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No.: ICC-01/04-01/07
Date: 6 November 2009

TRIAL CHAMBER II

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

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

**IN THE CASE OF
THE PROSECUTOR
*v. GERMAIN KATANGA AND MATHIEU NGUDJOLO CHUI***

Public
**with Annexes – Confidential, *ex parte*, only available to the Office of the
Prosecutor and the Defence**

Prosecution's Observations on Agreements as to Evidence

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

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Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(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

Deputy Registrar

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

Pursuant to Trial Chamber II's ("Chamber") order of 2 November 2009,¹ the Office of the Prosecutor ("Prosecution") provides the following observations regarding matters of evidence as agreed by the parties, pursuant to Rule 69 of the Rules of Procedure and Evidence ("Rules").

Request for receipt of annexes as Confidential

The Prosecution requests Annexes A and B to this filing be received by the Chamber as Confidential, *ex parte*, only available to the Office of the Prosecutor and the Defence, as they relate to material that is currently treated as confidential.

Background

1. During the status conference on 2 November 2009, the Chamber requested the Prosecution to provide a *"document in two parts, one which talks about the general consensus there is and the second part which also raises what has been proposed so far and which has perhaps partially been accepted, and what has been proposed and what has been totally refused as well."*²
2. As requested by the Chamber, the agreements, partial agreements, and disagreements are indicated separately below.

Matters of agreement

3. There was agreement from both Defence teams in relation to the following alleged facts:
 - the role of Uganda in the conflict in Ituri (facts 1, 5, 8, and 12)³; and
 - the FRPI and FNI (facts 120, 127 and 133).⁴

¹ ICC-01/04-01/07-T-74-CONF-ENG ET, p. 40, lines 4-10.

² ICC-01/04-01/07-T-74-CONF-ENG ET, p. 40, lines 4-10.

³ See Annex A.

⁴ See Annex B.

4. As some counter-proposals were made to proposed facts in relation to both topics, a revised version of those proposals is annexed to this submission. Annex A relates to alleged facts on the role of Uganda in the conflict in Ituri, and Annex B to alleged facts in relation to the FRPI and FNI.
5. Both Defence teams also agreed to the admissibility of a satellite image;⁵ and of four maps⁶ that are on the List of Evidence.

Partial agreement

6. For some of the proposed facts in Annexes A and B, there was agreement by one of the Defence teams:
 - The role of Uganda in the conflict in Ituri:
 - o The Defence team for Germain Katanga agreed to six additional proposed agreed facts (facts 2, 11, 15, 18, 19, and 20);
 - o The Defence team for Mathieu Ngudjolo agreed to two additional proposed agreed facts (facts 3 and 4).
 - The FNI and FRPI:
 - o The Defence team for Germain Katanga agreed to six additional proposed agreed facts (facts 121, 123, 124, 129, 130 and 136).
7. In addition, Defence for Germain Katanga has agreed to all of the proposed facts in relation to the photographs and video taken at the Bogoro Institute in 2007;⁷ the expertise of Mr Eric Baccard (P-418) in forensic evidence;⁸ and to the admissibility of a map that is on the List of Evidence.⁹

⁵ DRC-OTP-1016-0224.

⁶ DRC-OTP-0181-0516, DRC-OTP-1019-0446, DRC-OTP-1019-0447, DRC-OTP-1019-0448.

⁷ ICC-01/04-01/07-1570-Conf-Exp, p. 3, para. 1(h). ICC-01/04-01/07-1555-Conf-Exp-AnxG; proposals 24 to 57.

⁸ ICC-01/04-01/07-1570-Conf-Exp, p. 3, para. 1(a).

⁹ DRC-OTP-1019-0449.

8. On some of the proposed facts, the parties were close to agreement and the details are reflected in Annex A and B.

Matters of disagreement by both Defence

9. Both Defence disagreed on the following proposed agreed facts:

- The role of Uganda in the conflict: facts 6, 7, 9, 10, 13, 14, 16, and 17 (see Annex A to this filing);
- The FNI and FRPI: facts 122, 125, 126, 128, 131, 132, 134, and 135 (see Annex B to this filing).

10. Defence for Mathieu Ngudjolo does not agree to the proposal to admit a map that is on the List of Evidence.¹⁰

11. In addition, the Defence teams do not agree to any of the proposed agreed facts in relation to the following topics:

- The role of Rwanda in the conflict in Ituri (propositions 137 to 147);¹¹
- The contextual elements of crimes against humanity - attacks against the civilian population (propositions 68 to 119);¹²
- Issues relating to medical-legal matters (propositions 21 to 23¹³ and propositions 58 to 67);¹⁴
- Photographs taken by Witness P-373 (propositions 148 to 149);¹⁵
- The expertise of witness 419.¹⁶

¹⁰ DRC-OTP-1019-0449.

¹¹ See ICC-01/04-01/07-1555-Conf-Exp-AnxB. Propositions sent on 19 October 2009.

¹² See ICC-01/04-01/07-1555-Conf-Exp-AnxC. Propositions sent on 16 October 2009.

¹³ See ICC-01/04-01/07-1555-Conf-Exp-AnxE. Proposals sent on 9 October 2009.

¹⁴ See ICC-01/04-01/07-1555-Conf-Exp-AnxF. Propositions sent on 12 October 2009.

¹⁵ See ICC-01/04-01/07-1555-Conf-Exp-AnxH. Propositions sent on 22 October 2009.

¹⁶ See ICC-01/04-01/07-1555-Conf-Exp-AnxI. Email sent on 14 October 2009.

Relief sought

12. The Prosecution requests the Chamber to consider the alleged facts agreed by both Defence teams as proven pursuant to Rule 69 of the Rules.



Luis Moreno-Ocampo, Prosecutor

Dated this 6th day of November 2009

At The Hague, The Netherlands