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No.: ICC-01/04-01/07
Date: **24 September 2009**

TRIAL CHAMBER II

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

SITUATION IN DEMOCRATIC REPUBLIC OF CONGO

**IN THE CASE OF
*THE PROSECUTOR v. GERMAIN KATANGA AND MATHIEU NGUDJOLO
CHUI***

PUBLIC REDACTED VERSION

**Addendum to the Prosecution's Request to Maintain Redactions, "Requête
sollicitant le maintien de versions expurgées d'éléments de preuve", dated 10
August 2009**

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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Other

Pursuant to the order of Trial Chamber II (“Chamber”) of 14 September 2009 rendered by electronic means¹, the Prosecution submits an Addendum to its request to maintain redactions, “Requête sollicitant le maintien de versions expurgées d’éléments de preuve”, dated 10 August 2009.² The Prosecution indicates in this filing the redactions to witnesses’ statements³, which it no longer seeks to maintain.

Request for Receipt of Filing as Confidential *Ex Parte*

The Prosecution requests that this application be received by the Trial Chamber II as “Confidential, *ex parte*, only available to the Office of the Prosecutor”, as it relates to material that is currently treated as confidential. The Prosecution is filing a public redacted version of the present filing.

Introduction

1. In its initial decision setting a date for commencement of trial of 24 September 2009 against Germain Katanga and Mathieu Ngudjolo Chui (“Katanga case”), the Chamber authorised the Prosecution to request up to 10 August 2009, those redactions, which it sought to maintain.⁴
2. On 10 August 2009, the Prosecution submitted its request for redactions which it sought to maintain on a temporary basis prior to trial or which it sought to maintain for the whole of the legal proceedings (“10 August Request”).⁵

¹ See e-mail of 14 September 2009 from the Legal Advisor of the Trial Division.

² ICC-01/04-01/07-1363, 13 August 2009 (Public redacted version of ICC-01/04-01/07-1359-Conf-Exp, 10 August 2009).

³ The term ‘statement’ is intended broadly to cover notes of interview, screening notes, witness statements and transcripts of interview.

⁴ ICC-01/04-01/07-999, para. 14.

⁵ ICC-01/04-01/07-1363, 13 August 2009 (Public redacted version of ICC-01/04-01/07-1359-Conf-Exp, 10 August 2009).

3. On 9 September 2009, the Chamber ordered the Prosecution, by electronic means, to provide clarification on certain requests for redactions made for statements of witnesses, in light of prior decisions made by Trial Chamber I in the case of the *Prosecutor v Lubanga* (“Lubanga case”) regarding those same witnesses.⁶ The Prosecution was asked to submit its written observations on those redactions, which it no longer wished to maintain.

Redactions which the Prosecution no longer wishes to maintain

4. The security of victims, witnesses and other persons at risk is the primary consideration when assessing requests for redactions to a witness’s statement. There have been some differences between the Lubanga and Katanga cases when requesting redactions to statements of common witnesses since the risks differ *vis-à-vis* the different accused, warranting a different assessment as to which redactions are necessary.
5. Accordingly, where there has been a prior disclosure of certain information in one case, this does not necessarily mean that the same information can automatically be disclosed in the other case. The disclosure of information is based on an assessment of the risks.
6. Additionally, differences in practice have arisen as a result of the approach to redaction requests adopted by Pre-Trial Chamber I (“PTC I”) in the Katanga case. PTC I did not accept that the accused were necessarily exchanging information within the detention centre.⁷ This view impacted on the redaction

⁶ See e-mail of 9 September 2009 from the Legal Advisor to the Trial Division.

⁷ See ICC-01/04-01/07-322, 14 March 2008. PTC I rejected the Prosecution’s application to segregate the accused and to prohibit them from sharing information “in the absence of any concrete evidence of any specific violation of the detention regime aiming at threatening or harming witnesses, breaching non-disclosure orders by the Single Judge or fabricating testimony or evidence.”

regime that was followed by the Prosecution. [REDACTED].⁸ The Prosecution's requests for redactions have thus been adapted to reflect this reality.

7. Furthermore, in some instances, there has been a different approach to redaction requests adopted by Trial Chamber I and Trial Chamber II. Trial Chamber I has granted most of the requests for redactions on a permanent basis. Trial Chamber II has usually granted requests for redactions on a conditional basis, notably for categories of redactions such as family members of witnesses and intermediaries.
8. The Prosecution has conducted an assessment of the risks in the instances detailed below and it now considers that there is no further risk posed by the disclosure of the information in the Katanga case in the following cases.

