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

Date: 13 August 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

Public Redacted Version

Application for the Variation of an Order regarding Witness 219

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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Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

The Office of Public Counsel for Victims

The Office of Public Counsel for the Defence

States' Representatives

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Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

On 27 July 2009, Trial Chamber II (“the Chamber”) ordered the Prosecution “to contact P-219 in order to produce signed statements in lieu of the transcripts of the interviews for which the Prosecution seeks authorization for disclosure.”¹ For the reasons explained herein the Prosecution requests the Chamber’s authorisation to disclose unsigned summaries of the witness’s interview transcripts to the Defence.

Confidentiality

1. The Prosecution submits this Application as Confidential - *ex parte* - only available to the Office of the Prosecutor since the factual reasoning relied upon relates to the security of the witness.

Request

2. OTP interviewed Witness P-219 twice, in February 2007 and November 2008. Each interview is reflected in a transcript. Together, the transcripts total more than 1000 pages.
3. In lieu of providing the lengthy transcripts to the Defence and the Court, the Chamber directed that the Prosecution obtain signed summaries of the witness’s interview transcripts. The Prosecution is able to prepare and provide summaries, but the process of obtaining a signature will unduly

¹ ICC-01/04-01/07-1338-Conf-Exp and ICC-01/04-01/07-1364 for the public version of the decision.

jeopardize the safety of the witness. For that reason, the Prosecution requests leave to submit unsigned summaries along with redacted transcripts.²

4. The basis for the Prosecution's concern is the reality that obtaining a signed summary will require that the witness leave his new community for an extended period, in order to review more than 1000 pages of transcripts as well as the summaries themselves, to verify that the summaries accurately reflect his prior transcripts; and that his absence could draw attention and be a reason for suspicion.
5. The Chamber may recall that the Prosecution brought its concerns about the witness to the Chamber's attention, and the Chamber thereafter had a hearing with the VWU to discuss protection issues concerning this witness.³
[REDACTED].
6. [REDACTED].
7. [REDACTED].
8. [REDACTED].

² See Prosecution's application for redactions ICC-01/04-01/07-1274-Conf-Exp. [REDACTED].

³ See 9 June hearing, ICC-01/04-01/07-T-66-CONF-EXP-ENG-ET.

9. In light of these factors, the Prosecution cannot obtain signed summaries from the witness without implicating safety concerns. The Prosecution can produce and disclose an unsigned summary of the transcripts, which it submits will serve the same function – providing a simpler and shorter compilation of the significant evidence provided by the witness.
10. At the same time, however, it also submits that it should disclose the transcripts of P-219's interviews (with redactions) as well, since they constitute an accurate reflection of the content of the witness's interview.⁴ Their disclosure will eliminate any later claim by the Defence that it was prejudiced in its right to prepare adequately for trial.

Conclusion

11. For the above-mentioned reasons, the Prosecution requests the Chamber's authorisation to disclose unsigned summaries of the witness's interview transcripts to the Defence.



Luis Moreno-Ocampo, Prosecutor

Dated this 13th day of August 2009

At The Hague, The Netherlands

⁴ The Prosecution requested certain redactions to the transcripts concerning P-219's interviews: ICC-01/04-01/07-1274-Conf-Exp. The Prosecution still maintains the need for these redactions. Consequently, the disclosure of the transcripts should only take place once the Chamber has decided on this matter.