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TRIAL CHAMBER V

Before: Judge Kuniko Ozaki, Presiding Judge
Judge Christine Van den Wyngaert
Judge Chile Eboe-Osuji

SITUATION IN THE REPUBLIC OF KENYA

**IN THE CASE OF
*THE PROSECUTOR v. FRANCIS KIRIMI MUTHAURA
AND
UHURU MUIGAI KENYATTA***

Public redacted version of

**Decision on the second, third and fourth applications for the authorisation
of redactions, 17 December 2012, ICC-01/09-02/11-574-Conf**

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

The Office of the Prosecutor

Ms Fatou Bensouda
Ms Adesola Adeboyejo

Counsel for Francis Kirimi Muthaura

Mr Karim Khan, Mr Essa Faal,
Mr Kennedy Ogetto, Ms Shyamala
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Counsel for Uhuru Muigai Kenyatta

Mr Steven Kay
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Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

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States Representatives

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REGISTRY

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Detention Section

**Victims Participation and Reparations
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Others

Trial Chamber V (“Chamber”) of the International Criminal Court (“Court”), in the case of *The Prosecutor v. Francis Kirimi Muthaura and Uhuru Muigai Kenyatta* (“Muthaura and Kenyatta case”), having regard to Articles 54(3)(f), 64(2), 64(6)(e), 67 and 68(1) of the Rome Statute (“Statute”), and Rules 76, 77, 81(2) and 81(4) of the Rules of Procedure and Evidence (“Rules”) issues the following Decision on the second, third and fourth applications for the authorisation of redactions (“Decision”).

I. Procedural Background

1. On 27 September 2012, the Chamber issued its “Decision on the protocol establishing a redaction regime” (“Redaction Decision”) which annexed a protocol setting out a streamlined procedure for the application of redactions to materials subject to disclosure (“Redaction Protocol”).¹ The Redaction Protocol pre-approves certain categories of redactions and sets out a procedure for case-by-case authorisation of redactions that do not fall within such categories (“non-standard redactions”). Non-standard redactions include, relevantly, redactions to investigators’ names (category A.4); redactions to “other information” pursuant to Rule 81(2) of the Rules (category A.0), and redactions to “other information” pursuant to Rule 81(4) of the Rules (category B.0).²
2. On 5 October 2012, the Office of the Prosecutor (“Prosecution”) filed an application for the authorisation of non-standard redactions (“First Application”) as a confidential *ex parte* document.³ A confidential redacted version of the First Application was notified on 9 October 2012.⁴ Following a joint response⁵ from the defence teams for Mr Muthaura and Mr Kenyatta

¹ ICC-01/09-02/11-495 and AnxA-Corr.

² ICC-01/09-02/11-495, para. 13 and ICC-01/09-02/11-495-AnxA-Corr, paras 6 – 7, 36 – 37, 48 – 49, 62.

³ Prosecution application for the authorisation of redactions pursuant to Articles 54(3)(f), 64(2) and 68(1) of the Statute, Rule 81 and Decision ICC-01/09-02/11-495, notified on 8 October 2012, ICC-01/09-02/11-500-Conf-Exp with confidential *ex parte* annexes A, B and C.

⁴ ICC-01/09-02/11-500-Conf-Red.

⁵ Joint Defence Response to the Confidential redacted version of the Prosecution’s 5 September 2012 application for the authorisation of redactions pursuant to Articles 54(3)(f), 64(2) and 68(1) of the Statute, Rule 81 and

(together the “Defence”) and a reply⁶ from the Prosecution, the Chamber issued its “Decision on the prosecution’s first request for the authorisation of redactions” on 13 December 2012 (“Decision on First Application”).⁷

3. On 22 October 2012, the Prosecution filed a second application for the authorisation of non-standard redactions (“Second Application”) as a confidential *ex parte* document.⁸ A confidential redacted version of the Second Application was filed on the same day.⁹
4. On 13 November 2012, the Defence filed a joint response to the Second Application and an application for an order requesting further information from the Prosecution (“Response to Second Application”).¹⁰
5. On 6 November 2012, the Prosecution filed a confidential *ex parte* third application for the authorisation of non-standard redactions (“Third Application”).¹¹ On the same day, the Prosecution filed a confidential redacted

Decision ICC-01/09-02/11-495, with confidential annexes B and C, 7 November 2012, ICC-01/09-02/11-521-Conf (“Response to First Application”).

