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No.: ICC-01/04-01/07
Date: 24 November 2008

TRIAL CHAMBER II

Before: * Judge Bruno Cotte , Presiding Judge
Judge Fatoumata Dembele Diarra
Judge Fumiko Saiga

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

Public Document

Defence Response to the Order dated 13 November 2008

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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**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

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REGISTRY

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Ms Silvana Arbia

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
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Other

In response to the Trial Chamber's questions addressed to the parties in the *Ordonnance enjoignant aux participants et au Greffe de répondre aux questions de la Chambre de première instance II en vue de la conférence de mise en état (article 64-3-a du Statut)*, issued on 13 November 2008 (« Ordonnance »),¹ the Defence for Mr Germain Katanga (« the Defence ») submits the following observations :

10. La Chambre adresse aux conseils de la Défense les questions suivantes :

1) La Défense a-t-elle des observations à formuler sur les conditions de détention des accusés?

The Defence takes this opportunity to express gratitude for the arrangement of the visit of Mr. Katanga's family. The Defence encountered no problems during this visit. At this stage, the Defence has no other observations to make regarding the conditions of Mr. Katanga detention.

2) La Défense entend-elle conduire des enquêtes sur le territoire de la République démocratique du Congo ? Dans l'affirmative, quand commenceront-elles et quelle en sera la durée ?

The Defence hereby informs the Trial Chamber that a preliminary investigative journey has already been undertaken by a Defence team member prior to the confirmation hearing (March 2008). The Defence has provisionally scheduled the following investigative journeys between now and the expected commencement date of the trial.

4 December 2008 – 15 December 2008: Lead Counsel and Assistant Counsel will travel to Ituri to conduct investigations.

15 January 2009 – 25 January 2009: Lead Counsel and Assistant Counsel will travel to Kinshasa to conduct investigations.

16 February 2009 – 28 February 2009: Lead Counsel and Co-Counsel will travel to Ituri to conduct investigations.

¹ ICC-01/04-01/07-747.

23 March 2009 – 29 March 2009: Team members will travel to Kinshasa to conduct investigations.

20 April 2009 – 3 May 2009: Team members will travel to Ituri to conduct investigations.

3) La Défense est-elle en mesure d'indiquer à la Chambre le nombre de documents expurgés *motu proprio* par le Procureur à propos desquels elle demandera le rétablissement des passages supprimés ?

The Defence submits that there are 38 documents that have been redacted *proprio motu* by the Prosecution for the purpose of the confirmation hearing. The Defence did not object to this procedure on the understanding that it was done solely for the purposes of the confirmation proceeding. The Single Judge authorised the Prosecution to make *proprio motu* redactions in certain exonerating documents it did not intend to rely on for the confirmation “in light of the need to expedite the proceedings leading to the confirmation hearing in the present case - which in the case of Germain Katanga has already lasted for more than five months - and in order to respect the rights of the suspects to the holding of the confirmation hearing within a reasonable period of time after their transfer to the seat of the Court in The Hague”.²

In light of the fact that the proceedings have now moved to the trial stage, the Defence requests that the normal procedure in respect of redactions as described in the ICC Statute and Rules of Procedure and Evidence (notably Article 67 ICC Statute; Rules 77, 81, 82, 83 Rules of Procedure and Evidence) be respected. Accordingly, the Defence requests that the Trial Chamber review all redactions in accordance with Rules 81 and 82 to determine whether, balancing the need to protect the safety of victims and witnesses and the rights of the accused, they must be lifted at this stage of the proceedings.

4) La Défense est-elle en mesure d'indiquer à la Chambre le nombre de résumés de déclarations de témoins, de notes prises lors d'entretiens avec les témoins et de transcriptions de ces entretiens desquels elle entend obtenir la version originale?

² ICC-01/04-01/07-428-Corr, Corrigendum to 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, para. 144.

The Defence would like to receive all original versions of the summaries of all incriminating and exonerating statements taken by the Prosecution of all witnesses they intend to call and those they intend not to call, their interview notes with those witnesses and the audio and video transcripts of all such interviews.

5) Quand la Défense sera-t-elle en mesure d'indiquer à la Chambre, ne serait-ce qu'à titre indicatif, le nombre d'éléments de preuve qu'elle entend présenter au procès et de lui préciser le temps qui lui sera nécessaire pour la présentation de ses éléments de preuve ?

