



Original: English

No.: ICC-01/04-01/07
Date: 13 November 2009

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 Annexes - Confidential, *ex parte*, only available to the Office of the
Prosecutor**

**Provision of information in relation to five documents related to P-46 and request
for protective measures for one document**

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

**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 Victims

Mr Jean-Louis Gilissen

Mr Fidel Nsita Luvengika

Legal Representatives of the Applicants

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

Trial Chamber II (“Chamber”) requested, by e-mail, that the Prosecution submit an Application for the disclosure of 5 redacted documents of the United Nations (“UN”) related to P-46.¹ The Prosecution hereby complies with the Chamber’s request and seeks the implementation of protective measures in relation to one document.

Confidentiality

The Prosecution requests that the Annexes to this filing be received by the Chamber as confidential, *ex parte*, only available to the Office of the Prosecutor as they relate to confidential material.

Background

1. On 3 November 2009, Trial Chamber II requested the Prosecution to disclose, as soon as possible, any material relevant pursuant to Rule 77 of the Rules of Procedure and Evidence in relation to P-46 and P-317.²
2. On 6 November 2009, the Prosecution informed the Chamber and the Defence, by e-mail, that indeed it had identified 13 documents as relevant pursuant to Rule 77. It also informed the Chamber and the Defence, that for 5 of these documents, the UN had applied redactions when lifting the confidentiality restrictions pursuant to Article 54(3)(e). The remaining 8 documents could be disclosed immediately as no redactions had been applied by the UN. In this e-mail, the Prosecution was also seeking the immediate disclosure of the 5 redacted documents.
3. On 9 November 2009, the Prosecution disclosed the 8 documents to which no redactions had been applied by the UN to the Defence.
4. On 10 and 12 November 2009, the Chamber authorised by e-mail the provisional disclosure of the 5 documents with the redactions as applied by the UN. The

¹ E-mails received on 10 and 12 November 2009, from the Legal Adviser of the Trial Division.

² ICC-01/04-01/07-1590, para. 25.

Chamber also instructed the Prosecution to submit a formal disclosure request for these 5 redacted documents. This request is to include both the unredacted and redacted versions of these documents, a short description of each document and information as to when and under which conditions they were received from the UN.

5. On 12 November, the Prosecution disclosed 4 of the 5 documents as authorised by the Chamber. The Prosecution withheld the disclosure of one of the documents³ pending a decision by the Chamber on the protective measures sought by the provider, and as set out in detail below.

Protective measures sought

6. The Prosecution seeks, on behalf of the provider, protective measures to permit the disclosure of document DRC-OTP-0208-0284. These protective measures were granted by Trial Chamber I in the case of the *Prosecutor v. Thomas Lubanga Dyilo* on 8 May 2009.⁴ Under the terms of the decision, the Accused and his Defence team are prohibited from disclosing the document to any third person or body, and should they wish to use the document in proceedings before the Chambers, they can only submit the document in evidence or discuss its contents in closed session. Additionally, access to the unredacted transcripts and recordings of the respective parts of the proceedings must be restricted to the Chamber and their staff, the Prosecution and its staff, and the Accused and respective Defence team.
7. The letter of the UN setting out in detail the conditions for the disclosure of document DRC-OTP-0208-0284 is attached to this filing as confidential, *ex parte* Annex D. The Prosecution hereby requests the Chamber to grant the protective measures as sought by the provider and as confirmed by Trial Chamber I.

³ DRC-OTP-0208-0284.

⁴ Pursuant to the oral decision of Trial Chamber I of 8 May 2009. See ICC-01/04-01/06-T-171, p. 40, lines 4-21.

Description of the Annexes

8. In Annex A, the Prosecution submits the unredacted version of the 5 documents and in Annex B, with the redactions as applied by the UN.
9. In Annex C, the Prosecution submits a short description of each document and provides information as to when and under which conditions these documents were received from the UN.
10. In Annex D, the Prosecution submits the letter from the UN setting out the protective measures requested.



Luis Moreno-Ocampo, Procureur

Dated this 13th day of November 2009

At The Hague, The Netherlands