



Original: **English**

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

Date: **20 July 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 Document

Defence Request to Reclassify the Annexes to the '*Mémoire de l'Accusation, en application de la norme 35, aux fins de divulgation d'éléments à charge ou relevant de la règle 77, de modification de la liste des éléments à charge et de la liste des témoins à charge*'

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

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 Mbuyu Anjelani

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. On 15 July 2009, the Prosecution submitted the '*Mémoire de l'Accusation, en application de la norme 35, aux fins de divulgation d'éléments à charge ou relevant de la règle 77, de modification de la liste des éléments à charge et de la liste des témoins à charge*' ("Prosecution Motion").¹

2. The Prosecution requests leave to disclose as incriminating evidence:

- a photo presentation at 360° of the Bogoro Institute and its surroundings & a report of the photo expert who did it;

- a ballistic report established by an expert of the ballistic group of the Service Central d'Identité Judiciaire, a video of the ballistic investigations led by this expert, several seals and few pages of related documents.

The Prosecution requests leave to add these documents to the list of incriminating evidence and to add these two experts to the list of incriminating witnesses.

The Prosecution also requests leave to disclose as Rule 77 material hundreds of photos taken at the Bogoro Institute.

3. These documents are annexed to the Prosecution Motion and the Prosecution has no objection to their disclosure to the Defence:

'Toutes ces annexes sont déposées comme « confidentielles, ex parte, réservées à l'Accusation » : au moment du dépôt du présent mémoire, le Bureau du Procureur n'a pas l'autorisation de les communiquer à la Défense ; toutefois il ne voit aucun inconvénient à ce que la Chambre lève le caractère ex parte de ces annexes.'²

4. The Defence is not in position to assess the Prosecution Motion without having sight of the material the motion seeks to have admitted.

5. Therefore, the Defence for Germain Katanga respectfully prays the Trial Chamber to reclassify the annexes to the Prosecution Motion as "Confidential Ex Parte Prosecution and Defence Only." and to permit the Defence to respond to the Motion once it has had the opportunity of viewing the material.

¹ ICC-01/04-01/07-1305.

² ICC-01/04-01/07-1305, para.7.

Respectfully submitted,



David HOOPER

Dated this 20 July 2009

At The Hague