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No.: ICC-01/04-01/07
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TRIAL CHAMBER II

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

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

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

Public Document

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

**Prosecution's Amended Table of Incriminating Evidence and Amended List of
Evidence**

Source: Office of the Prosecutor

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

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Other

As ordered by Trial Chamber II (“Chamber”) on 2 November 2009,¹ the Office of the Prosecutor (“Prosecution”) herewith submits an amended Table of Incriminating Evidence (“Amended Table”) and an amended List of Evidence (“Amended List of Evidence”) in appended annexes.

Confidentiality of the Annexes

1. The Prosecution requests that the Annexes to this submission be received by the Chamber as Confidential, *ex parte*, only available to the Office of the Prosecutor and the Defence since they relate to evidentiary material that is confidential or information that could lead to the identification of witnesses.

Amended Table of Incriminating Evidence and Amended List of Evidence

2. Pursuant to the order of the Chamber,² the Prosecution has amended the Table of Incriminating Evidence previously submitted on 27 May 2009 (“First Table”)³ to reflect the Pre-Trial Chamber’s factual determinations of the confirmation decision⁴ as summarised in the “Document Summarising the Charges”.⁵
3. In order to link the relevant paragraphs of the Document Summarising the Charges to the evidence, the Prosecution modified the First Table. In this Amended Table newly added evidence to the List of Evidence is referenced, where appropriate.⁶

¹ ICC-01/04-01/07-T-74-CONF-ENG ET, p. 37, lines 7-23.

² ICC-01/04-01/07-1547, para. 30.

³ ICC-01/04-01/07-1174 and ICC-01/04-01/07-1174-Corr.

⁴ ICC-01/04-01/07-717.

⁵ ICC-01/04-01/07-1588-Anx-1

⁶ Since 27 May 2009, with the Chamber’s authorisation one hundred and thirty one (131) elements of evidence have been disclosed to the Defence. Consequently, they have been added to the Prosecution’s List of Evidence and integrated into the Amended Table.

4. Furthermore and as directed by the Chamber, the Prosecution reviewed the evidence included in the List of Evidence first submitted on 27 May 2009 ("First List")⁷ and removed thirty (30) elements of evidence⁸ which contained information that could be covered by other material already contained therein. Accordingly, both the Amended List of Evidence and the Amended Table reflect such changes.
5. Following the instructions of the Chamber,⁹ the Prosecution removed a number of cross-references. In some cases, however, to shorten the length of the Amended Table, the Prosecution has introduced more albeit focused cross-references.
6. Last, because of the limited number and scope of the facts that the Defence teams are currently inclined to agree to, no elements of evidence could be removed from the Amended Table on that basis, since this evidence supports factual allegations to be proven at trial.

Description of the Annexes

7. The Prosecution herewith submits to the Chamber annexes A to O. Annex A, contains the Amended List of Incriminating Evidence. The appended Annexes B to N contain the Amended Table.¹⁰ Annexes B to E encompass both the contextual elements of crimes against humanity,¹¹ and the underlying crimes of murder,¹²

⁷ ICC-01/04-01/07-T-76-Red-ENG WT 03-11-2009, p. 21.

⁸ Twenty-eight of these documents were listed in the filing ICC-01/04-01/07-1579-Conf-AnxA, 30-10-2009. Two other documents, related to witness 311 were mentioned during the Status Conference of 2 November 2009, these are: DRC-OTP-1018-0103 and DRC-OTP-1018-0159. See ICC-01/04-01/07-T-76-Red-ENG WT 03-11-2009, p. 21

⁹ ICC-01/04-01/07-T-71-CONF-ENG CT 01-10-2009, pp. 48-50.

¹⁰ The Amended Table totals 940 pages.

¹¹ Annex B.

¹² Annex C.

rape¹³ and sexual slavery,¹⁴ as crimes against humanity. Annex F, is comprised of a section concerning the contextual elements of war crimes, while annexes G to M contain, respectively, the underlying crimes of wilful killing,¹⁵ attacking civilians,¹⁶ destroying or seizing the enemy's property,¹⁷ pillaging,¹⁸ rape,¹⁹ sexual slavery²⁰ and using, conscripting or enlisting children, as war crimes.²¹ Annex N includes a section on the individual criminal responsibility of the accused. Each section of the appended annexes pertaining to the Amended Table contains a table of contents. Lastly, Annex O is comprised of the list of documents removed from the First Table and the First List.



Luis Moreno-Ocampo, Prosecutor

Dated this 16th day of November 2009

At The Hague, The Netherlands

¹³ Annex D.

¹⁴ Annex E.

¹⁵ Annex G.

¹⁶ Annex H.

¹⁷ Annex I.

¹⁸ Annex J.

¹⁹ Annex K.

²⁰ Annex L.

²¹ Annex M.