



Original: **French**

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

Date: **24 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 Instructing the Prosecutor to Submit a Reply (Regulation 24(5) 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 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

**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”), pursuant to regulation 24(5) of the Regulations of the Court, orders as follows:

1. On 5 June 2009, the Prosecutor submitted an application (“Application”) for protective measures and for the redaction of evidence falling within the ambit of rule 77.¹ In the Application, the Prosecutor requests, inter alia, leave to withhold from Defence investigators the transcripts of recordings made during medical examinations conducted by Doctor Baccard.²
2. Germain Katanga’s Defence replied on 15 June 2009 that it objected to such a restriction.³ It considered that these documents must be made available to its investigators because they might affect the witnesses’ credibility.⁴ It also noted that the Prosecutor had not given any reasons for such a restriction⁵ and it recalled that the Defence investigators are bound by confidentiality agreements which they have so far respected.⁶
3. In order that it may issue a ruling on this Application in full knowledge of the facts, the Chamber considers it necessary to order the Prosecutor to submit a reply to the Defence observations.

¹ Office of the Prosecutor, “*Requête de l’Accusation aux fins de mesures de protection et aux fins d’expurgation d’informations dans des éléments de preuve relevant de la règle 77 (témoins P-132, P-249 et P-287)*”, 5 June 2009, ICC-01/04-01/07-1194.

² ICC-01/04-01/07-1194, para. 8.

³ Germain Katanga’s Defence Team, “Defence Response to the Prosecution’s ‘*Requête de l’Accusation aux fins de mesures de protection et aux fins d’expurgation d’informations dans des éléments de preuve relevant de la règle 77 (témoins P-132, P-249 et P-287)*’”, 15 June 2009, ICC-01/04-01/07-1210, para. 3.

⁴ ICC-01/04-01/07-1210, paras. 3 and 4.

⁵ ICC-01/04-01/07-1210, para. 5.

⁶ Ibid.

FOR THESE REASONS, THE CHAMBER

INSTRUCTS the Prosecutor to submit a reply to the Defence observations by 4 p.m.
on 26 June 2009.

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

[signed]

Judge Bruno Cotte
Presiding Judge

[signed]

Judge Fatoumata Dembele Diarra

[signed]

Judge Hans-Peter Kaul

Dated this 24 June 2009

At The Hague, The Netherlands