



Original: **French**

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

Date: **7 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

**Order to Convene a Hearing
(rule 58(2) of the Rules of Procedure and Evidence)**

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 Éric MacDonald, Senior Trial Lawyer

Counsel for the Defence of Germain

Katanga
 Mr David Hooper
 Mr Andreas O'Shea
 Ms Caroline Buisman

Counsel for the Defence of 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
 Mr Kazadi Kabimba
 Mr Kaluba Didwa

Legal Representatives of the Applicants

**The Office of Public Counsel for
 Victims**

Ms Paolina Massida

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

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Ms Silvana Arbia

Defence Support Section

**Victims Participation and Reparations
 Section**

Other

Trial Chamber II of the International Criminal Court (“the Chamber”), acting pursuant to rule 58(2) of the *Rules of Procedure and Evidence* (“the Rules”), orders the following:

1. On 10 February 2009, the Defence for Germain Katanga submitted to the Chamber a challenge to the admissibility of the case as provided for in article 19(2)(a) of the Statute and on the grounds set forth in article 17¹ thereof (“Challenge to Admissibility”). This motion, originally filed as “confidential, *ex parte*, only available to the Defence for Germain Katanga”, was transmitted to the Prosecutor on 25 February 2009, pursuant to rule 58(3) of the *Rules of Procedure and Evidence* (“the Rules”) and after the Registry had reclassified it as a confidential document at the Chamber’s request.²

2. On 5 March 2009, the Chamber set the procedure to be followed pursuant to article 19 of the Statute, as required by rules 58 and 59 of the Rules.³ The Prosecutor submitted his response on 19 March 2009,⁴ and on 30 March 2009, having requested leave of the Chamber under regulation 24(5) of the Regulations of the Court,⁵ the Defence for Germain Katanga filed a reply.⁶

¹ The Defence for Germain Katanga, “Motion Challenging the Admissibility of the Case by the Defence of Germain Katanga, pursuant to Article 19(2)(a) of the Statute”, 10 February 2009, ICC-01/04-01/07-891-Conf-Exp.

² ICC-01/04-01/07-T-59-CONF-EXP-ENG ET 25-02-2009, p. 35, lines 7 and 8.

³ *Decision Prescribing the Procedure to be Followed Under Article 19 of the Statute (Rule 58 of the Rules of Procedure and Evidence)*, 5 March 2009, ICC-01/04-01/07-943-tENG.

⁴ Office of the Prosecutor, “Prosecution response to Motion Challenging the Admissibility of the Case by the Defence of Germain Katanga, pursuant to Article 19(2)(a)”, 19 March 2009, ICC-01/04-01/07-968.

⁵ The Defence for Germain Katanga, “Defence Application for Leave to Reply to the Prosecution Response to Motion Challenging the Admissibility of the Case by the Defence of Germain Katanga, pursuant to Article 19(2)(a)”, 26 March 2009, ICC-01/04-01/07-994.

⁶ The Defence for Germain Katanga, “Defence Reply to Prosecution Response to Motion Challenging the Admissibility of the Case by the Defence of Germain Katanga, pursuant to Article 19(2)(a)”, 30 March 2009, ICC-01/04-01/07-1008-Conf-Exp.

3. Acting pursuant to the decision setting the procedure and as provided for by rule 59 of the Rules, the legal representatives of the victims filed their observations on the Challenge to Admissibility on 16 April 2009.⁷ Having been granted an extension of the time limit,⁸ the Office of Public Counsel for Victims filed its observations on 28 April 2009.⁹

4. The authorities of the Democratic Republic of the Congo (“the DRC”) have not filed any observations, although the Chamber invited them to do so,¹⁰ and despite the reminders that the Registry sent to them.¹¹ However, the Chamber notes that the Prosecutor annexed to his response a document entitled “*Observations de la RDC sur l’exception d’irrecevabilité soulevée par la Défense de Germain Katanga*”,¹² which seems to reflect the current position of the authorities of the DRC with regard to the said Challenge.

5. In light of the arguments developed in the written submissions received by the Chamber, and given that the DRC has not, as yet, submitted any observations directly to the Chamber, a hearing, in particular one held in the presence of the authorities of the DRC, would seem necessary.

⁷ Legal Representatives of victims a/0330/07 and a/0331/07, “Submission on the Motion Challenging the Admissibility of the Case by the Defence of Mr Germain KATANGA (Article 19 of the Rome Statute)”, 16 April 2009, ICC-01/04-01/07-1058-Conf-ENG; Legal Representatives of victims a/0330/07 and a/0331/07 “Representations of Victims a/0333/07 and a/110/08 on the Challenge to Admissibility filed by the Defence for Mr. Katanga (rule 59(3) of the Rules of Procedure and Evidence)”, 16 April 2009, ICC-01/04-01/07-1059-Conf-ENG; Legal Representatives of victims, “Observations of the Victims on the Objection to Jurisdiction raised by the Defence for Germain Katanga in its Motion of 10 February 2009”, 16 April 2009, ICC-01/04-01/07-1060.

⁸ Decision on the Application of the OPCV to extend the time limit for the submission of observations with regard to the admissibility proceedings, 3 April 2009, ICC-01/04-01/07-1019-Conf.

⁹ Registry, “Observations du BCPV sur l’exception d’irrecevabilité de l’affaire de la Défense de Germain Katanga avec une annexe confidentielle ex parte réservée au BCPV et trois annexes publiques”, 28 April 2009, ICC-01/04-01/07-1083.

¹⁰ ICC-01/04-01/07-943, p. 7.

¹¹ Registry, “Rapport du Greffier sur les représentations des autorités de la RDC au sujet du résumé de l’exception d’irrecevabilité et s’agissant du niveau de confidentialité des pièces litées dans la version publique de ladite exception”, 28 April 2009, ICC-01/04-01/07-1081-Conf.

¹² ICC-01/04-01/07-968-Conf-Exp-AnxJ.

FOR THESE REASONS, the Chamber

CONVENES a public hearing, which will take place on 18 May 2009 at 2p.m.; and

INSTRUCTS the Registry to notify the authorities of the DRC of the above-mentioned hearing.

An agenda for the hearing will be sent to all the participants as soon as possible.

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

[signed]
Judge Bruno Cotte
Presiding Judge

[signed]
Judge Fatoumata Dembele Diarra

[signed]
Judge Hans-Peter Kaul

Dated this 7 May 2009,

At The Hague, The Netherlands