

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/04-01/07
Date: 19 January 2010

TRIAL CHAMBER II

Before: Judge Bruno Cotte, Presiding Judge
Judge Fatoumata Dembele Diarra
Judge Christine Van den Wyngaert

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 Prosecution's request for authorisation to add the signed record of questioning by P-219 to the Prosecution List of Incriminating Evidence

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
Ms Fatou Bensouda
Mr Eric MacDonald

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

Mr Fidel Nsita Luvengika
Mr Jean-Louis Gilissen

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

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

States Representatives

Amicus Curiae

REGISTRY

Registrar

Ms Silvana Arbia

Defence Support Section

Victims and Witnesses Unit

Ms Martinod-Jacome

Detention Section

**Victims Participation and Reparations
Section**

Other

Trial Chamber II (“Chamber”) of the International Criminal Court (“Court”), in the case of *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, having regard to article 64(3)(c) of the Rome Statute of the International Criminal Court (“Statute”) and rule 76(1) of the Rules of Procedure and Evidence (“Rules”) issues the following decision on the “Communication d’un procès-verbal de synthèse du témoin P-219 et demande d’ajout de ce procès-verbal sur la liste des éléments à charge de l’Accusation” of 17 December 2009 (“Application”).¹

1. On 23 January 2009, the Chamber ordered that all incriminating evidence be disclosed to the Defence no later than 30 January 2009.²
2. After a lengthy process involving a number of *ex parte* hearings, the Chamber authorised the Prosecution to add P-219 to the Prosecution Witness List on 27 July 2009.³ In this decision, the Chamber ordered the Prosecution to produce a signed witness statement in lieu of the lengthy transcripts of the interviews held with P-219, which in their totality exceed 1000 pages.⁴
3. On 13 August 2009, the Prosecution applied for a variation of the Chamber’s order,⁵ in which it requested the Chamber’s permission to disclose a summary of P-219’s statements instead of the signed witness statement. This request was

¹ ICC-01/04-01/07-1727

² “Ordonnance fixant le calendrier de communication des éléments de preuve à charge et à décharge avant le procès et la date d’une conférence de mise en état”, 23 January 2009, ICC-01/04-01/07-846

³ “Decision on the disclosure of evidentiary material relating to Witness 219”, 27 July 2009, ICC-01/04-01/07-1338-Conf-Exp; a public redacted version of this decision was issued on 13 August 2009: ICC-01/04-01/07-1364

⁴ ICC-01/04-01/07-1364, par. 27

⁵ “Application for the Variation of an Order regarding Witness 219”, 18 August 2009, ICC-01/04-01/07-1371, the public redacted version of the filing is ICC-01/04-01/07-1372

subsequently rejected⁶ and on 23 October 2009 the Chamber reiterated its order for the Prosecution to produce a signed witness statement of P-219.⁷

4. The Prosecution complied with this order and produced the signed witness statement, which it has already communicated to the Defence as an annex to the present Application. The statement does not require any redactions.⁸

5. The Defence has not submitted a response regarding the Application.

6. As it was the Chamber itself who ordered the production of the signed witness statement, it does not see any objection against its addition to the Prosecution Witness List. The statement will help the Defence in its preparations for the cross-examination of P-219, as it provides a more concise and organised record of what P-219 has to say.

7. The Chamber further reminds the Prosecution of its invitation to make all reasonable efforts to limit the number of topics on which it will question P-219.⁹ The Chamber had asked the Prosecution to inform the parties and the Chamber of its efforts in this regard when it submitted the signed witness statement. It is clear from the "Prosecution's Response to Defence for Germain Katanga's Application for Leave to Appeal the Decision on the Addition of Witness 219"¹⁰ that the Chamber's invitation did not go unnoticed by the Prosecution. However, the Prosecution did not make any mention of it in the Application. The Chamber therefore reiterates its invitation to the Prosecution to voluntarily reduce the number of topics on which it will question P-219, preferably by indicating the chapters or paragraph numbers of the relevant passages in P-219's signed statement.

⁶ "Decision on the disclosure of evidentiary material relating to witness 219", 27 August 2009, ICC-01/04-01/07-1434, par. 17

⁷ "Decision on the Prosecution request for the addition of witness P-219 to the Prosecution List of Incriminating Witnesses and the disclosure of related incriminating material to the Defence", 23 October 2009, ICC-01/04-01/07-1553

⁸ ICC-01/04-01/07-1727, par. 2

⁹ ICC-01/04-01/07-1553

¹⁰ 6 November 2009, ICC-01/04-01/07-1608

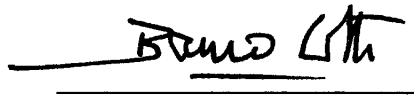
FOR THESE REASONS,

THE CHAMBER,

AUTHORISES the addition of the statement of P-219 (DRC-OTP-1052-0038) to the List of Incriminating Evidence; and

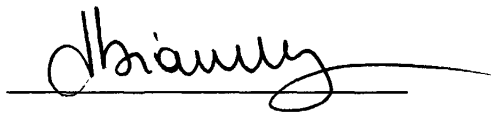
URGES the Prosecution to indicate to the parties and the Chamber the topics on which it will question P-219.

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

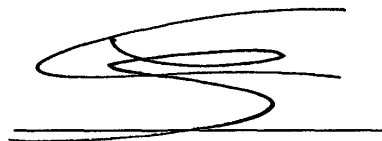


Judge Bruno Cotte

Presiding Judge



Judge Fatoumata Dembele Diarra



Judge Christine Van den Wyngaert

Dated this 19 January 2010

At The Hague, the Netherlands