



Original: **English**

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

Date: **20 August 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 for a Redacted Version of the Decision ICC-01/04-01/07-1243-
Conf-Exp**

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
Appeals Chamber

1. Thanks to the Presidency's *Decision replacing judges in the Appeals Chamber* of 4 August 2009,¹ the Defence for Mr Germain Katanga ("Defence") has been informed for the first time that the Prosecution has launched an appeal ICC-01/04-01/04-1340-Conf-Exp against the Trial Chamber II Decision ICC-01/04-01/07-1243-Conf-Exp and that it has been granted leave to appeal. The Defence has been notified neither these filings ICC-01/04-01/04-1340-Conf-Exp and ICC-01/04-01/07-1243-Conf-Exp nor the Decision granting the Prosecution's request for leave to appeal; the Prosecution and the Chamber have issued no redacted version of these filings.
2. Therefore, the Defence does not know the object of the Trial Chamber Decision and of the pending appeal.
3. Nonetheless, the Defence considers that if an issue, and in particular a legal issue, is going to be judged by the Appeals Chambers in the case of the *Prosecution v. Germain Katanga*, which will, in principle, be binding upon the Trial Chamber, then it should be notified and, eventually, to the extent possible, given an opportunity to submit its views on the legal issue at stake.
4. For the foregoing reasons, in light of Article 50 of the Rome Statute,² Rule 40 (1) (a)³ and Rule 43⁴ of the Rules of Procedure and Evidence, and Regulation 31 (1) of the Regulations of the Court,⁵ the Defence respectfully requests the Trial Chamber to

¹ ICC-01/04-01/07-1350.

² Article 50, Official and working languages

1. The official languages of the Court shall be Arabic, Chinese, English, French, Russian and Spanish. The judgements of the Court, as well as other decisions resolving fundamental issues before the Court, shall be published in the official languages. The Presidency shall, in accordance with the criteria established by the Rules of Procedure and Evidence, determine which decisions may be considered as resolving fundamental issues for the purposes of this paragraph.

³ Rule 40, Publication of decisions in official languages of the Court

1. For the purposes of article 50, paragraph 1, the following decisions shall be considered as resolving fundamental issues:

(a) All decisions of the Appeals Division;

(b) All decisions of the Court on its jurisdiction or on the admissibility of a case pursuant to articles 17, 18, 19 and 20;

(c) All decisions of a Trial Chamber on guilt or innocence, sentencing and reparations to victims pursuant to articles 74, 75 and 76;

(d) All decisions of a Pre-Trial Chamber pursuant to article 57, paragraph 3 (d).

2. Decisions on confirmation of charges under article 61, paragraph 7, and on offences against the administration of justice under article 70, paragraph 3, shall be published in all the official languages of the Court when the Presidency determines that they resolve fundamental issues.

3. The Presidency may decide to publish other decisions in all the official languages when such decisions concern major issues relating to the interpretation or the implementation of the Statute or concern a major issue of general interest.

4 Rule 43, Procedure applicable to the publication of documents of the Court

The Court shall ensure that all documents subject to publication in accordance with the Statute and the Rules respect the duty to protect the confidentiality of the proceedings and the security of victims and witnesses.

⁵ Regulation 31, Notification

1. Subject to the Statute, Rules, these Regulations or any order of a Chamber, all participants in the relevant proceedings shall be notified of any document registered by the Registry or any decision or order, unless, with

issue a confidential and/or public redacted version of its Decision ICC-01/04-01/07-1243-Conf-Exp. In the alternative, if the Trial Chamber considers that the issues at stake are so confidential that they cannot be disclosed to the Defence, then the Defence prays the Chamber to issue a public note of its Decision mentioning the kind of factual and/or legal issues at stake.

5. In light of the decision of the Chamber on the current Defence Motion, the Defence respectfully invites the Prosecution and the Appeals Chamber to file a redacted version and/or a public note of their past and/or future filings relative to this pending appeal.

Respectfully submitted,



David HOOPER

Dated this 20 August 2009

At The Hague

regard to a document, the participant submitting that document requests otherwise. All participants shall provide to the Registry an electronic, facsimile or postal contact address for notification of documents, preferably in The Hague.