

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

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

Date: 4 May 2009

**TRIAL CHAMBER II**

**Before:** Judge Bruno Cotte , Presiding Judge  
Judge Fatoumata Dembele Diarra  
Judge Hans-Peter Kaul

**SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO**

**IN THE CASE OF**

***THE PROSECUTOR v. GERMAIN KATANGA and MATHIEU NGUDJOLO CHUI***

**Public Document**

**Decision on the "Prosecution's Motion to File Partial Table of Incriminating Evidence and Related Material, Confidential – *Ex Parte*, available to the Prosecution Only, on 4 May 2009 – Regulation 35"**

**Decision/Order/Judgment to be notified in accordance with regulation 31 of the *Regulations of the Court* to:**

**The Office of the Prosecutor**

Mr Luis Moreno Ocampo  
Ms Fatou Bensouda  
Mr Eric MacDonald

**Counsel for Germain Katanga**

Mr David Hooper  
Mr Andreas O'Shea

**Counsel for 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  
**Unrepresented Victims**

**Unrepresented Applicants for Participation/Reparation**

**The Office of Public Counsel for Victims**

Ms Paolina Massidda

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

**States Representatives**

**Amicus Curiae**

**REGISTRY**

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**Registrar**

Ms Silvana Arbia

**Defence Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations Section**

**Other**

Trial Chamber II ("Trial Chamber" or "Chamber") of the International Criminal Court ("Court"), in the case of *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, issues the following decision, in accordance with regulation 35 of the Regulations of the Court ("Regulations") on the urgent "Prosecution's Motion to File Partial Table of Incriminating Evidence and Related Material, Confidential – Ex Parte, available to the Prosecution Only, on 4 May 2009 – Regulation 35".<sup>1</sup>

1. The present decision deals with the third application<sup>2</sup> for variation of time limit under regulation 35 of the Regulations of the "Order concerning the Presentation of Incriminating Evidence and the E-Court Protocol".<sup>3</sup> This application was filed by the Office of the Prosecutor ("Prosecution") as a motion to comply with the order only in part, whereas in fact it is an application for variation of time limit. The Chamber notes that a previous application for variation of time limit, which pertained to the same deadline but which was motivated differently,<sup>4</sup> was rejected by the Chamber.<sup>5</sup>

2. The Chamber strongly disapproves of the practice by the Prosecution of failing to include all the relevant factual information about the state of progress of the work by the Prosecution in the previous application.<sup>6</sup> There are no indications that this information was not available to the Prosecution when the previous application was filed and the Chamber cannot conceive of any

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<sup>1</sup> ICC-01/04-01/07-1090

<sup>2</sup> *Ibid*

<sup>3</sup> ICC-01/04-01/07-956

<sup>4</sup> "Prosecution's Second Application for Extension of Time Limit Pursuant to Regulation 35 to Submit a Table of Incriminating Evidence and related material in compliance with Trial Chamber II 'Order concerning the Presentation of Incriminating Evidence and the E-Court Protocol'", 28 April 2009, ICC-01/04-01/07-1080

<sup>5</sup> "Decision on the "Prosecution's Application for Leave to Appeal the 'Order concerning the Presentation of Incriminating Evidence and the E-Court Protocol'" and the "Prosecution's Second Application for Extension of Time Limit Pursuant to Regulation 35 to Submit a Table of Incriminating Evidence and related material in compliance with Trial Chamber II 'Order concerning the Presentation of Incriminating Evidence and the E-Court Protocol'", 1 May 2009, ICC-01/04-01/07-1088

<sup>6</sup> ICC-01/04-01/07-1080

justification for not including it. This unwarranted omission deprived the Chamber of the opportunity to rule on the previous application in full knowledge of all the relevant factors and it now forces the Chamber to decide *in extremis* on a third application, which does, at last, contain the necessary elements for a proper assessment of the criteria laid down in regulation 35. The Chamber stresses that the practice of submitting repeated applications, with incomplete or different motivations, causes the loss of time, which the Chamber and the parties can ill afford. It is therefore incumbent upon the Prosecution to avoid such practices in the future.

3. Nevertheless, it remains that the reasons invoked by the Prosecution today are pertinent under the provisions of regulation 35 and the Chamber considers that it is reasonable under these circumstances to accord this final application for an extension of time limit. Moreover, the Chamber notes that counsel for the accused do not object to a further extension of time limit.<sup>7</sup>

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<sup>7</sup> Defence for Mr Germain Katanga, "Defence Observations on the Prosecution's Motion to File Partial Table of Incriminating Evidence and Related Material, Confidential – Ex Parte, available to the Prosecution Only, on 4 May 2009", 1 May 2009, ICC-01/04-01/07-1091. The Prosecution alleges that counsel for Mr Mathieu Ngudjolo reassured it that there was no objection against an extension until 25 May 2009, ICC-01/04-01/07-1090, par. 5

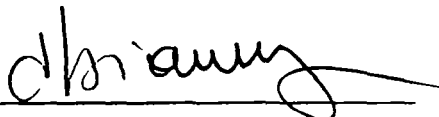
**FOR THESE REASONS,****The Chamber**

- 1) **REJECTS** the Prosecution's suggestion that it may submit part of the Table of Incriminating Evidence to the Chamber on an *ex parte* basis;
- 2) **GRANTS** the Prosecution one last extension of time limit to submit the complete Table of Incriminating Evidence, by 20 May 2009 at 4 p.m.;
- 3) **ORDERS** the Prosecution to coordinate with the Registry and send such parts of the Table of Incriminating Evidence that have already been finalised for translation.

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



Judge Bruno Cotte,  
Presiding Judge



Judge Fatoumata Dembele Diarra



Judge Hans-Peter Kaul

Dated this 4<sup>th</sup> of May 2009

At The Hague, The Netherlands