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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***

Public Document

**Public redacted version of the *Decision on Documents Obtained Pursuant to
Article 54(3)(e) and Already Disclosed to the Defence in Redacted Form*
of 23 July 2009
(ICC-01/04-01/07-1330-Conf-Exp)**

Decision to be notified in accordance with regulation 31 of the Regulations of the Court to:

The Office of the Prosecutor

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REGISTRY

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Ms Silvana Arbia

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” and “the Court” respectively), acting pursuant to articles 54(3)(e), 64(2), 64(3)(c), 64(6)(c), 64(6)(f), 67 and 68 of the Rome Statute (“the Statute”) and rules 77 and 82 of the Rules of Procedure and Evidence (“the Rules”), decides the following.

I. Procedural History

1. At the status conference of 3 February 2009, the Chamber directed the Prosecutor to submit to it all the documents obtained under article 54(3)(e) of the Statute which had already been disclosed to the Defence in redacted form, in order that it might examine the redactions required by the document source.¹ The Chamber repeated this request in its Decision of 26 February 2009.²

2. On 5 March 2009, the Prosecutor submitted to the Chamber an application together with documents obtained under article 54(3)(e) of the Statute;³ they included 53 redacted documents already disclosed to the Defence.⁴

3. On the same date, Germain Katanga’s Defence filed observations on certain documents obtained under article 54(3)(e) of the Statute which had been disclosed to it.⁵

¹ ICC-01/04-01/07-T-56-ENG ET WT 03-02-2009, p. 19, lines 6 to 19.

² *Reasons for the Oral Decision of 3 February 2009 on the Procedure for the Redaction of Documents Obtained by the Prosecutor Under Article 54(3)(e) of the Statute and Order Instructing the Prosecutor to Submit Documents to the Chamber*, 26 February 2009, ICC-01/04-01/07-931-tENG.

³ Office of the Prosecutor, “Prosecution’s Submission of Documents Obtained Pursuant to Article 54(3)(e) of the Statute and Already Communicated to the Defence in Redacted Form”, 5 March 2009, ICC-01/04-01/07-941, with confidential, *ex parte* annexes only available to the Office of the Prosecutor.

⁴ ICC-01/04-01/07-941-Conf-Exp-Anxs A, B and C.

⁵ Germain Katanga’s Defence Team, “Defence Observations in respect of the « *Motifs de la décision orale du 3 février 2009 relative à la procédure d’expurgation de documents obtenus par le Procureur en vertu de l’article 54-3-e du Statut et ordonnance enjoignant au Procureur de soumettre des documents à la Chambre* »”, 5 March 2009, ICC-01/04-01/07-944. The Defence submitted observations on documents DRC-OTP-1029-0338 (document C3), DRC-OTP-1029-0413, DRC-OTP-0185-0854 (document D5) and DRC-OTP-0172-0296.

4. Having examined the aforementioned 53 documents, the Chamber asked the Prosecutor a number of questions at an *ex parte* hearing held on 16 March 2009.⁶ The Prosecutor replied to those questions in writing on 20 March 2009.⁷

5. At that same *ex parte* hearing, the Chamber also directed the Prosecutor to submit the documents to it again, together with additional information enabling it to assess them effectively.⁸ The Prosecutor later re-submitted these 53 documents, indicating for each of them its source and the reasons why the source required the redactions.⁹

6. After re-examining these 53 documents in the light of the additional information provided by the Prosecutor, the Chamber directed the Prosecutor to present the documents, this time highlighting the relevant passages (according to whether they were incriminating, or exculpatory on the basis of article 67(2) of the Statute, or fell under rule 77 of the Rules).¹⁰ The Prosecutor submitted the documents in question on 22 June 2009 in the form required by the Chamber.¹¹

⁶ ICC-01/04-01/07-T-62-CONF-EXP-ENG ET 16-03-2009, p. 48, lines 19 to 25, pp. 49 to 51 and p. 52, lines 6 to 10.

⁷ Office of the Prosecutor, “*Réponse de l’Accusation aux questions additionnelles soulevées par la Chambre en relation de l’écriture de l’Accusation intitulée « Prosecution’s Submission of Documents Obtained Pursuant to Article 54(3)(e) of the Statute and Already Communicated to the Defence in Redacted Form »*”, 20 March 2009, ICC-01/04-01/07-973-Conf-Exp, confidential, *ex parte*, only available to the Office of the Prosecutor.

⁸ ICC-01/04-01/07-T-62-CONF-EXP-ENG ET 16-03-2009, p. 46, lines 18 to 25, p. 47 and p. 48, lines 1 to 2 and 11 to 13.

⁹ Office of the Prosecutor, “*Prosecution’s Re-submission of Documents Obtained Pursuant to Article 54(3)(e) of the Statute and Communicated to the Defence in Redacted Form*”, 31 March 2009, ICC-01/04-01/07-1013-Conf-Exp, confidential, *ex parte*, only available to the Office of the Prosecutor.

¹⁰ *Ordonnance enjoignant au Procureur de resoumettre des documents obtenus en vertu de l’article 54-3-e et ayant déjà été communiqués à la Défense*, 5 June 2009, ICC-01/04-01/07-1193-Conf-Exp, only available to the Office of the Prosecutor. The same approach was adopted by Trial Chamber I in its *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.

¹¹ Office of the Prosecutor, “*Nouvelle soumission de l’Accusation des documents obtenus en vertu de l’article 54-3-e et ayant été communiqués à la Défense*”, 22 June 2009, ICC-01/04-01/07-1236-Conf-Exp, confidential, *ex parte*, only available to the Office of the Prosecutor.

7. Acting pursuant to regulation 28 of the Regulations of the Court, the Chamber made further requests for additional details relating to 26 documents, which appeared necessary in order to enable it to render its decision.¹² The Prosecutor responded on 10 July 2009 to some of those requests.¹³ He further indicated that he was obliged to contact the sources of those documents in order to be able to respond to the request for additional information concerning the remaining 21 documents.¹⁴ The present Decision will therefore be supplemented accordingly once his response has been received.

II. The Chamber's Analysis

8. The Chamber recalls that reliance on article 54(3)(e) of the Statute must not lead the Prosecutor to act in breach of his obligations towards the accused, in particular of their right to disclosure of evidence in the Prosecutor's possession, or available to him, which he believes shows or tends to show their innocence or to mitigate their guilt, or which is material to the preparation of their defence.¹⁵

9. In its Judgment of 21 October 2008, the Appeals Chamber recalled that, whenever the Prosecutor relies on article 54(3)(e) of the Statute, he must apply it in a manner that will allow the Court to resolve the potential tension between the

¹² E-mails from the Legal Adviser to the Trial Division to the Office of the Prosecutor, 6 and 15 July 2009.

¹³ E-mails from the Office of the Prosecutor to the Legal Adviser to the Trial Division, 10 July 2009. The Prosecutor provided full information on the following documents: B8, B9, B16, D3 and D27.