⁶ Prosecution’s reply to “Joint Defence Response to the Confidential redacted version of the Prosecution’s 5 September 2012 application for the authorisation of redactions pursuant to Articles 54(3)(f), 64(2) and 68(1) of the Statute, Rule 81 and Decision ICC-01/09-02/11-495, with confidential annexes B and C” [ICC-01/09-02/11-521-Conf], 21 November 2012, ICC-01/09-02/11-539-Conf.

⁷ ICC-01/09-02/11-569-Conf.

⁸ Second Prosecution application for the authorisation of non-standard redactions pursuant to decision ICC-01/09-02/11-495 (Second Application), ICC-01/09-02/11-510-Conf-Exp.

⁹ Confidential redacted version of the Second Prosecution application for the authorisation of non-standard redactions pursuant to Decision ICC-01/09-02/11-495, with confidential redacted Annex A, 22 October 2012, ICC-01/09-02/11-510-Conf-Red.

¹⁰ Joint Defence (1) Response to the “Confidential redacted version of the Second Prosecution application for the authorisation of non-standard redactions pursuant to Decision ICC-01/09-02/11-495, with confidential redacted Annex A” and (2) Application for an Order requiring the Prosecution to provide additional information to the Defence with respect to applications for non-standard redactions, 13 November 2012, ICC-01/09-02/11-528-Conf.

¹¹ Third Prosecution application for the authorisation of non-standard redactions pursuant to Decision ICC-01/09-02/11-495 (“Third Application”), ICC-01/09-02/11-520-Conf-Exp.

version of the Third Application.¹² On 28 November 2012, the Defence filed a joint response to the Third Application (“Response to Third Application”).¹³

6. On 19 November 2012, the Prosecution filed a fourth application for the authorisation of non-standard redactions (“Fourth Application”) as a public document.¹⁴ The Defence submitted a joint response to the Fourth Application on 11 December 2012 (“Response to Fourth Application”).¹⁵
7. In this Decision, the Chamber rules on the requests in the Second, Third and Fourth Applications.

II. Overview of non-standard redactions at issue

Second Application

8. In the Second Application, the Prosecution seeks authorisation for four categories of non-standard redactions in 113 documents. The relevant documents were disclosed to the Defence on 19 October 2012.¹⁶ The majority of the documents are classified as incriminatory with the remainder classified as falling within Rule 77 of the Rules.
9. The first and largest category of the requested redactions applies to the names of prosecution investigators in the metadata fields or content of 112 of the 113 disclosed documents.¹⁷ The second category applies to information contained in four transcripts of interviews with Witness 11.¹⁸ The third category relates

¹² Confidential redacted version of the Third Prosecution application for the authorisation of non-standard redactions pursuant to Decision ICC-01/09-02/11-495, with confidential Annex A, 6 November 2012, ICC-01/09-02/11-520-Conf-Red.

¹³ Joint Defence Response to the “Confidential redacted version of the Third Prosecution application for the authorisation of non-standard redactions pursuant to Decision ICC-01/09-02/11-495”, 28 November 2012, ICC-01/09-02/11-545-Conf.

¹⁴ Fourth Prosecution application for the authorisation of non-standard redactions pursuant to Decision ICC-01/09-02/11-495 (“Fourth Application”), ICC-01/09-02/11-535 with Annex A (notified 20 November 2012).

¹⁵ Joint Defence Response to Fourth Prosecution application for the authorisation of non-standard redactions pursuant to Decision ICC-01/09-02/11-495, ICC-01/09-02/11-564.

¹⁶ Second Application, ICC-01/09-02/11-510-Conf-Red, para. 1; Prosecution’s Communication of the Disclosure of Evidence, 25 October 2012, ICC-01/09-02/11-512, para. 2 and accompanying confidential Annex 1.

