

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original : English

No.: ICC-01/04-01/07
Date: 29 January 2008

PRE-TRIAL CHAMBER I

Before: Judge Akua Kuenyehia, Presiding Judge
Judge Anita Ušacka
Judge Sylvia Steiner

Registrar: Mr. Bruno Cathala

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

***IN THE CASE OF
THE PROSECUTOR
v. GERMAIN KATANGA***

**Public Document with Confidential - *Ex Parte* - Prosecution Only and
Confidential Annexes**

Submission of the Document Containing the Charges and of the List of Evidence

The Office of the Prosecutor

Mr. Luis Moreno-Ocampo, Prosecutor
Ms. Fatou Bensouda, Deputy Prosecutor
Mr. Éric MacDonald, Trial Lawyer
Ms. Florence Darques-Lane, Legal
Adviser

Counsel for the Defence

Mr. David Hooper
Ms. Caroline Buisman
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The Office of the Prosecutor ("Prosecution") respectfully submits the document containing the charges against Germain KATANGA ("Document Containing the Charges") and the list of evidence which the Prosecution intends to rely upon at the confirmation hearing ("List of Evidence"),¹ pursuant to the "Corrigendum to the Decision Establishing Time Limits for Decisions on Protective Measures and Requests for Redactions"² ("Corrigendum to the Decision on Time Limits"), Article 61(3) of the Rome Statute ("Statute"), Rule 121(3) of the Rules of Procedure and Evidence ("Rules") and Regulation 52 of the Regulations of the Court ("Regulations"). The Prosecution also appends unofficial French translations of the two documents mentioned hereinabove, pursuant to the "Decision on the Defence Request Concerning Languages" ("Decision on Languages").³ Because the issue of protection to certain witnesses is still pending resolution,⁴ the Prosecution is submitting a redacted version of these documents. Furthermore, the Prosecution notifies Pre-Trial Chamber I ("PTC I") and Germain KATANGA, pursuant to Rule 121(3) and Regulation 52, that it is charging Germain KATANGA with the additional count of destruction of property, punishable under Article 8(2)(e)(xii) or Article 8(2)(b)(xiii) of the Statute.⁵ Last, the Prosecution hereby also informs PTC I and Germain KATANGA that KATANGA's responsibility for the crimes charged in the Document Containing the Charges rests on alternative modes of liability pursuant to Article 25(3)(a) (joint perpetration) or (b) (ordering) of the Statute.

¹ The individual components of the List of Evidence are linked to the relevant sections of the Document Containing the Charges as submitted in *The Prosecutor v. Thomas Lubanga Dyilo*. The Prosecution will submit as soon as practicable a chart containing the elements of crimes as they are supported by the evidence.

² ICC-01/04-01/07-103. See further ICC-01/04-01/07-T-12-ENG, p. 5, lines 5-11.

³ ICC-01/04-01/07-127.

⁴ ICC-01/04-01/07-138-Conf-Exp; ICC-01/04-01/07-162; ICC-01/04-01/07-165-Conf-Exp and the *ex parte* hearing with Victims and Witnesses Unit held on 28 January 2008.

⁵ Each of the counts qualified as "war crimes" in the Document Containing the Charges arise from conduct which constitutes a war crime regardless of whether the conflict is international or non-international. For that reason, the Prosecution is charging KATANGA in the alternative, based on counts reflecting the same conduct but related to war crimes in the context of a conflict of international character and of a non international character.

Background

1. On 22 October 2007, during the initial appearance of Germain KATANGA, PTC I scheduled the hearing for the confirmation of charges to take place on 28 February 2008.⁶ In the Corrigendum to the Decision on Time Limits the Single Judge decided that, except as provided for in Rule 121(4) and (5) of the Rules, the Defence shall have access to the evidence on which the Prosecution intends to rely at the confirmation hearing, at the latest by 29 January 2008.⁷ Furthermore, in the Decision on Languages, the Single Judge ordered the Prosecution to file a French version of the Document Containing the Charges and the List of Evidence within the time limits provided for in Rules 121(3), (4) and (5) of the Rules.⁸

Request for Receipt of Certain Annexes as Confidential, *Ex Parte*, Prosecutor Only and Certain Other Confidential Annexes

2. The Prosecution annexes to this public submission "Confidential - *Ex Parte* - Prosecution Only" Annex 1A, 1B, 2A, 2B,⁹ and "Confidential" Annex 1C, 1D, 2C and 2D. The Prosecution respectfully requests that Annex 1 containing the unredacted version of the Document Containing the Charges and the List of Evidence and Annex 2 containing the redacted version of the Document Containing the Charges and the List of Evidence be received by the Single Judge, for reasons of protection of victims and witnesses pursuant to Article 68(1) of the Statute, as "Confidential - *Ex Parte* - Prosecution Only" and "Confidential", respectively.¹⁰

⁶ ICC-01/04-01/07-T-5-ENG [22Oct2007Edited]1-31 NB PT, p. 29, lines 6-22.