¹⁴ E-mails from the Office of the Prosecutor to the Legal Adviser to the Trial Division, 10 and 15 July 2009.

¹⁵ Appeals Chamber, *Judgment on the appeal of the Prosecutor against the decision of Trial Chamber I entitled "Decision on the consequences of non-disclosure of exculpatory materials covered by Article 54(3)(e) agreements and the application to stay the prosecution of the accused, together with certain other issues raised at the Status Conference on 10 June 2008"*, 21 October 2008, ICC-01/04-01/06-1486, para. 42. See also: *Decision on the Thirteen Documents Obtained under Article 54(3)(e) of the Statute and Not Yet Disclosed to the Defence*, 19 June 2009, ICC-01/04-01/07-1227-Conf-Exp-tENG, only available to the Office of the Prosecutor, para. 6; *Decision on the Disclosure of a Redacted Version of the Screening Notes concerning Witness 315*, 2 July 2009, ICC-01/04-01/07-1264-Conf-Exp-tENG, only available to the Office of the Prosecutor, para. 5.

confidentiality to which he has agreed and the requirements of a fair trial.¹⁶ It is, moreover, the Trial Chamber which is the final arbiter of whether or not evidence in the Prosecutor's possession or control is required to be disclosed pursuant to article 67(2) of the Statute and in accordance with internationally recognised human rights. Accordingly, the material in question has to be submitted to the Chamber, in order that it may rule on it.¹⁷

10. The Chamber has also ruled that documents obtained under article 54(3)(e) of the Statute must be reviewed by it before being disclosed to the Defence. This review is necessary in order to enable the Chamber to ensure that the rights of the accused are not affected by any redaction carried out by the source that would render the documents in question unintelligible or unreadable, or even unusable by the Defence.¹⁸ The Chamber further considers that such a power of review must be exercised not only over documents falling under article 67(2) of the Statute, but also over incriminating material.¹⁹

11. The Chamber is aware that it cannot force the Prosecutor to disclose documents to the Defence obtained by him pursuant to agreements under article 54(3)(e) of the Statute without the prior consent of the document sources. Likewise, the Chamber recalls that, where it considers that the material would have had to be disclosed had it not been obtained under that provision and that the redactions required by the source violate the rights of the Defence, it must request the Prosecutor to approach the source with a view to agreeing other solutions that might allow the redactions to be reconsidered or modified. It recalls further that, if the sources persist in opposing disclosure, the Chamber must then determine whether

¹⁶ ICC-01/04-01/06-1486, para. 44.

¹⁷ ICC-01/04-01/07-1227-Conf-Exp-tENG, para. 7. See also ICC-01/04-01/06-1486, para. 46. ICC-01/04-01/07-1264-Conf-Exp-tENG, para. 6.

¹⁸ ICC-01/04-01/07-931-tENG, paras. 5 and 7. ICC-01/04-01/07-1264-Conf-Exp-tENG, para. 7.

¹⁹ ICC-01/04-01/07-931-tENG, para. 6.

counter-balancing measures can be taken in order to ensure that the rights of the accused are protected and the requirements of a fair trial are met.²⁰

12. The Chamber further observes that the reasons cited for the redactions required by the source are based on the need to protect individuals or organisations who or which, if measures were not taken, would be placed at risk. Here again however, the Chamber recalls that it has to verify that no less restrictive measures are available and, where it proves essential to withhold disclosure of names, it has to ensure, as the Appeals Chamber has made clear, that the trial is conducted fairly and with full respect for the rights of the accused.²¹

13. As the Chamber has already noted, names can in fact prove to be material to the Defence where the individuals to whom they refer have information which could assist in its preparation. Thus, the Defence might wish to call them as witnesses, or to contact them beforehand in order to obtain further particulars of the facts or to dispute their veracity.²²

14. Accordingly, the Chamber must examine whether the names of individuals or organisations have been redacted in passages containing incriminating information, exculpatory information in the sense of article 67(2) of the Statute, or information falling under rule 77 of the Rules. Where necessary, the Chamber must first ascertain whether those individuals whose names have been redacted had themselves examined the information in question, or whether they were merely reporting it to their organisation.²³ In the latter case, the Chamber considers that failure to disclose the name of an employee of an international organisation or of a non-governmental

²⁰ ICC-01/04-01/07-1227-Conf-Exp-tENG, para. 10. See also ICC-01/04-01/06-1486, para. 48; and ICC-01/04-01/07-931-tENG, para. 8; ICC-01/04-01/07-1264-Conf-Exp-tENG, para. 8.

²¹ ICC-01/04-01/07-1227-Conf-Exp-tENG, para. 11; ICC-01/04-01/07-1264-Conf-Exp-tENG, para. 10.

²² ICC-01/04-01/07-1227-Conf-Exp-tENG, para. 12. See also, Trial Chamber I, *Reasons for Oral Decision lifting the stay of proceedings*, 23 January 2009, ICC-01/04-01/06-1644, paras. 48 and 49; ICC-01/04-01/07-1264-Conf-Exp-tENG, para. 12.

²³ See also similarly, ICC-01/04-01/06-1644, paras. 50 and 51.

organisation (“NGO”) does not prejudice the rights of the accused, but the Chamber has to see to it that the information itself is disclosed in full.²⁴

15. Where the redactions required by the source appear in passages containing no article 67(2) or rule 77 information, the Chamber considers that the Prosecutor’s duty of disclosure is less strict. If the redactions of names do not affect the reading and understanding of the document and if they do not prevent the Defence from using its content, then, in the Chamber’s view, the rights of the accused are respected.²⁵

16. Where the source requires his or her name, or that of certain of his or her sources, to be redacted in order to avoid reprisals, even where those individuals provide information which might be useful and relevant for the Defence, the disclosure of other sources of information providing similar material to that contained in the documents in question can constitute an adequate counter-balancing measure and enable the rights of the Defence to be respected.

17. Lastly, the Chamber considers that, at this stage, it is difficult to assess definitively the usefulness and relevance for the Defence of the information described in these documents. It is in fact up to the Defence to conduct such an assessment, since it is for it alone to decide on the strategy it intends to adopt. It is up to the Defence therefore to assess the usefulness and relevance of the redacted documents (given that the majority of the documents dealt with in this Decision have already been disclosed) and, where necessary, to file with the Chamber, prior to the commencement of the hearings on the merits, an application for review giving the specific information which, in its view, is necessary for the preparation of its case. In that event, the Chamber will assess, in the light of the Defence’s arguments, the practical impact of the redactions required and may thus request the Prosecutor

²⁴ ICC-01/04-01/07-1227-Conf-Exp-tENG, para. 13.

²⁵ ICC-01/04-01/07-1227-Conf-Exp-tENG, para. 13. See also similarly, ICC-01/04-01/06-1644, paras. 52 and 53.

to approach the source with a view to agreeing other solutions that might allow the redactions to be reconsidered or modified or, where necessary, to propose counter-balancing measures.²⁶

18. It is thus in light of these various principles that the Chamber will examine the 32 documents for which it has information which it considers sufficient, and decide on a case-by-case basis whether the redactions imposed by the source are consistent with the right of the accused to a fair trial.

