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No.: ICC-01/04-01/07
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TRIAL CHAMBER II

Before: Judge Bruno Cotte, Presiding Judge
Judge Fatoumata Dembele Diarra
Judge Christine Van den Wyngaert

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 provision of information in relation to the redactions applied to the
statement of Witness 317**

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

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REGISTRY

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Victims and Witnesses Unit

Detention Section

Victims Participation and Reparations Section

Other

On 2 November 2009, Trial Chamber II (“Chamber”) requested the Prosecution to file a document establishing the legal foundation as well as the factual arguments justifying the redactions applied to the statement of witness 317.¹

Confidentiality

1. 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 contains the reasons for the redactions to the statement of Witness 317.

Legal basis

2. The United Nations (“UN”) conditioned its agreement to the interview of Witness 317 on the application of Article 18(3) of the Relationship Agreement between the United Nations and the International Criminal Court (“Relationship Agreement”).² Article 18(3) states: “The United Nations and the Prosecutor may agree that the United Nations provide documents or information to the Prosecutor on condition of confidentiality and solely for the purpose of generating new evidence and that such documents or information shall not be disclosed to other organs of the Court or to third parties, at any stage of the proceedings or thereafter, without the consent of the United Nations”. Article 18(3) of the Relationship Agreement mirrors Article 54(3)(e) of the Rome Statute (“Statute”), and the legal basis under the Statute for the Prosecutor to agree to the application of Article 18(3) of the Relationship Agreement is Article 54(3)(e).

¹ ICC-01/04-01/07-T-74-CONF-ENG ET, p. 4, lines 19-21. The written reasons were filed by the Chamber on 3 November, see ICC-01/04-01/07-1590, para. 28.

² <http://www.icc-cpi.int/Menus/ICC/Legal+Texts+and+Tools/Official+Journal/Negotiated+Relationship+Agreement+between+the+International+Criminal+Court+and+the+United+Nations.htm>.

3. The content of the interview remained at all times subject to the conditions of confidentiality as set out in Article 54(3)(e). Following the request of the Prosecution to the UN for the lifting of Article 54(3)(e) restrictions on the statement of Witness 317, the Prosecution received on 5 October 2009 confirmation in writing that the UN agreed to the lifting of the applicable confidentiality restrictions, subject to the retention of certain redactions to the statement, which remained subject to Article 18(3) of the Relationship Agreement and Article 54(3)(e). Thus, while the UN agreed to lift Article 54(3)(e) restrictions on part of the document, namely the majority thereof, it retained Article 54(3)(e) restrictions with respect to other portions of the document, namely those set out in the redactions.
4. On 7 October 2009, the Prosecution received a copy of the statement of Witness 317 prepared with the redactions retained by the UN.

Underlying reasons for the redactions

5. On 16 October 2009, the Prosecution filed the List of Redactions ("List") as received by the UN. The last column of the List describes the reasons of the UN for maintaining a limited number of restrictions (redactions) pursuant to Article 54(3)(e).³

³ ICC-01/04-01/07-1537-Conf-Exp-AnxD.

6. The Prosecution files, in Annex A, a chart that follows the model adopted by the Chamber in its “*Décision relative à la procédure d’expurgation*” of 12 January 2009.⁴



Luis Moreno-Ocampo, Prosecutor

Dated this 4th day of November 2009

At The Hague, The Netherlands

⁴ ICC-01/04-01/07-819. The Prosecution is only in a position to populate Annex A with the information as received by the UN and as previously submitted in ICC-01/04-01/07-1537-Conf-Exp-AnxD.