

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: French

No.: ICC-01/04-01/07
Date: 25 August 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 Instructing the Prosecutor to File a Reply
(Regulation 24 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
 Ms Caroline Buisman

**Counsel for the Defence of Mathieu
 Ngudjolo Chui**

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

Legal Representatives of the Victims

Mr Jean-Louis Gilissen
 Mr Fidel Nsita Luvengika
 Ms Carine Bapita Buyangandu
 Mr Joseph Keta
 Mr Hervé Diakiese
 Mr Jean Chrysostome Mulamba
 Nsokoloni
 Mr Vincent Lurquin
 Ms Flora Mbuyu Anjelani
 Mr Richard Kazadi Kabimba
 Ms Magali Pirard
 Mr Dieudonné Kaluba Didwa
 Mr Lievin Ngondji Ogombe

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 Participation and Reparations
 Section**

TRIAL CHAMBER II of the International Criminal Court (“the Chamber”), acting pursuant to regulations 24, 28 and 34 of the Regulations of the Court, decides as follows.

1. On 20 May 2009, the Chamber requested the Prosecutor to disclose to the Defence for Germain Katanga and for Mathieu Ngudjolo, 45 days prior to the commencement of the trial, an unredacted version of the statement of prosecution witness 267, that is, no later than 10 August 2009.¹

2. On 4 August 2009, the Prosecutor submitted to the Chamber an application for authorisation to disclose a redacted version of the said witness’s statement, as well as various new evidentiary materials relating to that witness. He also sought authorisation to disclose to the Defence materials falling under rule 77 of the Rules of Procedure and Evidence, which had also undergone certain redactions (“the Application”).²

3. On 10 August 2009, the expiry date of the time limit set by the Chamber, the Prosecutor submitted to it an application under regulation 35 of the Regulations of the Court, on the ground that the statement of Witness 267 could not be disclosed until the Chamber had ruled on the Application.³

4. The public redacted version of the Application was not notified to the Defence teams until 7 August 2009, that is, only three days prior to the expiry of the time limit set by the Chamber for the disclosure of the unredacted statement of the

¹ *Decision on the Protection of Prosecution Witnesses 267 and 353*, 20 May 2009, ICC-01/04-01/07-1156-Conf-Exp-tENG. See the public redacted version of 28 May 2009, ICC-01/04-01/07-1179.

² Office of the Prosecutor, “Application for Authorization to Disclose Redacted Incriminating Evidence and Rule 77 Material to the Defence (Witness 267)”, 4 August 2009, ICC-01/04-01/07-1351-Conf-Exp.

³ Office of the Prosecutor, “Application for extension of time pursuant to Regulation 35 of the Court”, 10 August 2009, ICC-01/04-01/07-1358.

witness concerned.⁴ The Defence teams responded on 14⁵ and 18⁶ August 2009 respectively. They requested that the Chamber dismiss the Application because of its late filing in relation to the time limits set by the Chamber, and both were strongly opposed to the disclosure of new evidence relating to Witness 267.

5. In order to be able to make an informed ruling on the respective merits of the representations made to it, and since there is at issue a possible refusal to admit new incriminating evidence, the Chamber invites the Prosecutor to submit to it a reply stating the reasons why he did not submit his Application to the Chamber until 4 August 2009, that is, two and a half months after it had fixed the time limit for disclosure of the statement to the Defence.

FOR THESE REASONS,

INSTRUCTS the Prosecutor to file his reply not later than 4 p.m. on 28 August 2009.

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

[signed]

Judge Bruno Cotte
Presiding Judge

[signed]

Judge Fatoumata Dembele Diarra

[signed]

Judge Hans Peter Kaul

Dated this 25 August 2009
At The Hague, The Netherlands

⁴ Office of the Prosecutor, "Application for Authorization to Disclose Redacted Incriminating Evidence and Rule 77 Material to the Defence (Witness 267)", 4 August 2009, ICC-01/04-01/07-1356.

⁵ Defence for Mathieu Ngudjolo, "*Observations consolidées de la Défense de Mathieu Ngudjolo relatives aux requêtes du Procureur référencées sous les numéros ICC-01/04-01/07-1356 et ICC-01/04-01/07-1358*", 14 August 2009, ICC-01/04-01/07-1376.

⁶ Defence for Germain Katanga, "Defence Observations on the Prosecution's Applications relative to Witness 267", 18 August 2009, ICC-01/04-01/07-1402.