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

Date: 5 June 2008

PRE-TRIAL CHAMBER I

Before: Judge Sylvia Steiner, Single Judge

**SITUATION IN THE DEMOCRATIC REPUBLIC OF CONGO
IN THE CASE OF
THE PROSECUTOR
*v. GERMAIN KATANGA and MATHIEU NGUDJOLO CHUI***

Public Document

Defence Observations on the Lifting of Redactions

Source: Defence for Mr Germain Katanga

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

The Office of the Prosecutor

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Mr Eric Macdonald, Senior Trial Lawyer

Counsel for the Defence for Germain Katanga

Mr David Hooper
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Mr Jean-Pierre Kilenda Kakengi Basila
Ms Maryse Alié

Legal Representatives of Victims

[1 name per team maximum]

Legal Representatives of Applicants

[1 name per team maximum]

Unrepresented Victims

Unrepresented Applicants for Participation/Reparation

The Office of Public Counsel for Victims

[2 names maximum]

The Office of Public Counsel for the Defence

[2 names maximum]

States Representatives

Amicus Curiae

REGISTRY

Registrar

Defence Support Section

Victims and Witnesses Unit

Detention Section

Victims Participation and Reparations Section

Other

1. Pursuant to the Single Judge's *Decision on Evidentiary Scope of the Confirmation Hearing, Preventive Relocation and Disclosure under Article 67(2) of the Statute and Rule 77 of the Rules*,¹ the Defence for Germain Katanga (« Defence ») makes the following observations. The Defence does not, at this moment, seek an order lifting of the redactions in documents that the Prosecution has disclosed pursuant to Article 67(2) of the Rome Statute and Rule 77 of the Rules. Neither did the Defence, at previous occasions, seek such an order from the Single Judge.
2. Nonetheless, the Defence wishes to state for the record that the fact that it has, thus far, not sought an order to lift redactions in exculpatory materials or documents which may be material for the preparation of the defence and is again not seeking such an order within the present deadline set by the Single Judge, should be without prejudice to the following considerations.
3. The Single Judge has previously clarified that the redactions would only have valid legal effect for the confirmation phase.² Consequently, in the event that the charges are confirmed, the redactions would no longer have legal effect. It would therefore be necessary for the Prosecutor to either immediately disclose the unredacted version of the material, or seek authorization from the Trial Chamber to maintain the redactions. In this regard, the Appeals Chamber has recently confirmed that, “when seeking redactions pursuant to rule 81(4), the Prosecutor may only redact information from material and evidence that it must disclose to the Defence after obtaining authorisation from the competent Chamber to do so”.³
4. The Appeals Chamber has also stipulated that “even if it is determined that certain information should not be disclosed, such determination should be kept under review by the Pre-Trial Chamber. It may be necessary to disclose the withheld information subsequently, should circumstances change. The Prosecutor should assist the Pre-Trial Chamber in this regard by bringing to its attention factors that may cause it to reconsider its ruling on nondisclosure.”⁴ As such, there is an obligation on both the Prosecution and the Pre-Trial Chamber to review, in an ongoing manner, whether the redactions continue to be necessary, and if not, to disclose immediately the information to the Defence, irrespective of whether the defence requested the lifting of particular redactions within any of the deadlines set by the Single Judge.

¹ ICC-01/04-01/07-423-Conf. A public redacted version was issued on 20 May 2008 (ICC-01/04-01/07-484).

² ICC-01/04-01/07-484, pages. 6-7; ICC-01/04-01/07-483-Conf, p. 6-7.

³ ICC-01/04-01/07-475, at para 60.

⁴ At para 73.

5. The Defence may be interested in receiving non-redacted versions of the exculpatory materials or documents which may be material for the preparation of the defence in question, after the confirmation hearing, where the redacted information may be useful for defence investigations during the time period from the cessation of the confirmation hearing until when the Trial Chamber is formally seized of the case. It is respectfully submitted that the present deadline for seeking the lifting of redactions cannot be applied as a bar against any potential requests for seeking the lifting of the same redactions after the confirmation hearing but before the Trial Chamber is sworn in.

Respectfully submitted,



David HOOPER

Dated this 5th June 2008

London