



Original: **French**

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

Date: **12 June 2009**

TRIAL CHAMBER II

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

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

IN THE CASE OF

THE PROSECUTOR v. GERMAIN KATANGA and MATHIEU NGUDJOLO CHUI

Public Document

**Order on Written Submissions on the Interpretation of Regulation 42 of the
Regulations of the Court (Regulation 28 of the Regulations of the Court)**

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

The Office of the Prosecutor

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

Counsel for the Defence of Germain

Katanga
Mr David Hooper
Mr Andreas O'Shea

Counsel for Mathieu Ngudjolo Chui

Mr Jean-Pierre Kilenda Kakengi Basila
Mr Jean-Pierre Fofé Djofia Malewa

Legal Representatives of the Victims

Ms Carine Bapita Buyangandu
Mr Joseph Keta
Mr Jean-Louis Gilissen
Mr Hervé Diakiese
Mr Jean Chrysostome Mulamba
Nsokoloni
Mr Fidel Nsita Luvengika
Mr Vincent Lurquin
Ms Flora Ambuyu Andjelani

Legal Representatives of the Applicants

**The Office of Public Counsel for
Victims**

Ms Paolina Massida

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

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Ms Silvana Arbia

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

Trial Chamber II of the International Criminal Court (“the Chamber”), acting pursuant to regulation 28 of the Regulations of the Court, orders as follows:

1. On 2 April 2009, the Prosecutor submitted an application to redact documents falling within the purview of rule 77 of the Rules.¹ The application was filed as “confidential *ex parte*, only available to the Prosecutor” and a redacted public version of the application was submitted on 8 May 2009.²
2. On 11 May 2009, the Office of Public Counsel for Victims (“OPCV”) drew the Chamber’s attention to two redactions in an annex of the Prosecutor’s application³ for which the Chamber had requested additional information.⁴ On 20 May 2009, the OPCV further requested to appear before the Chamber in order to address specific issues relating to Witness 7.⁵ The OPCV relies on regulation 42 of the Regulations of the Court in requesting that the protective measures granted to Witness 7 on the order of Trial Chamber I, in particular the aforementioned redactions, continue to apply in the case currently before Trial Chamber II.
3. On 28 May 2009, the Office of the Prosecutor also submitted an addendum to its application of 2 April 2009 for the redaction of comments contained in a statement of Witness 294, indicating to the Chamber that it had recently realised that the redaction had already been authorised on a permanent basis

¹ Office of the Prosecutor, “*Requête aux fins d’expurgations d’informations dans certains éléments de preuve relevant de la Règle 77 (W-007 et W-294)*”, 2 April 2009, ICC-01/04-01/07-1018-Conf-Exp, with confidential, *ex parte* annexes only available to the Prosecutor.

² Office of the Prosecutor, public redacted version of the document ICC-01/04-01/07-1018-Conf-Exp dated 2 April 2009, “*Requête aux fins d’expurgations d’informations dans certains éléments de preuve relevant de la Règle 77 (W-007 et W-294)*”, 8 May 2009, ICC-01/04-01/07-1118 with confidential, *ex parte* annexes only available to the Prosecution.

³ Office of Public Counsel for Victims, “*Éléments d’information relatifs au document DRC-OTP-0207-0130*”, 11 May 2009, ICC-01/04-01/07-1126, with a confidential, *ex parte* annex only available to the OPCV.

⁴ E-mail exchange between the Legal Advisor of the Trial Division and the Office of the Prosecutor on 4 and 7 May 2009.

⁵ Office of Public Counsel for Victims, “*Demande du BCPV afin d’être autorisé en vertu de la norme 81-4-b du Règlement de la Cour à comparaître devant la Chambre dans le cadre de questions spécifiques liées aux mesures de protection au bénéfice du témoin W-007*”, 20 May 2009, ICC-01/04-01/07-1160.

by Trial Chamber I in an oral decision dated 18 January 2008.⁶ It then relies on regulation 42 of the Regulations of the Court to inform the Chamber that it wishes to withdraw that application for leave to redact.⁷

4. The Chamber notes that regulation 42(1) of the Regulations of the Court stipulates that:

Protective measures once ordered in any proceedings in respect of a victim or witness shall continue to have full force and effect in relation to any other proceedings before the Court and shall continue after proceedings have been concluded, subject to revision by a Chamber. (emphasis added)

5. The Chamber considers that the appropriate interpretation of this regulation justifies adversarial proceedings given its implications for the redactions previously authorised by another Chamber, in particular regarding the obligations of disclosure of material by the parties.

FOR THESE REASONS, THE CHAMBER

INSTRUCTS the parties and participants to make written submissions on the appropriate interpretation of regulation 42 of the Regulations of the Court by 4 p.m. on 19 June 2009.

⁶ Office of the Prosecutor, “*Addendum du Bureau du Procureur à la Requête aux fins d’expurgation d’informations dans certains éléments de preuve relevant de la règle 77 (W-007 et W-294)- ICC-01/04-01/07-1018-Conf-Exp*”, 28 May 2009, ICC-01/04-01/07-1177, para. 3.

⁷ *Ibid*, para. 4.

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

[signed]

Judge Bruno Cotte
Presiding Judge

[signed]

Judge Fatoumata Dembele Diarra

[signed] 12/6/09

Judge Hans-Peter Kaul

Dated this 12 June 2009

At The Hague, The Netherlands