¹⁷ Second Application, ICC-01/09-02/11-510-Conf-Red, paras 4 – 5.

¹⁸ Second Application, ICC-01/09-02/11-510-Conf-Red, paras 6 – 8.

to information contained within an annex to a statement of Witness 4.¹⁹ The fourth and final category relates to information contained in a transcript of an interview with Witness 12.²⁰

Third Application

10. In the Third Application the Prosecution seeks authorisation for redactions to the names of prosecution investigators in either the metadata fields or content of 38 documents.²¹ The documents were disclosed to the Defence on 5 November 2012.²² The majority of the documents are classified as potentially exculpatory with the remainder classified as either incriminatory or falling within Rule 77 of the Rules.

11. In the Third Application the Prosecution also informs the Chamber that it is maintaining redactions to Witness 4's place of residence on the grounds that the redactions were approved at the pre-trial stage and that the circumstances justifying the redactions have not changed. The Prosecution also submits that the information in question falls under category B.2 of the Redaction Protocol, a pre-approved category relating to identifying and contact information for family members of witnesses.²³

12. In the Response to Third Application, the Defence raises an objection to category A.0 redactions to a witness statement of Witness 4.²⁴

Fourth Application

13. In the Fourth Application the Prosecution seeks authorisation for redactions to the names of prosecution investigators in the metadata fields of 19 documents

¹⁹ Second Application, ICC-01/09-02/11-510-Conf-Red, para. 9.

²⁰ Second Application, ICC-01/09-02/11-510-Conf-Red, paras 10 - 12.

²¹ Third Application, ICC-01/09-02/11-520-Conf-Red, para. 5.

²² Third Application, ICC-01/09-02/11-520-Conf-Red, para. 1; Prosecution's Communication of the Disclosure of Evidence, 5 November 2012, ICC-01/09-02/11-518, para. 2 and accompanying confidential Annex 1.

²³ Third Application, ICC-01/09-02/11-520-Conf-Red, paras 6 – 9.

²⁴ Response to Third Application, ICC-01/09-02/11-545-Conf, paras 14 - 17.

disclosed to the Defence on 16 November 2012.²⁵ The majority of the documents are classified as falling within Rule 77 of the Rules with the remainder classified as either potentially exculpatory or as incriminatory.

III. Submissions and analysis

14. As the requests for redactions to investigators' names and identifying information included in the Second, Third and Fourth Applications raise identical issues, the Chamber analyses them together in the first sub-section below. The Chamber then separately analyses, in the following sub-sections, the remaining non-standard redactions sought in the Second Application and the additional redactions to statements of Witness 4 referred to in the Third Application and Response to Third Application.

A. Investigators' names and identifying information (Second, Third and Fourth Application)

Prosecution submissions

15. The Prosecution seeks authorisation to redact the names and identifying information of all but one²⁶ of its investigators from the metadata fields or content of 112 documents identified in the Second Application, 38 documents identified in the Third Application and 19 documents identified in the Fourth Application.

16. In support, the Prosecution relies upon the arguments it made in the First Application.²⁷ These arguments are summarised in full in the Decision on First Application.²⁸

²⁵ Fourth Application, ICC-01/09-02/11-535, para. 1; Prosecution's Communication of the Disclosure of Evidence, 19 November 2012, ICC-01/09-02/11-533, para. 2 and accompanying confidential Annex 1.

²⁶ The Prosecution does not seek to redact the name of one investigator appearing in certain documents covered by the Second Application as this investigator's involvement with the Kenya cases has been made public. See Second Application, ICC-01/09-02/11-510-Conf-Exp, para. 5.

²⁷ Second Application, ICC-01/09-02/11-510-Conf-Red, para. 4, Third Application, ICC-01/09-02/11-520-Conf-Red, para. 5, Fourth Application, ICC-01/09-02/11-535, para. 3 referring to First Application, ICC-01/09-02/11-500-Conf-Red, paras 20-27.

²⁸ ICC-01/09-02/11-569-Conf, paras 23 – 25.