⁷ ICC-01/04-01/07-103 p. 5.

⁸ ICC-01/04-01/07-127, p. 17.

⁹ The Prosecution submits French translations of both the un-redacted version and the redacted version of the pertinent documents.

¹⁰ The Prosecution will file a public redacted version of the pertinent documents as soon as practicable.

Additional Count of Destruction of Property

3. The Prosecution considers that after review of the evidence available regarding destruction of property during the Bogoro attack, including as detailed in the Prosecution's Application for a warrant of arrest for Germain KATANGA ("Arrest Warrant Application"), and witness statements disclosed to date,¹¹ there is sufficient evidence to establish substantial grounds to believe that Germain KATANGA is criminally responsible for the crime of destruction of property in Bogoro village and surrounding areas constituting a war crime punishable under Article 8(2) (e)(xii) or Article 8(2) (b) (xiii) of the Statute.

Addition of an Alternate Mode of Liability

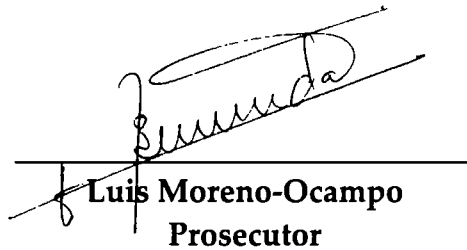
4. The Prosecution submits, as determined by PTC I, that Germain KATANGA is criminally liable as a principal for the joint attack on the village of Bogoro pursuant to a common plan. For that reason, the Document Containing the Charges, charges Germain KATANGA as a joint perpetrator pursuant to Article 25(3) (a) of the Statute.
5. Because the Prosecution is of the view that ordering as a mode of liability set out in Article 25(3) (b) of the Statute is not necessarily a form of accessory liability, the Prosecution maintains, in the alternative, that Germain KATANGA, as a principal, ordered the attack on Bogoro.¹² In the case law of the *ad hoc* tribunals, for instance, it has been held that "where [...] the superior orders [emphasis added] the crime [...] he may be more appropriately referred

¹¹ To date the Defence has already received evidence underlying the crime of destruction of property in a number of documents, such as: ICC-01/04-01/07-129-Conf-AnxA; ICC-01/04-01/07-100; ICC-01/04-01/07-101, ICC-01/04-01/07-136; ICC-01/04-01/07-135; ICC-01/04-01/07-157.

¹² In ICC-01/04-01/07-55 PTC I issued the arrest warrant against Germain KATANGA based ordering as a mode of participation in the commission of the crime punishable under Article 25(3) (b). In so doing, PTC I held that modes of participation in the commission of the crime punishable under Article 25(3) (b) to (d) of the Statute give rise to accessory liability. PTC I therefore concluded that GK could also be liable as an accessory to the crimes committed by his subordinates during and in the aftermath of the attack.

to as *primarily responsible* [emphasis added] for its commission".¹³ Similarly, certain commentators have stated that a person who orders a crime is at least in certain circumstances a perpetrator by means.¹⁴ For these reasons the Prosecution rests on alternative modes of liability in the Document Containing the Charges.

6. The Prosecution respectfully submits, pursuant to Article 61(3) of the Statute, Rule 121(3) and Regulation 52, the Document Containing the Charges and the List of Evidence in the annexes appended to this motion.



Luis Moreno-Ocampo
Prosecutor

Dated this 29th day of January 2008
At The Hague, The Netherlands

¹³ Prosecutor v. Kordic and Cerkez, IT-95-14/2-T (Trial Chamber), 26 February 2001, para. 367. See further UN Commission of Experts, Interim Report, S/25274, 10 February 1993, para. 51 ("A person who gives the order to commit a war crime or a crime against humanity is equally guilty of the offence with the person actually committing it").

¹⁴ Eser, "Individual Criminal Responsibility" in: Cassese et al. (eds.), *The Rome Statute of the International Criminal Court*, vol. 1, p. 797; cf. also Ambos in *Der Allgemeine Teil des Völkerstrafrechts*, p. 645 et seq. and Ambos, "Individual Criminal Responsibility" in: Triffterer (ed.), *Commentary on the Rome Statute of the International Criminal Court*, Article 25, margin 12.