

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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

Date: 19 March 2009

TRIAL CHAMBER II

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

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

Public Document

URGENT

**Prosecution's Application for Extension of Time Limit Pursuant to Regulation 35
to Submit a Table of Incriminating Evidence and related material in compliance
with Trial Chamber II "Order concerning the Presentation of Incriminating
Evidence and the E-Court Protocol"**

Source: Office of the Prosecutor

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

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Other

1. In its 13 March 2009 “Order concerning the Presentation of Incriminating Evidence and the E-Court Protocol” (“Order”),¹ Trial Chamber II (“Chamber”) ordered the Prosecution, *inter alia*, to submit no later than Friday 3 April 2009, at 4 p.m. the following documents: 1) a Table of Incriminating Evidence; 2) a list of all the witnesses it intends to call together with a Witness Information List for each witness; 3) all the items of evidence included in the Table of Incriminating Evidence, indicating clearly for each item of evidence when it was disclosed to the Defence and whether it is still subject to redactions and/or protective measures.² In addition, the Chamber ordered the Prosecution to update all items of evidence, no later than 24 April 2009, at 4 p.m. and endeavor to update the metadata of all material previously disclosed to the Defence as soon as possible after the Chamber has approved the revised E-Protocol. If there are any issues of redactions to metadata the Prosecution shall make the appropriate request no later than 9 April 2009, at 4 p.m.

2. Because of the magnitude of these tasks, in addition to already considerable demands weighing on the Prosecution, the Prosecution hereby requests, pursuant to Regulation 35 of the Court, an extension of time, to and including 3 May 2009, within which to provide the Table of Incriminating Evidence, the evidence, the list of witnesses and the Witness Information Lists, and the proposed redactions, if any.³

3. The preparation of the Table of Incriminating Evidence requires a particularized analysis of each of the incriminating documents submitted at the confirmation hearing (258 documents) and then it requires the actual

¹ Order concerning the Presentation of Incriminating Evidence and the E-Court Protocol”, ICC-01/04-01/07-956.

² *Ibid.*, pp. 17-18.

³ The Prosecution disagrees fundamentally with the Order, will file an Application for Leave to Appeal, and will ask the Appeals Chamber to attach suspensive effect to the Order should appeal be authorized. Notwithstanding its intent to appeal, it has initiated processes to comply with the Order and intends to proceed under the Order unless and until the Chamber authorizes appeal.

insertion into the Matrix designed by the Chamber of the pertinent information from each document within the framework of each element of each charged crime. It also requires the review and analysis of each of the incriminating documents disclosed since the confirmation hearing (193 documents) or submitted for redactions (34 documents). Some of these documents are quite lengthy. This material must be carefully analyzed, according to the structure the Chamber has directed, before the Prosecution can include them under all the pertinent elements of the charges.

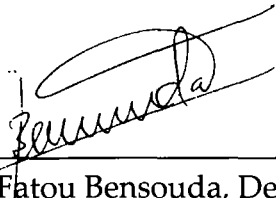
4. As the Chamber notes, the Prosecution began a similar project as part of its internal organization of the case. Due to time constraints, however, the Prosecution has not completed, indeed is not close to completing, the project. Its internal process thus far includes only material from the List of Evidence. Moreover, the Prosecution's format is different than the one identified by the Chamber, so the work that has been done will nonetheless have to be redone and checked and then converted from the Prosecution's format to the Chamber's format, which itself is an additional and time-consuming task.

5. The magnitude of this task, as well as the need to complete other projects and submissions requested by the Chamber, all due within the next few weeks, constitute good cause justifying a variation of the time limit set by the Chamber.

6. This request is submitted in good faith, reflects the Prosecution's assessment that it cannot possibly comply with the 13 March Order within the allotted time period, and is not intended to prejudice the Defence. Both the Chamber and the Defence already have almost all the underlying evidence, the materials from the confirmation hearing, the Document Containing the Charges, and the Confirmation Decision. They are accordingly able to proceed with their trial preparations. Moreover, the Chamber has not set a

firm trial date, though it suggested that the trial would briefly commence in July with the introduction of evidence to occur only after the summer recess.

7. In light of the foregoing, the Prosecution requests an extension of one month, to and including 3 May 2009.



Fatou Bensouda, Deputy Prosecutor
on behalf of
Luis Moreno-Ocampo, Prosecutor

Dated this 19th day of March 2009

At The Hague, The Netherlands