

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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

Date: 13 February 2009

TRIAL CHAMBER II

Before: Judge Bruno Cotte, President
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 Annexes A, B, C-1, C-2, D, E, F, G, H, I-1 and I-2 - Confidential, *ex parte*, only
available to the Office of the Prosecutor

Prosecution's Application for Protective Measures pursuant to Article 54(3)(f) and
Rule 81(4)

Source: Office of the Prosecutor

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

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Pursuant to the Trial Chamber II's decisions of 12 January 2009¹ and 23 January 2009², the Office of the Prosecutor ("Prosecution") requests authorisation to take appropriate measures to protect persons, on the basis of Article 54(3)(f) of the Rome Statute of the International Criminal Court ("Statute") and Rule 81(4) of the Rules of Procedure and Evidence ("Rules"), by:

- a. implementing video or facial distortions of specific individuals shown on two videos, before disclosing these videos to the Defence; and
- b. maintaining voice and facial distortions and non-disclosure of a name applied for an individual shown on one video that was previously disclosed to the Defence.³

Request for Receipt of Annexes to Filing as Confidential *Ex Parte*

The Prosecution requests that the Annexes to this application be received by the Trial Chamber II ("Chamber") as confidential, *ex parte*, only available to the Prosecution, as they relate to material that is currently treated as confidential. The Prosecution submits that the present classification of the Annexes to the filing is necessary to protect the identity of the persons, for whom face and voice distortions are sought.

Introduction

1. On 23 January 2009, the Chamber held in its decision ("Decision"), *inter alia*, that the Prosecution must disclose material falling under Article 67(2) of the Statute or Rule 77 of the Rules by 27 February 2009.⁴

¹ ICC-01/04-01/07-819.

² ICC-01/04-01/07-846.

³ Video DRC-OTP-0155-0004 was disclosed pursuant to Rule 77 of the Rules on 20 June 2008, as part of Pre-Confirmation Rule 77 Package 17.

⁴ *Supra* note 2.

2. In that Decision, the Chamber also required the Prosecution to submit by 16 February 2009 any requests regarding information relevant to Rule 77 of the Rules that cannot be disclosed to the Defence until after redactions (or non-disclosure of information) are implemented.⁵

Background

3. The Prosecution has disclosed to date 40 videos pursuant to Article 67(2) of the Statute or Rule 77 of the Rules.
4. The Prosecution has identified two videos (DRC-OTP-1002-0002 and DRC-OTP-1002-0006) which require facial or voice distortions for specific individuals shown on those videos before they can be disclosed to the Defence. Both videos are to be disclosed pursuant to Rule 77 of the Rules.
5. On 20 June 2008, the Prosecution disclosed to the Defence one video with information pursuant to Rule 77 of the Rules, applying voice and facial distortions and removed reference to the individual's name.⁶ The Prosecution seeks the Chamber's approval for these distortions to be maintained.

Legal Basis

6. The Prosecution submits that the proposed voice or facial distortions for these three videos, and removal of the name of the individual at video DRC-OTP-0155-0004, should be authorised pursuant to Article 54(3)(f) of the Statute and Rule 81(4) of the Rules.
7. In all three videos, it is apparent that the relevant individuals expected to remain anonymous. In videos DRC-OTP-1002-0002 and DRC-OTP-1002-0006,

⁵ *Supra* note 2.

⁶ DRC-OTP-0155-0004. See *Supra* note 3.

attempts were made by the filmmakers to avoid revealing the identities of the two individuals concerned, as both were interviewed with their backs to the camera. In video DRC-OTP-0155-0004, the individual explicitly stated that he has fears for his life.

8. The Prosecution has no means to make contact with these individuals for whom voice and facial distortions are requested, as their identities and whereabouts are not known to the Prosecution. Accordingly, the Prosecution cannot contact these individuals to clarify whether they still wish to remain anonymous and if they have any security concerns as regards the accused. Accordingly, there is an objectively justifiable risk to these individuals, who may be at risk from the accused.
9. The Prosecution confirms that none of these individuals will be called to testify as witnesses.
10. In the case of all three videos, the underlying information provided by the individuals concerned is being disclosed to the Defence. Only their faces and voices are being distorted.
11. Even if the Prosecution knew these persons, which it does not, disclosure of their identities: a. does not undermine the preparation of the Defence; and c. does not affect the value of the information identified pursuant to Rule 77 of the Rules.
12. The Prosecution submits that in these circumstances, the least intrusive and only available effective measure to protect these persons is to avoid disclosing their identities by applying voice or facial distortions (and to remove the

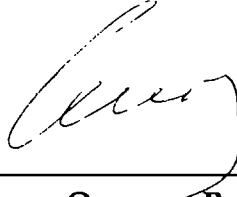
name of one individual appearing on video DRC-OTP-0155-0004) pursuant to Article 54(3)(f) of the Statute and Rule 81(4) of the Rules.

13. The distortions requested and removal of the name of the individual at DRC-OTP-0155-0004 are the only viable manner in which the Prosecution can carry out its mandate pursuant to Article 54(3)(f) of the Statute to “[t]ake necessary measures, or request that necessary measures be taken, to ensure [...] the protection of any person.”
14. The Appeals Chamber confirmed that Article 54(3)(f) of the Statute and Rule 81(4) of the Rules empower Chambers to authorise redactions for the protection of “persons who may be placed at risk as a result of the activities of the Court”, but who are not victims or witnesses or their family members.⁷
15. The specifics of the request for the voice and face distortion (and removal of the name of the individual on video DRC-OTP-0155-0004) are set out in the confidential annexes to this filing. The three videos and the unredacted transcripts and translations for the relevant portions of these videos are also attached as confidential annexes to this filing.
16. The Prosecution requests that voice and facial distortions are applied to ensure that these individuals remain anonymous and to avoid any risks to their security.

⁷ See ICC-01/04-01/07-475. In particular, *see* paras. 1 and 56. The Appeals Chamber confirmed that Rule 81(4) of the Rules, read together with Article 54(3)(f), can be interpreted to include protection for persons who are not victims, current or prospective witnesses or sources, or their family members, but who are at risk because of the activities of the Court. *See also* ICC-01/04-01/07-776, at paras. 16-17.

Request

17. For the foregoing reasons, the Prosecution respectfully requests that Trial Chamber II authorise, as regards the three videos described in this application, the proposed voice and facial distortions and removal of the name of the individual at video DRC-OTP-0155-0004.



Luis Moreno-Ocampo, Prosecutor

Dated this 13th day of February 2009

At The Hague, The Netherlands