



Original: **French**

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

Date: **26 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 THE CONGO

IN THE CASE OF

THE PROSECUTOR v. Germain KATANGA and Mathieu NGUDJOLO CHUI

Public Document

Public redacted version of the “Decision on the Thirteen Documents Obtained under Article 54(3)(e) of the Statute and Not Yet Disclosed to the Defence” dated 19 June 2009, ICC-01/04-01/07-1227-Conf-Exp

Decision 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
 Ms Fatou Bensouda, Deputy Prosecutor
 Mr Éric MacDonald, Senior Trial Lawyer

**Counsel for the Defence of Germain
 Katanga**

Mr David Hooper
 Mr Andreas O'Shea

**Counsel for the Defence of Mathieu
 Ngudjolo Chui**

Mr Jean-Pierre Kilenda Kakengi Basila
 Mr Jean-Pierre Fofé Djofia Malewa

Legal Representatives of the Victims

Ms Carine Bapita Buyangandu
 Mr Joseph Keta
 Mr Jean-Louis Gilissen
 Mr Hervé Diakiese
 Mr Jean Chrysostome Mulamba
 Nsokoloni
 Mr Fidel Nsita Luvengika
 Mr Vincent Lurquin
 Ms Flora Mbuyu Anjelani

Legal Representatives of the Applicants

**The Office of Public Counsel for
 Victims**

Ms Paolina Massida

**The Office of Public Counsel for the
 Defence**

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Ms Silvana Arbia

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
 Section**

Other

Trial Chamber II of the International Criminal Court (“the Chamber” and “the Court” respectively), acting pursuant to articles 54(3)(e), 64(2), 64(3)(c), 64(6)(f), 67 and 68 of the Rome Statute (“the Statute”) and to rules 77 and 82 of the *Rules of Procedure and Evidence* (“the Rules”), decides as follows.

I. Procedural history

1. At the status conference of 3 February 2009, the Chamber directed the Prosecutor to submit to it all of the documents obtained under article 54(3)(e) of the Statute already disclosed in redacted form to the Defence, in order that it might examine the redactions requested by the document provider.¹ The Chamber repeated this request in its Decision of 26 February 2009.²

2. On 5 March 2009 the Prosecutor submitted an application transmitting to the Chamber documents obtained under article 54(3)(e) of the Statute;³ they included 53 redacted documents already disclosed to the Defence⁴ and 13 which had not yet been disclosed.⁵ The filing was marked “Confidential. *Ex parte*, only available to the Office of the Prosecutor”.

3. At an *ex parte* hearing held on 16 March 2009, the Chamber, having examined the documents, asked the Prosecutor a number of questions.⁶ The Prosecutor replied to those questions in writing on 20 March 2009.⁷

¹ ICC-01/04-01/07-T-ENG ET WT 03-02-2009, p. 19, lines 6-19.

² *Reasons for the Oral Decision of 3 February 2009 on the Procedure for the Redaction of Documents obtained by the Prosecutor Under Article 54(3)(e) and Order Instructing the Prosecutor to Submit Documents to the Chamber*, 26 February 2009, ICC-01/04-01/07-931-tENG.

³ Office of the Prosecutor, “Prosecution’s Submission of Documents Obtained Pursuant to Article 54(3)(e) of the Statute and Already Communicated to the Defence in Redacted Form”, 5 March 2009, ICC-01/04-01/07-941, with confidential annexes, *ex parte*, only available to the Office of the Prosecutor.

⁴ ICC-01/04-01/07-941-Conf-Exp-Anxs A, B and C.

⁵ ICC -01/04-01/07-941-Conf-Exp-Anxs D, E and F.

⁶ ICC-01/04-01/07-T-62-CONF-EXP-ENG ET 16-03-2009, p. 48, lines 19-25, pp. 49-51, and p. 52, lines 6-10.

