

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 27 July 2009

TRIAL CHAMBER II

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

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

Public

**Order on the submissions by the Defence on the Table of Incriminating Evidence
and on the sequence of Prosecution witnesses**

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 Eric MacDonald, Senior Trial Lawyer

Counsel for the Defence

Mr David Hooper
Mr Andreas O'Shea
Ms Caroline Buisman

Counsel for Mathieu Ngudjolo Chui

Mr Jean-Pierre Kilenda Kakengi Basila
Prof 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 Mbuyu Anjelani

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**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 and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

Trial Chamber II ("Chamber") of the International Criminal Court ("Court"), in the case of *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, acting in accordance with article 64 of the Rome Statute ("Statute"), rule 134 of the Rules of Procedure and Evidence ("Rules") and regulation 54 of the Regulations of the Court ("Regulations"), issues the following order:

I. THE TABLE OF INCRIMINATING EVIDENCE

1. On 12 March 2009, the Defence for Germain Katanga filed the "Defence Application for an Amended Document Containing the Charges"¹ in which it requested the Chamber to "order the Prosecution to file an amended document containing the charges"² reflecting the position following the Decision on the Confirmation of Charges and not going beyond the provisions of the Amended Document Containing the Charges³ of 26 June 2008.⁴
2. On 13 March 2009, the Trial Chamber issued its "Order concerning the Presentation of Incriminating Evidence and the E-Court Protocol",⁵ in which it instructed the Prosecution to compile a Table of Incriminating Evidence ("Table") no later than 3 April 2009⁶. In the same order, the Chamber instructed the Prosecution to submit a list of all the witnesses it intends to call at trial no later than 3 April 2009.⁷
3. In ordering the Prosecution to compile the Table, the Trial Chamber gave clear directions on the Table's structure and, in particular, on its function.

¹ "Defence Application for an Amended Document Containing the Charges", 12 March 2009, ICC-01/04-01/07-954

² ICC-01/04-01/07-954, par. 29

³ "Submission of Amended Document Containing the Charges Pursuant to Decision ICC-01/04-01/07-649

⁴ *Idem*

⁵ "Order concerning the Presentation of Incriminating Evidence and the E-Court Protocol", 13 March 2009, ICC-01/04-01/07-956

⁶ *Ibid.*, par. 37

⁷ *Idem*

After having been granted several extensions of time limit for the filing of the Table⁸, the Prosecution filed the Table on 27 May 2009.⁹

4. On 17 July 2009, the Defence for Germain Katanga filed a “Renewed Application by the Defence for Germain Katanga for a New Amended Document Containing the Charges”¹⁰ (“Application”), in which it requests the Trial Chamber to order the Prosecution to file a new amended document containing the charges pursuant to Article 61(3)(a) of the Rome Statute.¹¹

5. It submits that, having reviewed the Table, it has reached the conclusion that it does not fulfil the practical purpose of providing the Defence with a single, reliable and clear point of reference for the charges against the accused, capable of being used during the course of the trial.¹² The Defence reiterates its previous position¹³ in stating that it is vital for the Defence that it be provided “with an authoritative, clear, concise and comprehensive representation of the charges”.¹⁴ In its view, the Table is “large and unwieldy and yet incomplete as it requires reference to other documents for the factual premise of charges to be understood.”¹⁵ It is further submitted that it would be “appropriate for the Prosecution to reformulate a single, simple and short

⁸ “Decision on the Prosecution’s Application for an Extension of Time Limit to Submit a Table of Incriminating Evidence and Related Material”, 1 April 2009, ICC-0/04-01/07-1017, par. 7. The Chamber extended the deadline for the submission of the Table to 20 May 2009 by virtue of its “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”, 4 May 2009, ICC-01/04-01/07-1095, par. 3. The deadline was again extended to 27 May 2009 pursuant to the Chamber’s “Décision relative à la protection des témoins à charge 267 et 353”, 20 May 2009, 1156-Conf-Exp, par. 53

⁹ “Mémoire aux fins de dépôt du tableau des éléments à charge, de la liste des témoins de l’Accusation et de la liste des pièces à charge, avec 16 Annexes A à P, confidentielles, *ex parte*, réservées à l’Accusation et à la Défense et 1 annexe Q, confidentielle, *ex parte*, réservée à l’Accusation”, 27 May 2009, ICC-01/04-01/07-1174

¹⁰ “Renewed Application by the Defence for Germain Katanga for a New Amended Document Containing the Charges”, 17 July 2009, ICC-01/04-01/07-1310

¹¹ *Ibid.*, par. 1

¹² *Ibid.*, paras. 2 and 3

¹³ It reiterates its arguments advanced in its 12 March 2009 submissions ICC-01/04-01/07-954.

