing, the Single Judge grants the Prosecutor's request to redact the interview location [REDACTED].

4. Translations

34. The Prosecutor informs the Single Judge that "no translations currently exist for any of the witness statements that are the subject of" the Third Application.⁴⁵ Nevertheless, she seeks authorization to apply the redactions granted by the Single

⁴² Pre-Trial Chamber II, "Second Decision on the Prosecutor's Requests for Redactions", 15 November 2013, ICC-01/04-02/06-145-Conf-Exp, para. 28.

⁴³ Pre-Trial Chamber II, "Second Decision on the Prosecutor's Requests for Redactions", 15 November 2013, ICC-01/04-02/06-145-Conf-Exp, paras 29-31.

⁴⁴ Pre-Trial Chamber II, "First Decision on the Prosecutor's Requests for Redactions and Other Related Requests", 1 October 2013, ICC-01/04-02/06-117-Conf-Exp, para. 60.

⁴⁵ ICC-01/04-02/06-134-Conf-Exp, para. 42.

Judge in the present decision to any eventual Kinyarwanda translations, which are being prepared “in anticipation that the Defence will make such a request”.⁴⁶ In addition, the Prosecutor also seeks to extend “this request to cover the translations into Kinyarwanda of the witness statements that were the subject of its Second Application”.⁴⁷

35. With regard to the translation of any of the witness statements and material treated in the Second Decision on Redactions, the Single Judge clarifies that such authorization was already given.⁴⁸ She reiterates that such authorization of redactions extends to any translation that exists or has yet to be completed. With regard to any translation of the statements and material subject to this decision, the Single Judge clarifies that she grants authorization to apply the redactions granted or ordered *proprio motu* to any translation that exists or has yet to be completed.

5. *Transcription of Audio Recordings of Interviews Pursuant to Article 55(2)*

36. The Prosecutor advances that she has been able to prepare draft transcriptions of the audio-recorded interviews of witnesses P-0768 and P-0055 but not the final (quality controlled) versions thereof.⁴⁹ She therefore requests authorization to apply the redactions granted by the Single Judge in respect of the draft transcriptions to the final (quality controlled) versions of these documents, which are to be completed by 25 November 2013 and 20 December 2013, respectively.⁵⁰

37. Mindful of the rationale adopted in relation to translations, the Single Judge is of the view that the redactions granted or ordered *proprio motu* in respect of the draft transcriptions of the interviews of witnesses P-0055 and P-0768 must also extend to the final (quality controlled) versions of these documents.

⁴⁶ ICC-01/04-02/06-134-Conf-Exp, para. 42.

⁴⁷ ICC-01/04-02/06-134-Conf-Exp, para. 42.

⁴⁸ Pre-Trial Chamber II, “Second Decision on the Prosecutor’s Requests for Redactions”, 15 November 2013, ICC-01/04-02/06-145-Conf-Exp, para. 20 and letter (a) of the operative part.

⁴⁹ ICC-01/04-02/06-134-Conf-Exp, para. 43.

⁵⁰ ICC-01/04-02/06-134-Conf-Exp, paras 44 and 46.

38. In relation to the interview concerning witness P-0768, the Single Judge is informed that the interview was conducted in both English and French and, by extension, both languages are transcribed in the draft transcription.⁵¹ However, during her review of this document, the Single Judge noted that certain redaction proposals highlighted by the Prosecutor in one language do not fully correspond to the redaction proposals highlighted in the other language. Therefore, in her determinations, the Single Judge rules on the proposed redactions to the English version of the draft transcription of this interview, as long as the highlighted section in the corresponding French version does not diverge. In this case, and in accordance with the approach of the Single Judge adopted in respect of translations,⁵² the authorization or *proprio motu* order to redact the English text element in the transcription extends also to its corresponding French version. Nevertheless, whenever a discrepancy is identified between redaction proposals in the English and French text elements in the transcription, the Single Judge provides specific reasoning as to the authorization to redact information in the two languages separately, as set out in Annex II to the present decision. This approach is also taken in relation to the material pertaining to witness P-0290.⁵³

39. Further, in respect of the interview of witness P-0768, the Prosecutor seeks authorization “to redact the same content in the audio recording of the interview of [witness P-0768] as appears in the draft transcript” thereof.⁵⁴ In addition, with regard to the interview of witness P-0055, the Prosecutor requests the temporary non-disclosure of the original audiotapes that contain both utterances in the English and Swahili languages, as she “is not in a position to identify accurately the corresponding words in Swahili to enable redactions to the Swahili portions of the

⁵¹ ICC-01/04-02/06-134-Conf-Exp, footnote 47.

