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

Date: 17 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

with Annex A - Confidential – Ex Parte, only available to the Office of the Prosecutor

Prosecution's Observations regarding Witness 113

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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Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

The Office of Public Counsel for Victims

The Office of Public Counsel for the Defence

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Ms Silvana Arbia

Deputy Registrar

Defence Support Section

Victims and Witnesses Unit

Detention Section

Victims Participation and Reparations Section Other

The Prosecution informs Trial Chamber II (“Chamber”) that Witness 113 has consented to the disclosure of her witness statement to the accused, Mathieu Ngudjolo and Germain Katanga (“Accused”).

Request for Receipt of Annex A as Confidential *Ex Parte*

The Prosecution requests that Annex A to this filing be received by the Chamber as confidential, *ex parte*, only available to the Office of the Prosecutor, as it relates to material that is currently treated as confidential.

Observations

1. On 23 March 2009 the Prosecution submitted two specific requests for protection measures in relation to 21 witnesses who provided information relevant under Rule 77 of the Rules of Procedure and Evidence (“Rules”) and/or Article 67(2) of the Rome Statute of the International Criminal Court (“Statute”) (“21 Witnesses”).¹ The second of these requests related to nine witnesses, including Witness 113, in which the Prosecution proposed the use of factual admissions and alternative sources of information in lieu of disclosure of these witnesses’ information (“la Requête aux fins d’admission”).² At that stage, none of the nine witnesses had been able to be contacted by the Prosecution.³
2. In its decision of 22 July 2009, the Chamber observed that eight of these nine witnesses, including Witness 113, could have their statements or transcripts or notes of interview disclosed to the Accused with redactions.⁴

¹ ICC-01/04-01/07-985 (ICC-01/04-01/07-985-Corr) ; ICC-01/04-01/07-986.

² ICC-01/04-01/07-986.

³ ICC-01/04-01/07-986, para. 29.

⁴ ICC-01/04-01/07-1329-Conf-Exp, para. 52 (public redacted version issued on 24 July 2009 of decision ICC-01/04-01/07-1332). Trial Chamber II referred to its views in this regard expressed in the *ex parte* hearing of 8 July 2009. See ICC-01/04-01/07-T-68-Conf-Exp, p. 29, lines 18-22.

3. The Chamber ordered the Prosecution to make further efforts to contact the nine witnesses.⁵ The Chamber also ordered the Prosecution to provide information to Trial Chamber I regarding the situation of five of the nine witnesses including Witness 113 pursuant to Articles 64(6)(e) and (f) and Article 68(1) of the Statute, in order to obtain Trial Chamber I's views on the possibility of the disclosure of the identity of these witnesses.⁶
4. On 27 July 2009,⁷ Trial Chamber I ordered the Prosecution to provide information by 17 August 2009 on 17 witnesses (including Witness 113) who had been referred directly by Trial Chamber II,⁸ because the statements are relevant in the case before Trial Chamber II, either under Article 67(2) or Rule 77, and because Trial Chamber I authorised protective measures to the statements of most of these witnesses.⁹
5. On 30 and 31 July 2009, the Prosecution succeeded in making contact with Witness 113, who confirmed that she consents to disclosure of her identity to the three accused Germain Katanga, Mathieu Ngudjolo and Thomas Lubanga ("Three Accused"), provided the Prosecution considers that this does not create security problems for her.
6. In its application to be filed on 17 August 2009, the Prosecution is informing Trial Chamber I of Witness 113's consent to disclosure of her identity and submitting to Trial Chamber I proposed redactions to her statement, which it submits are appropriate for disclosure to the Three Accused in the separate

⁵ ICC-01/04-01/07-T-68-CONF-EXP, p. 28, lines 6-9.

⁶ ICC-01/04-01/07-1332, paras. 64-65 (public redacted version issued on 24 July 2009, of decision ICC-01/04-01/07-1329-Conf-Exp).

⁷ ICC-01/04-01/06-2068. There is overlap between the witnesses in the Prosecution's application and in Trial Chamber II's decision.

⁸ ICC-01/04-01/07-1332 (public redacted version issued on 24 July 2009, of decision ICC-01/04-01/07-1329-Conf-Exp). The Prosecution notes that there is overlap between the 10 witnesses referred to by the Prosecution and the 17 witnesses referred to the Chamber by Trial Chamber II.

⁹ For witness DRC-OTP-WWWW-0090, the request for authorization of redactions is pending before Trial Chamber I.

proceedings *Prosecutor v Lubanga* and *Prosecutor v Katanga & Ngudjolo*. The redactions proposed relate to protecting the identity and location of her family members and the identity of the non-governmental organisation, which took notes of an interview with Witness 113 prior to her interview with the Prosecution. The Prosecution attaches a copy of the statement with those proposed redactions to be submitted to Trial Chamber I, as Confidential *Ex parte* Annex A to this filing.

7. Once Trial Chamber I has made a determination on the proposed protective measures for Witness 113 in the *Prosecutor v. Lubanga*, and provides its views on the disclosure of her identity to the accused and Defence in that case, the Prosecution will submit its application for appropriate protective measures for Witness 113 in the *Prosecutor v. Katanga & Ngudjolo* pursuant to Regulation 42 of the Court Regulations, Rule 81(4) and Articles 64(6)(e) and (f), 68(1) and 54(3)(f) of the Statute.



Luis Moreno-Ocampo, Prosecutor

Dated this 17th day of August 2009

At The Hague, The Netherlands