

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: **French**

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

Date: **5 June 2009**

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***

Confidential

Ex parte, only available to the Prosecutor

**Order Directing the Prosecutor to Re-submit Documents Obtained Pursuant to
Article 54(3)(e) and Already Disclosed to the Defence**

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

Counsel for Mathieu Ngudjolo Chui

Legal Representatives of the Victims

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

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"), acting pursuant to regulation 28 of the Regulations of the Court, orders as follows:

1. On 5 March 2009, the Prosecutor made a filing submitting to the Chamber, at its request, documents obtained pursuant to article 54(3)(e) of the Statute,¹ including a group of 53 documents redacted as required by the source and already disclosed to the Defence.² Thirteen documents not yet disclosed to the Defence were also annexed.³ The submission was filed as "Confidential, *ex parte*, Prosecution only".
2. Having examined these documents, the Chamber requested that the Prosecutor re-submit them and provide it with additional information,⁴ in particular so that it might better assess any prejudice the Defence may have suffered.⁵ The Prosecutor responded on 31 March 2009.⁶ The Chamber also directed the Prosecutor to submit a marked-up version of the 13 documents not yet disclosed to the Defence highlighting the relevant passages (indicating, as applicable, whether they were incriminatory, exculpatory under article 67(2) of the Statute, or fell within the parameters of rule 77 of the Rules of Procedure and Evidence).⁷

¹ 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.

² ICC-01/04-01/07-941-Conf-Exp-Anxs A, B and C.

³ ICC-01/04-01/07-941-Conf-Exp-Anxs D, E and F.

⁴ ICC-01/04-01/07-T-62-CONF-EXP-ENG ET 16-03-2009, p. 46, lines 10 to 25, p. 47 and p. 48, lines 1 to 2 and 11 to 13.

⁵ ICC-01/04-01/07-T-62-CONF-EXP-ENG ET 16-03-2009, p. 46, lines 10 to 14.

⁶ 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; and the 'Corrigendum to "Prosecution's Re-submission of Documents Obtained Pursuant to Article 54(3)(e) of the Statute and Communicated to the Defence in Redacted Form"', 2 April 2009, ICC-01/04-01/07-1013-Conf-Exp-Corr, confidential, *ex parte*, only available to the Office of the Prosecutor.

⁷ Office of the Prosecutor, "Prosecution's Re-submission of 13 Documents Obtained Pursuant to Article 54(3)(e) of the Statute and for which Redacted Versions Have not yet Been Disclosed to the Defence", 27 March 2009, ICC-01/04-01/07-973-Conf-Exp, confidential, *ex parte*, only available to the Office of the Prosecutor. This filing was classified in accordance with the Chamber's instructions at the *ex parte* hearing on 16 March 2009, ICC-01/04-01/07-T-62-CONF-EXP-ENG ET 16-03-2009, p. 47, lines 4 to 10. The same practice was followed by Trial Chamber I. See "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

3. After re-examining the 53 above-mentioned documents in the light of the additional information provided by the Prosecutor, the Chamber considers that it must take the same approach for assessing any prejudice the Defence may have suffered, in particular in order to assess the relevance of the redacted information, for all the documents obtained on the basis of article 54(3)(e). Accordingly, the Chamber directs the Prosecutor to submit a copy of each of these 53 documents, highlighting in colour any relevant passages that are incriminatory, or fall within the parameters of either article 67(2) of the Statute or rule 77 of the Rules, in particular those which have been redacted.

FOR THESE REASONS, THE CHAMBER

ORDERS the Prosecutor to present it with a marked-up version of the 53 documents obtained pursuant to article 54(3)(e) by 4 p.m. on 22 June 2009.

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

[signed]
Judge Bruno Cotte
Presiding Judge

[signed]
Judge Fatoumata Dembele Diarra

[signed]
Judge Hans-Peter Kaul

Dated this 5 June 2009

At The Hague, The Netherlands

highlighting the passages of potentially exculpatory value or falling within the parameters of Rule 77", 22 October 2008, ICC-01/04-01/06-1488.