⁵² See paragraph 18 above; see also Pre-Trial Chamber II, “Redacted First Decision on the Prosecutor’s Requests for Redactions and Other Related Requests”, 1 October 2013, ICC-01/04-02/06-117-Conf-Red, para. 76.

⁵³ ICC-01/04-02/06-134-Conf-Exp-AnxA6.

⁵⁴ ICC-01/04-02/06-134-Conf-Exp, para. 43.

audio recordings".⁵⁵ The Single Judge understands that, along with the temporary non-disclosure of the audio tapes of the interview of witness P-0055, the Prosecutor also requests an extension of the redactions in the draft transcription of the interview of witness P-0055 in the English language to the corresponding audio recording thereof.

40. As set out in paragraph 18 above, any redaction authorized by the Single Judge shall extend to any corresponding portions in the audiotape. Consequently, authorization to redact portions of the audio recordings of the interviews of witnesses P-0055 and P-0768 is granted to the same extent as authorized for the draft transcriptions of the interviews of these witnesses. This approach is also taken in relation to the material pertaining to witness P-0290.⁵⁶

41. As a result of the above, and considering the Prosecutor's request to withhold temporarily the disclosure of the audiotapes pertaining to witness P-0055, the Single Judge is of the view that, if these audio recordings were to be disclosed in their entirety, the very purpose of the redactions granted in respect of the corresponding draft transcriptions of this witness' interview would be defeated. Regard is also paid to the fact that the Defence will be provided with the redacted version of the draft transcription of the interview of witness P-0055 in the English language prior to the disclosure of the corresponding audiotapes. Accordingly, the Single Judge authorizes the temporary non-disclosure of the audiotapes until such time that the Prosecutor finalizes her review of the Swahili portions of the audio recordings but no later than 30 days before the commencement of the confirmation hearing.

42. The Single Judge observes from the above that redactions will need to be applied to the Swahili portions of the audiotape and related transcription. With a view to facilitating and expediting the disclosure process, the Single Judge authorizes the

⁵⁵ ICC-01/04-02/06-134-Conf-Exp, para. 45. These concern DRC-OTP-2058-0682; DRC-OTP-2058-0718 (track 1); DRC-OTP-2058-0745 (track 2); DRC-OTP-2058-0772 (track 3); DRC-OTP-2058-0792 (track 4); DRC-OTP-2058-0815 (track 5); DRC-OTP-2058-0851 (track 1); DRC-OTP-2058-0873 (track 2); DRC-OTP-2058-0900 (track 1); DRC-OTP-2058-0904 (track 2); and DRC-OTP-2058-0942 (track 3).

⁵⁶ ICC-01/04-02/06-134-Conf-Exp-AnxA6.

extension of the redactions in the English version of the transcription to the corresponding text in the transcription in the Swahili language and the audiotape.

43. In line with the approach set out above, the Single Judge authorizes the redaction of metadata to the audio recording and transcription of interviews of witness P-0055⁵⁷ in order to protect the name of the investigator pursuant to rule 81(2) of the Rules.

6. *Request to Authorize Redactions Retroactively*

44. Finally, the Prosecutor informs the Single Judge that two photographs addressed in the First Decision on Redactions, have been disclosed with redactions.⁵⁸ In one instance, the Prosecutor had not submitted the photograph concerned (DRC-OTP-0072-0478) but only requested authorisation to redact certain information in the metadata pertaining to this photograph.⁵⁹ At the same time, however, the same photograph was submitted together with a witness statement for which redactions had been requested properly and ruled upon by the Single Judge.⁶⁰ In the other instance, a photograph (DRC-OTP-0072-0473) was disclosed with redactions to the Defence without having been previously submitted to the Single Judge for her consideration. No duplicate had been submitted either.

