

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/04-01/07
Date: 27 September 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 CONGO
IN THE CASE OF
THE PROSECUTOR *v.* GERMAIN KATANGA *and* MATHIEU NGUDJOLO
CHUI**

PUBLIC REDACTED VERSION

**Decision on the Prosecution Motion for leave to disclose and add the
investigator's report concerning Witness P-268 to the List of Incriminating
Evidence**

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
Ms Fatou Bensouda
Mr Eric MacDonald

Counsel for Germain Katanga

Mr David Hooper
Mr Andreas O'Shea

Counsel for 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 for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

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

REGISTRY

Registrar

Ms Silvana Arbia

Defence Support Section

Victims and Witnesses Unit

Detention Section

Trial Chamber II ("Chamber") of the International Criminal Court ("Court"), in the case of *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, pursuant to Articles 64(3)(c) and (6)(d), 67(1)(b) and 69(3) of the Statute of the International Criminal Court ("Statute"), and Regulation 35(2) of the Regulations of the Court ("Regulations"), issues the following decision:

I. BACKGROUND

1. On 23 January 2009, the Chamber ordered the Office of the Prosecutor ("Prosecution") to disclose to the Defence, by 30 January 2009, the evidence on which it intended to rely at trial.¹ On 27 May 2009, in accordance with orders of the Chamber,² the Prosecution filed its table analysing all incriminating evidence which it intended to use at trial, as well as a list of such evidence.³ On 16 November 2009, pursuant to a further order of the Chamber,⁴ the Prosecution filed its amended table and list of incriminating evidence (collectively, "List of Incriminating Evidence"), integrating pieces of

¹ Order Fixing the Schedule for Pre-Trial Disclosure of Incriminatory and Exculpatory Evidence and the Date of a Status Conference (rule 132 of the *Rules of Procedure and Evidence*), ICC-01/04-01/07-846-tENG, 14 July 2009 (the French original was filed on 23 January 2009), par. 1 of the Disposition.

² Order concerning the Presentation of Incriminating Evidence and the E-Court Protocol, ICC-01/04-01/07-956, 13 March 2009; Decision on the "Prosecution's Motion to File Partial Table of Incriminating Evidence and Related Material, Confidential – *Ex Parte*, available to the Prosecution Only, on 4 May 2009 – Regulation 35", ICC-01/04-01/07-1095, 4 May 2009; Decision on the Protection of Prosecution Witnesses 267 and 353, ICC-01/04-01/07-1156-Conf-Exp-tENG, 7 September 2009 (the French original was filed on 20 May 2009).

³ Mémoire aux fins de dépôt du tableau des éléments à charge, de la liste des témoins de l'Accusation et de la liste des pièces à charge, ICC-01/04-01/07-1174 and ICC-01/04-01/07-1174-Conf-Exp-AnxA to AnxQ, 27 May 2009; *Corrigendum* au « Mémoire [de l'Accusation] aux fins de dépôt du tableau des éléments à charge, de la liste des témoins de l'Accusation et de la liste des pièces à charge » - ICC-01/04-01/07-1174, ICC-01/04-01/07-1174-Corr, 28 May 2009.

⁴ Decision on the Filing of a Summary of the Charges by the Prosecutor, ICC-01/04-01/07-1547-tENG, 29 October 2009 (the French original was filed on 21 October 2009).

evidence which the Chamber allowed the Prosecution to add to its original table and list.⁵

2. On 17 March 2010, during cross-examination by defence counsel for Mr. Germain Katanga (“Katanga”), Witness P-323 testified about a soldier of the UPC [REDACTED], and identified this soldier as [REDACTED].⁶ Witness P-323 also testified that when he gave his statement to the Prosecution in [REDACTED], this soldier lived in [REDACTED].⁷ [REDACTED] is the name of Witness P-268, who testified before the Chamber between 23 and 25 February 2010, confirming that he was a “civilian”.⁸

3. On 7 May 2010, the Prosecution filed a motion,⁹ requesting the Chamber to permit it to disclose to the other parties and participants its investigator’s report of 16 April 2010 (“Report”)¹⁰ as a piece of incriminating evidence, and to add the Report to the List of Incriminating Evidence.¹¹ As described more in detail below, the Report contains information which suggests that Witness P-268 was absent from [REDACTED].¹²

4. On 27 and 31 May 2010, respectively, the Defence for Mr. Mathieu Ngudjolo Chui (“Ngudjolo”) and the Defence for Katanga (collectively, “Defence”) filed their responses, opposing the Motion.¹³

⁵ Prosecution’s Amended Table of Incriminating Evidence and Amended List of Evidence, ICC-01/04-01/07-1643 and ICC-01/04-01/07-1643-Conf-Exp-AnxA to AnxO, 16 November 2009 (See, in particular, ICC-01/04-01/07-1643, fn. 6).

