

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: **English**

No.: **ICC-01/04-01/07**
Date: **4 September 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

**Prosecution Request Pursuant to Regulation 28 for Leave to Present Additional
Authority Regarding "Defence motion for a declaration of unlawful detention and
stay of proceedings"**

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

Counsel for the Defence of Mathieu Ngudjolo Chui
Mr Jean-Pierre Kilenda Kakengi Basila

Legal Representatives of Victims

Ms Carine Bapita Buyangandu
Mr Hervé Diakiese
Mr Vincent Lurquin
Mr Jean Chrysostome Mulamba Nsokoloni
Ms Flora Mbuyu Anjelani
Mr Fidel Nsita Luvengika

Legal Representatives of Applicants

Mr Jean-Louis Gilissen
Mr Joseph Keta

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 30 June 2009, the Defence of Germain Katanga filed a “Defence motion for a declaration of unlawful detention and stay of proceedings” (“Defence Motion”).¹
2. On 23 July 2009, legal representatives of victims filed observations to the Defence Motion.²
3. On 24 July 2009, the Prosecution filed a response to the Defence Motion.³
4. Recently, and after the filing of all submissions by the parties and participants, a Trial Chamber of the ICTY has issued a five pages long decision which goes to a number of core issues in the matter before the Trial Chamber, including the attributability of activities by national authorities to the international tribunal, the availability of some of the remedies requested by the Defence, and the relevance of some of the case law of the ICTR adduced by the Defence.
5. The Prosecution submits that this authority is relevant to the matter before the Trial Chamber in the full consideration and resolution of the issue before it. The Prosecution therefore seeks leave pursuant to Regulation 28 to place this authority, which was unavailable to either party at the time of filing their submissions, before the Trial Chamber.
6. The Appeals Chamber has ruled that a party may seek leave to present an additional authority to the relevant Chamber pursuant to Regulation 28.⁴

¹ ICC-01/04-01/07-1258-Conf-Exp. Following Trial Chamber II’s Instruction dated 03/07/2009, this document is reclassified as Confidential, *ex parte*, only available to the Katanga Defence Team and the Prosecution. On 2 July 2009, the Defence filed a public redacted version of this document (ICC-01/04-01/07-1263).

² ICC-01/04-01/07-1331.

³ ICC-01/04-01/07-1335-Conf-Exp. A public redacted version of the Defence motion was filed on 17 August 2009 (ICC-01/04-01/07-1381).

7. For the reasons set out above, the Prosecution seeks leave to bring this additional authority to the attention of the Trial Chamber, without submitting any accompanying argument,⁵ by filing a supplementary list of authorities to its response to the Defence Motion.



Luis Moreno-Ocampo, Prosecutor

Dated this 4th day of September 2009

At The Hague, The Netherlands

⁴ ICC-01/04-01/07-522 OA3, para. 16.

⁵ ICC-01/04-01/07-402 OA3, 16 April 2008.