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

Date: 27 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 THE CONGO
IN THE CASE OF
THE PROSECUTOR
*v. GERMAIN KATANGA AND MATHIEU NGUDJOLO CHUI***

Public
**with Annexes A, B and C - Confidential, only available to the Office of the
Prosecutor and the Defence**
and Annex D - Confidential, *ex parte*, only available to the Office of the Prosecutor
**Prosecution's Notice of Intention to Disclose Documents Related to Witness 12
Pursuant to a Request of the Defence**

Source: Office of the Prosecutor

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

The Office of the Prosecutor

Counsel for the Defence of Germain Katanga

Mr David Hooper

Mr Andreas O'Shea

Counsel for the Defence of Mathieu Ngudjolo

Mr Jean-Pierre Kilenda Kakengi Basila

Mr Jean-Pierre Fofé Djofia Malewa

Legal Representatives of the Victims

Ms Carine Bapita Buyangandu

Mr Hervé Diakiese

Mr Vincent Lurquin

Mr Jean Chrysostome Mulamba Nsokoloni

Ms Flora Mbuyu Anjelani

Mr Fidel Nsita Luvengika

Mr Jean-Louis Gilissen

Mr Joseph Keta

Unrepresented Victims

Legal Representatives of the Applicants

**Unrepresented Applicants
(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

Deputy Registrar

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

Introduction

On 3 August 2009, the Defence team of Germain Katanga requested the disclosure of a large number of documents referred to in the first statement of Witness 12. The documents are themselves not exculpatory, incriminating, or material to the preparation of the Defence. Because the Defence is now requesting them, however, the Prosecution plans to disclose them *inter partes*. Since some of the documents contain redactions approved by Trial Chamber I, the Prosecution hereby alerts Trial Chamber II (“the Chamber”) of its intent to disclose.

Confidentiality

1. The Prosecution submits Annexes A, B and C to this filing as Confidential, only available to the Office of the Prosecutor and the Defence as they relate to *inter partes* disclosure of material and Annex D as Confidential, *ex parte*, only available to the Office of the Prosecutor as it describes redactions granted by Trial Chamber I to some of these documents.

Notification of Disclosure

2. The Prosecution disclosed the statement of Witness 12 to the Defence team of Germain Katanga on 13 December 2007.¹ The Prosecution also disclosed a list of 281 documents (DRC-OTP-0105-0222) on 24 November 2008.²
3. In its “*Ordonnance fixant le calendrier de communication des éléments de preuve à charge et à décharge avant le procès et la date d’une conférence de mise en état (règle 132 du Règlement de procédure et de preuve)*”³, Trial Chamber II ordered the

¹ The statement of Witness 12 (DRC-OTP-0105-0085) was first disclosed to the Defence on 13 December 2007 as part of Pre-Confirmation INCR Package 1 and subsequently on 21 January 2008 (Pre-Confirmation INCR Package 4), 29 January 2008 (Pre-Confirmation List of Evidence), 27 May 2008 (Pre-Confirmation INCR Package 10) and 3 April 2009 (Pre-Trial INCR Package 30).

² Annex A contains the list of 281 documents.

³ ICC-01/04-01/07-846.

Prosecution to disclose to the Defence by 27 February 2009, all evidentiary items currently within its possession that fall within the terms of Rule 77 of the Rules of Procedure and Evidence ("the Rules").

4. On 3 August 2009, by way of e-mail, the Defence of Germain Katanga requested the Prosecution the disclosure of the following material:
 - All the documents included in the list of 281 documents bearing the ERN DRC-OTP-0105-0222. The list was provided by Witness 12 and is referenced in the first statement of P-12,⁴ and
 - All the documents mentioned at paragraph 22 of Witness 12's first statement, comprising 13 groups of pictures given to the Prosecution by P-12, not all of which had been disclosed to the Defence.⁵
5. Prior to the disclosure deadline of 27 February 2009, the Prosecution had reviewed the requested documents, deemed only a few to be relevant under Article 67(2) or Rule 77, and disclosed those documents.
6. After receiving the 3 August Defence request, the Prosecution again reviewed the documents in order to ascertain which of the documents had already been disclosed to the Defence, to ensure again that none of the remaining documents fall within Article 67(2) or Rule 77, and to determine whether there was a need to redact any of them prior to providing them to the Defence.
7. None of the remaining documents fall under Article 67(2) or Rule 77. That said, the Prosecution is willing to disclose the materials to the Defence in response to its request, and hereby notifies the Chamber of its intent to do so.

⁴ Although the list contains 281 entries, they were scanned into the Ringtail electronic database as 369 separate documents. Annex B contains the ERN of all 369 documents, their description and identifies the ones previously disclosed. Out of these 369 documents, 331 were not previously disclosed to the Defence.

⁵ See Annex C. It contains the list of previously undisclosed documents referenced at paragraph 22 of the first statement of Witness 12, including their ERNs and description.

The documents to be disclosed are listed in Confidential Annexes B and C to this Notice.

8. It is essential, however, that some information contained therein be redacted, consistent with decisions by Trial Chamber I in relation to certain of the requested documents. Pursuant to Regulation 42 of the Regulations of the Court, the Prosecution intends to disclose these documents to the Defence with the same redactions. These documents are attached in Confidential, *ex parte* Annex D and the redactions approved by Trial Chamber I are highlighted in red. The Prosecution is not seeking additional redactions to the documents redacted by Trial Chamber I or to any of the other documents identified in Annexes B and C.



Luis Moreno-Ocampo, Prosecutor

Dated this 27th day of August 2009

At The Hague, The Netherlands