⁷ Office of the Prosecutor, “*Réponse de l’Accusation aux questions additionnelles soulevées par la Chambre en relation de l’écriture de l’Accusation intitulée* « Prosecution’s Submission of Documents Obtained

4. At that same *ex parte* hearing, the Chamber also directed the Prosecutor to submit the documents to it again, together with additional information enabling it to assess them effectively.⁸ It further directed the Prosecutor to submit a marked-up version of the 13 documents not yet disclosed to the Defence, indicating the relevant passages (according to whether they were incriminatory, or potentially exculpatory on the basis of article 67(2) of the Statute, or fell within the terms of rule 77 of the Rules).⁹ The Prosecutor resubmitted these 13 documents on 27 March 2009, now presenting them in the form requested by the Chamber.¹⁰

5. The Prosecutor, having informed the Chamber at the above hearing of 16 March 2009 that he was still awaiting paper copies of the redacted version of three of these 13 documents,¹¹ was able to submit them to the Chamber on 7 May 2009, and at that time he requested protective measures in respect of two of them.¹²

Pursuant to Article 54(3)(e) of the Statute and Already Communicated to the Defence in Redacted Form », 20 March 2009, ICC-01/04-01/07-973-Conf-Exp, confidential, *ex parte*, only available to the Office of the Prosecutor.

⁸ ICC-01/04-01/07-T-62-CONF-EXP-ENG ET 16-03-2009, p. 46, lines 18-25, p. 47, p. 48, lines 1-2 and 11-13.

⁹ ICC-01/04-01/07-T-62-CONF-EXP-ENG ET 16-03-2009, p. 47, lines 4-10. The same practice has been followed by Trial Chamber I: *Order for further information regarding potentially exculpatory documents and for expedited defence response*, 15 October 2008, ICC-01/04-01/06-1480, para. 5; Office of the Prosecutor, "Prosecution's submission of 93 documents highlighting the passages of potentially exculpatory value or falling within the parameters of Rule 77", 22 October 2008, ICC-01/04-01/06-1488.

¹⁰ Office of the Prosecutor, "Prosecution's Re-submission of 13 Documents Obtained Pursuant to Article 54(3)(e) of the Statute and for which Redacted Versions Have not yet Been Disclosed to the Defence", 27 March 2009, ICC-01/04-01/07-996-Conf-Exp, confidential, *ex parte*, only available to the Office of the Prosecutor.

¹¹ ICC-01/04-01/07-T-62-CONF-EXP-ENG ET 16-03-2009, p. 51, lines 17-23.

¹² Office of the Prosecutor, "*Requête de l'Accusation aux fins de mesures de protection concernant des documents tombant dans le champ d'application de l'article 54-3-e*", 7 May 2009, ICC-01/04-01/07-1115-Conf-Exp.

II. The Chamber's analysis

6. A textual interpretation of article 54(3)(e) of the Statute indicates that the Prosecutor may rely on that provision only in order to generate new evidence.¹³ That article is an important tool for him in the conduct of his investigations, enabling him, often in challenging circumstances, to obtain documents, provided they remain confidential. However, reliance on article 54(3)(e) must not lead the Prosecutor to act in breach of his obligations towards suspects or accused persons, in particular of their right to disclosure of evidence in his possession which shows, or tends to show, their innocence or to mitigate their guilt, or which is necessary to enable them to prepare their defence.¹⁴

7. In its Judgment of 21 October 2008, the Appeals Chamber recalled that, where the Prosecutor relies on article 54(3)(e) of the Statute, he must apply it in such a way as to enable the Court to resolve any conflict that may exist between, on the one hand, the confidentiality that he has undertaken to respect and, on the other, the requirements of a fair trial.¹⁵ It is, moreover, the Trial Chamber which is the final arbiter of whether or not evidence in the Prosecutor's possession or control is required to be disclosed pursuant to article 67(2) of the Statute and in accordance with internationally recognised human rights. It is for that reason that the material in question has to be submitted to the Chamber, in order that it may rule on it.¹⁶

8. The Chamber has also ruled that documents obtained under article 54(3)(e) must be reviewed by it before being disclosed to the Defence. It considers that any redaction, whether effected by the Prosecutor *proprio motu* or requested by the information provider where the document has been obtained under article 54(3)(e),

¹³ Appeals Chamber, *Judgment on the appeal of the Prosecutor against the decision of Trial Chamber I entitled "Decision on the consequences of non-disclosure of exculpatory materials covered by Article 54(3)(e) agreements and the application to stay the prosecution of the accused, together with certain other issues raised at the Status Conference on 10 June 2008"*, 21 October 2008, ICC-01/04-01/06-1486, para. 41.