Defence submissions

17. The Defence opposes the Prosecution's requests to redact the names and identifying information of investigators and adopts, by reference, its arguments in the Response to First Application.²⁹ These arguments are summarised in full in the Decision on First Application.³⁰

Analysis

18. The Chamber sees no reason to depart from its Decision on First Application wherein it rejected the Prosecution's submission that disclosure of investigators' identities at this time may jeopardise ongoing or future investigations but accepted that disclosure may pose a risk to existing and future witnesses in the case.³¹ The Chamber notes that this finding should not be interpreted necessarily as an acceptance of the Prosecution's allegations³² regarding the intentional leakage of confidential information by the accused. Rather, it is a recognition of the simple fact that the more widely this information is disseminated, the greater the risks of disclosure to third parties.

19. Furthermore, the Chamber notes that a large number of the documents covered by the Second and Third Applications and all documents covered by the Fourth Application are non-witness related materials and that the redactions in question appear only in the metadata fields relating to their chain of custody. As such, non-disclosure of this limited information should not, in principle, hinder the Defence's preparations for trial as it does not limit the Defence's ability to evaluate the disclosed materials themselves.

²⁹ Response to Second Application, ICC-01/09-02/11-528-Conf, paras 30 - 31; Response to Third Application, ICC-01/09-02/11-545-Conf, paras 8 - 9 and Response to Fourth Application, ICC-01/09-02/11-564, para. 7 referring to Response to First Application ICC-01/09-02/11-521-Conf, paras 36 - 47.

³⁰ ICC-01/09-02/11-569-Conf, paras 26 - 27.

³¹ ICC-01/09-02/11-569-Conf, paras 28 - 29.

³² The Chamber notes that the Defence appears to interpret certain of the Prosecution's allegations as extending to members of the Defence legal team. Absent any express allegations to this effect, the Chamber understands the Prosecution to be referring to risks arising from disclosure to the accused persons, through the Defence, and not from disclosure to the Defence itself.

20. Finally, the Chamber notes that the Prosecution has stated that it would be willing to provide the Defence with a “list of witness interviews in which pseudonyms or letter codes are used to identify Prosecution investigators and witnesses whose identities have not yet been disclosed.”³³ The Chamber considers that provision of such a list may mitigate any potential prejudice resulting from the temporary non-disclosure as it will allow the Defence to determine when a witness has questioned by a particular investigator even if the actual identity of that investigator is not known.

21. For the above reasons, and on condition that the Prosecution provides the defence with the list referred to in paragraph 20 above, the Chamber grants the requested redactions to the names of each of the prosecution investigators at issue until the disclosure to the defence of the identity of the last witness interviewed or contacted by that investigator.

B. Category A.0 information relating to Witness 11 (Second Application)

Prosecution submissions

22. The Prosecution requests the redaction of certain words in four transcripts of interview of Witness 11 under category A.0 of the Redaction Protocol. As noted above, this category applies to “other information” relating to ongoing or future investigations within the meaning of Rule 81(2) of the Rules. The Prosecution makes submissions as to the nature of, and justification for, the proposed redactions in its *ex parte* version of the Second Application.³⁴ These submissions are redacted in the confidential version of the Second Application made available to the Defence.³⁵

Defence submissions

23. The Defence submits that as the justification for the proposed redactions has been “completely and improperly removed” from the redacted version of the

³³ First Application, ICC-01/09-02/11-500-Conf-Red, para. 27.

³⁴ Second Application, ICC-01/09-02/11-510-Conf-Exp, paras 7-8.

³⁵ Second Application, ICC-01/09-02/11-510-Conf-Red, paras 7-8.

Second Application it is unable to properly scrutinise and make any meaningful submissions on those redactions.³⁶ Relying on a decision of the Appeals Chamber in the *Katanga* case³⁷ in addition to the Redaction Protocol, the Defence requests the Chamber to order the Prosecution to submit either a lesser redacted version of the Second Application or a supplemental filing which would provide maximum possible information to the Defence regarding the nature of the information redacted and the reasons why disclosure would prevent an objectively justifiable risk which could not be addressed by less restrictive measures.³⁸

