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No.: ICC-01/04-01/07
Date: **21 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

Urgent Defence Application for Extension of Page Limit

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

Mr Jean-Louis Gilissen
Mr Fidel Nsita Luvengika

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

1. During the Status Conference of 2 October 2009, the Trial Chamber invited the Defence to file, before the commencement of the trial, a motion on the admissibility and relevance of various items of evidence, including challenges based on principle and substantive objections relative to specific items of evidence, such as the admissibility of evidence relative to deceased witnesses.¹
2. On 19 October 2009, the Defence for Mr Ngudjolo filed a « *Requête urgente sollicitant l'extension du nombre de pages conformément à la Norme 37 (2) du Règlement de la Cour pour une requête relative aux témoins décédés 167 et 258.* »² It requested an extension of up to 40 pages for its motion dealing (only) with the admissibility of evidence relative to deceased witnesses. The Trial Chamber granted this Request.³
3. The Defence for Mr Katanga seeks an extension of the page limit for the *Defence Motion Relative to the Admissibility of Evidence* it intends to file on Friday, 23 October 2009. The existing draft of this forthcoming motion is around 55 pages. Regulation 37 (1) of the Regulations of the Court imposes a page limit of 20 pages. However, the Chamber has a clear discretion to lift this limit and the Defence submits that the nature of the present document justifies the exercise of that discretion, not least of all because of the significance of the issues to be discussed.
4. The Defence Motion will deal, *inter alia*, with:
 - general principles of admissibility of evidence;

¹ ICC-01/04-01/07-T-72-ENG ET WT, pages 53-54:

14 And it should be possible before the commencement of the trial to deal with a
15 number of challenges having to do with the admissibility and relevance of various
16 items of evidence. This is what I said a few moments ago under these two
17 headings, providing principles -- or challenges based on principle and then
18 substantive objections having to do with specific difficulties relating to items of
19 evidence.

20 We also spoke of witnesses who are deceased. And certainly I think both
21 Defence teams will have other challenges that may deal with -- not in concrete
22 terms, but more generally and more specifically with this issue.
23 And Mr. Hooper, Mr. Kilenda, that is why we are asking you to submit by way
24 of a written application, with grounds, very specific grounds within a deadline of
25 three weeks, no longer than three weeks, so that insofar as possible these matters
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1 can be dealt with before the commencement of the trial. And that way, the trial
2 will not be contaminated by such difficulties.

3 Mr. Hooper, upon reception of this written submission -- well, you could also
4 make a number of observations more general in nature, more general than your
5 earlier observations, and we would be most grateful if you could do that.

² ICC-01/04-01/07-1540.

³ ICC-01/04-01/07-1546, Decision on the urgent request for an extension of page limit pursuant to regulation 37(2) of the Regulations of the Court (ICC-01/04-01/07-1540), 21 October 2009.

- the admissibility of evidence of deceased witnesses in general, and in particular the issue of the waiver of right to counsel in relation with Witness 258, the issue of the alleged co-perpetrator in relation with Witness 258, the lack of reliability and of relevance of the evidence relative to Witness 167;
- the admissibility of the 'PV d'audition' of Mr Katanga;⁴
- the issue of the Bar Table Motions previously raised by the Prosecution, that is, the admissibility of evidence which is not tendered through a witness, and in particular the issue of evidence which goes to the acts and conduct of the Accused;
- the admissibility of evidence without source, which are not dated or not localised.
- the admissibility of evidence relating to events other than the Bogoro events on 24 February 2003.

5. This request is based upon the fact that the issues to be raised in the Motion are of the greatest significance. The issues are numerous, complex⁵ and deal both with law and fact. The issues have not been definitely determined by the Appeals Chamber. They require extensive legal analysis based, *inter alia*, on the case law of other international or national jurisdictions together with factual analysis, of the relevance or reliability of the evidence in question. The Defence would in fact be entitled to deal with separate issues in separate motions but consider that one motion dealing with the evidentiary matters is appropriate. The Defence, in making the proposed submissions, has, as a primary objective, the intention of assisting the Chamber to the fullest extent. The Defence will take care to limit its submissions to essential matters.
6. Accordingly, it is submitted that exceptional circumstances exist that justify an extension of the page limit which is applicable to ordinary filings. The Defence therefore prays the Chamber to grant this application and allow it to file a Motion of up to 60 pages, pursuant to Regulation 37 (2) of the Regulations of the Court.

⁴ DRC-OTP-1016-0150, DRC-OTP-0155-0318.

⁵ See for example the *Decision on the Prosecution Application for an Extension of the Page Limit for Application to Be Filed Tomorrow* – where the extension was granted due to the number and complexity of issues.

Respectfully submitted,



David HOOPER

Dated this 21 October 2009

At London