Document B2 (DRC-OTP-1029-0300²⁷)

19. This document is a chronology of the events which took place in Ituri between 1 September and 30 November 2003. Prepared by MONUC and transmitted to the Prosecutor, it sets out mainly facts and incidents of a military nature.

20. It contains information which, according to the Prosecutor, falls under article 67(2) of the Statute.²⁸ [REDACTED] It also contains information which, according to the Prosecutor, falls under rule 77 of the Rules.

21. Several redactions have been made in this 38-page document [REDACTED] [REDACTED] [REDACTED] [REDACTED]

22. The redactions were made in passages of the document which, according to the Prosecutor, contain neither exculpatory information nor rule 77 information.

²⁶ *Decision on Three Prosecutor's Applications to Maintain Redactions or Reinstate Redacted Passages (ICC-01/04-01/07-859, ICC-01/04-01/07-860 and ICC-01/04-01/07-852)*, 25 March 2009, ICC-01/04-01/07-987-Conf-Exp-tENG, redacted version only available to the Office of the Prosecutor and the Defence, ICC-01/04-01/07-1033-Conf-Exp-tENG, and public redacted version, ICC-01/04-01/07-1034-tENG, paras. 30 and 31.

²⁷ DRC-OTP-1029-0300 to DRC-OTP-1029-0338. This document is the redacted version of DRC-OTP-0003-0388 to DRC-OTP-0003-0426. See ICC-01/04-01/07-1013-Conf-Exp-AnxB and ICC-01/04-01/07-1236-Conf-Exp-AnxB.

²⁸ ICC-01/04-01/07-1236-Conf-Exp-AnxB.

Furthermore, the redactions are of a very limited nature and do not relate to material that is *prima facie* relevant. Lastly, the name of the document source, as well as the content of all the information which, according to the Prosecutor, falls under rule 77 of the Rules and article 67(2) of the Statute, have been disclosed to the Defence. The Chamber considers accordingly that the right of the accused to a fair trial is respected.

Document B4 (DRC-OTP-0204-0177²⁹)

23. This document is a daily report from MONUC dated 25 October 2005. It describes the military situation in the town of Bunia and its surrounding area and concerns the events that are most relevant in MONUC's view. According to the Prosecutor, it contains information which falls under article 67(2) of the Statute and which concerns the FNI demobilisation process in Ituri.³⁰

24. This four-page report is redacted in several places [REDACTED] [REDACTED] This event is not part of the information which the Prosecutor considers exculpatory.

25. The Chamber considers that, where the redactions required by the source are of a very limited nature and do not concern information that is *prima facie* relevant, the Prosecutor's duty of disclosure is less strict. It also notes that the information falling under article 67(2) of the Statute is disclosed in its entirety to the Defence, that the redactions are limited and that the document is perfectly usable by the Defence. The Chamber therefore considers that the redactions required by the source do not violate the rights of the accused.

²⁹ DRC-OTP-0204-0177 to DRC-OTP-0204-0180. This document is the redacted version of DRC-OTP-0006-0201 to DRC-OTP-0006-0204. See ICC-01/04-01/07-1013-Conf-Exp-AnxB and ICC-01/04-01/07-1236-Conf-Exp-AnxB.

³⁰ ICC-01/04-01/07-1236-Conf-Exp-AnxB.

Document B5 (DRC-OTP-1029-0378³¹)

26. This document from MONUC describes the events of a military nature which took place in November 2003 in the Ituri region. The facts reported are identical to those set out in document B2, which explains why the redactions required by MONUC are the same. The document contains a few passages which, according to the Prosecutor, fall under article 67(2) of the Statute and a passage falling under rule 77 of the Rules [REDACTED]

27. [REDACTED] None of these redactions is in a part of the document considered by the Prosecutor as exculpatory or falling under rule 77 of the Rules.

28. The source and the content of the relevant information have been disclosed to the Defence. Furthermore, the redactions are very limited and do not prevent the Defence from using the relevant parts. As this document is also readable and intelligible, the Chamber considers that the right of the accused to a fair trial is respected.

Document B8 (DRC-OTP-0204-0189³²)

29. This document is a MONUC report describing the principal facts of a military nature which took place on 23 February 2004 in the Ituri region. According to the Prosecutor, the report contains information falling under article 67(2) of the Statute and rule 77 of the Rules.³³ [REDACTED]

³¹ DRC-OTP-1029-0378 to DRC-OTP-1029-0408. This document is the redacted version of DRC-OTP-0006-0368 to DRC-OTP-0006-0398. See ICC-01/04-01/07-1013-Conf-Exp-AnxB and ICC-01/04-01/07-1236-Conf-Exp-AnxB.

³² DRC-OTP-0204-0189 to DRC-OTP-0204-0194. This document is the redacted version of DRC-OTP-0007-0374 to DRC-OTP-0007-0379. See ICC-01/04-01/07-1013-Conf-Exp-AnxB and ICC-01/04-01/07-1236-Conf-Exp-AnxB.

³³ ICC-01/04-01/07-1236-Conf-Exp-AnxB.

30. The only redaction in this six-page document is that of the name of the person who informed MONUC [REDACTED] The redaction appears in a part of the document which, according to the Prosecutor, does not contain any relevant information. The redaction is very limited, the document remains readable and intelligible, and the Defence is able to use all the relevant information. Accordingly, the Chamber considers that the rights of the accused are not affected.

Document B9 (DRC-OTP-1029-0470³⁴)

31. This document contains the daily reports on military matters prepared by MONUC in Bunia in February 2004. According to the Prosecutor, these reports mainly contain rule 77 information and a few passages falling under article 67(2) of the Statute.³⁵ [REDACTED]

32. In this document of almost 100 pages there are redactions of certain names, [REDACTED], in a part which is not one of the passages which the Prosecutor considers to be relevant to the Defence [REDACTED]. [REDACTED] [REDACTED] [REDACTED]

33. The Prosecutor observes that certain passages in the document fall under article 67(2) of the Statute or rule 77 of the Rules. However, the required redactions do not concern any relevant passages and the individuals whose names are redacted do not provide any information of interest to the Defence. The Chamber notes that the redactions are very limited, that the relevant information is disclosed in its entirety, including the name of the source, and that the document remains readable

³⁴ DRC-OTP-1029-0470 to DRC-OTP-1029-0567. This document is the redacted version of DRC-OTP-0007-0374 to DRC-OTP-0007-0471. See ICC-01/04-01/07-1013-Conf-Exp-AnxB and ICC-01/04-01/07-1236-Conf-Exp-AnxB.

³⁵ ICC-01/04-01/07-1236-Conf-Exp-AnxB. The Prosecutor indicated that one of the passages which, in his opinion, fell under rule 77 of the Rules in fact contained information which was exculpatory but of limited value: see e-mail from the Office of the Prosecutor to the Legal Adviser to the Trial Division, 10 July 2009.

and intelligible. It considers accordingly that no prejudice has been caused to the Defence.

