



Original: **French**

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

Date: **27 March 2009**

TRIAL CHAMBER II

Before

**Judge Bruno Cotte, Presiding Judge
Judge Fatoumata Dembele Diarra
Judge Fumiko Saiga**

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

**Public document
URGENT**

**Decision on the Application of the Defence for Germain Katanga to file a reply
(regulation 24 of the *Regulations of the Court*)**

Decision 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
 Ms Fatou Bensouda, Deputy Prosecutor
 Mr Éric MacDonald, Senior Trial Lawyer

**Counsel for the Defence of Germain
 Katanga**

Mr David Hooper
 Mr Andreas O'Shea
 Ms Caroline Buisman

**Counsel for the Defence of Mathieu
 Ngudjolo Chui**

Mr Jean-Pierre Kilenda Kakengi Basila
 Mr Jean-Pierre Fofé Djofia Malewa

Legal Representatives of the Victims

Ms Carine Bapita Buyangandu
 Mr Joseph Keta
 Mr Jean-Louis Gilissen
 Mr Hervé Diakiese
 Mr Jean Chrysostome Mulamba
 Nsokoloni
 Mr Fidel Nsita Luvengika
 Mr Vincent Lurquin
 Ms Flora Ambuyu Andjelani

Legal Representatives of the Applicants

**The Office of Public Counsel for
 Victims**

Ms Paolina Massida

**The Office of Public Counsel for the
 Defence**

States' Representatives

Amicus curiae

REGISTRY

Registrar

Ms Silvana Arbia

Defence Support Section

**Victims Participation and Reparations
 Section**

TRIAL CHAMBER II of the International Criminal Court (“the Chamber”) decides the following pursuant to regulations 24 and 34 of the *Regulations of the Court*.

1. On 10 February 2009, Germain Katanga’s Defence submitted to the Chamber a challenge to the admissibility of the case pursuant to article 19(2)(a) of the Statute and on the grounds set forth at article 17 thereof¹ (“Challenge to Admissibility”). This motion, originally filed as “confidential, *ex parte*, only available to the Defence for Mr Katanga”, was transmitted to the Prosecutor on 25 February 2009, pursuant to rule 58(3) of the *Rules of Procedure and Evidence* (“the Rules”) and after the Registry had reclassified it as a confidential document at the Chamber’s request.²

2. On 5 March 2009, the Chamber decided on the procedure to be followed pursuant to article 19 of the Statute, as is incumbent upon it under rules 58 and 59 of the Rules.³ The Prosecutor submitted his response on 19 March 2009⁴ (“the Response”) and on 26 March 2009, Germain Katanga’s Defence submitted an application for leave to file a reply, in accordance with regulation 24(5) of the *Regulations of the Court* (“the Application”).⁵

3. In support of its Application, the Defence for Germain Katanga alleges that the Prosecutor misinterpreted the substantive arguments set forth in the Challenge to Admissibility⁶ and that he is engaging in new issues of law.⁷ Furthermore, it recalls that, in the annexes to his response, the Prosecutor disclosed documents to which the Defence hitherto had no access.⁸ Under these circumstances, it submits that it would

¹ Germain Katanga’s Defence, *Motion Challenging the Admissibility of the Case by the Defence of Germain Katanga, pursuant to Article 19(2)(a) of the Statute*, 10 February 2009, ICC-01/04-01/07-891-Conf-Exp.

² ICC-01/04-01/07-T-59-CONF-EXP-ENG ET 25-02-2009, p. 35, lines 7 and 8.

³ *Décision arrêtant la procédure à suivre au titre de l’article 19 du Statut (règle 58 du Règlement de procédure et de preuve)*, 5 March 2009, ICC-01/04-01/07-943.

⁴ Office of the Prosecutor, *Prosecution response to Motion Challenging the Admissibility of the Case by the Defence of Germain Katanga, pursuant to Article 19(2)(a)*, 19 March 2009, ICC-01/04-01/07-968.

⁵ Germain Katanga’s Defence, *Defence Application for Leave to Reply to the Prosecution Response to Motion Challenging the Admissibility of the Case by the Defence of Germain Katanga, pursuant to Article 19(2)(a)*, 26 March 2009, ICC-01/04-01/07-994.

⁶ ICC-01/04-01/07-994, para. 3.

⁷ *Ibid.*, para. 5.

⁸ *Ibid.*, para. 4.

be appropriate for it to clarify its position on the application of the complementarity principle in the current matter, to set out its point of view on the new point of law submitted by the Prosecutor, and to comment on the documents produced which had thus far not been disclosed.

3. Given the importance of the issue raised by the Challenge to Admissibility and in light of the Prosecutor's arguments set forth in his Response, the Chamber considers that the filing of a reply is indeed appropriate and justified. It must, however, stress that the forthcoming reply must not reiterate a line of argument already submitted in the Challenge to Admissibility.

FOR THESE REASONS,

GRANTS the Application; and

INSTRUCTS the Defence for Germain Katanga to file its reply no later than 4 p.m. on 30 March 2009.

Done in English and in French, the French version being authoritative.

[signed]

Judge Bruno Cotte
Presiding Judge

[signed]

Judge Fatoumata Dembele Diarra

[signed]

Judge Fumiko Saiga

Dated this 27 March 2009

At The Hague, The Netherlands