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

Public

Defence Response to “Demande urgente de l’Accusation aux fins d’extension de pages pour ses conclusions écrites finales”; and Request to Vary the Page Limit of the Defence Closing Brief

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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Other

Introduction

1. The Defence for Mr. Katanga (“Defence”) hereby responds to “*Demande urgente de l’Accusation aux fins d’extension de pages pour ses conclusions écrites finales*”.¹ It supports the Prosecution’s Request and agrees with the reasons given. Despite its best efforts, the Defence similarly has difficulties to limit itself to 300 pages. In the course of writing the Closing Brief, the Defence has realised that it is unable to make its arguments effectively within the page-limit set by the Chamber. It therefore requests the Chamber to extend the page limit to 400 pages pursuant to Regulation 37(2) of the Regulations of the Court. The Defence submits that exceptional circumstances exist which justify this request. These circumstances are elaborated upon below.

Defence Submissions

2. While it might appear that 300 pages are sufficient for the parties arguments, in practice, given the nature of the case, such a limitation may over constrict submissions and render the brief significantly less functional. It is not sought to burden the Chamber unnecessarily. The case is significantly more complex and voluminous than the *Lubanga* case where the Defence was given the same page limit of 300 pages. There are ten counts each with a legal and factual component. With regard to the legal component, it is noteworthy that this is only the second case before the ICC. Many legal issues have not yet been determined. With the assistance of the parties and participants, this Chamber will contribute to the creation of new jurisprudence on these legal issues. For the benefit of the Court, the legal submissions must therefore be addressed in sufficient detail.
3. With regard to the factual component, issues of witness credibility are key to this case. An extensive review is required. Twenty-four witnesses have appeared on behalf of the Prosecution, one of whom has been withdrawn. Two witnesses have appeared on behalf of the victim representatives. Eighteen witnesses have appeared on behalf of the Katanga Defence, three of whom were common witnesses of both defence teams. Ten additional witnesses have appeared on behalf of the Ngudjolo Defence; and two on behalf of the Chamber. A significant number of pages are required per witness to present the Chamber with an adequate overview of the credibility issues at stake. The

¹ ICC-01/04-01/07-3243, 15-02-2012.

Defence submits that it is not desirable to summarise what the witnesses have said. At least for the key issues in dispute, it is much more preferable to quote the exact words spoken by the witnesses. This requires additional pages. In addition, footnotes take significant space.

4. These issues cannot be addressed adequately in oral submissions. Credibility submissions must be made in a comprehensive and exhaustive manner. For this, it is necessary that credibility issues pertaining to all witnesses should be contained in one written filing, rather than partly in written, and partly in oral submissions. Also, the purpose of the oral arguments is to address the other parties' and participants' submissions and not to elaborate or continue its own submissions.

Relief Sought

5. On the grounds set out above, the Defence respectfully requests the Chamber to grant a variation of the page limit under Regulation 37(2) of the Regulations of the Court, and to allow the Defence an additional 100 pages. The Defence has no objection if the same proposed page limit of 400 pages be given to the Prosecution.

Respectfully submitted,



David HOOPER, Q.C.
Lead Counsel for Germain Katanga

Dated this 16th February 2012

At The Hague, Netherlands