

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/04-01/07
Date: 27 January 2010

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
with Confidential Annex**

**Victims and Witnesses Unit and Defence Teams joint protocol specifying concrete
modalities of disclosure of protected witnesses' identities**

Source: Registry

Document 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 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 Fidel Nsita Luvengika
Mr Jean Louis Gilissen

Legal Representatives of Applicants

Unrepresented Victims

Unrepresented Applicants for 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

Mr Didier Preira

Defence Support Section

Victims and Witnesses Unit

Ms Maria Luisa Martinod-Jacome

Detention Section

Victims Participation and Reparations Section

Ms Fiona Mackay

Other

The Registrar of the International Criminal Court ("the Court");

NOTING the "Decision on a number of procedural issues raised by the Registry" of 14 May 2009¹;

NOTING the "Requête de la Défense en vue d'obtenir de la Chambre des instructions précises sur la manière d'approcher des tiers qui lui sont très utiles en vue de recueillir des éléments a décharge et des éléments pouvant décrédibiliser certains témoins du Procureur" of 2 December 2009²;

NOTING the Prosecution's "Observations regarding the disclosure of the identity of Prosecution witnesses to third parties" of 11 December 2009³;

NOTING the "Observations du Représentant légal du groupe principal des victimes sur la requête de la Défense de Mathieu Ngudjolo Chui visant à obtenir de la Chambre des instructions sur la manière d'approcher des tiers quant à certains témoins à charge Articles 64(2) et 68 (1) et (3) du Statut" of 11 December 2009⁴;

NOTING the "VWU's report on the request by defence counsel for Mr. Ngudjolo to be authorised to mention the identity of certain witnesses" of 16 December 2009 submitted to Trial Chamber II by email;

¹ ICC-01/04-01/07-1134.

² ICC-01/04-01/07-1702-Conf-Exp. See also the Public redacted version of 8 December 2009, ICC-01/04-01/07-1702.

³ ICC-01/04-01/07-1720-Red.

⁴ ICC-01/04-01/07-1719.

NOTING Trial Chamber II's "Instructions sur la manière d'approcher des tiers utiles aux enquêtes de la Défense" of 18 December 2009 ("Trial Chamber II's Instructions")⁵;

NOTING the "Defence Provisional Observations on the Meaning and Execution of the Trial Chamber's Instructions re: Approaching Third Parties during Defence Investigations" submitted by the Defence team for Mr. Germain Katanga of 28 December 2009⁶;

NOTING Articles 43(6), 67 (e) and 68(1) and (4) of the Rome Statute, Rules 16 to 19, 87 to 89 of the Rules of Procedure and Evidence, Regulations 23*bis* and 41 of the Regulations of the Court and Regulations 79 to 96 of the Regulations of the Registry;

CONSIDERING that Trial Chamber instructed the Victims and Witnesses Unit ("VWU") and the Defence teams to coordinate and to prepare a protocol specifying concrete modalities of disclosure of protected witnesses' identities⁷;

RESPECTFULLY SUBMITS the VWU and Defence Teams joint protocol specifying concrete modalities of disclosure of protected witnesses' identities.

1. Following Trial Chamber II's Instructions, the Defence teams and the VWU drafted and agreed on the joint protocol specifying concrete modalities of disclosure of protected witnesses' identities. The protocol is submitted in a Confidential Annex 1 in English and French⁸.

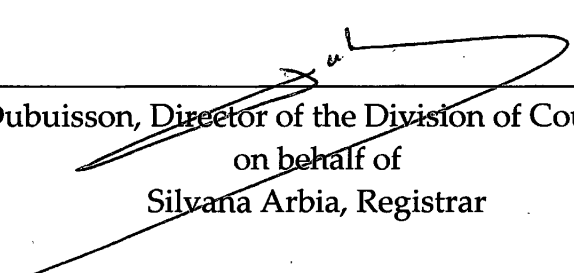
⁵ ICC-01/04-01/07-1734.

⁶ ICC-01/04-01/07-1745.

⁷ ICC-01/04-01/07-1734, p.13.

⁸ Unofficial translated version.

2. The Protocol sets out general guidelines to be followed as a minimum requirement when a witness's identity might be revealed to a third party.
3. For these cases, the Defence Teams committed to follow the recommendations of the protocol. The VWU remains available to provide advice and guidance in relation to any questions or concerns the parties or participants may have in respect of any specific matter or a particular witness.
4. Furthermore, the VWU recommends considering applying the protocol also to investigations in relation to participating victims and non-protected witnesses. All parties and participants may wish to conduct investigations in relation to those individuals and extending the application of the protocol could help to ensure that those individuals are not exposed unnecessarily.
5. Finally, the VWU suggests considering applying the protocol as an addition to the existing "Decision on a number of procedural issues raised by the Registry"⁹ whereby the contact of the witnesses appearing on behalf of another party is further specified in paragraphs 27 and 28.



Marc Dubuisson, Director of the Division of Court Services
on behalf of
Silvana Arbia, Registrar

Dated this 27 January 2010

At The Hague, The Netherlands

⁹ ICC-01/04-01/07-1134, paras 27-28.