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

Date: 21 August 2009

**TRIAL CHAMBER II**

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

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

**PUBLIC REDACTED VERSION**

**With Annexes A and B – Confidential, *ex parte*, only available to the Office of the  
Prosecutor**

**Prosecution's Application to Redact, Disclose and to Add to its List of  
Incriminating Evidence the Interview Transcripts of Witnesses 28 and 250**

**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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**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**

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**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations Section**

**Other  
Trial Chamber I**

The Office of the Prosecutor (“Prosecution”) seeks permission from Trial Chamber II (“Chamber”) to redact and disclose transcripts of the interviews of witnesses 28 and 250. The Prosecution also seeks permission to add these transcripts to its List of Incriminating Evidence (“List”). This application is submitted pursuant to Regulation 35 of the Regulations of the International Criminal Court (“Court”).

### **Request for Receipt of Application and Annexes as Confidential**

The Prosecution requests that this application and Annexes A<sup>1</sup> and B<sup>2</sup> attached to this filing be received by the Chamber as confidential, *ex parte*, only available to the Office of the Prosecutor as they relate to evidence which the Prosecution seeks to redact and for the additional reasons set out in paragraph 7, *infra*.

### **Background**

1. On 23 January 2009, the Prosecution was ordered to disclose all incriminating evidence to the Defence by 30 January 2009 (“Order”).<sup>3</sup>
2. On 16 June 2009, before Trial Chamber I, [REDACTED]<sup>4</sup>.
3. On 3 and 4 July 2009, the Prosecution re-interviewed witnesses 28 and 250 [REDACTED].
4. On 13 August 2009, the transcripts of the recordings of both interviews were finalised and made available for redactions.

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<sup>1</sup> The transcript of the interview of witness 28 has ERN DRC-OTP-1046-0198 (containing 14 pages – not counting the cover page).

<sup>2</sup> The transcript of the interview of witness 250 has ERN DRC-OTP-1046-0213 (containing 24 pages – not counting the cover page).

<sup>3</sup> ICC-01/04-01/07-846.

<sup>4</sup> [REDACTED].

### Application pursuant to Regulation 35

5. The Prosecution submits that it could not have submitted a request related to these transcripts by 30 January 2009, and that the request presents precisely the situation envisaged in Regulation 35(2):
  - [REDACTED] only came to light on 16 June 2009;
  - On 16 June 2009, Trial Chamber I [REDACTED]<sup>5</sup>.
  - [REDACTED].
6. These represent good cause and reasons outside the Prosecution's control to depart from the Court's time limit, as provided in Regulation 35(2).

### Confidentiality of the Proceedings before Trial Chamber I

7. [REDACTED] the Prosecution will seek permission<sup>6</sup> from Trial Chamber I to disclose [REDACTED]<sup>7</sup>.
8. For that same reason, the Defence teams of Mathieu Ngudjolo and Germain Katanga should not have access to the content of this filing.
9. In the interim, the Prosecution respectfully submits that the transcripts of the interviews of witnesses 28 and 250 should be disclosed as soon as possible to the Defence in the present case (with some redactions, see *infra*) to facilitate the Defence's preparation since the trial is to start on 24 September 2009.

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<sup>5</sup> [REDACTED].

<sup>6</sup> The Prosecution's request before Trial Chamber I, will mention that the Prosecution is seeking the approval of Trial Chamber II to disclose to the Defence teams of Mathieu Ngudjolo and Germain Katanga, the transcripts of the interviews of witnesses 28 and 250, as this is *inter alia* an obligation under Rule 76(1).

<sup>7</sup> Upon a decision by Trial Chamber I, the Prosecution will file a request for leave to disclose [REDACTED].

10. These transcripts are not voluminous; they are limited to one topic and because of the clear answers provided, the Defence will have sufficient time to prepare accordingly.

### **Request for Redactions**

#### **a) Names of P-316 and P-183**

11. [REDACTED] and a final report has not yet been submitted to Trial Chamber I, the name of intermediary P-316 should not yet be disclosed to the Defence.
12. Additionally, the name of [REDACTED] (P-183), another intermediary mentioned by witnesses 28 and 250, should be redacted on a permanent basis. [REDACTED].
13. [REDACTED].

#### **b) Locations**

14. The Prosecution also seeks to redact additional information that may lead to the identity of both P-316 and P-183, such as locations.

#### **c) Names of ICC staff members**

15. The Prosecution is also seeking redactions to the names of VWU and local OTP staff members mentioned in the interview. These names are not relevant to the Defence preparation or case.

#### **d) Place of the interview**

16. The Prosecution seeks to redact the name of the location where the interviews took place since both witnesses are relocated in that area.

**e) Name of the interpreter**

17. Pursuant to Regulation 42, the Prosecution also seeks to redact the name of the interpreter until such time as the Chamber rules on the scope of this Regulation.<sup>8</sup>

18. These redactions are requested pursuant to Rule 81(2) and 81(4) for the reasons submitted in the tables annexed to this submission.

**Conclusion**

19. The Prosecution requests Trial Chamber II to grant, on an urgent basis, the request for the redaction to the transcripts of witnesses 28 and 250, their immediate disclosure to the Defence and their addition to the Prosecution's List of Incriminating Evidence.



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Luis Moreno-Ocampo, Prosecutor

Dated this 21<sup>st</sup> day of August 2009

At The Hague, The Netherlands

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<sup>8</sup> Trial Chamber I has yet to rule on the pending requests for redactions to the name of the interpreter. See ICC-01/04-01/06-1567-Conf-Exp and ICC-01/04-01/06-1664-Conf-Exp. Trial Chamber II has yet to rule on the scope of Regulation 42, see ICC-01/04-01/07-1205.