Document B10 (DRC-OTP-1029-0568³⁶)

34. This document is a weekly report by MONUC in Bunia, covering the period between 16 and 22 November 2003. The report contains information which, according to the Prosecutor, falls under article 67(2) of the Statute, [REDACTED] The document also contains certain passages which, according to the Prosecutor, might be of interest to the Defence.³⁷

35. The source requires [REDACTED] to be redacted in this six-page report; the redaction was already required for documents B3 (which will be considered later) and B5. As the Chamber has noted, these redactions do not concern any relevant information. Further, they are very limited and do not make the document unreadable or unusable for the Defence. The Chamber considers accordingly that disclosure of the document with the required redactions does not prejudice the Defence.

Document B11 (DRC-OTP-0204-0236³⁸)

36. This document is a weekly report by MONUC in Bunia, covering the period between 10 and 16 January 2004. The report contains information which, according to the Prosecutor, falls under article 67(2) of the Statute and rule 77 of the Rules.³⁹
[REDACTED]

³⁶ DRC-OTP-1029-0568 to DRC-OTP-1029-0573. This document is the redacted version of DRC-OTP-0008-0496 to DRC-OTP-0008-0501. See ICC-01/04-01/07-1013-Conf-Exp-AnxB and ICC-01/04-01/07-1236-Conf-Exp-AnxB.

³⁷ ICC-01/04-01/07-1236-Conf-Exp-AnxB.

³⁸ DRC-OTP-0204-0236 to DRC-OTP-0204-0240. This document is the redacted version of DRC-OTP-0009-0106 to DRC-OTP-0009-0110. See ICC-01/04-01/07-1013-Conf-Exp-AnxB and ICC-01/04-01/07-1236-Conf-Exp-AnxB.

³⁹ ICC-01/04-01/07-1236-Conf-Exp-AnxB.

37. This five-page report contains only the redaction of the name of the person who provided MONUC with information [REDACTED]. The Prosecutor does not consider this information to be relevant to the present case. Given that the information of interest to the Defence has been disclosed and that the redaction is very limited, leaving the document readable and intelligible, the Chamber considers that the rights of the accused are respected.

Document B12 (DRC-OTP-1029-0579⁴⁰)

38. This weekly report by MONUC covers the period between 24 and 30 January 2004 and describes in detail the military situation in Ituri. The Prosecutor points out that only one passage falling under article 67(2) of the Statute [REDACTED]

39. The only redaction required by the source is that of a reference to the name [REDACTED]. The redaction appears in a part which the Prosecutor does not consider relevant [REDACTED] Given that the relevant information has been disclosed to the Defence and that the document is perfectly readable and intelligible, the Chamber considers that the rights of the accused have not been affected.

Document B13 (DRC-OTP-0204-0241⁴¹)

40. This weekly report by MONUC covers the main military events taking place between 21 and 27 February 2004 in Ituri. The document contains passages which,

⁴⁰ DRC-OTP-1029-0579 to DRC-OTP-1029-0584. This document is the redacted version of DRC-OTP-0009-0117 to DRC-OTP-0009-0122. See ICC-01/04-01/07-1013-Conf-Exp-AnxB and ICC-01/04-01/07-1236-Conf-Exp-AnxB.

⁴¹ DRC-OTP-0204-0241 to DRC-OTP-0204-0254. This document is the redacted version of DRC-OTP-0009-0157 to DRC-OTP-0009-0170. See ICC-01/04-01/07-1013-Conf-Exp-AnxB and ICC-01/04-01/07-1236-Conf-Exp-AnxB.

according to the Prosecutor, fall under article 67(2) of the Statute and rule 77 of the Rules.⁴² [REDACTED]

41. The source requires that the references to the names and information enabling identification of three individuals be deleted in this fourteen-page report [REDACTED] According to the Prosecutor, none of this information is of interest to the Defence, which makes the duty of disclosure less strict. In view of the fact that the required redactions are limited and that the document is perfectly usable by the Defence, the Chamber considers that the redactions in question do not cause any prejudice to the Defence.

Document B14 (DRC-OTP-1029-0585⁴³)

42. This MONUC document is a record of incidents which occurred between 21 and 27 February 2004 in Ituri. The Prosecutor considers that one of the incidents falls under article 67(2) of the Statute, [REDACTED] Two other incidents, in his opinion, fall under rule 77 of the Rules.⁴⁴

43. In this six-page report, the source requires the redaction of the names of two individuals who were victims of an attack [REDACTED] The same information is also provided in document B9 and the same redactions were required. As with the latter document, the Prosecutor indicates that this information is of no interest to the Defence. The Chamber considers therefore that, since the accused have access to all the relevant information and the source thereof, and since the redactions do not render the document unreadable or unintelligible, no prejudice has been caused to the Defence.

⁴² ICC-01/04-01/07-1236-Conf-Exp-AnxB.

⁴³ DRC-OTP-1029-0585 to DRC-OTP-1029-0590. This document is the redacted version of DRC-OTP-0009-0194 to DRC-OTP-0009-0199. See ICC-01/04-01/07-1013-Conf-Exp-AnxB and ICC-01/04-01/07-1236-Conf-Exp-AnxB.

⁴⁴ ICC-01/04-01/07-1236-Conf-Exp-AnxB.

Document B15 (DRC-OTP-1029-0591⁴⁵)

44. This document, which is the weekly report of the MONUC contingent operating in Ituri, covers the period between 28 February and 5 March 2004. The report contains information which, according to the Prosecutor, falls under article 67(2) of the Statute, [REDACTED] The document also contains rule 77 material.⁴⁶

45. The only redaction in this twelve-page report is that of the name [REDACTED]. The redaction does not concern any part of the document which the Prosecutor deems relevant. The very limited nature of the redaction and the fact that the Defence can have access to all the information necessary for its preparation lead the Chamber to conclude that the accused do not suffer any prejudice as a result of the redaction.

Document B16 (DRC-OTP-1029-0631⁴⁷)

46. This is a three-page weekly report dated 2 January 2004, prepared by the MONUC Brigade in Ituri. It contains two passages which, according to the Prosecutor, fall under article 67(2) of the Statute [REDACTED]

47. The source requires the redaction of the names of two individuals appearing in parts which, according to the Prosecutor, cannot be regarded as passages considered useful to the Defence. The Chamber observes that the redactions in question do not make the document unreadable or unusable for the Defence. Given

⁴⁵ DRC-OTP-1029-0591 to DRC-OTP-1029-0614. This document is the redacted version of DRC-OTP-0009-0200 to DRC-OTP-0009-0212. See ICC-01/04-01/07-1013-Conf-Exp-AnxB and ICC-01/04-01/07-1236-Conf-Exp-AnxB.

⁴⁶ ICC-01/04-01/07-1236-Conf-Exp-AnxB.

