



Original: English

No.: ICC-01/04-01/07
Date: 4 November 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

***Addendum to the Defence Objections to Admissibility in Principal and in
Substance filed on 23rd October 2009 (ICC-01/04-01/07-1558)***

Source: Defence for Mr Germain Katanga

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

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Section**

Other

1. As stated at the Status Conference on 3rd November 2009 the Defence contributes this addendum to its submissions contained in the *Defence Objections to Admissibility in Principal and in Substance* filed on 23rd October 2009¹.
2. In support of those submissions, particularly those found at paragraphs 9 to 16 under the heading ‘The Meaning and Applicability of Rule 68’, the Defence now refers to the *Lubanga Trial Chamber Decision on the Prosecution’s application for the admission of the prior recorded statements of two witnesses*, of 15 January 2009². This addendum draws the Chamber’s attention to relevant authority in support of its submissions already made. It is submitted that there is a continuing duty on counsel to keep the Chamber apprised of authority relevant to its determinations. The *Lubanga Trial Chamber* stated at paragraph 18:

Turning to Article 69(2) and Rule 68, in the judgment of the Chamber the latter provision is directed at the "testimony of a witness" in a broad sense, given that the various forms of testimony that are specifically included in the rule are audio- or video- records, transcripts or other documented evidence of "such" testimony (namely, the testimony of a witness). The Chamber highlights, particularly, that the "other documented evidence" (of the testimony of the witness) is referred to separately, and in addition to, the audio- or video- records in the opening paragraph of Rule 68; moreover, in sub-rules a) and b) "previously recorded testimony" is referred to without limiting its scope to video or audio evidence.

The Defence submits that this finding provides strong support for its submission that the words ‘testimony of a witness’ contained in Rule 68, are to be interpreted in a broad sense, sufficient to bring the disputed material in the present case within the ambit of that rule.

3. The Defence notes that while admitting certain written statements to be read the *Lubanga Trial Chamber* did so in the context that “the Chamber must ensure that the accused's rights are appropriately protected”, the witnesses were available for cross-examination, and that “there is nothing to indicate that the background evidence they provide is materially in dispute”.³

¹ ICC-01/04-01/07-1558.

² ICC-01/04-01/06-1603.

³ *Ibid*, paras 23-24.

Respectfully submitted,



David HOOPER

Dated this 4 November 2009

At The Hague