

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: **English**

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

Date: **4 May 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 Annexes A to O – Confidential, *ex parte*, only available to the Office of the
Prosecutor and the Defence**

**Prosecution's Application to Disclose Documents Related to Witnesses 157 and 279
in Redacted Form pursuant to Regulation 42 of the Regulations of the Court and
Rule 77 of the Rules of Procedure and Evidence**

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 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

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

The Office of the Prosecutor ("Prosecution") seeks the Chamber's authorization, pursuant to Regulation 42 of the Regulations of the Court ("Regulations"), to disclose to the Defence teams of Germain Katanga and Mathieu Ngudjolo Chui fourteen documents ("receipts") related to Witness P-157 with the same redactions as applied in the case of the *Prosecutor v. Thomas Lubanga Dyilo* ("*Lubanga* case"). The documents fall within the ambit of Rule 77 of the Rules of Procedure and Evidence ("Rule 77"). The Prosecution also seeks the disclosure of one document related to Witness 279 ("P-279") with redactions pursuant to Rule 81(4), following the new simplified procedure set out by the Chamber regarding the disclosure of redacted Rule 77 and potentially exonerating material.¹

Disclosure of documents related to P-157 pursuant to Regulation 42

1. The Defence team of Germain Katanga requested the Prosecution to disclose a number of additional documents related to Witness P-157 that were disclosed to the Defence in the *Lubanga* case.² Further to the above request, the Prosecution disclosed, on 28 April 2010,³ sixty-nine documents related to the aforementioned witness.
2. The fourteen receipts the Prosecution seeks to disclose with redactions fall within the realm of the same request in relation to P-157. The receipts refer to expenses incurred by the Prosecution in relation to P-157. These documents have been disclosed in the *Lubanga* case with redactions pursuant to Rules 81(1) and 81(2).⁴ The Prosecution in this case seeks to apply, pursuant to Regulation 42, the same redactions as applied in the *Lubanga* case.

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 Email from the Defence team of Germain Katanga, dated 22 April 2010, at 18:03 ("*The Defence for Mr Katanga requests that all the documents mentioned in the Chart [...] relative to W-157, already disclosed to the Defence for Lubanga but not to us yet, be disclosed to us as soon as possible.*")

³ ICC-01/04-01/07-2056

⁴ See the Prosecution's application in ICC-01/04-01/06-2266-Conf-Exp, 26 January 2010. The documents have already been disclosed in the *Lubanga* case with the proposed redactions and with the caveat that should the

3. The majority of the redactions applied to these receipts fall within the category of “internal work product” in accordance with Rule 81(1). A limited number of redactions were applied pursuant to Rule 81(2): in one document, the name of intermediary P-143 is redacted; in two documents the name of a local organization is redacted, and in five other the name of a person who assisted the witness is also redacted.
4. The proposed redactions do not affect the value, or hinder Defence’s ability to assess the relevant information contained in these documents, nor do they impact on issues that are relevant to the Defence case. Accordingly, the Prosecution submits that the redactions are not prejudicial to or inconsistent with the rights of the Accused.

Disclosure of a document related to P-279 with redactions pursuant to Rule 81(4)

5. The Prosecution seeks to disclose a copy of a birth certificate issued on the name of P-279.⁵ The Prosecution will not be relying on this document at trial. An investigator’s note detailing the circumstances of collection of this document was disclosed to the Defence on 28 April 2010.⁶ The Prosecution is disclosing this birth certificate since it may be material to the preparation of the Defence, pursuant to Rule 77.

Chamber “decline to authorise any of the proposed redactions, the Prosecution will re-disclose the relevant documents” (see para. 43 of the above-mentioned application). To date, Trial Chamber I has not requested the Prosecution to lift any of the *proprio motu* redactions applied to these receipts.

⁵ DRC-OTP-1023-0072.

⁶ ICC-01/04-01/07-2056.

6. The redactions applied pursuant to Rule 81(4) are limited to the names of the parents of P-279. The Prosecution recalls that the Chamber authorized permanent redactions to these names⁷ in the statement of P-279⁸.

Request for confidentiality

Annexes A to N appended to this application contain copies of the documents related to P-157, whereas Annex O contains the document related to P-279. The Prosecution has applied the proposed redactions to enable the Defence to immediately access these documents pursuant to the new simplified procedure set out by the Chamber. The Prosecution requests that these annexes be received as "Confidential, *ex parte*, only available to the Office of the Prosecutor and the Defence" since they relate to *inter partes* disclosure.



Luis Moreno-Ocampo, Prosecutor

Dated this 4th day of May 2010

At The Hague, The Netherlands

⁷ See decisions ICC-01/04-01/07-987-Conf-Exp of 25 March 2009, and ICC-01/04-01/07-1551-Conf-Exp of 22 October 2009 (see, in particular, para. 21).

⁸ DRC-OTP-1007-1077.