¹⁴ *Ibid.*, para. 42.

¹⁵ *Ibid.*, para. 44.

¹⁶ *Ibid.*, para. 46.

must be subject to judicial review before the document in question is transmitted to the Defence.¹⁷

9. Thus a review of redactions is necessary in order to enable the Chamber to ensure that the rights of the accused are not affected by any redaction carried out by the information provider that would render the document in question incomprehensible or unreadable, or unusable by the Defence.¹⁸ The Chamber further considers that such a power of review must be exercised not only over documents falling within the terms of article 67(2) of the Statute, but also over incriminating material.¹⁹

10. The Chamber cannot force the Prosecutor to disclose documents to the Defence obtained by him pursuant to agreements under article 54(3)(e) without the prior consent of the information provider. Where it considers that the material would have had to be disclosed had it not been obtained by virtue of that provision, and that the redactions required by the provider infringe the rights of the Defence, it must request the Prosecutor to undertake discussions with the provider with a view to finding other solutions that might enable the redactions to be reconsidered or modified. If the provider does not consent to disclosure, the Chamber must then determine what counter-balancing measures might be taken in order to ensure that the rights of the accused are protected and that the trial is fair.²⁰

11. The Chamber notes that the reasons cited for the redactions requested by the information provider are based on the need to protect individuals or organisations which, without the redactions, would be endangered. However, the Chamber has to check that there are not less restrictive measures available and, where it concludes that it is essential that identities be withheld, it must then ensure, as the Appeals Chamber has made clear, that the trial is conducted fairly and with full respect for the rights of the accused.

¹⁷ ICC-01/04-01/07-931-tENG, para. 7.

¹⁸ Ibid., paras. 5 and 7.

¹⁹ Ibid., para. 6.

²⁰ ICC-01/04-01/06-1486, para. 48; ICC-01/04-01/07-931-tENG, para. 8.

12. Identities can be material to the accused's defence where the individuals concerned have information which could assist in its preparation. Thus, Defence Counsel might wish to call them as witnesses, or to contact them beforehand in order to obtain further particulars of the facts or to dispute their veracity.²¹

13. It is thus incumbent on the Chamber to check whether the identities of individuals or organisations have been redacted from passages containing incriminating material, or potentially exculpatory evidence in the sense of article 67(2) of the Statute, or material coming within the terms of rule 77 of the Rules. Where that is the case, the Chamber must first ascertain whether those whose identities have been redacted had themselves obtained the information in question, or if they were merely reporting on it to their organisation.²² In the latter case, failure to disclose the identity of an employee of an international organisation or of an NGO does not prejudice the rights of the accused, but the Chamber has to see to it that the material itself is disclosed in full.

14. Where the redactions requested by the information provider relate to passages containing no article 67(2) or rule 77 material, the Chamber considers that the Prosecutor's duty of disclosure is less strict. If the redactions of identities do not affect the reading and understanding of the document and it remains usable by the Defence, then, in the Chamber's view, the rights of the accused are respected.²³

15. It is thus in light of the principles set out above that the Chamber must examine the 13 documents submitted by the Prosecutor and decide on a case-by-case basis whether the redactions required by their providers are consistent with the right of the accused to a fair trial.

²¹ Trial Chamber I, *Reasons for Oral Decision lifting the stay of proceedings*, 23 January 2009, ICC-01/04-01/06-1644, paras. 48 and 49.

²² See also, similarly, *ibid.*, paras. 50 and 51.

²³ Similarly, *ibid.*, paras. 52 and 53.