¹⁴ *Idem*

¹⁵ *Ibid.*, par. 7

document which accurately reflects the decision of the Chamber confirming the charges.”¹⁶ In this respect it requests the Chamber to order the Prosecution to re-file the Table reflecting the charges as set out in a new amended document containing the charges.¹⁷

6. Following the Application, the Defence for Mathieu Ngudjolo filed its “*Soumission de la Défense de Mathieu Ngudjolo suite à la « Renewed Application by the Defence of Germain Katanga for a New Amended Document Containing the Charges »* enregistrée le 17 juillet 2009 (ICC-01/04-01/07-1310)”¹⁸ on 20 July 2009.

7. It shares the views expressed by the Defence for Germain Katanga in relation to the Table not fulfilling its desired purpose of clearly setting out the charges and related factual allegations of the Prosecution’s case against the accused.¹⁹ It further submits that it is not only concerned about the fact that the Table provides cross-references to the document containing the charges of 26 June 2009, rather than the decision confirming the charges, but also that it has concerns as to whether the Table can serve a practical purpose at trial. The Defence for Mathieu Ngudjolo is in particular opposed to a document being used at trial that refers to anything other than the decision confirming the charges.²⁰ The Defence requests the Chamber to order the Prosecution to submit a new Table that only makes reference to the Decision on the confirmation of charges.²¹

¹⁶ Ibid., par. 13

¹⁷ Ibid., par. 28

¹⁸ “*Soumission de la Défense de Mathieu Ngudjolo suite à la « Renewed Application by the Defence of Germain Katanga for a New Amended Document Containing the Charges »* enregistrée le 17 juillet 2009 (ICC-01/04-01/07-1310)”, 20 July 2009, ICC-01/04-01/07-1324

¹⁹ ICC-01/04-01/07-1324, par. 6

²⁰ Ibid., par. 12

²¹ Idem

8. The Chamber notes that both Defence teams have expressed concern about the way in which the Chamber's order of 13 March 2009 has been implemented by the Prosecution in the Table submitted on 27 May 2009 and in particular, about the practical utility of the Table with regard to the preparation of their respective defence cases.
9. Although the Chamber understands that the Table in its present form may pose practical difficulties in terms of excessive cross-referencing, it considers that neither the Defence for Germain Katanga nor the Defence for Mathieu Ngudjolo have advanced any specific suggestion as to why the Table is not providing them with the necessary information. Before deciding on the Request, the Chamber therefore orders the Defence teams to submit precise proposals to the Chamber, clearly indicating why and how they wish the Prosecution to amend the present Table.

II. SEQUENCE OF PROSECUTION WITNESSES

10. The Chamber recalls that in its decision of 14 May 2009²² it invited the Prosecution to inform the Chamber at the earliest possible moment about the exact order in which it proposes to call its witnesses, together with an estimate of the duration of their examination.
11. Given that the trial is scheduled to begin on 24 September 2009²³, the Chamber considers that it is opportune that the Prosecution provide it with a document setting out the sequence in which it intends to call its witnesses at trial together with an explanation as to why it intends to call the witnesses in this particular order.

²² "Decision on a number of procedural issues raised by the Registry", 14 May 2009, ICC-01/04-01/07-1134

²³ "Décision fixant la date du procès (règle 132-1 du Règlement de procédure et de preuve)", 27 March 2009, ICC-01/04-01/07-999

FOR THESE REASONS,


THE CHAMBER

ORDERS the Defence for Germain Katanga as well as the Defence for Mathieu Ngudjolo to file their proposals mentioned in paragraph 9 no later than 4. p. m. on 14 August 2009;

ORDERS the Prosecution to respond to the Defence submissions no later than 4 p.m. on 21 August 2009;

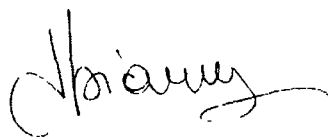
ORDERS the Prosecution to provide the Chamber with a document setting out in which sequence it intends to call its witnesses at trial and why it chose this sequence no later than 4. p. m. on 14 August 2009.

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



Judge Bruno Cotte

Presiding Judge



Judge Fatoumata Dembele Diarra



Judge Hans-Peter Kaul

Dated this 27 July 2009

At The Hague, the Netherlands