



Original: **French**

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

Date: **19 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**

**Decision on the Application of the Defence for Germain Katanga concerning  
Witness 353**

**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 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 Mbuyu Anjelani

**Legal Representatives of the Applicants**

**Unrepresented Victims**

**Unrepresented Applicants  
(Participation/Reparation)**

**The Office of Public Counsel for  
Victims**

Ms Paolina Massidda

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

**States' Representatives**

*Amicus Curiae*

**REGISTRY**

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**Registrar**

Ms Silvana Arbia

**Defence Support Section**

**Victims and Witnesses Unit**

Mr Simo Vaatainen

**Detention Section**

**Victims Participation and Reparations  
Section**

**Other**

**Trial Chamber II** of the International Criminal Court (“the Chamber”) renders the following decision:

1. In its Decision of 20 May 2009, the Chamber ruled on the protective measures to be granted to prosecution Witness 353.<sup>1</sup> On that occasion, it gave leave for disclosure of the witness’s identity to be delayed until 45 days prior to the witness’s testimony at the hearing and, in the meantime, authorised the disclosure of a redacted version of the witness’s statements.

2. In its application dated 8 June 2009 and received on 12 June (“the Application”),<sup>2</sup> the Defence for Germain Katanga asked the Chamber to tell it where Witness 353 was taken to after being abducted from Bogoro, to name the place where this happened, and to inform the Defence whether the witness had met Mr Katanga at that time, or been seen by him.

3. In the Defence’s view, disclosure of this information would not lead to identification of the witness and would enable it to “better appreciate the nature of the case”.<sup>3</sup>

4. On 12 June 2009, the Prosecutor submitted his response to the Chamber, emphasising that the disclosure of these items of information could, on the contrary, lead to identification of the witness, particularly if they were cross-checked with one another or with the unredacted parts of the witness’s statements.<sup>4</sup>

5. With regard to this witness, the aforementioned Decision of 20 May 2009 states, *inter alia*, the following:

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<sup>1</sup> *Decision on the Protection of Prosecution Witnesses 267 and 353*, 20 May 2009, ICC-01/07-01/07-1156-Conf-Exp-tENG and ICC-01/07-01/07-1179-tENG (public redacted version filed on 29 May 2009).

<sup>2</sup> Defence for Germain Katanga, “Defence Request regarding Anonymous Witness 353”, 12 June 2009, ICC-01/07-01/07-1201-Conf-Exp.

<sup>3</sup> *Ibid.*, para. 3.

<sup>4</sup> Office of the Prosecutor, “Réponse de l’Accusation à la requête de la Défense de Germain Katanga relative au témoin P-353”, 12 June 2009, ICC-01/07-01/07-1207-Conf-Exp.

Lastly, as regards Witness 353, the Chamber indicated at the *ex parte* hearing on 8 May 2009 that, as far as possible, it intended to give preference to disclosure of redacted statements or transcripts rather than to summaries, since, in its view, the rights of the Defence are affected less by the former than the latter procedure. At the Chamber's request, and although he initially envisaged disclosing only a summary, the Prosecutor transmitted to it a redacted version of the transcripts of that witness's interview. The Chamber indicates that the redactions do not cover the part written in Swahili, which the Prosecutor himself also notes. It appears to the Chamber that disclosure of more than 250 pages of transcripts – even redacted – which are, in addition, listed and ordered in the table of incriminating evidence due to be filed shortly, allows the Defence to evaluate immediately the content and precise scope of the statement and any potential deficiencies or inconsistencies and to determine the nature of the investigations, if any, it will have to undertake.<sup>5</sup>

6. The Chamber recalls that it carried out an in-depth review of the protective measures proposed by the Prosecutor in respect of this witness, analysing the information that could be disclosed bearing in mind both the need for the protection of witnesses and the effective exercise of the rights of the Defence. It carried out this analysis during a hearing on 8 May 2009, as well as in the aforementioned Decision.

7. It appeared then to the Chamber that the information which the Defence is now requesting to be disclosed could in fact enable that witness to be identified if any cross-checks were made. The Chamber cannot therefore grant the Application.

8. Moreover, insofar as it requests the disclosure of additional, albeit specific, information, the Application seeks in reality to invite the Chamber to re-examine its decision, even though no new material or new circumstance have been put forward that might justify such a request.

9. The Chamber can only therefore remind the Defence for Germain Katanga, and all the other parties, that it is through the appeals procedure provided by the Rome Statute and the Rules of Procedure and Evidence that decisions rendered by the Chamber can be contested.

10. Lastly, the Chamber notes that the Application and the Prosecutor's response were submitted as "confidential *ex parte*". It appears to the Chamber, however, that

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<sup>5</sup> ICC-01/07-01/07-1179-tENG, para. 52 (footnotes omitted).

none of the information contained in the present decision requires confidentiality, and that it is possible to submit public redacted versions. It considers it necessary to reiterate that, as far as possible, the parties must ensure that they submit public documents or, where necessary, public redacted versions, in order to ensure that the public nature of the proceedings be maintained.

**FOR THESE REASONS, THE CHAMBER**

**REJECTS** the Application; and

**INSTRUCTS** the Defence for Germain Katanga and the Prosecutor to submit to the Registry public redacted versions of their filings.

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

[signed]

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**Judge Bruno Cotte**  
**Presiding Judge**

[signed]

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**Judge Fatoumata Dembele Diarra**

[signed]

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**Judge Hans-Peter Kaul**

Dated this 19 June 2009

At The Hague, The Netherlands