⁶ ICC-01/04-01/07-T-118-CONF-ENG ET, p. 9, line 22 - p. 11, line 18.

⁷ ICC-01/04-01/07-T-118-CONF-ENG ET, p. 9, line 22 - p. 11, line 18 ; p. 55, lines 19 - 21.

⁸ ICC-01/04-01/07-T-108-CONF-ENG ET, p. 38, line 25 - p. 39, line 1.

⁹ Requête de l’Accusation aux fins d’ajout d’un Rapport de l’Accusation relatif à P-268 à la liste des éléments à charge, ICC-01/04-01/07-2088-Conf, 7 May 2010 (the public redacted version was filed on 12 May 2010).

¹⁰ ICC-01/04-01/07-2088-Conf, Annex A.

¹¹ ICC-01/04-01/07-2088-Conf, paras 4, 17.

¹² ICC-01/04-01/07-2088-Conf, Annex A.

¹³ Réponse de la Défense de Mathieu Ngudjolo à la « Requête de l’Accusation aux fins d’ajout d’un Rapport de l’Accusation relatif à P-268 à la liste des éléments à charge », ICC-01/04-

II. SUBMISSIONS

A. Prosecution

5. The Report reads, in relevant part:

[REDACTED].¹⁴

According to the Prosecution, this information suggests that Witness P-268 is a different person from the UPC soldier to whom Witness P-323 referred in his cross-examination, since it indicates that Witness P-268 has not been in [REDACTED] since [REDACTED] while Witness P-323 stated that the UPC soldier in question had lived in [REDACTED] in [REDACTED].¹⁵

6. The Prosecution accepts that it was in possession of the information concerning Witness P-268 contained in the Report prior to 30 January 2009, which was the deadline for the disclosure of incriminating evidence set by the Chamber.¹⁶ However, the Prosecution argues that it was not in a position to disclose such information prior to 30 January 2009. According to the Prosecution, it had not expected, and could not expect until 17 March 2010 when Witness P-323 testified about the UPC soldier during cross-examination, that the information contained in the Report would become so important for the case that the disclosure thereof would be warranted.¹⁷

7. The Prosecution further submits that the Report provides a clarification necessary for a better and adequate understanding of Witness P-268's testimony.¹⁸ It also maintains that the information contained therein is

01/07-2140-Conf, 27 May 2010; Defence Response to Requête de l'Accusation aux fins d'ajout d'un Rapport de l'Accusation relatif à P-268 à la liste des éléments à charge, ICC-01/04-01/07-2149, 31 May 2010.

¹⁴ ICC-01/04-01/07-2088-Conf, Annex A.

¹⁵ ICC-01/04-01/07-2088-Conf, par. 3.

¹⁶ ICC-01/04-01/07-2088-Conf, par. 7.

¹⁷ ICC-01/04-01/07-2088-Conf, paras 8-9.

¹⁸ ICC-01/04-01/07-2088-Conf, par. 12.

objective and reliable and can be corroborated by the Victims and Witnesses Unit (“VWU”), which is a neutral organ of the Court [REDACTED].¹⁹ In addition, the Prosecution argues that the Report is sufficient to establish that Witness P-268 must be distinguished from the UPC soldier mentioned by Witness P-323.²⁰

8. For these reasons, the Prosecution avers that the disclosure of the Report at this stage is justified under Regulation 35 of the Regulations,²¹ and that by making this request, it is merely carrying out its mission to establish the truth pursuant to Article 54(1) of the Statute.²² The Prosecution also submits that should the Chamber grant its request, it intends to tender the Report into evidence in court through an oral request.²³

B. Defence for Katanga

9. The Defence for Katanga responds that the Prosecution’s application is made at a time when the deadline for the disclosure is long overdue, although it was, long before the deadline, in possession of the information concerning the date of Witness P-268’s departure from [REDACTED].²⁴ It further contends that the date of Witness P-268’s departure is an issue that the Prosecution could have easily anticipated.²⁵ In addition, it submits that the information on Witness P-268’s departure in the Report is not on its own relevant and does not shed conclusive light on the question at hand – whether the soldier, referred to by Witness P-323, and Witness P-268 are the same

¹⁹ ICC-01/04-01/07-2088-Conf, par. 11.