Documents 1 (DRC-OTP-0043-0524),²⁴ 2 (DRC-OTP-0043-0549),²⁵ 3 (DRC-OTP-0043-0564),²⁶ 12 (DRC-OTP-0043-0391)²⁷ and 13 (DRC-OTP-0043-0516)²⁸

16. These five documents are e-mails sent on 11 November 2002,²⁹ 3³⁰ and 20³¹ March and 4³² and 18³³ April 2003 by [REDACTED], whom the Prosecutor intends to call at trial.

17. On 5 March 2009 the Prosecutor informed the Chamber that the United Nations Organisation ("the UN") had consented to these five documents being disclosed in full, subject to certain additional measures being taken,³⁴ and he transmitted to the Chamber the relevant letters from the Organisation's Office of Legal Affairs, describing the measures requested.³⁵ He informed the Chamber that the UN had authorised the disclosure of Document 1 (DRC-OTP-0043-0524) by a letter of 23 February 2009,³⁶ of Documents 2 and 3 (DRC-OTP-0043-0549 and DRC-OTP-0043-0564) by a letter of 19 February 2009³⁷ and, finally, the full disclosure of Documents 12 and 13 (DRC-OTP-0043-0391 and DRC-OTP-0043-0516) by a letter of 2 March 2009.³⁸

18. The Chamber notes that the protective measures imposed by the UN as a condition of its consent to the full disclosure of these five documents to the Defence and to the Legal Representatives of the victims are the following:³⁹

²⁴ DRC-OTP-0043-0524 to DRC-OTP-0043-0526.

²⁵ DRC-OTP-0043-0549 to DRC-OTP-0043-0553.

²⁶ DRC-OTP-0043-0564 to DRC-OTP-0043-0570.

²⁷ DRC-OTP-0043-0391 to DRC-OTP-0043-0399.

²⁸ DRC-OTP-0043-0516 to DRC-OTP-0043-0521.

²⁹ DRC-OTP-0043-0391.

³⁰ DRC-OTP-0043-0516.

³¹ DRC-OTP-0043-0524.

³² DRC-OTP-0043-0549.

³³ DRC-OTP-0043-0564.

³⁴ ICC-01/04-01/07-941-Conf-Exp-Anx D.

³⁵ ICC-01/04-01/07-973-Conf-Exp, para. 14.

³⁶ Ibid., Anx II.

³⁷ Ibid., Anx I.

³⁸ Ibid., Anx III.

³⁹ Ibid., Anx I.

- i. a prohibition on the disclosure to any third person or body of any information removed from the redacted versions of the documents;⁴⁰
- ii. the public record of the proceedings must contain only the redacted versions of the documents; dissemination of the unredacted versions must be restricted to the Chambers and their staff, to the Prosecutor and his staff, to the accused and their Defence teams and to the Legal Representatives of the victims;⁴¹
- iii. any quotation from or discussion of the redacted passages by the parties, the Legal Representatives of the victims or the Chamber shall be in closed session, and unredacted transcripts and recordings must be restricted;⁴²
- iv. in open court, the individuals whose names are removed in the redacted versions shall be identified by pseudonyms only;⁴³
- v. the Chamber must order protective measures giving effect to the above conditions;⁴⁴ and
- vi. the Court shall take such protective measures as might be necessary to protect the individuals who are the sources of the documents, including organising their relocation, together with their families.⁴⁵

19. The Chamber notes that the author of the documents under consideration has been taken into the Court's protection programme and has accordingly been relocated. Furthermore, as regards the public, it sees no objection to any necessary protective measures being taken, if the documents in question or passages therefrom are used or cited at the trial. It considers that their full disclosure to the Defence teams will represent the best guarantee of the accused's right to a fair trial, since Documents 1, 2 and 3 contain information which the Prosecutor characterises as

⁴⁰ *Idem*, p.3; ICC-01/04-01/07-1115-Conf-Exp, pp. 6-7.

⁴¹ ICC-01/04-01/07-973-Conf-Exp, Anx. I, p. 3; ICC-01/04-01/07-1115-Conf-Exp, p. 7.

⁴² *Idem*.

⁴³ *Idem*.

⁴⁴ ICC-01/04-01/07-973-Conf-Exp-Anx I, p. 3.

