

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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

Date: **11 May 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

**Prosecution's Urgent Application to be Permitted to Present as Incriminating
Evidence a Video Previously Disclosed to the Defence Pursuant to Rule 77**

Regulation 35

Source: Office of the Prosecutor

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

The Office of the Prosecutor

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Mr Andreas O'Shea

Counsel for the Defence of Mathieu Ngudjolo Chui

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Unrepresented Victims

Unrepresented Applicants for Participation/Reparation

The Office of Public Counsel for Victims

The Office of Public Counsel for the Defence

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REGISTRY

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Ms Silvana Arbia

Defence Support Section

Victims and Witnesses Unit

Detention Section

Victims Participation and Reparations Section

Other

The Office of the Prosecutor (“Prosecution”) requests Trial Chamber II (the “Chamber”) the permission to add on its List of Incriminating Evidence a video that has previously been disclosed pursuant to Rule 77.

On 20 June 2008, the Prosecution disclosed to the Defence video DRC-OTP-0155-0004 (“Video”).¹

On 23 January 2009, the Prosecution was ordered to disclose all incriminating evidence to the Defence by 30 January 2009.²

On 13 March 2009, the Chamber ordered the Prosecution to submit, *inter alia*, an analytical table of all the evidence it intends to use for trial (“Table”).³ The order also mandated that all incriminating evidence referred to in the Table had to be included on a List of Incriminating Evidence (“List”).

On 4 May 2009, the Chamber granted the Prosecution an extension of time to 20 May 2009 to file the Table and List.⁴

On 5 May 2009, the Prosecution re-disclosed the Video as incriminating evidence to the Defence with the metadata according to the new eCourt protocol. The original of the Video was transferred to the Registry that same day.⁵

On 8 May 2009, the Chamber ordered the Prosecution in a closed session hearing to file an application pursuant to Regulation 35 to have the Video included on its List of Incriminating Evidence.

¹ Video DRC-OTP-0155-0004 was disclosed in R77 disclosure package 17.

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, ICC-01/04-01/07-846.

³ Order concerning the Presentation of Incriminating Evidence and the E-Court Protocol, ICC-01/04-01/07-956.

⁴ See decision ICC-01/04-01/07-1095 granting a final extension to 20 May 2009.

⁵ See ICC-01/04-01/07-1110 and ICC-01/04-01/07-1111.

Submission

1. The Prosecution interpreted both orders ICC-01/04-01/07-846 and ICC-01/04-01/07-956 read in conjunction with Rule 77, as permitting the addition, to its List, of any evidence disclosed to the Defence prior to 30 January 2009.
2. The Prosecution now seeks permission to add the Video to its List of Incriminating Evidence pursuant to Regulation 35. During its analysis of approximately 229 audio-videos, the Prosecution did not intend to rely on the Video as incriminating evidence. It is only while populating the Table that the Prosecution reviewed its position and now seeks to rely on the Video at trial.
3. The Prosecution respectfully submits that the Defence will not suffer any prejudice since the Video was originally disclosed, as material to the Defence's preparation, 11 months ago.
4. If the request is granted by the Chamber, the Defence will benefit from the analysis of the Video, within the context of the Table, 4 months before the scheduled start of the Trial.

Conclusion

The Prosecution requests the Chamber to permit the Prosecution to add the Video to its List of Incriminating Evidence pursuant to Regulation 35.



Luis Moreno-Ocampo, Prosecutor

Dated this 11th day of May 2009

At The Hague, The Netherlands