²⁰ ICC-01/04-01/07-2088-Conf, par. 13, also arguing that the Report is more persuasive evidence than some evidence concerning this question in the trial record.

²¹ ICC-01/04-01/07-2088-Conf, par. 4.

²² ICC-01/04-01/07-2088-Conf, par. 10.

²³ ICC-01/04-01/07-2088-Conf, par. 15. The Prosecution adds that this would not require the court time allocated the Prosecution to be increased, *ibid.*, par. 16.

²⁴ ICC-01/04-01/07-2149, paras 6-7.

²⁵ ICC-01/04-01/07-2149, par. 7.

person –, unless Witnesses P-268 and P-323 are offered an opportunity to comment on the Report.²⁶

10. The Defence for Katanga further points out that although this issue was raised during the cross-examination of Witness P-323, the Prosecution failed to confront Witness P-323 with the information contained in the Report during the re-examination of this witness.²⁷ In the view of the Defence for Katanga, if the Prosecution believes that a piece of evidence contradicts a fact established in cross-examination, it should produce the relevant information immediately after the close of cross-examination.²⁸ If not, the Defence would be deprived of the opportunity to deal with this information through the relevant witness, which would result in unfairness to the accused.²⁹

11. Consequently, the Defence for Katanga requests the Trial Chamber to dismiss the Prosecution's request or, in the alternative, to grant the production and "admission" of the Report on the condition that the Prosecution recalls Witnesses P-268 and P-323 to ask further questions to establish whether Witness P-323 was referring to Witness P-268 or another person.³⁰

C. Defence for Ngudjolo

12. The Defence for Ngudjolo responds that the Prosecution's reliance solely on Regulation 35 of the Regulations which governs the variation of time limits

²⁶ ICC-01/04-01/07-2149, paras 8-9, 13 also stating that Witness P-323 may have been confused about dates or there may have been another explanation for his assertion that the person in question was in [REDACTED], when, according to the Report, he was outside [REDACTED].

²⁷ ICC-01/04-01/07-2149, par. 10. The Defence for Katanga adds that the fact that the Prosecution asked Witness P-323 during re-examination to confirm that the soldier in question had lived in [REDACTED] in [REDACTED], demonstrates that the Prosecution was already aware of the relevance of the information in proving the alleged "civilian" status of Witness P-268, ICC-01/04-01/07-2149, par. 12.

²⁸ ICC-01/04-01/07-2149, par. 11.

²⁹ ICC-01/04-01/07-2149, paras 12, 14 also referring to Article 64(2) and (3)(c) of the Statute.

³⁰ ICC-01/04-01/07-2149, paras 15-17.

violates the principle of legality, as this Regulation does not specifically deal with the admission or disclosure of evidence.³¹ It also avers that even if the Prosecution may solely invoke Regulation 35 in relation to the disclosure and addition of the Report to the List of Incriminating Evidence, the criteria under this Regulation are not met.³² Referring to the Prosecution's admission that it possessed the information contained in the Report before the deadline for disclosure, the Defence for Ngudjolo submits that the Prosecution has not shown that it was unable, for reasons outside of its control, to disclose the Report within the time limit set by the Chamber.³³

13. The Defence for Ngudjolo further maintains that the Prosecution's request violates the principle of orality.³⁴ It argues that if Witness P-323 mentioned Witness P-268 during cross-examination, the Prosecution should have examined Witness P-323 with respect to this subject during his re-examination insofar as the Report was already at its disposal, and that such a course of action would have made it possible for the Chamber, the parties and the participants to further discuss the matter.³⁵ The Defence for Ngudjolo further avers that this resulted in depriving it of the right to have an opportunity to discuss and effectively contest the contents of the Report in the presence of Witness P-323.³⁶

³¹ ICC-01/04-01/07-2140-Conf, paras 5-10.

