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

Date: **15 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 CONGO
IN THE CASE OF
THE PROSECUTOR
*v. GERMAIN KATANGA and MATHIEU NGUDJOLO CHUI***

Public

Defence Response to the Prosecution's "Requête de l'Accusation aux fins de mesures de protection et aux fins d'expurgation d'informations dans des éléments de preuve relevant de la règle 77 (Témoins P-132, P-249 et P-287))»

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**

Mr David Hooper
Mr Andreas O'Shea

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

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

Legal Representatives of Victims

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

Registrar

Ms Silvana Arbia

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

1. The Defence for Mr. Katanga (“the Defence”) hereby files its Response to the Prosecution’s « Requête de l’Accusation aux fins de mesures de protection et aux fins d’expurgation d’informations dans des éléments de preuve relevant de la règle 77 (Témoins P-132, P-249 et P-287) », filed publicly on 5 June 2009 (« Prosecution’s Request for redactions »).¹

2. The Defence objects to all permanent redactions sought. In support of its requests for permanent redactions, the Prosecution cites the Trial Chamber’s “Décision concernant trios requêtes du Procureur aux fins de maintien des suppressions ou de rétablissement de passages supprimés (ICC-01/04-01/07-859, ICC-01/04-01/07-860 et ICC-01/04-01/07-862) ». ² However, until now, the Chamber has not authorised permanent redactions. On the contrary, in the cited Decision, the Chamber rejected all requests for permanent redactions on the ground that such measure would be excessive in respect of the rights of the Defence.³ The Defence requests that the Trial Chamber apply the same principles set out in this Decision and order that the redactions sought in the present application be lifted at the latest 30 days prior to the commencement of the trial.

3. The Defence also objects to disclosure that excludes the Defence investigator. This is an artificial request which would seriously hamper the work of the Defence. In order to ensure the right of the accused to adequate facilities for the preparation of his defence, the investigator must have the same access to information as other members of the Defence team. An exchange where a witness makes statements differs from a medical report which emanates exclusively from a doctor. Such statements may affect the witnesses’ credibility.

¹ ICC-01/04-01/07-1194, PUBLIC Avec annexes A, B et C confidentielles, ex parte, réservées à l’Accusation

² ICC-01/04-01/07-987-Conf-Exp, version publique ICC-01/04-01/07-1034, paras. 17-21 and paras. 42-48; ICC-01/04-01/07-1149-Conf-Exp.

³ *Ibid.*, para. 46.

4. It is primarily the investigator who is in the field to conduct investigations. It would facilitate the team coordination and cooperation if the legal members of the Defence team could communicate to him all documents essential to the credibility of Prosecution witnesses. The transcripts the Prosecution seeks to withhold from the investigator would seem to fall in that category as they concern the medical situation of three Prosecution witnesses. The health situation of these Prosecution witnesses may have an impact on their credibility and may have to be thoroughly investigated. On that ground, the investigator should have access to this information.
5. The Prosecution does not give any reasons as to why the Defence investigator should not have access to the said transcripts. To the knowledge of the Defence, there has, until now, never been any allegation against the investigator that he shared confidential information with third persons or to have abused his position in the team in any other way. The investigator has signed an agreement of confidentiality. Unless the Prosecution has compelling evidence to the contrary, it must be assumed that the investigator will abide by his obligations of confidentiality. Accordingly, the Defence requests that the transcripts be disclosed to the whole Defence of Germain Katanga, which necessarily includes the investigator.

Respectfully submitted,



David HOOPER

Dated this 15th June 2009
At The Hague, Netherlands