



Original: English

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

Date: 12 March 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 Document
with Confidential Annexes A and B**

**Prosecution's Communication of Potentially Exonerating Evidence Disclosed to
the Defence on 12 March 2010**

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 the Victims

Legal Representatives of the Applicants

Mr Jean-Louis Gilissen

Mr Fidel Nsita Luvengika

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

Defence Support Section

Ms Silvana Arbia

Deputy Registrar

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

The Office of the Prosecutor ("Prosecution") herewith submits its report regarding the disclosure, on 12 March 2010, of one document pursuant to Article 67(2) of the Statute to the Defence. The Prosecution disclosed the document based on the new, simplified procedure set out by the Chamber regarding the disclosure of Rule 77 and potentially exonerating material.¹

Disclosure of new material

The document is the statement of witness 363² and contains information that is potentially exonerating to the Defence. The document does not require redactions. The Prosecution did not disclose it prior to the 27 February 2009 deadline³ due to an oversight.

Request for Confidentiality

Annexes A⁴ and B⁵ appended to this communication contain the "List of Disclosed Material" provided to each Defence team. The Prosecution requests that these annexes be received as "Confidential" since they relate to *inter partes* disclosure.



Luis Moreno-Ocampo, Prosecutor

Dated this 12th day of March 2010

At The Hague, The Netherlands

¹ ICC-01/04-01/07-T-105-CONF-FRA ET, 22 February 2010, p. 3, lines 16-25 and p. 4, lines 1-4.

² DRC-OTP-0206-0163.

³ In its « *Ordonnance fixant le calendrier de communications des éléments de preuve à charge et à décharge avant le procès et la date d'une conférence de mise en état* », ICC-01/04-01/07-846, 23 January 2009, the Chamber ordered *inter alia* that all evidentiary items in his possession that fell within the terms of article 67(2) of the Statute be disclosed to the Defence no later than 27 February 2009.

⁴ List of Disclosed Material provided to the Defence of Germain Katanga on 12 March 2010.

⁵ List of Disclosed Material provided to the Defence of Mathieu Ngudjolo Chui on 12 March 2010.