⁴⁵ *Ibid.*, p. 4.

exculpatory in the sense of article 67(2) of the Statute, and Documents 12 and 13 contain material which he considers to fall within the terms of rule 77 of the Rules.

20. The Chamber further notes that Documents 2 and 3 also contain material which in the Prosecutor's view is incriminating, but, since they also contain material coming within the terms of article 67(2) of the Statute, it considers that they must be disclosed to the Defence pursuant to that provision. It considers that, if the Prosecutor intends to present them as incriminating evidence at the trial, he will have to invoke regulation 35(2) of the Regulations of the Court and show good cause that he was unable to file his application within the prescribed time limit for reasons outside his control.⁴⁶

Document 4 (DRC-OTP-1034-0066)⁴⁷

21. This document, entitled "MONUC Report on the Illegal Supply of Arms; September 2003", was transmitted to the Prosecutor by the UN Office of Legal Affairs. It is dated 2 October 2003 and was drafted by MONUC. [REDACTED].

22. [REDACTED]

23. In this ten-page document there has been a redaction of a reference [REDACTED] which might serve to identify the individual who provided the initial information regarding the supply of arms to Ituri by Uganda. This person's identity is protected because, at the time of the events in question, he was a minor. This is the only item that has been redacted and it does not relate to any information characterised by the Prosecutor as exculpatory. However, the redacted item is in a part of the document falling within rule 77 of the Rules.

⁴⁶ Order Fixing the Schedule for Pre-Trial Disclosure of Incriminatory and Exculpatory Evidence and the Date of a Status Conference, 23 January 2009, ICC-01/04-01/07-846-t-ENG.

⁴⁷ DRC-OTP-1034-0066 to DRC-OTP-1034-0075. This is the redacted version of DRC-OTP-0044-0371 to DRC-OTP-0044-0380.

24. Since an item of information enabling identification of the source of rule 77 material may be useful and relevant for the Defence, the Chamber asked the Prosecutor for further particulars regarding the reasons which had led the UN Office of Legal Affairs to require this redaction. The Office confirmed that it had no information as to the current whereabouts of the individual in question, which made it impossible to provide any other form of protective measure. Hence, redaction of the item enabling that person to be identified was the only available measure to ensure his protection and personal safety.⁴⁸

25. The Chamber considers that, in light of the limited nature of the redaction, the document remains readable and capable of being used by the Defence, in particular since it will be informed of the identity of the document's author. Moreover, all of the rule 77 material will be disclosed in full, although the information identifying its source will not. Furthermore, although the Office of the Prosecutor states that this material falls within the terms of rule 77, the document makes it clear that the allegations which it cites have not been confirmed. Finally, these same allegations also originate from other sources mentioned in paragraphs 3 and 4 of the document. The Chamber accordingly considers that the redactions required by the document provider do not prejudice the right of the accused to a fair trial.

Document 5 (DRC-OTP-1034-0076)⁴⁹

26. This document, dated 30 September 2003, was drafted by MONUC. It is a six-page daily report on the political, military and police situation in eastern Congo. It was sent to the Prosecutor by the UN Office of Legal Affairs.

27. The document contains passages which the Prosecutor characterises as exculpatory in the sense of article 67(2) of the Statute, as well as other passages falling within rule 77 of the Rules. [REDACTED].

⁴⁸ E-mail exchange between the Prosecutor and the Legal Adviser to the Trial Division, 28 May 2009.

⁴⁹ DRC-OTP-1034-0076 to DRC-OTP-1034-0081. This is the redacted version of DRC-OTP-0044-0436 to DRC-OTP-0044-0441.

28. [REDACTED] who had discussions with MONUC and allegedly provided certain information has been redacted. The redaction occurs in a passage which, according to the Prosecutor, contains neither exculpatory matter nor rule 77 material. The redaction required by the source is of a very limited nature and concerns no other material that is prima facie relevant. Moreover, the source of the document, as well as all of the material characterised by the Prosecutor as falling within rule 77 of the Rules or article 67(2) of the Statute will be disclosed to the Defence. The Chamber accordingly considers that the right of the accused to a fair trial is respected.