45. The Single Judge observes that, as a result, the two pictures were redacted without having been assessed and authorized by the Single Judge and disclosed to the Defence. The Single Judge opines that approaching the Chamber *after* the actual disclosure took place the Prosecutor's request for "authorisation to redact the faces of the bystanders in both photographs"⁶¹ amounts to an *ex post facto* request for authorization to redact. However, rule 81(2) of the Rules specifically requires that

⁵⁷ ICC-01/04-02/06-134-Conf-Exp, para. 46. However, no request for request for redactions of the metadata was included in the justification table (ICC-01/04-02/06-134-Conf-Exp-AnxA3).

⁵⁸ ICC-01/04-02/06-134-Conf-Exp, para. 47. The two photographs are registered as: DRC-OTP-0072-0473 and DRC-OTP-0072-0478.

⁵⁹ ICC-01/04-02/06-98-Conf-Exp-AnxB.1, pp. 7-8.

⁶⁰ See ICC-01/04-02/06-98-Conf-Exp-AnxA15.

⁶¹ ICC-01/04-02/06-134-Conf-Exp, para. 47.

authorization to redact be granted *prior* to the disclosure to the Defence and does not allow for *ex post facto* authorization to redact. In this regard, the Single Judge must note that the Prosecutor did not comply with the Court's statutory documents and corresponding orders of the Chamber. The Single Judge recalls the importance of strict adherence to the legal framework and instructions of the Chamber as set out in the decisions organizing the disclosure process so as to ensure that disclosure takes place under satisfactory conditions, as dictated by rule 121(2)(b) of the Rules.

46. Turning back to the two photographs, the Single Judge observes that in relation to photograph DRC-OTP-0072-0478, authorization to redact the faces of the bystanders was given in respect of a duplicate of this same photograph in the First Decision on Redactions.⁶² In these circumstances, the Single Judge takes the stance that the disclosure of the redacted version of the original photograph (DRC-OTP-0072-0478) has not caused prejudice to the Defence. In contrast, as concerns photograph DRC-OTP-0072-0473, the Single Judge notes that the Prosecutor disclosed the photograph without having sought and having been granted redactions to the faces of the bystanders. Although the Prosecutor approached the Chamber to correct this mistake, she failed to provide any reasons to justify her non-compliance with the instructions of the Single Judge.⁶³ However, mindful of these particular circumstances, as well as the limited nature of the unauthorized redactions, the Single Judge is of the view that they are not prejudicial to the Defence. Consequently, in light of the foregoing, photographs DRC-OTP-0072-0473 and DRC-OTP-0072-0478 can be retained as disclosed material for the purposes of the confirmation of charges hearing.

⁶² Pre-Trial Chamber II, "First Decision on the Prosecutor's Requests for Redactions and Other Related Requests", Annex II, 1 October 2013, ICC-01/04-02/06-117-Conf-Exp-AnxII, pp. 246-247. This photograph is registered as DRC-OTP-0077-0293.

⁶³ ICC-01/04-02/06-134-Conf-Exp, para. 47.

IV. Further Determinations of the Single Judge

1. *Family Members of a Witness Referred to in the Statement of Another Witness*

47. It has been noted on several occasions that the Prosecutor proposes redactions under category B to information pertaining to the family members of a witness, such as their name, which is mentioned by *another* witness in his/her statement. Contrary to the Prosecutor's suggestion, the Single Judge is of the view that category C is the appropriate redaction category as those persons are not the family members of the witness in whose statement they are mentioned. Rather, they are referred to like any other third person who may be put at risk on account of the activities of the Court. Hence, the Single Judge has re-categorized the information as falling under category C.

