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

Date: 7 October 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 7 October 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

Mr Fidel Nsita Luvengika

Mr Jean-Louis Gilissen

Legal Representatives of the Applicants

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

Ms Silvana Arbia

Deputy Registrar

Defence Support Section

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 7 October 2010, of three documents pursuant to Article 67(2) of the Statute to the Defence of Germain Katanga and Mathieu Ngudjolo Chui. The three documents relate to P-28, including one report providing Article 67(2) and Rule 77 information related to P-28's relocation and security concerns and two investigator's notes.

The first investigator's note¹ has been registered in Ringtail with redactions to the names of two child soldiers and their whereabouts, as well as the name of a MONUC employee.² The second investigator's note³ is also disclosed with redactions, including to the names of same child soldiers and their whereabouts.⁴ The latter is disclosed in a redacted form in accordance with the new, simplified procedure set out by the Chamber regarding the disclosure of Rule 77 and potentially exonerating material.⁵

¹ DRC-OTP-0230-0451.

² This document has been disclosed in the *Lubanga* case with these same redactions on 26 June 2010.

³ DRC-OTP-0232-0276.

⁴ The Prosecution applied redactions to the names of two child soldiers and their whereabouts in accordance with Rule 81(4) of the Rules of Procedure and Evidence in order to protect persons at risks on account of the activities of the Court, as recognised by the Appeals Chamber Judgment of 13 May 2008, ICC-01/04-01/07-475, paras 54 to 56. Please note that the redaction of one name has already been approved by Trial Chamber II in Decision ICC-01/04-01/07-1915-Conf-Exp of 25 February 2010.

⁵ ICC-01/04-01/07-T-105-CONF-FRA ET, 22 February 2010, p. 3, lines 16-25 and p. 4, lines 1-4.

Request for Confidentiality

Annexes A⁶ and B⁷ 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 7th day of October 2010

At The Hague, The Netherlands

⁶ List of Disclosed Material provided to the Defence of Germain Katanga on 7 October 2010.

⁷ List of Disclosed Material provided to the Defence of Mathieu Ngudjolo Chui on 7 October 2010.