

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: **French**

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

Date: **22 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

Confidential

Ex parte only available to the Office of the Prosecutor

**Order Instructing the Prosecutor to Re-submit the Witness Statement of
Witness 56**

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 Germain Katanga

Counsel for Mathieu Ngudjolo Chui

Legal Representatives of the Victims

Legal Representatives of the Applicants

**The Office of Public Counsel for
Victims**

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

States' Representatives

Amicus Curiae

REGISTRY

Registrar

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"), acting pursuant to regulation 28 of the Regulations of the Court, orders as follows:

1. On 3 April 2009, the Prosecutor submitted an application ("Application") requesting that the Chamber determine whether the information contained in the witness statement of Witness 56 must be disclosed to the Defence.¹ The Application was filed as "confidential, *ex parte*, available to the Prosecution only".

2. On 16 March 2009, the Chamber ordered the Prosecutor to submit a highlighted version of the 13 documents obtained under article 54(3)(e) of the Statute and not yet disclosed to the Defence in order to show the relevant passages (according to whether they were incriminatory or exculpatory on the basis of article 67(2) of the Statute, or fell within rule 77 of the Rules of Procedure and Evidence).² The Chamber then ordered the Prosecutor to highlight the relevant passages of the 53 documents obtained under article 54(3)(e) of the Statute and already disclosed to the Defence.³

3. The Chamber considers that it should take the same approach to enable it to assess any prejudice the Defence may have suffered and, in particular, to assess the relevance of the information contained in the document in question. It orders the Prosecutor therefore to re-submit the witness statement, highlighting in colour the relevant passages falling within article 67(2) of the Statute or rule 77 of the Rules.

¹ Office of the Prosecutor, "Prosecution's request for a determination from Trial Chamber II regarding disclosure of the Witness Statement of Witness 56", 3 April 2009, ICC-01/04-01/07-1020-Conf-Exp.

² 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-01/04-01/07-973-Conf-Exp, confidential, *ex parte*, available to the Office of the Prosecutor only. This filing was registered in accordance with the Chamber's instructions at the *ex parte* hearing on 16 March 2009, ICC-01/04-01/07-T-62-CONF-EXP-ENG ET 16-03-2009, p. 47, lines 4 to 10. The same practice was 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.

³ *Ordonnance enjoignant au Procureur de resoumettre des documents obtenus en vertu de l'article 543-e et ayant déjà été communiqués à la Défense*, 5 June 2009, ICC-01/04-01/07-1193-Conf-Exp.

FOR THESE REASONS, THE CHAMBER

ORDERS the Prosecutor to submit to the Chamber the highlighted version of the witness statement of Witness 56 by 4 p.m. on 29 June 2009.

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 22 June 2009

At The Hague, The Netherlands