³² ICC-01/04-01/07-2140-Conf, par. 12.

³³ ICC-01/04-01/07-2140-Conf, paras 13-17.

³⁴ ICC-01/04-01/07-2140-Conf, paras 20-24.

³⁵ ICC-01/04-01/07-2140-Conf, par. 23.

³⁶ ICC-01/04-01/07-2140-Conf, paras 30-31. In this context, the Defence of Ngudjolo refers to Article 67(1) of the Statute guaranteeing the right of the accused to a public hearing, Article 69(2) embodying the principle of orality and Article 69(4) governing the admission of evidence, *ibid.*, paras 26-29.

III. DISCUSSION

14. When a party wishes to disclose new items of incriminating evidence and add them to the List of Incriminating Evidence after the expiration of the applicable time limit, the Chamber will first assess whether the party's application for extension of time is justifiable under Regulation 35(2) of the Regulations.³⁷ Namely, such a party must establish that it was "unable to file the application within the time limit for reasons outside [its] control".³⁸ This condition presupposes "exceptional circumstances".³⁹ The mere fact that common day-to-day working methods did not allow earlier compliance with the time limit does not qualify as an "exceptional circumstance".⁴⁰

15. Even if the above mentioned criteria of Regulation 35(2) are not met, the Chamber may still consider allowing the late disclosure and addition of new incriminating evidence in exercising its power pursuant to Articles 64(6)(d) and 69(3) of the Statute to order the production of evidence that it deems necessary for the determination of the truth.⁴¹ The late disclosure and addition may be granted only if it is shown that (i) the new material is either significantly more compelling than other items of evidence already disclosed

³⁷ Decision on the "Prosecution's Urgent Application to Be Permitted to Present as Incriminating Evidence Transcripts and translations of Videos and Video DRC-OTP-1042-0006 pursuant to Regulation 35 and Request for Redactions (ICC-01/04-01/07-1260)", ICC-01/04-01/07-1336, 27 July 2009, par. 24; Corrigendum, Decision on the disclosure of evidentiary material relating to the Prosecutor's site visit to Bogoro on 28, 29 and 31 March 2009 (ICC-01/04-01/07-1305, 1345, 1360, 1401, 1412 and 1456), ICC-01/04-01/07-1515-Corr, 9 October 2009, par. 26; Decision on Prosecution requests ICC-01/04-01/07-1386 and ICC-01/04-01/07-1407 made pursuant to regulation 35 of the Regulations, ICC-01/04-01/07-1552, 23 October 2009, par. 14.

³⁸ Regulation 35(2) of the Regulations; ICC-01/04-01/07-1336, par. 24.

³⁹ ICC-01/04-01/07-1336, par. 24. *See also ibid.*, par. 7 citing *Prosecutor v. Thomas Lubanga Dyilo*, "Reasons for the 'Decision of the Appeals Chamber on the request of counsel to Mr. Thomas Lubanga Dyilo for modification of the time limit pursuant to regulation 35 of the Regulations of the Court of 7 February 2007' issued on 16 February 2007", ICC-01/04-01/06-834, 21 February 2007, paras 9-10.

⁴⁰ ICC-01/04-01/07-1336, par. 24. *See also ibid.*, par. 7.

⁴¹ ICC-01/04-01/07-1336, par. 30; ICC-01/04-01/07-1515-Corr, par. 26; ICC-01/04-01/07-1552, par. 14.

to the Defence, or brings to light a previously unknown fact which has a significant bearing upon the case,⁴² and (ii) the late disclosure and addition will not cause undue prejudice to the right of the Defence under Article 67(1)(b) of the Statute to have adequate time and facilities to prepare its case.⁴³

16. At the outset, the Chamber observes that the Report is dated 16 April 2010. Therefore, the Prosecution did not have the Report in its possession on 30 January 2009 when the disclosure of incriminating evidence was due, or on 17 March 2010 when Witness P-323 testified about the UPC soldier during his cross-examination. Yet the Prosecution accepts that it was already aware of the information contained in the Report prior to 30 January 2009.⁴⁴

17. The Chamber considers that it is inherent in a criminal trial that unforeseen issues may arise. Therefore, as a matter of principle, the Chamber is of the view that the fact that the Prosecution could not initially expect that the information contained in the Report would become important to its case does not, as such, constitute exceptional circumstances which Regulation 35(2) of the Regulations envisages.