⁴⁷ DRC-OTP-1029-0631 to DRC-OTP-1029-0633. This document is the redacted version of DRC-OTP-0011-0191 to DRC-OTP-0011-0193. See ICC-01/04-01/07-1013-Conf-Exp-AnxB and ICC-01/04-01/07-1236-Conf-Exp-AnxB.

that the relevant information has been disclosed to the Defence, the Chamber considers that the right of the accused to a fair trial has not been affected.

Document B17 (DRC-OTP-0204-0418⁴⁸)

48. This document, which was prepared by MONUC's Child Protection Section, covers the period between 6 October and 2 November 2003. The 28-page report contains one passage which, according to the Prosecutor, falls under article 67(2) of the Statute, and another which falls under rule 77 of the Rules.⁴⁹ [REDACTED]

49. The source also requires the redaction of the [REDACTED] which reported to MONUC [REDACTED] The Prosecutor deems this information to be of no interest to the Defence. Furthermore, the redaction is very limited and the report remains readable and intelligible. Accordingly, the Chamber considers that no prejudice has been caused to the Defence.

Document B18 (DRC-OTP-0204-0263⁵⁰)

50. This document is a MONUC report dated 22 July 2003 describing the situation in Bunia in relation to civil, political, military, humanitarian and human rights matters. The report contains only one passage which, in the Prosecutor's view, falls under article 67(2) of the Statute.⁵¹ [REDACTED]

51. In this four-page report are deleted the names and information enabling identification of individuals having provided information relating to the human

⁴⁸ DRC-OTP-0204-0418 to DRC-OTP-0204-0436. This document is the redacted version of DRC-OTP-0065-0436 to DRC-OTP-0065-0454. See ICC-01/04-01/07-1013-Conf-Exp-AnxB and ICC-01/04-01/07-1236-Conf-Exp-AnxB.

⁴⁹ ICC-01/04-01/07-1236-Conf-Exp-AnxB.

⁵⁰ DRC-OTP-0204-0263 to DRC-OTP-0204-0266. This document is the redacted version of DRC-OTP-0111-0720 to DRC-OTP-0111-0723. See ICC-01/04-01/07-1013-Conf-Exp-AnxB and ICC-01/04-01/07-1236-Conf-Exp-AnxB.

⁵¹ ICC-01/04-01/07-1236-Conf-Exp-AnxB.

rights situation [REDACTED] The Prosecutor indicates that the redactions do not concern passages that can be considered exculpatory. The report remains readable and intelligible and the Defence can use the information contained therein. Accordingly, the Chamber considers that no prejudice has been caused to the Defence.

Document C1 (DRC-OTP-0152-0256⁵²)

52. This MONUC report entitled “Child Protection Report-DRAFT”, prepared in February 2004, deals with the recruitment of children by rebel groups in Ituri, in particular by the UPC, PUSIC, the FNI/FRPI, the APC and the *Forces armées du peuple congolais* (“the FAPC”) [REDACTED] [REDACTED] According to the Prosecutor, the report contains incriminating information, exculpatory information and rule 77 information.⁵³ [REDACTED]

53. In this 18-page report, only the names of [REDACTED] have been redacted. The redactions appear in a passage which does not contain any information which the Prosecutor deems relevant. The Chamber considers therefore that the Defence can make full use of the content of the report and that, accordingly, the rights of the accused have not been affected.

⁵² DRC-OTP-0152-0256 to DRC-OTP-0152-0274. This document is the redacted version of DRC-OTP-0001-0125 to DRC-OTP-0001-0143. See ICC-01/04-01/07-1013-Conf-Exp-AnxC and ICC-01/04-01/07-1236-Conf-Exp-AnxC. See Office of the Prosecutor, “*Mémoire aux fins de dépôt du tableau des éléments à charge, de la liste des témoins de l’Accusation and de la liste des pièces à charge*”, 27 May 2009, ICC-01/04-01/07-1174, “avec 16 Annexes A à P, confidentielles, ex parte, réservées à l’Accusation et à la Défense et 1 annexe Q, confidentielle, ex parte, réservée à l’Accusation”, Anx D, pages 9, 21, 28 and 31; Anx E, pages 21, 27 and 30; Anx F, pages 150 and 160; Anx H, page 13; Anx K, page 9; Anx M, pages 3, 4, 6, 9, 11, 23, 24, 50, 57, 58, 71 and 72; Anx N, pages 31, 59, 74, 89, 288 and 311; Anx O, page 51.

⁵³ ICC-01/04-01/07-1236-Conf-Exp-AnxC.

Document C2 (DRC-OTP-0202-0671⁵⁴)

54. This MONUC report concerns events relating to security in the Ituri region which took place in September 2003. It contains all the daily reports sent during that month and includes, according to the Prosecutor, many incriminating, exculpatory and rule 77 passages.⁵⁵ [REDACTED]

55. In this 30-page document, two items are redacted: first, information enabling identification of the person who reported an incident which occurred [REDACTED] This last item of information is also redacted in document B2.

56. Although that document contains many passages which the Prosecutor considers to be relevant and useful to the Defence, it should be noted that neither of the deleted items of information are located in those parts. The Chamber notes further that the redactions do not make this report unreadable or unintelligible, and that the Defence can make full use of its content. Accordingly, it considers that no prejudice has been caused to the Defence.

Document C3 (DRC-OTP-1029-0338⁵⁶)

57. This MONUC report describes a series of security-related “micro-incidents” which occurred in the Ituri region in October 2003. According to the Prosecutor, it

⁵⁴ DRC-OTP-0202-0671 to DRC-OTP-0202-0701. This document is the redacted version of DRC-OTP-0006-0089 to DRC-OTP-0006-0119. See ICC-01/04-01/07-1013-Conf-Exp-AnxC and ICC-01/04-01/07-1236-Conf-Exp-AnxC. See also ICC-01/04-01/07-1174-Conf-Exp, Anx C, page 53; Anx F, page 143, Anx M, pages 7 and 52, Anx N, pages 11, 40, 62, 73, 103, 128, 199 and 290; Anx O, page 68.

⁵⁵ ICC-01/04-01/07-1236-Conf-Exp-AnxC.

⁵⁶ DRC-OTP-1029-0338 to DRC-OTP-1029-0361. This document is the redacted version of DRC-OTP-0065-0068 to DRC-OTP-0065-0091. See ICC-01/04-01/07-1013-Conf-Exp-AnxC and ICC-01/04-01/07-1236-Conf-Exp-AnxC. See also ICC-01/04-01/07-1174-Conf-Exp, Anx B, pages 14, 32, 47, 70, 87 and 107; Anx F; page 135; Anx H, page 88; Anx M, page 52; Anx N, pages 40 and 128; Anx O, page 104.

contains incriminating information as well as material falling under article 67(2) of the Statute and rule 77 of the Rules.⁵⁷ [REDACTED]

58. Two items are redacted in this 23-page report. The source required the redaction of the name of the person who reported an incident [REDACTED] Furthermore, MONUC required the redaction of information enabling identification of the victim of an act of vandalism [REDACTED], as well as the name of the place where this incident occurred. The latter incident is described in document B4 and the same information is redacted therein.

