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No.: ICC-01/04-02/12

Date: 22 March 2013

THE APPEALS CHAMBER

Before: Judge Sanji Mmasenono Monageng, Presiding Judge
Judge Sang-Hyun Song
Judge Cuno Tarfusser
Judge Erkki Kourula
Judge Ekaterina Trendafilova

**SITUATION IN THE DEMOCRATIC REPUBLIC OF CONGO
IN THE CASE OF THE PROSECUTOR *v.* MATHIEU NGUDJOLO CHUI**

Public Document

Defence Request to Be Provided with the Prosecution Appeal Brief

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

Ms Fatou Bensouda, Prosecutor
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Unrepresented Victims

Legal Representatives of Applicants

**Unrepresented Applicants for
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

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

Procedural Background

1. On 22 and 25 June 2007, the prosecution filed jointly, against both Germain Katanga and Mathieu Ngudjolo Chui, an Application for Warrants of Arrest.¹
2. On 2 July 2007, the Pre-Trial Chamber I issued a Warrant of Arrest for Germain Katanga.² Mr Katanga was transferred from the Democratic Republic of Congo to The Hague on 18 October 2007.³ His initial appearance before the Pre-Trial Chamber occurred on 22 October 2007.⁴
3. On 6 July 2007, the same Chamber issued a Warrant of Arrest for Mathieu Ngudjolo Chui.⁵ His initial appearance before the Pre-Trial Chamber occurred on 11 February 2008.⁶
4. On 10 March 2008, Pre-Trial Chamber I decided to join the cases of *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*.⁷
5. On 26 September 2008, the Pre-Trial Chamber confirmed some of the charges alleged against Mr Katanga and Mr Ngudjolo.⁸ The trial started on 24 November 2009.⁹ The last witnesses heard were the Accused, whose testimonies were completed by 11 November 2011.¹⁰
6. On 24 February 2012, the prosecution¹¹ and the legal representatives of victims¹² filed their final briefs. On 30 March 2012, the defence for Mr Katanga¹³ and the defence for Mr Ngudjolo¹⁴ filed their closing briefs.
7. From 15 to 23 May 2012, the Trial Chamber heard the closing arguments of the parties and participants.¹⁵
8. On 21 November 2012, the Trial Chamber issued its Decision on the implementation

¹ See ICC-01/04-01/07-196, Submission of the Redacted English and French Versions of Prosecution's Application for Warrants of Arrest against Germain KATANGA and Mathieu NGUDJOLO CHUI, 14 February 2008.

² ICC-01/04-01/07-1-tENG.

³ ICC-01/04-01/07-40, Information to the Chamber on the execution of the Request for the arrest and surrender of Germain Katanga, 22 October 2007, p. 4.

⁴ ICC-01/04-01/07-T-5-ENG.

⁵ ICC-01/04-02/07-1.

⁶ ICC-01/04-02/07-T-3-ENG.

⁷ ICC-01/04-01/07-257, Decision on the Joinder of the Cases against Germain Katanga and Ngudjolo.

⁸ ICC-01/04-01/07-716-Conf, Decision on the confirmation of charges; see its public redacted version ICC-01/04-01/07-717.

⁹ ICC-01/04-01/07-T-80-ENG

¹⁰ ICC-01/04-01/07-T-333-ENG.

¹¹ ICC-01/04-01/07-3251-Conf, Mémoire final. See its public redacted version ICC-01/04-01/07-3251-Corr-Red.

¹² ICC-01/04-01/07-3253-Conf, Conclusions finales; ICC-01/04-01/07-3250-Conf, Conclusions finales du Représentant légal des victimes enfants soldats.

¹³ ICC-01/04-01/07-3266-Conf, Defence Closing Brief. See its public redacted version ICC-01/04-01/07-3266-Corr2-Red.

¹⁴ ICC-01/04-01/07-3265-Conf, Conclusions finales de Mathieu Ngudjolo. See its public redacted version ICC-01/04-01/07-3265-Corr2-Red.

¹⁵ ICC-01/04-02/07-T-336-ENG to ICC-01/04-02/07-T-340-ENG.

of regulation 55 of the Regulations of the Court and severing the charges against the accused persons, by which it triggered regulation 55 of the Regulations of the Court, notified the parties and participants that the mode of liability under which Germain Katanga stands charged was subject to legal recharacterisation on the basis of article 25(3)(d) of the Statute, and declared the charges against Mathieu Ngudjolo to be severed.

9. On 18 December 2012, Trial Chamber II delivered its judgment acquitting Mathieu Ngudjolo (thereafter the “*Ngudjolo Judgment*”).¹⁶
10. On 20 December 2012, the prosecution filed its notice of appeal against *Ngudjolo Judgment*.¹⁷
11. The prosecution submitted its appeal brief against *Ngudjolo Judgment* on 19 March 2013; this document is not public yet.
12. On 20 March 2013, the defence for Mr Katanga asked the prosecution whether it was possible to be notified the confidential version of the prosecution appeal brief against *Ngudjolo judgment*.¹⁸
13. The prosecution replied on 21 March 2013 that the third ground of appeal refers to matters that are *ex parte* only available to the Ngudjolo defence team, and that therefore it could not provide access to this document. On 22 March 2013, it added that it will not oppose the Katanga defence team having access to the confidential redacted version of the brief.¹⁹

Defence Submissions

14. The defence for Mr Katanga hereby respectfully requests the Appeal Chamber to order that it be provided with the confidential, redacted version of the prosecution appeal brief in the *Ngudjolo* case.
15. Until severance, the two cases were clearly closely linked. The defence is directly concerned with the factual and/or legal grounds of appeal raised by the prosecution against the *Ngudjolo* judgment, since such arguments may directly effect the applicant’s case and could later be raised by the parties or participants in the *Katanga* case.
16. In respect of matters discussed in the prosecution’s appeal submissions, the defence

¹⁶ ICC-01/04-02/12-3, *Jugement rendu en application de l'article 74 du Statut*.

¹⁷ ICC-01/04-02/12-10, Prosecution's Appeal against Trial Chamber II's « *Jugement rendu en application de l'article 74 du statut* ».

¹⁸ Email from Ms Menegon to Mr Macdonald, dated 20 March 2013, entitled ‘Request to be disclosed the confidential version of the Prosecution appeal brief against Ngudjolo judgement’.

¹⁹ Emails from Mr Macdonald to Mr Menegon, dated 21 and 22 March 2013, entitled ‘RE: Request to be disclosed the confidential version of the Prosecution appeal brief against Ngudjolo judgement’.

submits that the fullest disclosure is justified. The defence obviously has knowledge of all the evidence tendered by the parties, participants and the Chamber during the trial. The one exception of this, according to the prosecution, are the matters raised in the third ground of appeal, which are *ex parte* only available to the Ngudjolo Defence team. Subject to the view of the Appeal Chamber, which has access to that material and can assess the desirability of such non disclosure, the defence are content to receive the prosecution appeal brief with those matters removed or redacted.

Respectfully submitted,



David HOOPER Q.C.

Dated this 22 March 2013

At The Hague