



Original: English

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

Date: 1 April 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

**Decision on the Prosecution's Application for Extension of Time Limit to Submit
a Table of Incriminating Evidence and Related Material**

Order 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
 Ms Fatou Bensouda, Deputy Prosecutor
 Mr Eric MacDonald, Senior Trial Lawyer

Counsel for Germain Katanga

Mr David Hooper
 Mr Andreas O'Shea
 Ms Caroline Buisman

Counsel for Mathieu Ngudjolo Chui

Mr Jean-Pierre Kilenda Kakengi Basila
 Mr Jean-Pierre Fofé Djofia Malewa

Legal Representatives of the Victims

Ms Carine Bapita Buyangandu
 Mr Joseph Keta
 Mr Jean-Louis Gilissen
 Mr Hervé Diakiese
 Mr Jean Chrysostome Mulamba
 Nsokoloni
 Mr Fidel Nsita Luvengika
 Mr Vincent Lurquin
 Ms Flora Ambuyu Andjelani

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants for
 Participation/Reparation**

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

Ms Paolina Massidda

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Ms Silvana Arbia

Defence Support Section

Victims and Witnesses Unit

Detention Section

HAVING REGARD to regulation 35 of the *Regulations of the Court* ("the Regulations"), Trial Chamber II ("the Chamber") of the International Criminal Court ("the Court"), hereby makes the following order.

I. BACKGROUND AND SUBMISSIONS

1. On 13 March 2009, the Chamber issued its "Order concerning the Presentation of Incriminating Evidence and the E-Court Protocol".¹ In it, the Chamber, *inter alia*, ordered the Prosecutor to:

1. Submit a Table of Incriminating Evidence no later than 3 April 2009 at 4 p.m.;
2. Submit a list of all witnesses it intends to call, as well as a Witness Information List for each witness, no later than 3 April 2009 at 4 p.m.;
3. File all items of evidence listed in the Table of Incriminating Evidence, no later than 3 April 2009 at 4 p.m.;
4. Submit a detailed list of all incriminating evidence included in the Table of Incriminating Evidence, providing certain details for each item included, no later than 3 April 2009 at 4 p.m.;
5. Update the metadata for all items of evidence included in the Table of Incriminating Evidence, no later than 24 April 2009 at 4 p.m.;
6. Submit any requests for redactions of the metadata, no later than 9 April 2009 at 4 p.m.;

¹ ICC-01/04-01/07-956

2. On 19 March 2009, the Prosecution filed an “Urgent 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””², in which the Prosecution asked for an extension of time limit until 3 May 2009. Paragraph 2 of the Application makes reference to items 1, 2, 3 and 6 of the Order, which leaves the Chamber to wonder whether the Prosecution considers that it will have no problems meeting the deadline for items 4 and 5.

3. The Defence for Mr. Mathieu Ngudjolo did not object to a possible extension of the deadline, as long as it would have sufficient time between the submission of the Table and the start of the trial.³ The Defence for Mr. Katanga expressed some reservations about the length of the extension requested, but did not oppose an extension until 15 April 2009. Moreover, the Defence for Mr. Katanga requested the Chamber to insist that the Prosecution provide it with the first two columns of the Table, consisting of the charges and the facts underlying those charges “to reflect the Decision on the Confirmation of Charges”, by 3 April 2009.⁴

II. ANALYSIS

4. The Chamber recalls that it recently decided to set the start date for the trial on 24 September 2009.⁵ In its decision, the Chamber stressed that except for very important reasons, it would not postpone this date. It is therefore of great importance that the parties adhere to the time limits imposed by the Chamber.

² ICC-01/04-01/07-969

³ Réponse de la Défense de Mr. Ngudjolo à la demande d’extension de temps soumise par le Bureau du Procureur en date de 19 mars 2009 en vertu de la Norme 35 du Règlement de la Cour, ICC-01/04-01/07-976

⁴ “Defence Response to Prosecution’s Application for Extension of Time Limit Pursuant to Regulation 35 to Submit a Table of Incriminating Evidence”, 23 March 2009, ICC-01/04-01/07-980, par. 9

⁵ “Décision fixant la date du proces (règle 132-1 du Règlement de procédure et de preuve », 27 March 2009, ICC-01/04-01/07-999

5. However, in light of the comments by both Defence Teams, the Chamber accepts the arguments of the Prosecution that it needs more time to complete the Table of Incriminating Evidence.

6. The Chamber notes, however, that the proposed new deadline of 3 May is significantly later than the initial time limit of 3 April originally imposed by the Chamber. Bearing in mind the necessity for the Defence and the Chamber to have a complete overview of the Prosecution case, including the metadata for each item of evidence, the Chamber does not consider it appropriate to also postpone the deadline for the updating of the metadata by an additional month.

7. With regard to the request by the Defence of Mr. Katanga to be provided with the first two columns of the Table at an earlier date, the Chamber deems that, in light of the extended time limit, it would not be opportune to oblige the Prosecution to produce this first instalment. However, if the Prosecution is willing to provide the Defence with an advance (non-binding) copy of the two columns in question as a matter of courtesy, the Chamber would welcome such a gesture.

FOR THESE REASONS,

The Chamber

GRANTS the Prosecution request for an extension of time limit to submit the Table of Incriminating Evidence until 4 May 2009, at 4 p.m.;

GRANTS the Prosecution request for an extension of time limit to file all items of evidence listed in the Table of Incriminating Evidence until 4 May, at 4 p.m.;

GRANTS the Prosecution request for an extension of time limit to submit a detailed list of all incriminating evidence included in the Table of Incriminating Evidence, indicating clearly for each item of evidence when it was disclosed to the Defence and

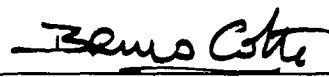
whether it is still subject to redactions and/or other protective measures until 4 May, at 4 p.m.;

GRANTS the Prosecution request for an extension of time limit to submit a list of all witnesses it intends to call, as well as a Witness Information List for each witness, until 4 May 2009, at 4 p.m.;

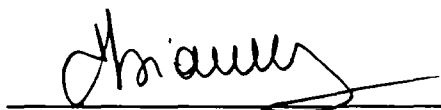
ORDERS the Prosecution to submit any requests for redactions of the metadata no later than 27 April 2009, at 4 p.m.;

ORDERS the Prosecution to update the metadata for all the items of evidence included in the Table of Incriminating Evidence, for which no requests for redaction have been made, no later than 4 May 2009, at 4 p.m.;

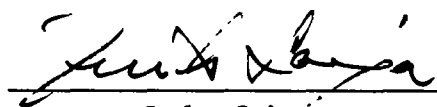
Done in both English and French, the English version being authoritative.



Judge Bruno Cotte,
Presiding Judge



Judge Diarra



Judge Saiga

Dated this Friday, 1 April 2009

At The Hague