

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: French

No.: ICC-01/04-01/07
Date: 30 August 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**

Confidential

***Ex parte*, only available to the Office of the Prosecutor and the Defence for
Germain Katanga**

**Decision on the application of the Prosecutor and of the Defence for the redaction of
a portion of the recording of an interview with Witness P-219 to be disclosed to
Mathieu Ngudjolo Chui**

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

Office of the Prosecutor

Mr Luis Moreno-Ocampo, Prosecutor
Mr Éric MacDonald, Senior Trial Lawyer

Counsel for Germain Katanga

Mr David Hooper
Mr Andreas O'Shea

Counsel for Mathieu Ngudjolo Chui

Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparations**

Office of Public Counsel for Victims

**Office of Public Counsel for the
Defence**

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Defence Support Section

Deputy Registrar

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”), acting pursuant to article 64(2), 64(3)(a) and 64(6)(f) of the Rome Statute and regulation 23 *bis* of the Regulations of the Court, decides the following.

I. Procedural Background

1. By an urgent request dated 8 July 2010,¹ the Defence for Germain Katanga (“the Defence”) sought the disclosure of the recordings of the interviews of Witness P-219 by the Office of the Prosecutor in December 2009 in order to produce a signed statement by that witness in accordance with the Chamber’s instruction in its decision of 23 October 2009.²

2. The Prosecutor responded to the Defence request on 19 July 2010,³ stating at footnote 16 of the *ex parte* version of its response, which is only available to the Prosecutor and the Defence for Germain Katanga, that were the Chamber to allow the request, it would be necessary to make a one-minute redaction to one of the tapes to be handed over to Mathieu Ngudjolo, since Witness P-219 raises a matter which has been the subject of *ex parte* filings not available to the Defence for Mr Ngudjolo.⁴

3. In its *ex parte* decision of 20 August 2010, available only to the Prosecutor and the Defence for Germain Katanga, granting the Defence’s request, the Chamber ordered the Prosecutor immediately to disclose the relevant excerpt to the Defence for Germain Katanga and instructed the latter to raise any objection to the disclosure

¹ Defence for Germain Katanga, “Defence Request for the Disclosure of the Audio Records of Interview of Incriminating Witness 219 Dated December 2009”, 8 July 2010, ICC-01/04-01/07-2250.

² *Decision on the Prosecution request for the addition of witness P-219 to the Prosecution List of Incriminating Witnesses and the disclosure of related incriminating material to the Defence*, 23 October 2009, ICC-01/04-01/07-1553.

³ Office of the Prosecutor, “Réponse de l’Accusation à la ‘Defence Request for the Disclosure of the Audio Records of Interview of Incriminating Witness 219 Dated December 2009’”, 19 July 2010, ICC-01/04-01/07-2291-Conf-Exp and ICC-01/04-01/07-2291-Conf-Red (confidential redacted version).

⁴ ICC-01/04-01/07-2291-Conf-Exp, footnote 16.

of that portion to the Defence for Mathieu Ngudjolo within two days of notification of the disclosure.⁵

4. On 24 August 2010, the Defence for Germain Katanga registered its objection to the disclosure of the relevant portion to the Defence for Mathieu Ngudjolo, arguing that “[t]he Defence for Mr Ngudjolo has not had disclosed to it any information relating to that phone call” and that “this issue should remain confidential, *ex parte*, and disclosure should not occur at this stage”.⁶

II. Analysis

5. The Chamber considers that this issue is linked to the Prosecutor’s *ex parte* application, only available to the Prosecutor and the Defence for Germain Katanga, for the disclosure of an item of evidence relating to Witness P-219,⁷ in relation to which the Chamber will issue a decision in the near future, and that the two issues should therefore be determined concomitantly. Pending the issuance of that decision, which will take into account all of the materials at issue, the Chamber is of the view that the requested redaction should be authorised provisionally in order to accelerate the disclosure of the recordings in accordance with its order.

6. Accordingly, the Chamber will issue a confidential redacted version of this decision and a public redacted version of its decision of 20 August 2010 ordering the Prosecutor to disclose the requested recordings to both Defence teams, which must thus be read in light of the authorisation granted in this decision.

⁵ *Decision on the Application by the Defence for Germain Katanga for Disclosure of the Audio Records of Interview of Witness P-219*, 20 August 2010, ICC-01/04-01/07-2309-Conf-Exp-tENG, para. 5.

⁶ Defence for Germain Katanga, “Defence Observations on the Disclosure of the Audio Records of Interview of Witness 219 Dated December 2009”, 24 August 2010, ICC-01/04-01/07-2323-Conf-Exp, para. 4.

⁷ Office of the Prosecutor, “*Requête de l’Accusation aux fins de communication d’un élément de preuve relatif au témoin P-219*”, 23 April 2010, ICC-01/04-01/07-2044-Conf-Exp.

FOR THESE REASONS, the Chamber

GRANTS the request for redaction on a provisional basis.

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

[signed]
Judge Bruno Cotte
Presiding Judge

[signed]
Judge Fatoumata Dembele Diarra

[signed]
Judge Christine Van den Wyngaert

Dated this 30 August 2010
At The Hague, The Netherlands