Analysis

24. With regard to the Defence's request for further information, the Chamber agrees with the Defence that, in principle, it should be provided with as much information as possible concerning the nature of, and justification for, proposed redactions in order to allow it to make meaningful submissions. However, the Chamber considers this to be a particular case where it would not be possible for the Prosecution to provide further information of this kind without revealing the information itself, thereby defeating the purpose of the redactions. For this reason, the Chamber rejects the relief requested by the Defence.
25. With regard to the merits of the proposed redactions, the Chamber is satisfied, on the basis of the Prosecution's submissions in the *ex parte* version of the Second Application and its own review of the information in question, that disclosure of the information to the accused persons would present an objectively justifiable risk to further or ongoing investigations and that this risk could not be addressed by less restrictive measures. As to the latter point,

³⁶ Response to Second Application, ICC-01/09-02/11-528-Conf, paras 23 – 25, 36 – 37.

³⁷ *Prosecutor v Katanga*, 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. 73(b).

³⁸ Response to Second Application, ICC-01/09-02/11-528-Conf, paras 26 – 27.

the Chamber notes that the proposed redactions are very limited, applying to only a few words in eight lines of approximately 2400 lines of transcripts. Furthermore, the Chamber is satisfied that the information in question is not in principle relevant to the Defence and, therefore, that its non-disclosure is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.

C. Category A.0 information relating to Witness 4 (Second Application)

26. In the Second Application the Prosecution requests authorisation to redact information contained in an annex to a prior statement of Witness 4 under category A.0 of the Redaction Protocol. The information in question relates to [REDACTED] Witness 4, which is being investigated by the Prosecution pursuant to Article 70 of the Statute.
27. At the time the Second Application was filed, the Defence was not aware that an Article 70 investigation was being undertaken. The basis for the Prosecution's request to redact the information contained in the annex was that its disclosure may prejudice the Article 70 investigation.
28. Since the filing of the Second Application, however, the Prosecution has disclosed the information contained in the annex together with other documents relating to [REDACTED] the Article 70 investigation. The relevant disclosure took place on 29 November 2012³⁹ in accordance with a decision of the Chamber.⁴⁰ Given this disclosure, the Prosecution's request to redact the information contained in the annex is now moot and need not be considered further in this Decision.

³⁹ Prosecution's Communication of the Disclosure of Evidence, 30 November 2012, ICC-01/09-02/11-548 and accompanying confidential Annex 1.

⁴⁰ Decision on the prosecution's third application for delayed disclosure of information related to Witness 4, 19 October 2012, ICC-01/09-02/11-509-Conf.

D. Category B.0 information relating to Witness 12 (Second Application)

Prosecution submissions

29. The Prosecution seeks the Chamber's authorisation to redact, under category B.0 of the Redaction Protocol, certain words from three passages of a transcript of interview with Witness 12. In the *ex parte* version of the Second Application, the Prosecution makes submissions as to the nature of, and justification for, the proposed redactions.⁴¹ These submissions are redacted in the confidential version of the Second Application made available to the Defence.⁴²

Defence submissions

30. As with the proposed redactions under category A.0 of the Redaction Protocol, considered in sub-section B above, the Defence submits that the Prosecution should be ordered to provide further information regarding the proposed redactions.⁴³ The Defence further rejects in whole any allegations that may have been made by the Prosecution in the *ex parte* filing as to the risk arising from disclosure to the accused.⁴⁴ Notwithstanding these submissions, on the assumption that the redactions relate to "measures and procedures concerning the safety and/or security of Witness 12 and/or his family", the Defence does not contest the proposed redactions at this stage.⁴⁵

Analysis

31. The Chamber confirms that the information in question relates solely to protective measures for Witness 12 and his family. As the Defence does not object to the redaction of such information at this stage and as it is satisfied, based on the Prosecution's submissions and its own review of the information, that the proposed redactions are necessary and proportionate, the Chamber

⁴¹ Second Application, ICC-01/09-02/11-510-Conf-Exp, paras 10-12.

⁴² Second Application, ICC-01/09-02/11-510-Conf-Red, paras 10-12.

⁴³ Response to Second Application, ICC-01/09-02/11-528-Conf, para. 33.