Document 6 (DRC-OTP-1034-0082)⁵⁰

29. This document, prepared by MONUC on 18 September 2003, is one of its daily reports to UN Headquarters. It deals in general terms with the security situation in Bunia and refers to the measures taken by certain armed groups, including the FNI, to restore freedom of movement in the area.

30. According to the Prosecutor, some paragraphs of the document fall within rule 77 of the Rules. [REDACTED].

31. The only redaction in this four-page document is the name of the person who drafted the report. The report was transmitted to the Prosecutor by the UN Office of Legal Affairs, which justifies the redaction by the need to protect [REDACTED] one of its staff members [REDACTED].⁵¹ All material identified by the Prosecutor as falling within rule 77 of the Rules will be disclosed to the Defence teams.

32. The Chamber notes that disclosure to the Defence of the source of a document constitutes material and useful information. It notes, however, that this report is a document from MONUC, and that this fact will be helpful to the Defence, even if the author of the document is not identified. This is a report describing in general terms

⁵⁰ DRC-OTP-1034-0082 to DRC-OTP-1034-0085. This is the redacted version of DRC-OTP-0061-0026 to DRC-OTP-0061-0029.

⁵¹ E-mail exchange between the Prosecutor and the Legal Adviser to the Trial Division, 28 May 2009.

the current situation in the region, the author confining himself to official transmission of a series of matters reported [REDACTED]. The Chamber accordingly considers that, given the limited nature of the redaction, the fact that the Defence has access to the material information in full and that the document is fully intelligible and usable, the rights of the accused to a fair trial are not infringed.

Document 7 (DRC-OTP-1034-0086)⁵²

33. This document, dated 4 September 2003, was prepared by MONUC as one of its daily reports to UN Headquarters. This report contains information on the political, military, humanitarian, police and human rights situation in Bunia. The Prosecutor characterises it as a document containing exculpatory material in the sense of article 67(2) of the Statute.

34. [REDACTED]

35. This five-page document contains some redactions in respect of two items: the first concerns particulars enabling identification of an individual having provided information on the military situation in the region; the second relates to [REDACTED].

36. The Chamber recalls that certain parts of the document have been identified by the Prosecutor as containing exculpatory material. However, none of the passages in question has been redacted. The two redactions noted relate to MONUC sources having provided information not prima facie material to preparation of the defence. The Chamber considers that the redactions requested do not affect the understanding of the document, or its use by the Defence, since they are very limited in scope. The Defence will have access to the passages falling within the terms of article 67(2) of the Statute; the Chamber is accordingly able to find that the redactions required by the document provider do not compromise the rights of the accused to a fair trial.

⁵² DRC-OTP-1034-0086 to DRC-OTP-1034-0090. This is the redacted version of DRC-OTP-0061-0092 to DRC-OTP-0061-0096.

Document 8 (DRC-OTP-1034-0091)⁵³

37. This document, prepared by the United Nations and dated 7 July 2003, is a report on a meeting with the chief representative of MONUC's Humanitarian Affairs Division.

38. According to the Prosecutor, certain passages in the report fall within rule 77 of the Rules. [REDACTED].

39. This three-page document contains three types of redaction which, according to the Prosecutor, are necessary in order to protect the UN source. The first is of the e-mail address [REDACTED]. The second redaction protects the identity of a UN employee [REDACTED]. The third relates to [REDACTED].

40. Only the first redaction, that of the e-mail address [REDACTED], relates to material which, in the Prosecutor's view, falls within rule 77 of the Rules, and the identity [REDACTED] will be disclosed to the Defence, which will enable it to use that information for purposes of future investigations. Moreover, the information provided by [REDACTED] to MONUC is to be disclosed to the Defence teams. The two other redactions, the identity of a UN employee [REDACTED] and the name [REDACTED] do not relate to rule 77 material and are also very limited in scope. The Chamber considers that they do not affect an understanding of the document, which remains intelligible and comprehensible to the Defence. It therefore finds that the redactions required by the document provider do not compromise the right of the accused to a fair trial.