Employees of the Court

9. The Chamber had authorised in the Katanga case⁹ the temporary redactions from transcripts of interview of Witness 187¹⁰ of the names of two Court employees [REDACTED]¹¹ and [REDACTED]¹². Witness 187 is a former Prosecution witness providing incriminatory evidence in the Lubanga case and provided information relevant pursuant to Rule 77 of the Rules of Procedure and Evidence ("Rules") in the Katanga case. In its 10 August Request, the Prosecution sought to maintain those redactions. Witness 187's statement was disclosed in the Lubanga case without redactions to these two

⁸ [REDACTED]

⁹ [REDACTED]

¹⁰ [REDACTED]

¹¹ [REDACTED]

¹² [REDACTED]

Court employees' names. The Prosecution, after a risk evaluation, no longer seeks to maintain redactions to these two employees' names.

Family members of witnesses

10. The Prosecution, after a risk evaluation of the individual circumstances of the security situation of the family members of the witnesses, is of the opinion that the risk related to the disclosure of their names is manageable, including for Witness 159 who is in the International Criminal Court Protection Programme.
11. The identity of family members of the Bogoro attack is being disclosed, as the information is relevant pursuant to Rule 77 to the preparation of the Defence, since the family members of Witnesses 159, 161 and 233 referred to below are also victims of the Bogoro attack.¹³ On 25 March 2009, the Chamber granted the lifting of redactions to the names of family members of victims and witnesses of the Bogoro attack.¹⁴
12. The Prosecution requested the lifting of redactions for the names of family members of Witness 161¹⁵ and 159¹⁶ so that the Defence may have access to the names of victims of the Bogoro attack or persons present during the attack.¹⁷
13. The Prosecution originally requested maintaining the redaction of the names of the cousins and sister of Witness 233.¹⁸ The Prosecution has re-evaluated the risk and now seeks the lifting of redactions of the names of the cousins and sister of Witness 233.

¹³ On 30 January 2009, the Prosecution requested the lifting to the redactions of the names of victims of the Bogoro attack and to their family members, ICC-01/04-01/07-862, paragraph 21. [REDACTED]

¹⁴ [REDACTED] For the public version see ICC-01/04-01/07-1034.

¹⁵ [REDACTED]

¹⁶ [REDACTED]

¹⁷ [REDACTED]

¹⁸ [REDACTED]

14. The notes of interview of Witness 161¹⁹ sets out the names of family members including his brother. The Prosecution originally requested a redaction for the place of residence of the witness's brother [REDACTED], but after re-evaluating the risk, is now seeking to lift that redaction.²⁰ In this instance, Witness 161's brother was present during the Bogoro attack [REDACTED].

Family members of witnesses relevant in the Katanga case pursuant to Article 67(2) or Rule 77

15. Witnesses 4, 7, 14, 16, 24, 31, 41, 43, 187 and 294 are witnesses in the Lubanga case who provide incriminatory evidence and who provide information relevant to Article 67(2) or Rule 77 in the Katanga case. The Prosecution sought to redact the names of members of their family and their location in the Katanga case. This information was disclosed in the Lubanga case.
16. The Prosecution has assessed that the disclosure of this information to the accused in the Katanga case will not increase the risk to these Witnesses and their family members. The Prosecution requests the lifting of the redactions to the names and location of the family members of Witnesses 4, 7, 14, 16, 24, 31, 41, 43, 187 and 294.
17. On 16 September 2009, the Prosecution confirmed with Witness 180 that his parents live in [REDACTED]. Accordingly, the Prosecution has assessed that the disclosure of their names to the accused in the Katanga will not pose a

¹⁹ [REDACTED]

²⁰ In its e-mail of 9 September 2009, the Chamber refers to a request for redaction to the witness statement of Witness 161, [REDACTED].

risk. Therefore, the Prosecution requests the lifting of the redactions to the names of the mother and father of Witness 180.²¹

Conclusion

The Prosecution respectfully requests the lifting of the information as described above.

A handwritten signature in blue ink, appearing to read 'Luis Moreno-Ocampo', is centered on the page. The signature is fluid and cursive.

Luis Moreno-Ocampo, Prosecutor

Dated this 24th day of September 2009

At The Hague, The Netherlands

²¹ [REDACTED]