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

Date: **12 June 2008**

THE APPEALS CHAMBER

Before: Judge Georghios M. Pikis, Presiding Judge
 Judge Erkki Kourula
 Judge Philippe Kirsch
 Judge Navi Pillay
 Judge Sang-Hyun Song

**SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO
 IN THE CASE OF
 THE PROSECUTOR**

v. Germain Katanga and Mathieu Ngudjolo Chui

Public Document

**Application for Extension of Time Limits Pursuant to Regulation 35 of the
Regulations of the Court to Allow the Defence to Submit its Observations on the
 Prosecutor's Appeal regarding the *Decision on Evidentiary Scope of the
 Confirmation Hearing and Preventive Relocation***

Source: Defence Team for Mathieu Ngudjolo

Document 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

**Counsel for the Defence of Germain
Katanga**

Mr David Hooper
Mr Goran Sluiter

**Counsel for the Defence of Mathieu
Ngudjolo**

Mr Jean-Pierre Kilenda Kakengi Basila
Ms Maryse Alié

Legal Representatives of Victims

Ms Carine Bapita
Mr Gilissen
Mr Keta

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

Ms Paolina Massida

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

Mr Xavier Jean Keïta
Ms Mélinda Taylor

States Representatives

Amicus Curiae

REGISTRY

Registrar

Ms Silvana Arbia

Defence Support Section

Mr Esteban Peralta

Victims and Witnesses Unit

Detention Section

I. BACKGROUND AND PURPOSE OF THE APPLICATION

1. On 21 April 2008, the Pre-Trial Chamber issued the *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 Prosecutor requested leave to appeal the said decision on the basis of article 82(1)(d) of the Rome Statute (hereinafter "Statute").²
2. On 20 May 2008, the Pre-Trial Chamber granted the Prosecutor leave to appeal in relation to two specific issues.³ These two issues pertain respectively to the Prosecutor's power in relation to preventive relocation of witnesses and the preventive relocation of witnesses 132 and 287 and to the exclusion of their testimony from evidence for the purpose of the confirmation hearing.
3. On 2 June 2008, the Office of the Prosecutor submitted his notice of appeal to your Honourable Court.⁴ The Defence for Mr Mathieu Ngudjolo (hereinafter "Defence") takes due note of the Prosecutor's discontinuance of the appeal with respect to witnesses 132 and 287 who have since been lawfully relocated.
4. The Defence wishes to exercise its right to respond pursuant to regulation 65(5) of the *Regulations of the Court* (RC). Nevertheless, as it is not in a position to submit such a response for the reasons set out below, the Defence hereby requests an extension of the 10 days for notification provided for in regulation 65(5) of the RC.

II. THE APPLICATION FOR EXTENSION OF TIME LIMIT

2.1 IN LAW

¹ ICC-01/04-01/07-423-Conf.

² "Prosecution's Application for Leave to Appeal the Decision on the Evidentiary Scope of the Confirmation Hearing and Preventive Relocation", 28 April 2008, ICC-01/04-01/07-453.

³ *Decision on the Requests for leave to appeal the 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*, Pre-Trial Chamber I, 20 May 2008, ICC-01/04-01/07-483-Conf.

⁴ "Prosecution's Document in Support of Appeal against the Decision on the Evidentiary Scope of the Confirmation Hearing and Preventive Relocation", 2 June 2008, ICC-01/04-01/07-541.

5. The Defence invokes the application of regulation 35(1) of the RC to request the extension of the time limit provided for in regulation 65(5) of the RC, to allow it to set out its observations on the notice of appeal filed by the Prosecutor. Regulation 35(1) of the RC on the variation of time limits stipulates that applications to extend or reduce any time limit as prescribed in these Regulations or as ordered by the Chamber shall be made in writing or orally to the Chamber seized of the matter setting out the grounds on which the variation is sought.

2.2 IN FACT

6. The Defence for Mr Mathieu Ngudjolo respectfully states that it is unable to present its observations within the statutory time limit due to exceptional circumstances constituting a good cause within the meaning of regulation 35(1) of the RC. These exceptional circumstances are explained below.
7. The Defence team of Mr Mathieu Ngudjolo currently comprises one counsel, one legal assistant and one case manager. The team is currently focusing actively and thoroughly on preparing for the confirmation of charges hearing scheduled to commence on 7 June 2008 for a duration as yet unspecified. In support of its application the Defence invokes both the quantity and quality of the work to be done approximately fifteen days before the commencement of the confirmation hearing.
8. Moreover, the Defence observes that the process of disclosure is continuing and that several procedural documents must still be prepared. These include, further to the oral decision of the honourable Single Judge on 10 June 2008, the submission of observations relating to the Prosecutor's discharging his obligation to disclose evidence by 19 June 2008. Furthermore, the Defence would inform the Appeals Chamber that other procedural documents are being prepared for the purpose of guaranteeing the rights of Mr Mathieu Ngudjolo. This work, in

addition to preparing for the confirmation of charges hearing – which, it should be recalled, represents a colossal endeavour – is fully occupying Mr Mathieu Ngudjolo’s defence team, who seek to be reactive and to allow no irregularities whatsoever. Respect for the rights of the accused guaranteed *inter alia* by article 67 of the Rome Statute requires serious analysis of the issues relating to the preventive relocation of witnesses by the Office of the Prosecutor. Given this workload and the confirmation of charges hearing, the Defence for Mr Mathieu Ngudjolo requests an extension of the time limit set for submitting observations under regulation 65(5) of the RC.

9. Insofar as the determination of the issue brought before your Honourable Court does not directly affect the scheduling of the confirmation of charges hearing, the Defence respectfully submits that the time limit for submission might be extended until after the confirmation of charges hearing.

FOR THESE REASONS

10. The Defence, with all due respect, requests that your Chamber grant it an extension of the deadline to a date after the conclusion of the confirmation of charges hearing in order to file the aforementioned procedural document.

And justice shall be done.

[signed]

Mr Jean-Pierre Kilenda Kakengi Basila

Permanent Defence Counsel for Mr Mathieu Ngudjolo Chui

Dated this 12 June 2008, at Brussels, Belgium