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

Date: 26 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 - URGENT**

**Defence Application for Leave to Reply to the *Prosecution Response to Motion  
Challenging the Admissibility of the Case by the Defence of Germain Katanga,  
pursuant to Article 19(2)(a)***

**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**

Mr Luis Moreno Ocampo, Prosecutor  
Mr Eric Macdonald, Senior Trial Lawyer

**Counsel for the Defence for Germain Katanga**

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**Counsel for the Defence for Mathieu Ngudjolo Chui**

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**Legal Representatives of Victims**

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Mr Joseph Keta  
Mr Jean-Louis Gilissen  
Mr Hervé Diakiese  
Mr Jean Chrysostome Mulamba  
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**Legal Representatives of Applicants**

**Unrepresented Victims**

**Unrepresented Applicants for Participation/Reparation**

**The Office of Public Counsel for Victims**

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

**States Representatives**

**Amicus Curiae**

**REGISTRY**

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**Registrar**

Ms Silvana Arbia

**Defence Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations Section**

**Other**

1. On 10 February 2009, the Defence for Mr. Germain Katanga (“the Defence”) filed the *Motion Challenging the Admissibility of the Case by the Defence of Germain Katanga, pursuant to Article 19 (2) (a) of the Statute* (“Defence Motion”).<sup>1</sup> On 19 March 2009, the Prosecution filed the *Prosecution Response to Motion Challenging the Admissibility of the Case by the Defence of Germain Katanga, pursuant to Article 19(2)(a)* (“Prosecution Response”).<sup>2</sup> The Defence submits that the Prosecution Response warrants further submissions and clarifications from the Defence. Accordingly, the Defence hereby seeks leave to reply to the Prosecution Response, which it understands would be due on Monday 30<sup>th</sup> of March, subject to leave, by virtue of Regulation 34 (c) of the Regulations of the Court.
2. This is the first challenge to the jurisdiction of the ICC on the basis of the principle of complementarity. The issue of complementarity is a complex legal issue which goes to the heart of the functioning of the Court, and requires a thorough analysis. Particularly in light of its novelty, it is of great public importance that the issue be considered carefully and with the assistance of submissions of the parties, which are as analytical, precise and clear as they can possibly be.
3. From its Response, it appears that the Prosecution has misunderstood the arguments of the Defence. The Defence would, therefore, be grateful if it is given an opportunity to clarify its position. In the view of the Defence, such would assist the Chamber in making its important determination on whether the complementarity principle has been respected in the case against Germain Katanga.
4. Moreover, the Annexes to the Prosecution Response contain documents which have not been disclosed to the Defence earlier. These documents are, therefore, new to the Defence and, in many aspects, complete the picture of what transpired in the DRC investigations and between the DRC authorities and the ICC Prosecution. It is only fair to the Defence and helpful to the Chamber to provide the Defence with an opportunity to comment on these newly disclosed materials.
5. The Prosecution’s Response further warrants a reply because it engages in new collateral points. In particular, it addresses in detail what is the meaning of “case” under Article 17 of the ICC Statute. The question of what is a “case” in the context of Article 17 is a complex and important issue that warrants further discussion and submissions from the Defence.
6. On the basis of the submissions set out above, the Defence requests the Chamber to grant it leave to reply to the Prosecution Response.

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<sup>1</sup> ICC-01/04-01/07-891-Conf-Exp; this Motion was filed ex parte but was subsequently reclassified as "Confidential Ex Parte only available to the Office of the Prosecutor and both Defence teams" pursuant to Oral Decision of Trial Chamber II, dated 24-02-2009. On 11 March 2009, a public redacted version was issued (ICC-01/04-01/07-949).

<sup>2</sup> ICC-01/04-01/07-968-Conf-Exp. The Response was filed cconfidentially, and ex parte available only to the Prosecution and both Defence teams.

Respectfully submitted,



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David HOOPER

Dated this 26 March 2009

At The Hague