⁴⁴ Response to Second Application, ICC-01/09-02/11-528-Conf, para. 33.

⁴⁵ Response to Second Application, ICC-01/09-02/11-528-Conf, para. 34.

authorises the proposed redactions and rejects the Defence request to order the Prosecution to submit further information.

E. Additional redactions to information in statements of Witness 4 (Third Application and Response to Third Application)

Prosecution submissions

32. In the Third Application, the Prosecution informs the Chamber that it is maintaining redactions to Witness 4's place of residence, pursuant to paragraph 14 of the Redaction Protocol.⁴⁶ This paragraph provides that redactions approved by the Pre-Trial Chamber remain in place "unless and until the reasoning justifying their application changes, due to a change in circumstances."

33. The Prosecution submits that the redaction of Witness 4's place of residence was approved by the Pre-Trial Chamber for witness security reasons and that there has been no change to the reasoning justifying the application. The Prosecution observes that whilst the underlying witness security concerns remain it has categorised the redaction under category B.2 of the Protocol, a pre-approved category relating to identifying and contact information for family members of witnesses.⁴⁷

Defence submissions

34. The Defence submits that the reasoning justifying the redaction of Witness 4's place of residence is no longer valid due to the Prosecution's recent disclosure to the Defence of [REDACTED]. The Defence asserts that it is currently investigating the "existence and content of materials [REDACTED] of a similar nature" and that "the justifications provided by Witness 4 [REDACTED], are crucial in determining the witness' consistency and credibility."⁴⁸ The Defence

⁴⁶ Third Application, ICC-01/09-02/11-520-Conf-Red, para. 4.

⁴⁷ Third Application, ICC-01/09-02/11-520-Conf-Red, paras 6 – 9.

⁴⁸ Response to Third Application, ICC-01/09-02/11-545-Conf, paras 10 – 13.

requests the Chamber to order the Prosecution to disclose Witness 4's [REDACTED].

35. In its Response to the Third Application, the Defence also raises an objection to other redactions applied under category A.0 to a statement of Witness 4 dated 3 June 2011.⁴⁹ The Defence requests the Chamber to order the Prosecution to lift the redactions.

Analysis

36. With respect to redactions to Witness 4's current residence, the Chamber notes that in the Third Application the Prosecution does not specifically identify the document(s) to which the proposed redaction(s) apply. A footnote reference to a decision of the Pre-Trial Chamber indicates that the Prosecution has in mind a statement of Witness 4 dated 27 September 2010.⁵⁰ However, the Chamber observes that a B.2 category redaction has also been applied to the place of residence in another statement of Witness 4, made on 25 May 2012.⁵¹ Although no reference is made to this later statement in the Third Application, considering the nature of the Defence objection which is broad enough to extend to any redaction of Witness 4's country of residence, the Chamber considers the application of the B.2 redaction in both the September 2010 and May 2012 statements.

37. Looking first at the 27 September 2010 statement, the Chamber does not accept the Prosecution's submission that the justification for the redaction of Witness 4's place of residence has not changed since the authorisation of the redaction by the Pre-Trial Chamber. In particular, the Chamber observes that the most

⁴⁹ Response to Third Application, ICC-01/09-02/11-545-Conf, paras 14 – 17 referring to document KEN-OTP-0051-1045_R02 at 1058-1064.

⁵⁰ Third Application, ICC-01/09-02/11-520-Conf-Red, footnote 4 referring to the annex to the Pre-Trial Chamber's Fifth Decision on Prosecutor's Requests for Redactions, 18 August 2011, ICC-01/09-02/11-254-Conf-Exp-Anx, page 4, which in turn refers to KEN-OTP-0043-0002.

⁵¹ KEN-OTP-0067-0604.

recently disclosed version of this statement⁵² records the city, state, and country in which the witness was employed from January 2010 to July 2010, a mere 2 months before the statement was made. In addition, no redactions were made to the place of residence of Witness 4 in the most recently disclosed version of a subsequent statement he made dated 3 June 2011.⁵³ Significantly, the country of residence recorded in the June 2011 statement is the same as the country recorded in the September 2010 statement as his place of employment from January 2010 to July 2010. Based on this information, it is easy to infer that the witness was based in this country at the time he made the September 2010 statement.

