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

Date: **01 May 2009**

TRIAL CHAMBER II

Before: Judge Bruno Cotte , Presiding Judge
Judge Fatoumata Dembele Diarra
Judge Hans-Peter Kaul

**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 Motion to File Partial Table of Incriminating Evidence and Related Material, Confidential - *Ex Parte*, available to the Prosecution Only, on 4 May 2009

Regulation 35

Source: Office of the Prosecutor

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

The Office of the Prosecutor

Counsel for the Defence

Mr David Hooper
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Legal Representatives of Victims

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Mr Vincent Lurquin
Mr Jean Chrysostome Mulamba
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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

Registrar

Ms Silvana Arbia

Defence Support Section

Victims and Witnesses Unit

Detention Section

1. The Prosecution hereby requests that the Chamber accept for filing on 4 May 2009, a partial Table of Incriminating Evidence, confidential, *ex parte* available to Prosecution only ("Table"),¹ with the remainder to be provided on or before 20 May 2009. The partial Table will consist of approximately 700 pages (A3 format) that have been proofread and corrected. It lists the analysis of its incriminating evidence linked to the specific crimes against humanity charged: murder, rape, and sexual slavery. It will also include the incriminating evidence linked to the war crimes charged: willful killing, intentionally directing attacks against the civilian population, seizing or destroying the enemy's property, pillaging, rape, sexual slavery and conscripting, enlisting or using children under the age of 15 years to participate actively in hostilities. The Prosecution will also be filing on 4 May 2009, the witness list and list of incriminating evidence and related metadata, as requested by the Chamber² in Orders. The partial Table will not yet include the Prosecution's evidence as it relates to the modes of liability and the contextual elements of war crimes and crimes against humanity. It will also not include cross-references, the last column in the Table.

2. As the Prosecution explained in its initial application for an extension of time³, and most recently in its 28 April 2009 Motion for an extension of time⁴, compilation of this Table has been a labor - and time - intensive process. When completed, the Table will be approximately 1200 pages. Notwithstanding the substantial efforts, the Prosecution has not been able to complete all 13 subsections and proofread the Table, verify its accuracy, ensure that nothing in the Table will jeopardize witness security, add in all the

¹ Order concerning the Presentation of Incriminating Evidence and the E-Court Protocol", ICC-01/04-01/07-956, pp. 17-18 ("Order").

² ICC-01/04-01-07-956 and ICC-01/04-01-07-1017.

³ ICC-01/04-01-07-969.

⁴ ICC-01/04-01-07-1080.

cross-references, and conclude with reasonable certainty that the final product is complete and accurate.

3. The Prosecution can use its resources over the weekend to complete the entire Table and submit it with flaws and inaccuracies and later to proffer an amended and corrected Table; or can redirect its efforts towards finalizing a sizeable portion that is accurate and complete, supplementing it later with the remaining entries. The Prosecution is confident that the partial Table it proposes to submit on 4 May will fully and accurately reflect the incriminating evidence on the crimes identified above as confirmed by the Pre-Trial Chamber in its Decision on Confirmation of Charges.
4. The Prosecution also requests leave to file this partial Table Confidential, *ex parte* available to Prosecution only. When the Prosecution submits the completed Table, which will have been fully proofread and corrected, it will also provide that Table to the Defence.
5. The filing contemplated by the Prosecution will provide a significant quantity of information for the Chamber to begin its review. Delay will also not cause impermissible prejudice to the Defence. In that regard, the Prosecution reminds the Chamber that counsel for both Accused consent to delay in receiving the Table. Counsel for Mathieu NGUDJOLO CHUI reassured the Prosecution today that he agreed to an extension to and including 25 May 2009.

Conclusion

6. For the foregoing reasons, the Prosecution respectfully requests the Chamber to receive as Confidential, *Ex parte*, part of the Table as set out above in paragraph 1 and that it grant an extension to file the complete Table to 20 May 2009.



Luis Moreno-Ocampo, Prosecutor

Dated this 1st day of May 2009

At The Hague, The Netherlands