

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: 8 June 2009

TRIAL CHAMBER II

Before: Judge Bruno Cotte , Presiding Judge
Judge Fatoumata Dembele Diarra
Judge Hans Peter Kaul

**SITUATION IN THE DEMOCRATIC REPUBLIC OF CONGO
IN THE CASE OF
THE PROSECUTOR
*v. GERMAIN KATANGA and MATHIEU NGUDJOLO CHUI***

Confidential – Ex Parte – Prosecution and Defence for Mr Katanga only

Defence Request regarding Anonymous Witness 353

Source: Defence for Mr Germain Katanga

Document 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
Mr Eric Macdonald, Senior Trial Lawyer

**Counsel for the Defence for Germain
Katanga**

Mr David Hooper
Mr Andreas O'Shea

Legal Representatives of Victims

Legal Representatives of 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

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

1. By its 'Décision relative à la protection des témoins à charge 267 et 353' of 20th May 2009 (disclosed to the Defence in the confidential and redacted version of 29th May),¹ the Trial Chamber ordered, *inter alia*, that the Defence be served with redacted transcripts of the interviews that took place with anonymous Witness 353. The Defence has received those redacted transcripts on 27 May 2009.²
2. The Defence fully accepts and appreciates that the Trial Chamber is concerned that due to the vulnerability of Witness 353 late disclosure of her identity and consequent redactions of her interviews are necessary. However, the Trial Chamber

"is under the obligation to balance the various interests at stake, as stipulated in rule 81 of the Rules, whilst ensuring that the process includes safeguards that would protect the accused persons' interests so as to comply as far as possible with the requirements of adversarial proceedings and the principle of equality of arms."³

The Defence is concerned that the extent of the present redactions makes it impossible to judge the true nature of the evidence. The Defence is not sufficiently informed as to the depth of the incriminating material and its effect on the case against Germain Katanga. The Defence submits that it should be possible to provide the Defence with further significant details of her account in interview, which would enable the Defence to be put on proper notice of her potential evidence, without putting the witness at risk of identification.

3. The Defence would wish to know:
 - (a) which camp or camps Witness 353 claims she was taken to following her abduction from Bogoro. Such information cannot, in the submission of the Defence, lead to her identification and will enable the Defence to better appreciate the nature of the case. In particular, the Defence would wish to know whether she names the camp at Aveba as a place she was taken to.

¹ ICC-01/04-01/07-1156-Conf-Exp, *Décision relative à la protection des témoins à charge 267 et 353* » du 20 mai 2009 dated 20 May 2009 ; ICC-01/04-01/07-1178-Conf-Exp, *Version confidentielle expurgée de la « Décision relative à la protection des témoins à charge 267 et 353 » du 20 mai 2009* (ICC-01/04-01/07-1156-Conf-Exp) notified on 29 May 2009.

² Cf. ICC-01/04-01/07-1175-Conf-AnxA.

³ ICC-01/04-01/07-819, *Décision relative à la procédure d'expurgation*, 12 January 2009, para. 7. See also ICC-01/04-01/07-T-52-ENG ET WT 27-11-2008, p. 60, l. 6-8, p. 80, l. 22-25; ICTY, *Prosecutor v. Milosevic*, 'Decision on prosecution motion for provisional protective measures pursuant to rule 69', 19 February 2002, para 23 : "The Prosecution asserts that the duty to provide for the protection and privacy of the witnesses is an affirmative one. The measures which are appropriate should be determined after balancing the right of the accused to a fair and public trial and the protection of victims and witnesses. These propositions are uncontroversial. What is clear from the Statute and Rules of the Tribunal is that the rights of the accused are given primary consideration, with the need to protect victims and witnesses being an important but secondary one."

(b) Further, while the redacted transcripts do not suggest that she claims that she met, saw, or was seen by Germain Katanga, the Defence seeks clarification of the position so as not to be misled by the present redactions. Again, the Defence submits such an indication cannot lead to her identification.

4. The Defence has requested the Prosecutor to provide this information but was referred to the Trial Chamber and accordingly, by this motion, seeks the assistance of the Trial Chamber by permitting the Prosecutor to provide it with this very specific information.

Prayer

5. The Defence respectfully requests that the information sought be provided.

Respectfully submitted,



David HOOPER

Dated this 8 June 2009

At The Hague