



Original: **French**

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

Date: **25 March 2009**

TRIAL CHAMBER II

Before: Judge Bruno Cotte, Presiding Judge
Judge Fatoumata Dembele Diarra
Judge Fumiko Saiga

**SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO
IN THE CASE OF
*THE PROSECUTOR v. GERMAIN KATANGA and MATHIEU NGUDJOLO CHUI***

Public Document

Decision on the Prosecutor's Request Relating to Three Forensic Reports

Decision 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
 Ms Fatou Bensouda, Deputy Prosecutor
 Mr Éric MacDonald, Senior Trial Lawyer

Counsel for Germain Katanga

Mr David Hooper
 Mr Andreas O'Shea
 Ms Caroline Buisman

Counsel for Mathieu Ngudjolo Chui

Mr Jean-Pierre Kilenda Kakengi Basila
 Mr Jean-Pierre Fofé Djofia Malewa

Legal Representatives of the Victims

Ms Carine Bapita Buyangandu
 Mr Joseph Keta
 Mr Jean-Louis Gilissen
 Mr Hervé Diakiese
 Mr Jean Chrysostome Mulamba
 Nsokoloni
 Mr Fidel Nsita Luvengika
 Mr Vincent Lurquin
 Ms Flora Ambuyu Andjelani

Legal Representatives of the Applicants

**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

Trial Chamber II of the International Criminal Court (“the Chamber” and “the Court” respectively), acting pursuant to articles 21, 54, 64 and 68 of the Rome Statute (“the Statute”) and rule 77 of the Rules of Procedure and Evidence (“the Rules”), decides as follows:

I. Procedural Background

1. This decision is issued in response to the request submitted by the Prosecutor on 13 February 2009 for protective measures with regard to third persons and the public concerning three forensic reports.¹

2. The Prosecutor requests the Chamber to authorise, pursuant to article 68 of the Statute, protective measures with regard to third persons and the public concerning three forensic reports. These three reports were submitted on 13 February 2009 by Doctor Eric Baccard and contain medical information on witnesses 132, 249 and 287.² The Prosecutor submits that these reports contain personal information relating to the witnesses and that their disclosure to third parties could prejudice their psychological well-being and dignity.³

3. The Prosecutor requests that these reports be transmitted to Counsel for the Defence and their legal assistants and to the accused, but not to the investigators. The Prosecutor further submits that the Defence should not be authorised to disclose these reports or communicate their content to third parties, with the exception of medical or ballistic experts, and that the identity of such experts must be communicated to the Prosecution beforehand in order for it to make any relevant observations.⁴ He also considers that any other disclosure to third parties by the Defence for the purposes of its investigation, must be authorised by the Chamber.

¹ Office of the Prosecutor, “*Requête du Bureau du Procureur aux fins de l’obtention de mesures de protection à l’égard des tiers et du public concernant trois rapports d’expertise médico-légale*”, 13 February 2009, ICC-01/04-01/07-898.

² ICC-01/04-01/07-898, paras. 1 to 5.

³ *Ibid.*, para. 4.

⁴ *Ibid.*, para. 6.

Finally, the Prosecutor requests that only the legal representatives and not the victims whom they represent have access to these reports and that they seek the authorisation of the Chamber if they wish to disclose their content to victims or third parties.⁵

4. The Defence has not made observations on the Prosecutor's request.

II. Analysis of the Chamber

5. In the view of the Chamber, the measures requested by the Prosecutor in this case aim to protect the privacy of witnesses as well as their psychological well-being within the meaning of article 68(1) of the Statute. These measures are needed here because the reports in question are medical reports containing information on the state of health of these witnesses and injuries suffered by them. The disclosure of such information could effectively prejudice their psychological well-being. Information of this nature should be treated with the utmost care given that it is of paramount importance to safeguard the right to privacy and dignity, which are internationally recognised human rights within the meaning of article 21(3) of the Statute.⁶

6. The Chamber is of the opinion that the measures requested do not prejudice the rights of the Defence. Indeed, the Defence will have access to the reports and will be able to transmit them to medical and ballistic experts whose identity and *curriculum vitae* will be communicated in advance to the Office of the Prosecutor only. With regard to the reports containing solely medical information, it would seem appropriate to limit access to such documents to persons other than the medical experts from whom the Defence teams may seek medical or ballistics

⁵ *Ibid.*, para. 7.

⁶ These rights are set forth in article 17 of the International Covenant on Civil and Political Rights (1966), article 11 of the American Convention on Human Rights (1969), article 8 of the European Convention on Human Rights (1950), article 5 of the African Charter on Human and Peoples' Rights (1982) and articles 1 and 7 of the Charter of Fundamental Rights of the European Union (2000).

expertise. Moreover, it is not entirely out of the question that third parties may be granted access to these reports as the Defence may submit a request to this end to the Chamber, with explanations and justifications in support thereof. Accordingly, the Chamber considers that the restrictions proposed are proportionate to the purpose sought and do not prejudice the right of the accused to have adequate time and facilities for the preparation of the defence within the meaning of article 67(1)(b) of the Statute.

FOR THESE REASONS, THE CHAMBER

GRANTS the Prosecutor's Request.

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

[signed]

Judge Bruno Cotte
Presiding Judge

[signed]

Judge Fatoumata Dembele Diarra

[signed]

Judge Fumiko Saiga

Dated this 25 March 2009
At The Hague, The Netherlands