38. At the time the Pre-Trial Chamber authorised the redaction of Witness 4's place of residence in the September 2010 statement, it also authorised the redaction of the location of his employment in that statement and the redaction of his place of residence and employment recorded in the July 2011 statement.⁵⁴ As the Prosecution has now disclosed these latter details, the Chamber considers that the circumstances justifying the original redaction have changed and that the disclosure of the witness's *country* of residence recorded in the September 2010 statement would pose no additional security risk to the witness or to any of his family members.

39. On the other hand, the Chamber approves the redaction to the Witness's place of residence, including country, as recorded in the May 2012 statement.⁵⁵ As the statement was made after the confirmation of the charges, this redaction was not reviewed or approved by the Pre-Trial Chamber and, therefore, does not fall within paragraph 14 of the Redaction Protocol. However, the Chamber considers that the standard justification for B.2 redactions, as set out in

⁵² KEN-OTP-0043-0002_R03 disclosed 29 November 2012. See ICC-01/09-02/11-548 and accompanying confidential Annex 1.

⁵³ KEN-OTP-0051-1045_R03 disclosed 29 November 2012. See ICC-01/09-02/11-548 and accompanying confidential Annex 1.

⁵⁴ ICC-01/09-02/11-254-Conf-Exp-Anx, page 70 referring to KEN-OTP-0051-1045 at 1045.

⁵⁵ KEN-OTP-0067-0604.

paragraph 55 of the Redaction Protocol, applies to the redaction of this information. Specifically, the Chamber accepts the Prosecution's submissions that disclosure of the witness's *current* place of residence may raise concerns as to the security of the witness and his family members. This is the most recent statement of Witness 4. Therefore, it is reasonable to infer that the witness is currently residing at the location recorded in the statement. The Defence has not demonstrated that non-disclosure of this information is prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial. Although the Defence notes it is currently investigating matters relating to [REDACTED], it has not shown how these investigations would be helped by disclosure of his current place of residence. In the absence of such showing, the Chamber considers that the redaction should remain in place.

40. With regard to the Defence objection to category A.0 redactions to Witness 4's statement of 3 June 2011,⁵⁶ the Chamber notes that in the most recently disclosed version of this statement⁵⁷ the redactions in question have been lifted. Accordingly, the Defence objection is rendered moot and need not be considered further in this Decision.

For the foregoing reasons, the Chamber hereby:

GRANTS the Prosecution's request for the temporary non-disclosure of the identities of each of the investigators contained in the metadata and content of the documents identified in the Second, Third and Fourth Applications until the disclosure to the Defence of the identity of the last witness interviewed or contacted by that investigator;

DIRECTS the Prosecution to provide the defence with the list of pseudonyms or letter codes referred to in paragraph 20 of this Decision;

⁵⁶ Response to Third Application, ICC-01/09-02/11-545, paras 14 – 17 referring to document KEN-OTP-0051-1045_R02 at 1058-1064.

⁵⁷ KEN-OTP-0051-1045_R03 disclosed 29 November 2012. See ICC-01/09-02/11-548 and accompanying confidential Annex 1.

GRANTS the Prosecution's request for the A.0 redactions in the transcripts of interviews with Witness 11 identified in the Second Application;

DISMISSES as moot the Prosecution's request for the A.0 redactions in the annex to the statement of Witness 4 identified in the Second Application;

GRANTS the Prosecution's request for the B.0 redactions in the transcript of an interview with Witness 12 identified in the Second Application;

GRANTS the Defence request for disclosure of the country of residence of Witness 4 recorded in his statement of 27 September 2010;

REJECTS the Defence's request for disclosure of the country of residence of Witness 4 recorded in his statement of 25 May 2012; and

DISMISSES as moot the Defence's request for disclosure of the information redacted under category A.0 in Witness 4's statement of 3 June 2011.

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



Judge Kuniko Ozaki, Presiding Judge



Judge Robert Fremr



Judge Geoffrey Henderson

Dated 3 February 2017

At The Hague, The Netherland