59. All the redacted information relates to events of which, in the Prosecutor's view, the Defence does not need to be cognizant in order to prepare its case effectively. Germain Katanga's Defence, however, considers that the individuals whose names are redacted provide material in support of Mr Katanga's case,⁵⁸ yet it does not furnish details thereof or identify the passages in question. The Chamber notes that the relevance of the passages subject to redaction, and which concern an incident [REDACTED] and an act of vandalism [REDACTED], is not immediately clear. Furthermore, as the redactions are very limited, the document remains readable and intelligible. As matters stand, the Chamber considers that the right of the accused to a fair trial is not affected. However, if Germain Katanga's Defence considers that the redacted information is necessary for the preparation of its case, it should file an application with the Chamber giving all necessary particulars as indicated in paragraph 17.

⁵⁷ ICC-01/04-01/07-1236-Conf-Exp-AnxC.

⁵⁸ Germain Katanga's Defence asserts that "Some of those individuals whose protection is being sought may be important to the Defence. Individuals who told MONUC that they witnessed the commission of crimes may in fact provide the Defence with exculpatory leads. For example, the persons mentioned in the document DRC-OTP-1029-0338 provide information which supports Mr. Katanga's version. Accordingly, it may be in the interests of the Defence to contact such persons", ICC-01/04-01/07-944, para. 20.

Document C4 (DRC-OTP-0202-0785⁵⁹)

60. This document is a MONUC report entitled “*De l’enquête diligentée par la MONUC sur les violations des droits de l’homme commises à Bunia et à Bogoro dans l’Ituri*” (“On the investigation conducted by MONUC into the human rights violations committed in Bunia and Bogoro in Ituri”). It concerns the violations committed by APC troops and Ngiti fighters in Bogoro and, according to the Prosecutor, contains incriminating information as well as material falling under article 67(2) of the Statute and rule 77 of the Rules.⁶⁰ [REDACTED]

61. [REDACTED] Although this document contains a large number of passages which, in the Prosecutor’s view, are relevant to the present case, the event in question is not part of those passages. The redactions required are very limited and the document remains readable, intelligible and perfectly usable by the Defence. Accordingly, the Chamber considers that no prejudice has been caused to the Defence.

Document C5 (DRC-OTP-0202-0796⁶¹)

62. This MONUC document is a daily report, dated 22 August 2003, concerning events which occurred in Bunia and were connected with military, humanitarian and human rights-related activities. According to the Prosecutor, it contains incriminating and exculpatory information.⁶² [REDACTED]

⁵⁹ DRC-OTP-0202-0785 to DRC-OTP-0202-0791. This document is the redacted version of DRC-OTP-0065-0068 to DRC-OTP-0065-0074. See ICC-01/04-01/07-1013-Conf-Exp-AnxC and ICC-01/04-01/07-1236-Conf-Exp-AnxC. See also ICC-01/04-01/07-1174-Conf-Exp, Anx B, pages 12, 31, 45, 85, 106, 125; Anx C, page 48; Anx F, pages 40, 53, 91 and 185; Anx G, page 48; Anx H, pages 45 and 64; Anx N, pages 153, 169, 186, 207, 228, 248, 282, 301; Anx O, page 68.

⁶⁰ ICC-01/04-01/07-1236-Conf-Exp-AnxC.

⁶¹ DRC-OTP-0202-0796 to DRC-OTP-0202-0801. This document is the redacted version of DRC-OTP-0111-0662 to DRC-OTP-0111-0667. See ICC-01/04-01/07-1013-Conf-Exp-AnxC and ICC-01/04-01/07-1236-Conf-Exp-AnxC. See also ICC-01/04-01/07-1174-Conf-Exp, Anx B, pages 13, 32, 45, 69, 86 and 106; Anx F, pages 37, 70, 194 and 207; Anx M, pages 17 and 73; Anx O, page 68.

⁶² ICC-01/04-01/07-1236-Conf-Exp-AnxC.

63. [REDACTED] These redactions appear in a passage describing an incident which, in the Prosecutor's view, is not relevant in the instant case. Accordingly, the Chamber, having noted that the relevant information is disclosed in its entirety to the Defence, that the redactions are very limited and that the Defence is perfectly able to use this document, considers that the right of the accused to a fair trial is not affected.

Document D3 (DRC-OTP-0204-0122⁶³)

64. This ten-page MONUC report, entitled "Major events in Ituri District", describes the most important events that occurred between 22 June 1999 and 7 May 2004. It concerns the main military and political developments and the massacres committed in Ituri District. The document contains information which, according to the Prosecutor, falls under rule 77 of the Rules.⁶⁴

65. The source requires the redaction of the name of a person who was a victim of the massacre [REDACTED] and who had a meeting with MONUC. The Prosecutor indicates that, in his opinion, that event is not part of the information needed by the Defence to prepare its case effectively, a fact which can be accepted, since the massacre [REDACTED] is only vaguely connected with the events in Bogoro. Taking into account the limited nature of the redaction and the fact that the document remains readable, intelligible and perfectly usable by the Defence, the Chamber considers that the disclosure to the Defence of this document in redacted form does not prejudice the Defence.

⁶³ DRC-OTP-0204-0122 to DRC-OTP-0204-0131. This document is the redacted version of DRC-OTP-0003-0339 to DRC-OTP-0003-0348. See ICC-01/04-01/07-1013-Conf-Exp-AnxD and ICC-01/04-01/07-1236-Conf-Exp-AnxD.

⁶⁴ ICC-01/04-01/07-1236-Conf-Exp-AnxD.

Document D5 (DRC-OTP-1034-0109⁶⁵)

66. This MONUC document is a weekly report covering the period between 20 and 26 December 2003. It concerns events and analyses of a political and military nature, as well as the demobilisation and disarmament efforts conducted in Ituri. The Prosecutor indicates that several passages contain rule 77 information.⁶⁶

67. An initial version of this seven-page report containing a larger number of redactions (DRC-OTP-0185-0854 to DRC-OTP-0185-0860) was disclosed to the Defence on 21 May 2008.⁶⁷ Germain Katanga's Defence considered that these redactions were excessive and did not allow it to make effective use of the document.⁶⁸ Subsequently, the Prosecutor indicated that on 23 February 2009 he had received a new redacted version of the document (DRC-OTP-1034-0109 to DRC-OTP-1034-0115) which contains fewer redactions and which has yet to be disclosed to the Defence.⁶⁹ In this new version only the name [REDACTED] has been deleted. According to the Prosecutor, this information is of no interest to the Defence.

68. As noted above, the new version of document D5 is much less redacted, which reduces the relevance of the Defence's observations. As the redacted item is very limited, the document remains readable, intelligible and perfectly usable by the Defence. The Chamber considers therefore that the right of the accused to a fair trial is not affected and authorises the disclosure of document D5 to the Defence in the version received by the Prosecutor on 23 February 2009.

