



Original: **French**

No.: **ICC-01/04-01/07**
Date: **10 November 2009**

TRIAL CHAMBER II

Before: Judge Bruno Cotte, Presiding Judge
Judge Fatoumata Dembele Diarra
Judge Christine Van den Wyngaert

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

**IN THE CASE OF
THE PROSECUTOR**

v. GERMAIN KATANGA AND MATHIEU NGUDJOLO CHUI

**URGENT
Public Document**

**Decision on the Request of the Defence for Germain Katanga for an Extension of
Time for its Observations on the Summary of Charges
(Regulation 35 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 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

Mr Jean-Louis Gilissen
Mr Fidel Nsita Luvengika

Legal Representatives of the Applicants

**The Office of Public Counsel for
Victims**

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

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Ms Silvana Arbia

Counsel Support Section

Victims and Witnesses Unit

Other

**Victims Participation and Reparations
Section**

TRIAL CHAMBER II of the International Criminal Court (“the Chamber” and “the Court” respectively), pursuant to regulation 35 of the Regulations of the Court, decides as follows.

I. Background

1. In a decision dated 21 October 2009, the Chamber asked the Prosecutor to prepare a Summary of the Charges reiterating the language used by the Pre-Trial Chamber in its confirmation decision (“the Summary”). The Chamber indicated that the said document cannot merely restate the finding of the Pre-Trial Chamber at the conclusion of each charge it examined and also that, in the exposition preceding each conclusion, the Prosecutor must draw on the factual findings which that Chamber relied on to reach its decision.¹
2. An initial document was filed by the Prosecutor on 28 October 2009,² followed by a second document on 3 November 2009 with a corrected title.³ The content of this Summary was discussed in a status conference held on 2 November 2009.⁴ At the conclusion of the discussion, the Chamber asked the parties to submit to it a written filing with any observations they wished to make on the said document by 5 November 2009.⁵
3. The Defence for Mathieu Ngudjolo indicated in an e-mail dated 3 November 2009 that it did not intend to make any such written filing because the Summary

¹ *Decision on the Filing of a Summary of the Charges by the Prosecutor*, 21 October 2009, ICC-01/04-01/07-1547-tENG, para. 29 (“the Decision of 21 October 2009”).

² Office of the Prosecutor, “Document Containing the Charges as Confirmed by the Pre-Trial Chamber in accordance with the *‘Décision relative au dépôt d’un résumé des charges par le Procureur’*”, 28 October 2009, ICC-01/04-01/07-1568.

³ Office of the Prosecutor, “Document Summarising the Charges”, 3 November 2009, ICC-01/04-01/07-1588.

⁴ ICC-01/04-01/07-T-74-CONF-ENG CT 02-11-2009.

⁵ *Ibid.*, p. 26, lines 5 to 12.

“[TRANSLATION] reflects the decision confirming the charges of 26 September 2008 [...] [and] allows the accused and his Defence to prepare for the trial”.⁶

4. On 5 November 2009, the Defence for Germain Katanga filed an application to extend the time limit set by the Chamber to file its own observations on the Summary (“the Request”).⁷ In this application, the Defence notes in particular:
 - that, although the contents of the Summary meet its expectations, the Defence must be permitted more time to study it;⁸
 - that an in-depth study of the material is all the more necessary given that, during the status conference, the Chamber intended to indicate to the Defence teams that their observations on the Summary could not be presented during the trial;⁹
 - that it would be appropriate for the Chamber to clarify its position on this point;¹⁰
 - that, if such is the case, the Defence for Germain Katanga should be granted additional time to be able to analyse the document in detail, particularly in the light of the new table of incriminating evidence which the Prosecutor must file on 16 November 2009.¹¹
5. The Office of the Prosecutor has not submitted any observation on the Request.

⁶ E-mail addressed to the Legal Adviser of the Division on 6 November 2009.

⁷ Defence for Germain Katanga, “Defence Observations on the Summary of Charges and Request for clarification and or an Extension of time”, 5 November 2009, ICC-01/04-01/07-1601.

⁸ *Ibid.*, para. 2.

⁹ *Ibid.*, para. 4.

¹⁰ *Ibid.*, paras. 5 and 6;

¹¹ *Ibid.*, para. 8.

II. Analysis of the Chamber

6. Regulation 35 of the Regulations of the Court provides that the Chamber may only approve an application to extend a time limit on the condition that good cause is shown. Moreover, without further invoking the terms of the said regulation here, the Defence for Germain Katanga contends that the comments made in the hearing to the effect that “we can no longer criticize [the Summary] during the trial itself”¹² and the importance of the document in question to the proceedings justify the submission of its Request.
7. Subject to the following considerations, the Chamber is mindful that clearly defining the charges against which the accused will have to defend themselves is a matter of sufficient importance for the Defence team to be granted an extension to the time limit so as to present a fully informed point of view.
8. It should be recalled however, that the position the Chamber adopted during the status conference of 2 November 2009, and which it intends to reaffirm in the present decision, can be rightly understood only when bearing in mind the essentially technical and consequently limited nature of the Summary of Charges.
9. In indicating to the parties that they should “bring [...] out and bat [...] out together” the matter of notifying the charges to the accused before the trial commenced,¹³ the Chamber merely wished, before the proceedings, to put an end to the dispute on this point which began when the table of incriminating evidence was filed on 27 May 2009¹⁴ and continued until the hearing on 2 November 2009. The Chamber also wished to contribute a point of clarification

¹² ICC-01/04-01/07-T-74-CONF-ENG ET 02-11-2009, p. 25, line 23 to p.26, line 2.

¹³ Id.

¹⁴ Office of the Prosecutor, “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”, 27 May 2009, ICC-01/04-01/07-1174, with 17 confidential annexes.

regarding the trial and to respond to an application submitted expressly for that purpose by the Defence for Germain Katanga.

10. The unequivocal instruction thus addressed to the teams of the Defence was further justified given that the Summary was never intended to serve as the sole reference document for the trial. It was intended, the Chamber would recall, as an exercise in simplification – a document more concise than the decision on the confirmation of charges issued by the Pre-Trial Chamber,¹⁵ which simply reiterates the same terms as used by the latter. In the decision of 21 October 2009 moreover, the Chamber had recalled that only the decision issued by the Pre-Trial Chamber would serve as the point of reference for the trial.¹⁶
11. The Chamber will pay particular attention to the observations that the Defence will make on the Summary. The Chamber recalls however, that the Defence must not attribute the Summary greater importance than it truly has because it merely stems from the decision on the confirmation of charges.

FOR THESE REASONS,

GRANTS the Request; and

ORDERS the Defence for Germain Katanga to file its final observations on the Summary by 4.00 p.m. on 19 November 2009.

¹⁵ Pre-Trial Chamber I, *Decision on the Confirmation of Charges*, 26 September 2008, ICC-01/04-01/07-716-Conf.

¹⁶ Decision of 21 October 2009, para. 14.

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

[signed]

Judge Bruno Cotte
Presiding Judge

[signed]

Judge Fatoumata Dembele Diarra

[signed]

Judge Christine Van den Wyngaert

Dated this 10 November 2009

At The Hague, The Netherlands