



Original: **French**

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

Date: **13 May 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***

Public Document

**Decision authorising the reclassification of documents of the Chief Military
Prosecutor of the Military High Court and their disclosure to the Legal
Representatives of the Victims**

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 the Defence for Germain
 Katanga**

Mr David Hooper
 Mr Andreas O'Shea

**Counsel for the Defence 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**

Ms Paolina Massidda

**The Office of Public Counsel for the
 Defence**

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Ms Silvana Arbia

Defence Support Section

**Victims Participation and Reparations
 Section**

Trial Chamber II of the International Criminal Court (“the Chamber” and “the Court” respectively), acting pursuant to article 19(3) of the Rome Statute (“the Statute”), rules 59(1) and 59(3) of the Rules of Procedure and Evidence (“the Rules”), and regulation 23 bis(3) of the Regulations of the Court, decides the following.

I. Procedural History

1. On 10 February 2009, the Defence for Germain Katanga submitted to the Chamber an application challenging the admissibility of the case (“the Challenge to Admissibility”), filed pursuant to article 19(2)(a) of the Statute and on the grounds provided for in article 17 of said Statute.¹ The Defence attached to the challenge documents emanating largely from the Chief Military Prosecutor of the Military High Court.² The application was filed as “confidential *ex parte*, for the Defence for Germain Katanga only”.

2. At a hearing in closed session held on 24 February 2009, the Chamber ordered the Registry to reclassify the Challenge to Admissibility as a confidential *ex parte* document, confined to the Prosecutor and both Defence teams, and to transmit it to the Prosecutor and to the Defence for Mathieu Ngudjolo Chui.³ Furthermore, on 5 March 2009 the Chamber decided that the annexes attached to the Challenge to Admissibility should remain confidential and be available only to the Prosecutor and to both Defence teams.⁴

3. On 6 March 2009, the Registry notified the Legal Representatives of the Victims and the Office of Public Counsel for Victims (OPCV) of this Challenge to Admissibility.⁵

¹ Defence for Germain Katanga, “Motion challenging the Admissibility of the Case by the Defence of Germain Katanga, pursuant to Article 19 (2) (a) of the Statute”, 10 February 2009, ICC-01/04-01/04-891-Conf- Exp.

² *Ibid.*, Annexes A to J.

³ ICC-01/04-01/07-T-59-CONF-EXP-ENG ET, p. 35, lines 6 to 9.

⁴ *Decision Prescribing the Procedure to be Followed Under Article 19 of the Statute (Rule 58 of the Rules of Procedure and Evidence)*, 5 March 2009, ICC-01/04-01/07-943-Conf-tENG, para. 9.

⁵ Registry, “Registrar's report on the notification of the information to the DRC authorities, the Legal Representatives of anonymous and non-anonymous victims and the OPCV of the submission of the

4. On 11 March 2009, a public redacted version of this Challenge⁶ and a summary of the application⁷ were disclosed to the Legal Representatives of the Victims and to the OPCV.

5. On 16 April 2009, in their observations on the Challenge to Admissibility certain of the Legal Representatives of the Victims requested disclosure of unredacted versions of all of the documents disclosed to the Defence for Mr Katanga.⁸

6. In a communication dated 7 May 2009,⁹ the Prosecutor stated that the Chief Military Prosecutor was not opposed to the reclassification of the documents on which the Defence for Germain Katanga is basing its Challenge to Admissibility. The Chief Military Prosecutor requests, however, that these documents be reclassified as confidential documents available to the Legal Representatives of the Victims and to the OPCV and be subject to such redactions as had been carried out before their disclosure to the Defence.

II. The Chamber's Analysis

7. The Chamber recalls that, under article 19(3) of the Statute and rule 59(3) of the Rules, the Victims or their Legal Representatives may submit to the Chamber their observations on the admissibility of a case. Furthermore, rule 59(1) states that the Registrar is obliged to inform the victims or their representatives of any question

'Motion Challenging the Admissibility of the Case by the Defence of Germain Katanga, pursuant to Article 19(2)(a) of the Statute'', 23 March 2009, ICC-01/04-01/07-984-Conf, p. 3.

⁶ ICC-01/04-01/07-949.

⁷ Registry, "Registrar's report on the notification of the information to the DRC authorities, the Legal Representatives of anonymous and non-anonymous victims and the OPCV of the summary of the 'Motion Challenging the Admissibility of the Case by the Defence of Germain Katanga, pursuant to Article 19(2)(a) of the Statute'", 3 April 2009, ICC-01/04-01/07-1026-Conf.

⁸ Legal Representatives of the Victims, "Observations of the Victims on the Objection to Jurisdiction raised by the Defence for Germain Katanga in its Motion of 10 February 2009", ICC-01/04-01/07-1060-tENG, p. 9.

⁹ Prosecutor, "Prosecution's Provision of Information on the Reclassification of Documents Provided by the *Auditeur Général Militaire*", 7 May 2009, ICC-01/04-01/07-1116, p. 4.

or challenge regarding admissibility, where they have already communicated with the Court in the case, which is the position here.

8. In this connection, and having had access only to a redacted version of the documents, the Legal Representatives of the Victims were anxious to indicate the difficulties presented to them by partial disclosure, which did not allow them to present detailed observations.¹⁰

9. The Chamber wishes to give effect to the right, at this stage of the proceedings, to present written observations on the admissibility of the case. However, it is bound to ensure the protection of individuals and the preservation of evidence. It must also respect the desire of information providers to keep certain sensitive matters confidential or confidential *ex parte*.

10. However, in view of the importance of the issue raised, and since the Chief Military Prosecutor does not seek to oppose the disclosure of the documents to the Legal Representatives of the Victims and to the OPCV, the Chamber authorises their reclassification by the Registry and their disclosure with the same redactions as those made before their disclosure to the Defence.

11. The Chamber stresses that access to the documents thus authorised, in particular for anonymous victims, is without prejudice to the decision to be made by it on the terms of victims' participation in the trial. In light of the information currently in the Chamber's possession, the confidential *ex parte* documents provided by sources other than the Chief Military Prosecutor may not be disclosed to the Legal Representatives of the Victims.

¹⁰ *Ibid.*, paras. 2 to 4.

FOR THESE REASONS, the Chamber

DISMISSES the application by the Legal Representatives of the Victims relating to the disclosure of documents from sources other than the Chief Military Prosecutor of the Military High Court;

GRANTS the application concerning the disclosure of documents of the Chief Military Prosecutor in accordance with paragraph 10 of the present Decision, with the same redactions as those in the documents transmitted to the Defence;

ORDERS the Prosecutor to provide the Registry, by 4.00 pm on 14 May 2009, with the numbers of the documents in question;

ORDERS the Registry to reclassify said documents as “confidential”.

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

[signed]
Judge Bruno Cotte
Presiding Judge

[signed]
Judge Fatoumata Dembele Diarra

[signed 13/5/09]
Judge Hans-Peter Kaul

Dated this 13 May 2009

At The Hague, The Netherlands