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

Date: 23 March 2009

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 Prosecution's Application for Extension of Time Limit
Pursuant to Regulation 35 to Submit a Table of Incriminating Evidence and
related material**

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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Victims and Witnesses Unit

Detention Section

Victims Participation and Reparations Section

Other

1. On 12th March 2009, the Defence for Katanga requested the Chamber for an amended document containing the charges to consolidate, into a single authoritative document, the case for the Prosecution.¹ On 13th March 2009, the Trial Chamber ordered the Prosecution to produce a table containing the charges, the factual underpinning of those charges, the evidence it intends to rely upon, linking the evidence to the charges and the mode of liability.² The Chamber ordered that this table be completed and submitted by 3rd April 2009. On the 19th March 2009, the Prosecution applied for an extension of time for this exercise.³
2. The Defence interprets paragraph 7 of the said Order to constitute an invitation to the Defence to request a reconsideration of the Chamber's decision in the event that it considers that it is able to demonstrate that a well-structured table cannot 'fulfil the function of an amended document containing the charges.' The Defence accepts that a tabular as opposed to a narrative form should not affect the validity or functionality of a document containing the charges.
3. The Defence acknowledges that a table drafted in the manner ordered by the Chamber will meet many of Defence's concerns. Nevertheless, the Defence wishes to have the opportunity to consider the document produced by the Prosecution before deciding whether to take the matter further with the Chamber. In the event that the document produced by the Prosecution does not, in the view of the Defence, fulfil the function of providing clear and consistent notice of the case against the accused, then it may approach the Chamber with a view to ordering the Prosecution to adjust its document, or may ask the Chamber to reconsider its decision of 13th March 2009 in line with its invitation in paragraph 7 of said decision.
4. The Prosecution claims that the magnitude of the task it has been asked to perform as well as the completion of other projects and submissions requested by the Chamber constitutes good cause justifying a variation of the time limit set by the Chamber.
5. The Defence considers it in its interests to accord the Prosecution a margin of appreciation with respect to the Table of Incriminating Evidence in order to ensure that the document produced by the Prosecution actually serves its purpose. However,

¹ ICC-01/04-01/07-954.

² ICC-01/04-01/07-956.

³ ICC-01/04-01/07-969.

the Defence cannot agree to such a lengthy extension of time on the premise that the Prosecution may be giving its opening statement on the eve of July and starts its evidence following the judicial recess. The Defence submits that it is entitled to a clear, concise and comprehensive document containing the charges and their factual foundation a reasonable time prior to the commencement of trial.⁴

6. Further, the Defence does not agree to the extension of time requested for other matters including, as the Defence understands the Prosecution's request at paragraph 2, "the evidence, the list of witnesses and the Witness Information Lists, and the proposed redactions, if any". The Defence submits that these are matters which should have already been finalised, if the requirements of a fair trial are to be respected. The Prosecution does not, in the Defence submission, provide adequate grounds to justify further delay with respect to such matters.
7. In this regard it is submitted that two months prior to the commencement of trial is inadequate notice. The fact that the Defence has received witness statements and other incriminating evidence from the Prosecution, and is aware of the contents of the first document containing the charges and the Pre-trial Chamber's decision on the confirmation of charges, mitigates but does not resolve the problem of adequate notice. There remains a degree of confusion about the scope and direction of the Prosecution case.
8. The Defence notes that the Prosecution must be presumed to know its case and the evidence it intends to rely upon one year and ten months after it sought a warrant of arrest against the accused. The Prosecution must keep firmly in mind the accused right to an expeditious trial and use its extensive resources to give effect to this right.
9. Accordingly, the Defence for Katanga does not oppose a more moderate extension of time than that requested, in order to allow the Prosecution to produce a document of sufficient functionality, but not beyond the 15th April 2009. It further requests that the Trial Chamber insists that the Prosecution at least provide the Defence with the first two columns of its table consisting of the charges and the facts underlying those charges to reflect the Decision on the Confirmation of Charges by the 3rd April 2009 as initially requested by the Trial Chamber. The Defence also suggests that as soon as

⁴ ICC-01/04-01/07-954, 12 March 2009, paras 3-7.

the entries in relation to particular charges have been completed that they be informally furnished to the Defence prior to the official filing date.

Respectfully submitted,



David HOOPER

Dated this 23 March 2009

At The Hague