



Original: **French**

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

Date: **22 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

**Order to Convene a Hearing
(rule 58(2) of the Rules of Procedure and Evidence)**

Order 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

Mr David Hooper
Ms Caroline Buisman

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

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

**The Office of Public Counsel for
Victims**

Ms Paolina Massidda

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

States' Representatives

The DRC Authorities

Amicus Curiae

REGISTRY

Registrar

Ms Silvana Arbia

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

Trial Chamber II of the International Criminal Court (“the Chamber”), acting pursuant to rule 58(2) of the Rules of Procedure and Evidence (“the Rules”), orders the following:

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

2. On 5 March 2009, the Chamber set the procedure to be followed pursuant to article 19 of the Statute, as required by rules 58 and 59 of the Rules.² The Prosecutor submitted his response on 19 March 2009³ and on 30 March 2009, having requested leave of the Chamber under regulation 24(5) of the Regulations of the Court,⁴ the Defence for Germain Katanga filed a reply.⁵

3. Acting pursuant to the decision setting the procedure and as provided for by rule 59 of the Rules, the Legal Representatives of the Victims filed their observations

¹ ICC-01/04-01/07-T-59-CONF-EXP-ENG ET 25-02-2009, p. 35, lines 7 and 8.

² *Decision Prescribing the Procedure to be Followed Under Article 19 of the Statute (Rule 58 of the Rules of Procedure and Evidence)*, 5 March 2009, ICC-01/04-01/07-943-tENG.

³ 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.

⁴ Defence of Germain Katanga, “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.

⁵ Defence of Germain Katanga, “Defence Reply to Prosecution Response to Motion Challenging the Admissibility of the Case by the Defence of Germain Katanga, pursuant to Article 19(2)(a)”, 30 March 2009, ICC-01/04-01/07-1008-Conf-Exp.

on the Challenge to Admissibility on 16 April 2009.⁶ The Office of Public Counsel for Victims filed its observations on 28 April 2009.⁷

4. On 7 May 2009, in an order rendered pursuant to rule 58(2) of the Rules, the Chamber convened a hearing for 18 May 2009 at 2 p.m. The Chamber considered this hearing necessary in view of the arguments developed in the various written submissions received and insofar as the DRC authorities had not sent any written observations to it directly.

5. On 15 May 2009, the Registry sent to the Chamber a copy of an e-mail dated 14 May 2009 signed by the Minister of Justice of the DRC.⁸ This e-mail acknowledges receipt of the Chamber's order convening the hearing and explains that although the Congolese authorities wish to attend it, they will not be able to travel on the given date and would ask that the hearing be postponed until early June 2009.

6. The Chamber notes the contacts that have since taken place between the Registry and the DRC authorities, following which the latter have given a verbal confirmation that they were prepared to appear before the Chamber on 1 June 2009.

7. The Chamber reiterates that it considers their presence at that hearing indispensable.

⁶ Legal Representatives of Victims a/0330/07 and a/0331/07, "Submission on the Motion Challenging the Admissibility of the Case by the Defence of Mr Germain KATANGA (Article 19 of the Rome Statute)", 16 April 2009, ICC-01/04-01/07-1058-Conf-tENG; Legal Representatives of Victims a/0333/07 and a/110/08, "Representations of Victims a/0333/07 and a/110/08 on the Challenge to Admissibility filed by the Defence of Mr. Katanga (rule 59(3) of the Rules of Procedure and Evidence)", 16 April 2009, ICC-01/04-01/07-1059-Conf-tENG; Legal Representatives of Victims, "Observations of the Victims on the Objection to Jurisdiction raised by the Defence for Germain Katanga in its Motion of 10 February 2009", 16 April 2009, ICC-01/04-01/07-1060-tENG.

⁷ The Registry, "Observations du BCPV sur l'exception d'irrecevabilité de l'affaire de la Défense de Germain Katanga avec une annexe confidentielle ex parte réservée au BCPV et trois annexes publiques", 28 April 2009, ICC-01/04-01/07-1083.

⁸ The Registry, "Communication par le Greffe de la réponse des autorités de la République démocratique du Congo à la convocation à l'audience du 18 mai 2009 (règle 58-2 du Règlement de procédure et de preuve)", 15 May 2009, ICC-01/04-01/07-1138.

FOR THESE REASONS, THE CHAMBER

CONVENES a public hearing which will take place on 1 June 2009 at 9.30 a.m.

ORDERS the Registry to notify the DRC authorities of this order.

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

[signed]

Judge Bruno Cotte
Presiding Judge

[signed]

Judge Fatoumata Dembele Diarra

[signed]

Judge Hans-Peter Kaul

Dated this 22 May 2009

At The Hague, The Netherlands