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No.: ICC-01/04-01/07  
Date: 5 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**

**DEFENCE OBSERVATIONS ON THE SUMMARY OF CHARGES AND REQUEST FOR  
CLARIFICATION AND OR AN EXTENTION OF TIME**

**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**

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**REGISTRY**

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**Registrar**

Ms Silvana Arbia

**Defence Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

**Other**

1. On 28<sup>th</sup> October 2009, The Prosecutor filed his Summary of the Charges, at that stage entitled 'Document containing the charges', pursuant to the Chamber order of 21<sup>st</sup> October 2009. The Defence was requested to make its observations on this document at the status conference held on the 2<sup>nd</sup> and 3<sup>rd</sup> November 2009.
2. The Defence for Mr Katanga indicated that it was satisfied that the document met the Defence's general expectations, but that it required more time to analyse the document and might request certain clarifications or specificity.<sup>1</sup> The Trial Chamber granted the Defence an opportunity to review the document further until the 5<sup>th</sup> November 2009<sup>2</sup>, for which the Defence acknowledges its gratitude. The Trial Chamber also noted that once the observations had been made on the document, the Defence could not thereafter come back to it.<sup>3</sup>
3. The Defence hereby makes the following observation with respect to the Prosecution's summary of the charges. It acknowledges and accepts that the document prepared by the Prosecutor meets the requirements of the order of the Chamber.
4. However, the Defence finds itself in the difficult position that with the best will in the world it has not had adequate time and facilities to determine whether and in which respects it is necessary to seek further clarifications or specificity from the Prosecutor as to the factual foundation of the charges against the accused. This requires a careful review of the document, in the light of other documents including in particular the table of incriminating evidence, witness disclosure, internal documents relating to defence investigations and instructions from the accused. It also requires a degree of team consultation and consultation with the accused on strategic matters. Despite this, the Defence has, immediately before and since the status conference simply been overburdened finalising other matters including the very significant issues of the addition of prosecution witnesses and defence disclosure, the latter to be filed the same day on the 5<sup>th</sup> November. Of course, the status conference fell bang in the middle of all this, so of the six working days potentially available for this task, only four were theoretically useable, and in reality bunged up with other matters. It has only been two days since the status conference and it was only at the status conference that the

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<sup>1</sup> ICC-01/04-01/07-T-74-CONF-ENG ET, dated 2 November 2009, pp 15-19, 24-25.

<sup>2</sup> ICC-01/04-01/07-T-74-CONF-ENG ET, dated 2 November 2009, pp 23-26.

<sup>3</sup> ICC-01/04-01/07-T-74-CONF-ENG ET, dated 2 November 2009, pp 25-27.

Defence fully realised that there might be an intention on the part of the Chamber to preclude any further submissions relating to the document.

5. The Defence fully understands the Chamber's concern that there is a cap on the review of the documents providing notice to the Defence and that this does not interfere unreasonably with the expeditious progression of the trial. Yet, the summary of the charges and the general notice to the defence of the prosecution case is an issue of such fundamental importance that the Defence cannot rush to judgement within a few days of receiving the document summarising the charges.
6. In the first instance, the Defence seeks clarification from the Chamber as to the implications of the statement that the Defence could not come back to the document once it had made its observations. It is submitted that in the interests of a fair trial, it should always, within reason, be possible for the Defence to approach the Chamber with a request for clarification of the charges against it. This would not be a challenge to the summary of charges *per se* or to the fact that it responds to the Chamber's order. It would, however, constitute a challenge to the adequacy of notice provided to the Defence. The Defence is not sure whether the Chamber's statement was meant to foreclose that possibility and therefore seeks clarification thereon.
7. In the event that it is the position of the Chamber that the Defence will after today's date be barred from raising any issues relating to clarification and or specificity of the notice to the Defence of the charges as they are set out in summary form in the Prosecutor's document summarising the charges, the Defence necessarily seeks an extension of time to review the document.
8. So as not to look at the matter in isolation but especially because it has been repeatedly emphasised that the summary of the charges is exactly that: a summary, the Defence would prefer to analyse the document in the light of the new table of incriminating evidence with its cross-references to the document summarising the charges. This new table will, according to the Prosecutor, likely only be ready on 16<sup>th</sup> November 2009. Defence submits that in order to preserve the fairness of the trial it is essential that the Defence is accorded adequate time to meaningfully review the prosecution documents providing notice to ensure that it has been given notice with an appropriate level of precision.

**RELIEF SOUGHT**

Accordingly, the Defence respectfully requests an extension of time until the 24<sup>th</sup> November 2009 to make any final requests of clarification or for specificity of relating to the charges against the accused. This allows the accused 5 working days from the filing of the table of incriminating evidence with cross-references to the summary of charges. The Defence unfortunately maintains that this time is actually needed for this exercise. In default of this, in the event that the Chamber rejects this position, the Defence requests at least 7 working days from today's date to review the charges against the accused for this purpose within the context of the documentation available, albeit work in progress.

Respectfully submitted,



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David HOOPER

Dated this 5 November 2009

At The Hague