⁶⁵ DRC-OTP-1034-0109 to DRC-OTP-1034-0115. This document is the redacted version of DRC-OTP-0009-0028 to DRC-OTP-0009-0034. See ICC-01/04-01/07-1013-Conf-Exp-AnxD and ICC-01/04-01/07-1236-Conf-Exp-AnxD.

⁶⁶ ICC-01/04-01/07-1236-Conf-Exp-AnxD.

⁶⁷ ICC-01/04-01/07-941, Anx A and ICC-01/04-01/07-1236-Conf-Exp-AnxA.

⁶⁸ ICC-01/04-01/07-944, para. 22.

⁶⁹ ICC-01/04-01/07-941, Anx A and ICC-01/04-01/07-1236-Conf-Exp-AnxA.

Document D6 (DRC-OTP-0204-0259⁷⁰)

69. This weekly report from MONUC, covering the period between 10 and 16 January 2004, concerns the political situation and provides information on the conflict prevailing at that time in Ituri. The Prosecutor considers that only a short passage [REDACTED] falls under rule 77 of the Rules.⁷¹

70. The source requires only the redaction of the name [REDACTED] This information appears in a passage describing an incident which, according to the Prosecutor, is not relevant in the present case. Accordingly, the Chamber considers that, in view of the fact that the relevant information is disclosed in its entirety to the Defence and that the redaction is very limited, the Defence is perfectly able to use this document. Therefore, the Chamber considers that the right of the accused to a fair trial has not been affected.

Document D10 (DRC-OTP-0202-0186⁷²)

71. This document is a report prepared by the United Nations Expert Panel on the Illegal Exploitation of the Natural Resources and Other Forms of Wealth of the DRC. It concerns the meeting of the members of the expert panel [REDACTED] and contains information which, according to the Prosecutor, falls under rule 77 of the Rules.⁷³

72. The only redaction in this four-page document is that of the content of a footnote which refers to a passage in the said document not containing any

⁷⁰ DRC-OTP-0204-0259 to DRC-OTP-0204-0262. This document is the redacted version of DRC-OTP-0012-0273 to DRC-OTP-0012-0276. See ICC-01/04-01/07-1013-Conf-Exp-AnxD and ICC-01/04-01/07-1236-Conf-Exp-AnxD.

⁷¹ ICC-01/04-01/07-1236-Conf-Exp-AnxD.

⁷² DRC-OTP-0202-0186 to DRC-OTP-0202-0189. This document is the redacted version of DRC-OTP-0042-0199 to DRC-OTP-0042-0202. See ICC-01/04-01/07-1013-Conf-Exp-AnxD and ICC-01/04-01/07-1236-Conf-Exp-AnxD.

⁷³ ICC-01/04-01/07-1236-Conf-Exp-AnxD.

information which the Prosecutor deems to be relevant in the present case. The Chamber considers that the redactions sought do not interfere with the understanding of the document or its use by the Defence, since the redactions are very limited. It notes that the Defence has access to the passages falling under rule 77 of the Rules, thus enabling the Chamber to take the view that the redactions required by the source do not compromise the right of the accused to a fair trial.

Documents D11 (DRC-OTP-0204-0146⁷⁴), D20 (DRC-OTP-1034-0101⁷⁵), D21 (DRC-OTP-1034-0101⁷⁶), D22 (DRC-OTP-0204-0155⁷⁷), D23 (DRC-OTP-0204-0158⁷⁸), D24 (DRC-OTP-0204-0171⁷⁹) and D25 (DRC-OTP-0204-0174⁸⁰)

73. Document D11 is a report by the UN Expert Panel on the Illegal Exploitation of the Natural Resources and Other Forms of Wealth of the DRC [REDACTED] Documents D20, D21, D22, D23, D24 and D25 are e-mails sent on 11 November 2002, 18 November 2002, 1 December 2002, 13 December 2002, 20 January 2003 and 9 April 2003 respectively by [REDACTED], whom the Prosecutor wishes to call to appear at trial.

⁷⁴ DRC-OTP-0204-0146 to DRC-OTP-0204-0147. This document is the redacted version of DRC-OTP-0043-0104 to DRC-OTP-0043-0105. See ICC-01/04-01/07-1013-Conf-Exp-AnxD and ICC-01/04-01/07-1236-Conf-Exp-AnxD.

⁷⁵ DRC-OTP-1034-0101 to DRC-OTP-1034-0103. This document is the redacted version of DRC-OTP-0043-0388 to DRC-OTP-0043-0390. See ICC-01/04-01/07-1013-Conf-Exp-AnxD and ICC-01/04-01/07-1236-Conf-Exp-AnxD.

⁷⁶ DRC-OTP-1034-0104 to DRC-OTP-1034-0107. This document is the redacted version of DRC-OTP-0043-0400 to DRC-OTP-0043-0403. See ICC-01/04-01/07-1013-Conf-Exp-AnxD and ICC-01/04-01/07-1236-Conf-Exp-AnxD.

⁷⁷ DRC-OTP-0204-0155 to DRC-OTP-0204-0157. This document is the redacted version of DRC-OTP-0043-0436 to DRC-OTP-0043-0438. See ICC-01/04-01/07-1013-Conf-Exp-AnxD and ICC-01/04-01/07-1236-Conf-Exp-AnxD.

⁷⁸ DRC-OTP-0204-0158 to DRC-OTP-0204-0170. This document is the redacted version of DRC-OTP-0043-0452 to DRC-OTP-0043-0465. See ICC-01/04-01/07-1013-Conf-Exp-AnxD and ICC-01/04-01/07-1236-Conf-Exp-AnxD.

⁷⁹ DRC-OTP-0204-0171 to DRC-OTP-0204-0173. This document is the redacted version of DRC-OTP-0043-0510 to DRC-OTP-0043-0512. See ICC-01/04-01/07-1013-Conf-Exp-AnxD and ICC-01/04-01/07-1236-Conf-Exp-AnxD.

⁸⁰ This document is the redacted version of DRC-OTP-0043-0559. See ICC-01/04-01/07-1013-Conf-Exp-AnxD and ICC-01/04-01/07-1236-Conf-Exp-AnxD.

74. On 5 March 2009, the Prosecutor informed the Chamber that the United Nations (“the UN”) consents to the disclosure of these seven documents in their entirety on condition that certain additional measures are taken.⁸¹ At an *ex parte* hearing held on 16 March 2009, the Chamber requested further information on the required measures;⁸² the Prosecutor provided that information in the document which he filed on 20 March 2009.⁸³ On that occasion he transmitted the relevant correspondence from the UN Office of Legal Affairs listing and explaining the measures requested.⁸⁴ He indicated to the Chamber that the UN had authorised full disclosure of documents D20, D21, D22, D23 and D24 in a letter dated 19 February 2009,⁸⁵ and of documents D11 and D25 in a letter dated 2 March 2009.⁸⁶

75. The Chamber notes that the protective measures which the UN imposes on the full disclosure of those seven documents to the Defence and to the legal representatives of the victims are as follows:⁸⁷

- i) A prohibition on divulging to any third person or body the information redacted in the redacted versions;⁸⁸
- ii) The filing, in the public record of the proceedings, of only the redacted versions of documents; unredacted versions shall be restricted to the Chambers and their staff, to the Prosecutor and his staff, to the accused and their defence teams and to the legal representatives of the victims;⁸⁹

⁸¹ ICC-01/04-01/07-941-Conf-Exp-AnxA.