The defence investigations are presently not in a sufficiently advanced stage for the Defence to be in a position to give any indication to the Trial Chamber at this stage regarding the quantity of the evidence it intends to present at trial or the duration of the defence case. The Defence will inform the Trial Chamber of any provisional estimation as soon as it is in a position to do so.

11. La Chambre adresse au Procureur et aux conseils de la Défense les questions suivantes :

1) Le Procureur et la Défense peuvent-ils préciser à la Chambre la date à laquelle ils seront prêts pour l'ouverture des débats au fond ?

Both defence teams met with the Prosecution to discuss the matters raised in the Trial Chamber's Requests. All parties agreed that unless unforeseen difficulties arise a commencement date of 8th June 2009 is the preferred date. This proposed date should give all parties sufficient time to prepare for trial.

2) Le Procureur et la Défense peuvent-ils d'ores et déjà convenir que des faits invoqués dans les charges, la teneur d'un document, le témoignage attendu d'un témoin ou d'autres éléments de preuve ne sont pas contestés ? Dans l'affirmative, existe-t-il un résumé des faits non contestés ? Dans la négative, entendent-ils se rencontrer à cette fin et quand ?

At present, the Defence is not in a position to provide a list of uncontested facts. The parties have agreed that they will discuss and agree those facts that are uncontested no later than

thirty days prior to the start of the trial, with the added facility that any party may seek to have any particular fact or facts agreed before that time. The parties submit that this is a workable arrangement and respectfully request the Chamber to support it.

3) Le Procureur et/ou la Défense envisagent-ils de soumettre à la Cour des faits notoires pouvant faire l'objet d'un constat judiciaire ?

At present, the Defence is not in a position to provide the Trial Chamber with facts of general knowledge/ capable of judicial notice, but has agreed to continue to discuss the matter with the Prosecution. The parties will seek to agree any such fact not later than thirty days prior to trial.

4) Le Procureur et la Défense entendent-ils donner des instructions à des témoins experts au procès ? Dans l'affirmative, serait-il envisageable qu'ils donnent conjointement leurs instructions aux témoins experts ou, à tout le moins, qu'ils aient recours à des témoins communs auxquels ils donneront leurs instructions séparément ?

The Defence intends to instruct one or more expert witnesses but is not yet in a position to provide further details regarding the type of expertise it is seeking to obtain and the names and number of expert witnesses it intends to instruct. At this moment, the parties do not intend to instruct a joint expert, but are willing to reconsider this at a later stage if considered appropriate.

13. La Chambre adresse au Procureur, aux conseils de la Défense et aux représentants légaux des victimes les questions suivantes :

1) Les participants ont-ils des observations à formuler sur la procédure de communication mise en place par la Chambre préliminaire I ?

The Defence has no observation other than that the communication procedure has functioned well.

2) Les participants entendent-ils suggérer des modifications à apporter au protocole de présentation électronique des éléments de preuve, des pièces et des informations relatives aux témoins qui a été utilisé lors de l'audience de confirmation des charges ?

The Defence requests the Prosecution to indicate in 'Ringtail', the level of confidentiality assigned to each document and understand that the Prosecution has no objection to doing so.

3) Les participants ont-ils des observations à formuler sur le lieu du procès ? Estiment-ils par ailleurs qu'un déplacement de la Chambre à Bogoro pourrait favoriser une meilleure compréhension du dossier ? Dans l'affirmative, ce déplacement devrait-il avoir lieu avant le début des débats au fond ou pendant leur déroulement ?

(a) As to the place of trial the Defence have no observations to make at the present time other than that the trial take place in the presence of Mr Katanga unless both he, and his counsel, give their consent to him not being present for any particular part of the trial in any particular place.

(b) The Defence strongly supports the suggestion that the Trial Chamber makes a judicial site visit to Bogoro. The Defence submits that other places in Ituri directly relevant to the facts of the case may also be appropriate to visit. It is understood that any site visit made by the chamber will be in the presence of representatives of the Defence.

(c) The Defence submits that, if the Chamber envisages making just one visit to the area, it is more practicable to make that visit at a later rather than an earlier stage of the trial by which time issues that will be better clarified from a site visit would have been identified.

Respectfully submitted,



David HOOPER

Dated this 24 November 2008

At London