2. *Code of Intermediaries*

48. The Single Judge notes that in the evidence submitted, the Prosecutor requested the codes of intermediaries ■■■ and ■■■ to be redacted. Besides the general justification to protect persons who assist the Office of the Prosecutor in its investigation, no justification was provided for the specific request to redact the codes of the intermediaries. While the Single Judge understands that the names and contact details of intermediaries may be redacted, if properly justified, it is difficult to accept, without more, that a code, a protective measure which has been assigned by the Prosecutor, should be redacted. Most importantly, the Prosecutor failed to submit any justification how the disclosure of the codes of these particular intermediaries could endanger her "further or ongoing investigation" and why this risk can only be overcome or reduced by redacting the codes. Conversely, the Single Judge is of the view that this particular information could still be of some assistance for the Defence in its preparation for the confirmation of charges hearing and which, in any case, is not provided with any identifying information of the intermediaries concerned.

49. It is recalled that the Prosecutor seeking redactions under rule 81(2) of the Rules must establish that such redactions are warranted.⁶⁴ Absent any justification, the Single Judge does not grant the redaction of any codes of intermediaries.

3. Statements of Witnesses P-0792 and P-0773

50. The assessment and review of the Prosecutor's redaction requests to the statement of witness P-0792 have proven to be particularly challenging. When reviewing the highlighted sections in the statement in conjunction with the justifications provided in the justification table, it has been difficult to identify a consistent, clear and logical approach adopted by the Prosecutor. Hence, the Single Judge, based on the information provided and having due regard to the competing interests at stake decides, in conformity with her powers under article 68(1) of the Statute, on the non-disclosure of information contained in the statement of witness P-0792 in accordance with the criteria as stipulated in the First Decision on Redactions.

51. In relation to the material contained in DRC-OTP-2057-0250 to DRC-OTP-2057-0254 (annex A11) related to the statement of witness P-0773, the Single Judge agrees to the non-disclosure of this document. However, it is doubtful whether the disclosure of black pages can contain meaningful information for the Defence. In addition, it is unclear how this piece of evidence, which will be entirely redacted, can be presented by the Prosecutor and potentially challenged by the Defence during the confirmation of charges hearing and possibly used by the Chamber for the purposes of the article 61(7) decision. To remedy this situation, the Single Judge authorizes the Prosecutor to refrain from disclosing this material in order to protect the witness pursuant to rule 81(4) of the Rules.

⁶⁴ Pre-Trial Chamber II, "Redacted First Decision on the prosecutor's Requests for Redactions and Other Related Requests", 1 October 2013, ICC-01/04-02/06-117-Conf-Red, para. 23.

FOR THESE REASONS, THE SINGLE JUDGE HEREBY

- a) **partly grants** the Prosecutor's requests for redactions, as specified in Annex II to this decision, including their extension, as the case may be, to any translation, audio/video recording, final (quality controlled) versions of transcriptions of interviews and related metadata;
- b) **grants** the non-disclosure of the identity of witnesses P-0758, P-0761, P-0773, P-0804 and P-0806;
- c) **grants** the Prosecutor's request for temporary non-disclosure of the original audio recordings of the interview of witness P-0055 until such time that the Prosecutor finalizes her review of the Swahili portions of the audio recordings but no later than 30 days before the commencement of the confirmation of charges hearing;
- d) **authorizes** the Prosecutor to refrain from disclosing the material contained in DRC-OTP-2057-0250 to DRC-OTP-2057-0254 to the Defence;
- e) **orders *proprio motu*** redactions to the witness statements, transcripts of witness interviews and related documents, as specified in Annex II to this decision, including their extension, as the case may be, to any translation, audio or video recording, final (quality controlled) version of transcription of interview and related metadata;
- f) **orders** the Prosecutor to disclose to the Defence the redacted versions of the material within five days as of the notification of the present decision;
- g) **orders** the Prosecutor to continuously assess the risk to the safety and well-being of witnesses and to immediately inform the Chamber of any changes in the current situation of these witnesses;
- h) **orders** the Defence to keep the information disclosed confidential and to ensure that it is not passed on to third parties and the public.

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



Judge Ekaterina Trendafilova
Single Judge

Dated this Thursday, 3 July 2014

At The Hague, The Netherlands