⁸² ICC-01/04-01/07-T-62-CONF-EXP ET 16-03-2009, p. 45.

⁸³ Office of the Prosecutor, “*Réponse de l’Accusation aux questions additionnelles soulevées par la Chambre en relation de l’écriture de l’Accusation intitulée « Prosecution’s Submission of Documents Obtained Pursuant to Article 54(3)(e) of the Statute and Already Communicated to the Defence in Redacted Form »*”, 20 March 2009, ICC-01/04-01/07-973-Conf-Exp, confidential, *ex parte*, only available to the Office of the Prosecutor.

⁸⁴ ICC-01/04-01/07-973-Conf-Exp, paras. 2 and 4.

⁸⁵ ICC-01/04-01/07-973-Conf-Exp-Anx I and ICC-01/04-01/07-1236-Conf-Exp-AnxE.

⁸⁶ ICC-01/04-01/07-973-Conf-Exp-Anx III and ICC-01/04-01/07-1236-Conf-Exp-AnxE.

⁸⁷ ICC-01/04-01/07-1236-Conf-Exp, para. 17.

⁸⁸ ICC-01/04-01/07-1236-Conf-Exp, para. 17, ICC-01/04-01/07-973-Conf-Exp-Anx I and ICC-01/04-01/07-1236-Conf-Exp-AnxE.

⁸⁹ *Ibid.*

- iii) Any quotation or analysis by the parties, the legal representatives of the victims or the Chamber from or of passages redacted in the redacted versions must be effected in closed session, and unredacted recordings and transcripts of proceedings must be restricted;⁹⁰
- iv) In open court, pseudonyms must be used to refer to the individuals whose names have been redacted in the redacted versions;⁹¹
- v) The Chamber must order protective measures giving effect to the aforementioned measures;⁹² and
- vi) The Court must adopt the necessary protective measures to protect the individuals who provided the documents, including by relocating them together with their family members.⁹³

76. The Chamber notes that the author of the documents on which it has to rule is enrolled in the Court's protection programme and that that person has therefore been relocated. Furthermore, it sees no obstacle to protective measures being taken, vis-à-vis the public, which might prove necessary if the documents in question, or the content thereof, were used or quoted from at trial. The Chamber considers that full disclosure of the said documents to the Defence teams will be the best guarantee of the respect of the right of the accused to a fair trial, since the documents contain information which, according to the Prosecutor, falls under rule 77 of the Rules. It accordingly authorises full disclosure of these documents.

⁹⁰ Ibid.

⁹¹ Ibid.

⁹² ICC-01/04-01/07-973-Conf-Exp-Anx I and ICC-01/04-01/07-1236-Conf-Exp-AnxE.

⁹³ Ibid.

Document D12 (DRC-OTP-0198-0364⁹⁴)

77. This document is a report relating to a mission [REDACTED] in the DRC, prepared by the UN Expert Panel on the Illegal Exploitation of the Natural Resources and Other Forms of Wealth of the DRC. The aim of this report, which was drafted in preparation for a Security Council Mission to the DRC, was to give an update on the political situation in Ituri. It contains only one passage which, according to the Prosecutor, falls under rule 77 of the Rules [REDACTED]

78. The only redaction in this four-page report is that of the name of an individual whom the rapporteurs met [REDACTED] Moreover, it is not possible to ascertain whether that individual was the source of the only information which the Prosecutor deems relevant, since the report merely lists all the sources. Lastly, the Chamber notes that the Defence has access to the names of the individuals who participated in the mission by the Expert Panel. It considers therefore that, in light of the fact that the relevant information is disclosed in its entirety to the Defence and that the redaction is very limited, the document is perfectly usable by the Defence. Accordingly, the Chamber considers that the right of the accused to a fair trial is not affected.

Document D27 (DRC-OTP-0172-0296⁹⁵)

79. This document [REDACTED] is a collection of notes of interviews conducted [REDACTED] with various individuals residing in Ituri. The eight-page text contains several passages which, according to the Prosecutor, fall under rule 77 of the Rules [REDACTED]

⁹⁴ DRC-OTP-0198-0360 to DRC-OTP-0198-0363. This document is the redacted version of DRC-OTP-0043-0112 to DRC-OTP-0043-0115. See ICC-01/04-01/07-1013-Conf-Exp-AnxD and ICC-01/04-01/07-1236-Conf-Exp-AnxD.

⁹⁵ DRC-OTP-0172-0296 to DRC-OTP-0172-0303. This document is the redacted version of DRC-OTP-0126-0309 to DRC-OTP-0126-0316. See ICC-01/04-01/07-1013-Conf-Exp-AnxD and ICC-01/04-01/07-1236-Conf-Exp-AnxD.

80. The source required the redaction of entire passages, some of which contain rule 77 information. The name of the source is not disclosed either, nor are the names of two of the four individuals who provided information relevant to the document source.

81. Germain Katanga's Defence considered that these redactions were excessive and did not allow it to make effective use of this document.⁹⁶

82. The Chamber notes that the redactions required by the source are important and relevant to the Defence. In order to avoid prejudice to the latter, the Chamber has requested that the Prosecutor provide it with alternative sources of information to those mentioned in the redacted passages which fall under rule 77 of the Rules.⁹⁷

83. In this regard, the Prosecutor has transmitted, as alternative information, material concerning inter alia [REDACTED] Having examined these various items of information, the Chamber is of the opinion that they can be considered as being similar, and that they constitute an adequate and sufficient counter-balancing measure. Accordingly, it appears to the Chamber that, despite the extent of the redactions, the right of the accused to a fair trial is protected here.

⁹⁶ ICC-01/04-01/07-944, para. 22.

⁹⁷ E-mail exchange between the Office of the Prosecutor and the Legal Adviser to the Trial Division, 6 and 10 July 2009.

FOR THESE REASONS, THE CHAMBER

1) GRANTS the Prosecutor's Application relating to the redactions required by the source concerning the following documents: B2, B4, B5, B8, B9, B10, B11, B12, B13, B14, B15, B16, B17, B18, C1, C2, C3, C4, C5, D3, D5, D6, D10, D12 and D27;

2) AUTHORISES full disclosure of documents D11, D20, D21, D22, D23, D24 and D25, together with the protective measures referred to in paragraph 75 of the present Decision; and

3) AUTHORISES the disclosure of document D5 in its new redacted version as referred to in paragraphs 67 and 68 of this Decision.

Done in both English and French, the French version being authoritative.

[signed]
Judge Bruno Cotte
Presiding Judge

[signed]
Judge Fatoumata Dembele Diarra

[signed 18/8/09]
Judge Hans-Peter Kaul

Dated this 18 August 2009

At The Hague, The Netherlands