18. Moreover, the Chamber notes that the whereabouts of the UPC soldier in question is mentioned in Witness P-323's statement to the Prosecution dated [REDACTED], although the statement refers to the UPC soldier only by his last name.⁴⁵ Therefore, it was not impossible for the Prosecution to anticipate

⁴² For this purpose, the applying party must explain how the new evidence relates to its overall evidentiary case and the manner in which it will be tendered into evidence at trial, ICC-01/04-01/07-1336, par. 30.

⁴³ ICC-01/04-01/07-1336, par. 30; ICC-01/04-01/07-1515-Corr, par. 26; ICC-01/04-01/07-1552, par. 14. If the length of time and resources that are reasonably required by the Defence to prepare a meaningful response to the newly presented evidence are disproportionate to the limited interest of the Chamber in assessing this additional evidence, its disclosure and addition may be rejected, ICC-01/04-01/07-1515-Corr, par. 26.

⁴⁴ ICC-01/04-01/07-2088-Conf, par. 7.

⁴⁵ Statement of Witness P-323, 10 August 2008, ERN No.: DRC-OTP-1029-0234 to DRC-OTP-1029-0235; ICC-01/04-01/07-T-118-CONF-ENG ET, p. 9, line 22 - p. 11, line 18 ; p. 55, lines 19 - 21.

that the issue concerning the status of Witness P-268 and his whereabouts in [REDACTED] could be raised by the Defence. The Prosecution could have endeavoured to prepare an investigator's report containing the information on [REDACTED] or obtain an affidavit from the VWU stating the same information before the deadline for the disclosure of incriminating evidence passed, let alone before Witness P-323 came to testify.

19. In these circumstances, the Chamber is unable to discern any exceptional circumstance that would justify, pursuant to Regulation 35(2), the Prosecution's considerably late application for extension of time with respect to the disclosure of the information contained in the Report. The Prosecution has failed to establish that it was unable to file an application for extension of time for reasons outside of its control.

20. The Chamber now turns to examine whether the late disclosure should be nevertheless allowed for the purpose of establishing the truth pursuant to Articles 64(6)(d) and 69(3) of the Statute. Witness P-268 testified to the attack on Bogoro on 24 February 2003, including the identities of the attackers.⁴⁶ His credibility is therefore important to the case. If it is established that he was a UPC soldier contrary to his assertion that he was a "civilian", this may significantly affect the weight to be accorded to his testimony. The information suggesting that in [REDACTED], Witness P-268 did not live in the location where Witness P-323 alleges the UPC soldier resided, was unknown to the Chamber and has a significant bearing upon the present case. Such information could shed new light on the question concerning the alleged "civilian" status of Witness P-268, although it may not be determinative. In this regard, the Chamber notes that it is not necessary that this information is

⁴⁶ See, in particular, ICC-01/04-01/07-T-108-CONF-ENG ET, pp. 19-20.

capable of proving, on its own, the Prosecution's assertion, for its late disclosure to be allowed.

21. However, the Chamber is of the view that the late disclosure and addition of the Report to the List of Incriminating Evidence would cause undue prejudice to the right of the accused under Article 67(1)(b) to have adequate time and facilities to prepare their case. The Report itself is a one-page document with a few lines. Thus, the Defence may be able to study it within a short period of time. However, no matter how fast the Defence could familiarize itself with the Report, the fact remains that the late disclosure of this information would have deprived the Defence of an opportunity to examine Witness P-323 with the full knowledge of all pertinent information, since Witness P-323 has concluded his testimony. This would not only have violated the Defence's right to have adequate time and facilities to prepare its response to Witness P-323's testimony. It would have also undermined the Defence's right to examine witnesses against it under the same conditions as the Prosecution, as the latter already had the information concerning Witness P-268 when it examined Witness P-323, whereas the Defence did not.

22. Accordingly, the Chamber finds that the information contained in the Report may not be disclosed and added to the List of Incriminating Evidence at this stage.

