

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 3 June 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

**Prosecution's Submission of Unredacted Paragraph 225 of ICC-01/04-01/07-420-
Conf-AnxA**

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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Unrepresented Applicants for Participation/Reparation

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The Office of the Prosecutor respectfully submits the unredacted paragraph 225, including footnotes 84 and 85, of ICC-01/04-01/07-420-Conf-AnxA pursuant to the oral decision of Trial Chamber II delivered during the hearing of 1 June 2009.¹

“VII. No Circumstances Warranting Admissibility Review At This Stage

225. The information available to the OTP so far does not indicate the existence of any national proceedings related to the same case. In addition, none of the factors that permit a *proprio motu* review regarding admissibility, as set forth by the Appeals Chamber,⁸⁴ are present in the current application: the OTP has not sought any admissibility determination, the review of this matter is *ex parte* without participation of the suspect, victims, or entities, and there is no “ostensible cause” or “self evident factor” which should trigger *proprio motu* review rather than review with the full benefit of the participation of the named person or victims.⁸⁵ Accordingly, the OTP respectfully submits that the Single Judge should defer any determination on the admissibility of any case, until such time as the person named in any warrant may raise a challenge.

⁸⁴ See “Judgment on the Prosecutor’s appeal against the decision of Pre-Trial Chamber I entitled ‘Decision on the Prosecutor’s Application for Warrants of Arrest, Article 58,’ ” ICC-01/04-169-US-Exp, 13 July 2006, paras. 42-45. The decision can be cited in full in light of the *ex parte* and under seal nature of this filing.

⁸⁵ Such circumstances might exist, for example, if “uncontested facts . . . render a case clearly inadmissible” or the case “is based on the established jurisprudence of the Court.” See *id.*, para. 52. No analogous circumstance is present here. See *id.*”



Luis Moreno-Ocampo, Prosecutor

Dated this 3rd day of June 2009

At The Hague, The Netherlands

¹ ICC-01/04-01/07-T-65-ENG ET, p. 10, line 19-p. 11, line 13.