⁵³ DRC-OTP-1034-0091 to DRC-OTP-1034-0093. This is the redacted version of DRC-OTP-0062-0067 to DRC-OTP-0062-0069.

Document 9 (DRC-OTP-1034-0094)⁵⁴

41. This two-page document, prepared on 15 July 2003 by the UN, is a mission report on a meeting with the chief representative of MONUC's Humanitarian Affairs Division, as referred to in Document 8 (DRC-OTP-1034-0091).

42. The report contains certain passages which the Prosecutor considers to be rule 77 material, and which refer to the same facts as those in Document 8. [REDACTED].

43. As in Document 8, the e-mail address [REDACTED] who passed a document to MONUC, as well as the identity of [REDACTED] employee [REDACTED], have been redacted. Only the first redaction, of the [REDACTED] e-mail address, relates to a passage characterised as rule 77 material. However, the name of [REDACTED] in question can still be read and, as with Document 8, the Defence teams will have access to information that is prima facie material to future investigations. The Chamber considers that the redactions do not affect the understanding of the document, which remains intelligible to the Defence and, hence that the accused suffer no prejudice.

Document 10 (DRC-OTP-1034-0098)⁵⁵

44. This two-page document is a MONUC report entitled "Special Report: Bunia-Bogoro Recce". The report is undated, but it refers to events stated to have taken place on or about 6 September 2003. It deals with MONUC activities in the Bogoro area and on the security situation there.

45. Two paragraphs of the report contain rule 77 material [REDACTED].

⁵⁴ DRC-OTP-1034-0094 to DRC-OTP-1034-0095. This is the redacted version of DRC-OTP-0062-0326 to DRC-OTP-0062-0327.

⁵⁵ DRC-OTP-1034-0098 to DRC-OTP-1034-0099. This is the redacted version of DRC-OTP-0195-1669 to DRC-OTP-0195-1670.

46. The identities of the two MONUC sources, [REDACTED] and an individual who had provided information on security in the area, have been redacted. According to the Office of the Prosecutor, these redactions do not relate to any part of the document containing rule 77 material. On the other hand, the material which does come within rule 77 consists of statements by a MONUC employee whose identity will be disclosed to the Defence. Lastly, the material in question is to be disclosed to the Defence in full and the document is usable. The Chamber accordingly finds that the redactions required by the document provider do not prejudice the rights of the accused.

Document 11 (DRC-OTP-0208-0215)⁵⁶

47. This nineteen-page document, entitled “Maniema and the Kivus Provinces Follow up”, prepared by the United Nations Expert Panel on the Illegal Exploitation of National Resources and Other Forms of Wealth in the DRC, was transmitted to the Prosecutor by MONUC. This is a politico-military report on the provinces of Maniema and Kivu containing certain material which, according to the Prosecutor, falls within rule 77 of the Rules.

48. [REDACTED].

49. The only redaction is of the identity of the report’s author. The Chamber, having noted that this person’s identity had been disclosed in other documents, requested further particulars, as a result of which the UN lifted this redaction.⁵⁷ The document can therefore be disclosed to the Defence in full.

⁵⁶ DRC-OTP-0208-0215 to DRC-OTP-0208-0233. This is the redacted version of DRC-OTP-0055-0286 to DRC-OTP-0055-0304.

⁵⁷ E-mail exchange between the Prosecutor and the Legal Adviser to the Trial Division, 28 May 2009.

FOR THESE REASONS, THE CHAMBER

1. **AUTHORISES** the disclosure of Documents 4, 5, 6, 7, 8, 9 and 10, with the redactions requested by their provider;
2. **AUTHORISES** the disclosure of Document 11 in full;
3. **AUTHORISES** the full disclosure of Documents 1, 2, 3, 12 and 13, subject to the protective measures set out in paragraph 18 of this Decision.

Done in both English and French, the French version being authoritative.

[signed]

**Judge Bruno Cotte
Presiding Judge**

[signed]

Judge Fatoumata Dembele Diarra

[signed]

Judge Hans-Peter Kaul

Dated this 26 June 2009

At The Hague, The Netherlands