23. However, in light of the testimony provided by Witnesses P-323 and P-268 as well as the development of the issue surrounding the alleged "civilian" status of Witness P-268, the Chamber is of the view that, in order to establish the truth, it needs to be furnished with more evidence on the identification of the UPC soldier in question pursuant to Articles 64(6)(d) and 69(3) of the Statute. In the view of the Chamber, the most effective and efficient way to achieve this is to re-call Witness P-323, either in person or via

video-link, and conduct a photo identification of the UPC soldier, by showing the witness a photo line-up consisting of at least ten photographs, which include a photograph of Witness P-268. The photo line-up will be prepared by the Registry. The parties will be allowed to put to Witness P-323 questions arising out of the photo identification.

24. In this regard, the Chamber reminds the parties and participants that Witness P-268 has been granted protective measures, including non-disclosure of his identity to the public, assignment of a pseudonym and voice and image distortion.⁴⁷ Therefore, in the additional hearing of Witness P-323, no information identifying Witness P-268 as a witness before the Court may be disclosed to Witness P-323 or to the public. Furthermore, the fact that Witness P-268 [REDACTED] may not be revealed to Witness P-323, since it is sensitive confidential information relevant to the security of this witness, which may not be disclosed to anyone other than the parties and participants in this case. This does not prevent the parties from asking Witness P-323 questions on the identity of the concerned UPC soldier, as long as none of the information referred to above is mentioned.

25. Additionally, in order for the parties and the Chamber to have a complete understanding of the question of the "civilian" status of Witness P-268 before interrogating the re-called Witness P-323, the Chamber considers that it is appropriate and necessary for the information on [REDACTED] to be placed in the official record. In this regard, the Chamber is of the view that it is not the Prosecution's investigator, but the VWU, a neutral organ of the Court [REDACTED], who would be able to provide the most reliable information on [REDACTED]. A report prepared by the VWU providing such

⁴⁷ Ordonnance relative aux mesures de protection de certains témoins cités à comparaître par le Procureur et par la Chambre (règles 87 et 88 du Règlement de procédure et de preuve), ICC-01/04-01/07-1667-Conf, 23 November 2009, paras 10-13 and Disposition (p. 12).

information would be more appropriate evidence than a report thereon drafted by the Prosecution's investigator. Accordingly, in exercising its power under Articles 64(6)(d) and 69(3), the Chamber instructs the VWU to provide to the Chamber a report containing the information on [REDACTED], which will be admitted into evidence and given an EVD number.

26. Having considered its duty to ensure that the accused's rights are not unduly prejudiced and in order to enable the parties to adequately prepare themselves for the further hearing of Witness P-323, the Chamber directs Witness P-323 to be recalled for the photo identification no earlier than two weeks after the submission of the report by the VWU. As Witness P-323 is a Prosecution witness, the Chamber considers that it is for the Prosecution to make all necessary arrangements to recall the witness in person or via video-link prior to the end of the Prosecution case.

FOR THESE REASONS,

THE CHAMBER,

REJECTS the Motion;

ORDERS the VWU to file a report containing the information on [REDACTED] no later than 3 September 2010;

INSTRUCTS the Registry to upload the report provided by the VWU in E-Court and assign an EVD number to it;

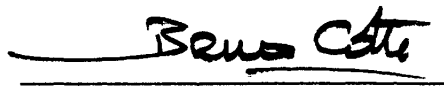
ORDERS that no earlier than two weeks after such filing and prior to the end of the Prosecution case, Witness P-323 be recalled for the purpose of a photo identification of the UPC soldier in question, which will be followed by questions by the parties and the Chamber, if any;

INSTRUCTS the Registry to, for this purpose, prepare a photo line-up consisting of at least ten photographs, which include a photograph of Witness P-268;

ORDERS the Prosecution to make all necessary arrangements for recalling Witness P-323 in person or via video-link; and

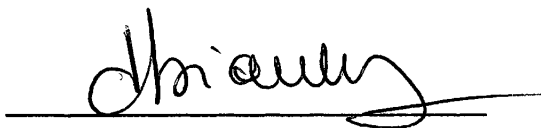
ORDERS that neither information identifying Witness P-268 as a witness nor information concerning [REDACTED] shall be mentioned to Witness P-323 or the public during the further hearing of Witness P-323.

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



Judge Bruno Cotte

Presiding Judge



Judge Fatoumata Dembele Diarra



Judge Christine Van den Wyngaert

Dated this 27th September 2010,

At The Hague, the Netherlands.