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

Date: **6 October 2009**

TRIAL CHAMBER II

Before: Judge Bruno Cotte , Presiding Judge
Judge Fatoumata Dembele Diarra
Judge Christine Van den Wyngaert

**SITUATION IN THE DEMOCRATIC REPUBLIC OF CONGO
IN THE CASE OF
THE PROSECUTOR
*v. GERMAIN KATANGA and MATHIEU NGUDJOLO CHUI***

Public Document

Defence Observations on a 'Summary Document Reflecting the Charges'

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

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**Victims Participation and Reparations
Section**

Other

1. At the Status Conference on 1st October 2009 the Trial Chamber posed the following question to the parties:

*‘Were the Chamber to request of the Prosecutor that he file a summary document reflecting the charges should he, with reference to the presentation of the facts underpinning those charges, use the terms used by the Pre-Trial Chamber in its decision of confirmation of charges, or can he present his facts in a free manner, making sure that he neither betrays the contents nor the spirit of the decision of confirmation of charges?’*¹

The Chamber asked for submissions on the issue by 6th October.

2. The Defence for Germain Katanga responds as follows;

(i) In the circumstances of this particular case, the Defence submits that it is appropriate for the Prosecutor, in producing such a document, to present his facts ‘in a free manner, mindful not to betray the content of the spirit of the decision of the pre-trial chamber’. The Defence emphasises that the confirmation document remains the authoritative document for the charges confirmed. In seeking not to betray the spirit of the Confirmation Decision the Prosecutor will be wise to employ, where practicable, the same or similar language to the language employed by the Pre-Trial Chamber.

(ii) In making its requests for a further charging document,² the Defence sought a single, short, authoritative document reflecting the Confirmation Decision and providing full and clear notice to the accused of the charges he faced and the underlying facts in support of those charges. This is clearly not provided by 1,100 pages of table. Such a document would have the added utility of providing a point of reference to the Chamber and the parties during the trial. The Defence does not repeat its earlier arguments here.

(iii) The essential reason for such a document is in order that the accused be given a clear and articulate picture of the case that the Prosecutor, in the light of the Confirmation Decision, proposes to advance against him. The Defence is concerned that the Prosecutor considers that he can mould the case against the accused as the trial progresses. In the course of the status conference the Prosecutor stated *“Now the way chosen by the office of the Prosecutor, in order to prove the facts supporting the charge, well, they are not fixed, as such. The way*

¹ ICC-01/04-01/07-T-71-Red-ENG, pp. 42-43.

² ICC-01/04-01/07-954, Defence Application for an Amended Document Containing the Charges, 12 March 2009, and ICC-01/04-01/07-1310, Renewed Application by the Defence for Germain Katanga for a New Amended Document Containing the Charges, 17 July 2009.

forward, this path has not been fixed".³ This is contrary to the principle that the accused be fully informed of the case against him before trial. Given that the case is due to start on November 24th, and that all the incriminating evidence was to have been submitted some nine months ago now (that is, by January 30th 2009), the time has surely come when the Prosecution must finally set out the case against the accused and be bound by it.

(iv) While the Defence accepts that a further charging document may not refer to all the detailed evidence against the accused it does expect that the essential facts underlying each charge relied upon be set out clearly. Further, the Defence submits that where greater particularity can be provided - as would be the case for example where the name of a person raped, murdered, abducted as a sexual slave, or used as a child soldier, is known - then such specific assertion should be contained in the document. Similarly, the Defence should have indicated to it all other salient, underlying facts known to and intended for use by the Prosecution.

That course appears to have been followed in the *Lubanga* case, as demonstrated by the charging document, which was amended at the request of Trial Chamber I to conform with the Confirmation Decision, dated May 2008.⁴

Respectfully submitted,



David HOOPER

Dated this 6 October 2009

At The Hague

³ ICC-01/04-01/07-T-71-Red-ENG, 1st October 2009, p. 34, l. 24 – p. 35, l. 1.

⁴ ICC-01/04-01/06-1363, Submission of the Prosecution's Updated Summary of Presentation of Evidence, 30 May 2008, <http://www.icc-cpi.int/iccdocs/doc/doc499776.PDF>