

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

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

Date: 30 January 2009

**TRIAL CHAMBER II**

**Before:** Judge Bruno Cotte , Presiding Judge  
Judge Fatoumata Dembele Diarra  
Judge Fumiko Saiga

**SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO**

**IN THE CASE OF  
THE PROSECUTOR**

*v. Germain KATANGA and Mathieu NGUDJOLO CHUI*

**Public**

**With Confidential Annexes – *ex parte* – Prosecution Only**

**Prosecution's Application to Redact Evidence Relating to  
Witnesses W-132, W-157 and W-287 and Provision of Information Relating to  
Witnesses W-12, W-132, W-219, W-249, W-287, W-292 and W-353**

**Source:** Office of the Prosecutor

**Document à notifier conformément à la norme 31 du *Règlement de la Cour* aux destinataires suivants :**

**Le Bureau du Procureur**

**Le Conseil de la Défense de Germain Katanga**

Me David Hooper

**Le Conseil de la Défense de Mathieu Ngudjolo Chui**

Me Jean-Pierre Kilenda Kakengi Basila

Professeur Jean-Pierre Fofé Djofia

Malewa

**Les représentants légaux des victimes**

Me Carine Bapita Buyangandu

Me Hervé Diakiese

Me Jean-Louis Gilissen

Me Joseph Keta

Me Jean Chrysostome Mulamba Nsokoloni

**Les représentants légaux des demandeurs**

**Les victimes non représentées**

**Les demandeurs non représentés  
(participation/réparation)**

**Le Bureau du conseil public pour les victimes**

**Le Bureau du conseil public pour la défense**

**Les représentants des États**

*L'Amicus Curiae*

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**GREFFE**

**Le Greffier**

Mme Silvana Arbia

**La Section d'appui à la Défense**

**L'Unité d'aide aux victimes et aux témoins**

**La Section de la détention**

**La Section de la participation des victimes et des réparations**

**Autres**

## Background

1. In its “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 (règle 132 du Règlement de procédure et de preuve)”,<sup>1</sup> Trial Chamber II (“the Chamber”) ordered the Prosecution to file applications for redactions to evidentiary material not yet disclosed to the Defence by 30 January 2009.
2. The Prosecution hereby requests the Chamber to apply redactions to certain items of evidence relevant to the following witnesses who will testify for Prosecution at trial, namely; W132, W-157 and W-287.
3. The Prosecution, furthermore, informs the Chamber that the Prosecution will not presently be able to file redaction requests for recently interviewed witnesses W-12, W-219, W-292 and W-353 since either the necessary protective measures are currently not in place or the transcripts of their interviews have not yet been finalized. The Prosecution also informs the Chamber that a number of forensic medical examinations, which will be adduced at trial, were recently conducted on witnesses W-132, W-249 and W-287 for which transcripts are also in the process of preparation.

## Submission

4. The Prosecution’s present request for redactions is made pursuant to Articles 54(3)(f), 64 and 68 of the Statute of Rome (“the Statute”) in addition to Rules 81(1), 81(2) and 81(4) of the Rules of Procedure and Evidence (“the Rules”). This request for redactions, furthermore, conforms

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<sup>1</sup> ICC-01/04-01/07-846.

to the specific procedure stipulated in the Chamber's "Décision relative à la procédure d'expurgation".<sup>2</sup>

5. The evidential materials for which redactions are presently sought comprise transcripts of interviews and an investigator's interview notes with the witnesses concerned conducted since the Decision on the Confirmation of the Charges.<sup>3</sup>
6. The material in respect of which the Prosecution is presently unable to file an application for redactions is relevant to witnesses with whom the Prosecution has yet to finalise its discussions concerning the nature of protective measures required or for whom there are currently no final transcripts of the investigative procedures conducted with them.
7. The Prosecution respectfully submits that none of the redactions presently sought impact on information necessary for the preparation of the defence to the charges. The redactions sought conform to the relevant decisions of the Appeals' Chamber of the International Criminal Court and do not prejudice the rights of the Accused.
8. The specifics of the request for redactions are set out in the confidential annexes to this filing and conform to the statutory categories on which the Prosecution shall elaborate below. Each annex contains the exact item of evidence for which redaction is sought and an accompanying table setting out the justification for such. The Prosecution justifies its request that these annexes be classified as "Confidential – ex parte" in light of the sensitive information that they contain.

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<sup>2</sup> ICC-01/04-01/07-819, 12 January 2009.

<sup>3</sup> ICC-01/04-01/07-717.

*W-132, W-157 and W-287*

A. The Prosecution's Sources and Employees in the Field (Rule 81(2))

9. The redaction proposed to the evidence taken from witness W-157 is justified by reference to Rule 81(2) which allows the Chamber to order the redaction of information essential for the ongoing conduct of the investigations of the Office of the Prosecutor including, in the Prosecution's submission, the names of sources and employees operating in the field. Without the co-operation of such individuals, investigations would be rendered far more difficult and, in certain circumstances, virtually impossible. The protection of such individuals is mandated not only by the need to utilise their services in other cases being investigated by the Office of the Prosecutor but also by an ongoing need to rely on their services throughout the trial proceedings.

B. Names of family members of witnesses, their current place of residence and other identifying features

10. The redactions proposed to the evidence taken from witnesses W-132 and W-238 are justified by reference to Rule 81(4) which allows the Chamber to order the redaction of the names of family members of witnesses and other identifying features in order to protect the safety of those latter mentioned individuals. Where proposed redactions have been made to these names, it is submitted that no prejudice whatsoever will be caused to the Accused or to the preparation of their defence.

***W-219 and W-292***

11. Witnesses 219 and 292 are witnesses on whom the Prosecution has decided it will rely at trial. The Prosecution is currently seeking protective measures for witness W-219 in co-operation with the Victims and Witnesses Unit ("VWU"). A request for protective measures in relation to witness 292 will be submitted to the VWU soon. Pending a decision of the Victims and Witness Unit, the Prosecution is not in a position to disclose the transcripts to the Defence.

***W-12 and W-353***

12. Witness W-12 is a witness currently in the ICC Protection Programme who was recently re-interviewed. W-12's recent interview was recorded in audio format but it is yet to be transcribed. As soon as the transcripts of W-12's recent interview are finalised they will be disclosed to the Defence.
13. Witness W-353's is a new witness and was recently interviewed. The interview is likewise in audio format and is also not yet transcribed. As soon as the transcripts are completed, they will be submitted expeditiously to the Chamber with an accompanying application for protective measures.

**Forensic Evidence**

14. A recent forensic medical examination was conducted by an expert of the Office of the Prosecutor on Witnesses W-132, W-249 and W-287. The said expert is currently finalising his forensic report which the Prosecution aims to disclose by 16 February 2009. The medical examinations were recorded

in audio format and are yet to be transcribed. As soon as the transcriptions of these examinations are finalised, they will be submitted to the Chamber with an application for protective measures.

### **Conclusion**

15. The Prosecution respectfully seeks redactions with respect to witnesses W132, W-157 and W-287 and will disclose the new evidentiary material relating to witnesses W-12, W-132, W-219, W-249, W-287, W-292 and W-353 as soon as the transcripts are prepared and necessary protective measure are approved by the Chamber.



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Luis Moreno-Ocampo, Prosecutor

Dated this 30th day of January 2009

At The Hague, The Netherlands