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

Date: 27 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 CONGO
IN THE CASE OF
THE PROSECUTOR
*v. GERMAIN KATANGA and MATHIEU NGUDJOLO CHUI***

Public Document

Urgent Defence Request for the Lifting of Redactions Regarding Witness 267

Source: Defence for Mr Germain Katanga

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
Mr Eric Macdonald, Senior Trial Lawyer

**Counsel for the Defence for Germain
Katanga**

Mr David Hooper Q.C.
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Legal Representatives of Victims

Mr Jean-Louis Gilissen
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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

1. The Defence for Mr. Germain Katanga ('Defence') hereby requests the urgent lifting of redactions to the statement DRC-OTP-1000-0002 of incriminating Witness 267.
2. More precisely, the Defence requests the lifting of the redactions contained in:
 - Paragraph 18: Reference to PRF-02618, unknown document;
 - Paragraphs 32, 40, 69, 71, 74, 75, 82, 123, 124, 130, 143, 148, 151, 155, 159, 164, 168, 169: Names of agents, collaborators of the witness in his work on demobilisation, and their location at the time;
 - Paragraphs 83, 157: Circumstances surrounding the kidnapping of the witness;
 - Paragraph 154: Name of the Director of a secondary school, author of the document DRC-OTP-1000-0080 'Histoire FRPI' given to the Prosecution by the witness.
3. The Defence maintains that the disclosure of the information sought is necessary for the preparation of the Defence at this advanced stage of the trial. Witness 267 is due to testify within a few weeks. The Defence relies, *inter alia*, on the *Décision sur l'appel de la Défense de Germain Katanga contre la « décision relative à la levée, au maintien et au prononcé de mesures d'expurgations » datée du 22 octobre 2009 (ICC-01/04-01/07-1551-Conf-Exp)*, which confirms that the Defence can request the lifting of redactions if it can indicate with sufficient detail why it is needed for the preparation of the Defence.¹ The Chamber recently confirmed, by an oral ruling of 14 May 2010, that:

The Chamber can authorise a redaction only if there is an objectively justifiable risk to the safety of the person in question if this risk stems from the disclosure of specific information specifically held by the Defence and if less restrictive protective measures are impossible or not sufficient. Furthermore, the Chamber would like to assess the interest that the information in question can present for the witness and weigh up the balances of the interests in question. The Chamber must, in particular, ensure that the redaction does not make the process unfair. The Chamber also wishes to remind parties that all redactions are subject to very careful legal review on a case-by-case basis, and the decision to authorise a redaction must be reviewed periodically as is required by the Appellate Chamber [...].²
4. The Defence maintains that the disclosure of the information sought is necessary to prepare Witness 267's cross-examination and for the Defence investigations. The information sought relates to the sources of information of Witness 267, namely his agents and collaborators. Therefore, they are relevant and necessary to assess his credibility, and for the Defence to make full investigations into the issues raised by the witness, including the number of child soldiers within the FRPI, the cooperation of the

¹ ICC-01/04-01/07-1725, 17 December 2009, paras 13, 18.

² ICC-01/04-01/07-T-141-CONF-ENG ET 14-05-2010, p. 15, l. 7-19.

FRPI and his meetings with Mr Katanga. Many of these people may assist in shedding light on the nature and content of these meetings and the level of cooperation of Mr Katanga, as well the origin of the children.

5. Furthermore, the disclosure of this information a few weeks before Witness 267's testimony will not be prejudicial for the witness as it could, in any event, be disclosed by the witness himself in the course of his testimony.

Reliefs sought

6. For the reasons above, the Defence respectfully requests the Chamber to order the Prosecution to lift the redactions in the statement DRC-OTP-1000-0002 of Witness 267.

Respectfully submitted,



David HOOPER Q.C.

Dated this 27 May 2010
At The Hague