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

Date: 6 October 2006

PRE-TRIAL CHAMBER I

Before: Judge Akua Kuenyehia, Presiding Judge
Judge Anita Ušacka
Judge Sylvia Steiner

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

Public Document

Notification of non-pursuance of the *Notification of Defence Request for leave to Appeal the Pre-Trial Chamber's Oral Decision of 11 July 2008 on Redactions of the Transcripts*

Source: Defence for Mr Germain Katanga

Document 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
Mr Eric Macdonald, Senior Trial Lawyer

Counsel for the Defence for Germain Katanga

Mr David Hooper
Ms Caroline Buisman

Counsel for the Defence for Mathieu Ngudjolo Chui

Mr Jean-Pierre Kilenda Kakengi Basila
Ms Maryse Alié

Legal Representatives of Victims

Ms Carine Bapita Buyangandu
Mr Joseph Keta
Mr Jean-Louis Gilissen
Mr Hervé Diakiese
Ms Paolina Massidda

Legal Representatives of Applicants
[1 name per team maximum]

Unrepresented Victims

Unrepresented Applicants for Participation/Reparation

The Office of Public Counsel for Victims

[2 names maximum]

The Office of Public Counsel for the Defence

Mr Xavier Jean Keïta
Ms Melinda Taylor

States Representatives

Amicus Curiae

REGISTRY

Registrar

Ms Silvana Arbia

Defence Support Section

Victims and Witnesses Unit

Detention Section

Victims Participation and Reparations Section

Other

1. On 24 June 2006, the Defence for Mr Katanga ("Defence") filed its confidential *Defence Written Submissions on Fact and Law pursuant to Rule 121(9)*,¹ *inter alia* objecting to the admissibility of the confidential document DRC-OTP-0155-0318 or DRC-OTP-1016-0150 disclosed on 29 January 2008 as incriminating evidence, which is a *procès-verbal d'audition* of Mr Katanga taken in Kinshasa on 20 January 2006 ("procès-verbal").
2. On 2 July 2007, the Prosecution said that it will not rely on the procès-verbal for the purpose of the confirmation hearing.² However, in the *Prosecution's Observations Addressing Matters that Were Discussed at the Confirmation Hearing*, dated 22 July 2008, it stated that it relies on all of the evidence presented in its additional List of Evidence.³
3. During the public hearing of 7 July 2008, the procès-verbal was discussed by one of the victims' legal representatives, Mr Diakiese.⁴
4. On 7 July 2008, the Defence filed the confidential *Defence Request for Redactions*,⁵ requesting the redactions of the two excerpts of the public transcript of the hearing of 7 July 2008 referring to the procès-verbal.
5. During the hearing of 11 July 2008, Pre-Trial Chamber I rejected the *Defence Request for Redactions* and ordered that it be reclassified as public⁶ ("Oral Decision of 11 July 2008").

¹ ICC-01/04-01/07-641-Conf.

² ICC-01/04-01/07-T-41-ENG Ct WT 02-07-2008 1-54 SZ PT, p. 15.

³ ICC-01/04-01/07-692, para. 5.

⁴ ICC-01/04-01/07-T-44-ENG RT 07-07-2008, p. 16 and 19.

⁵ ICC-01/04-01/07-663-Conf.

⁶ ICC-01/04-01/07-T-46-ENG ET WT 11-07-2008 1-46 NB PT, p. 24-25.

14 On the 7th of July, the Defence of Mr. Germain Katanga filed a
 15 confidential request for the redaction of pages 16, lines 4 to 7, and
 16 page 19, lines 4 to 10 of the public transcript of the hearing of 7th
 17 July 2008, ICC-01/04-01/07-T.44-ENG RT. The request was made on the
 18 basis that one of the Legal Representatives of Victims, and I quote:
 19 "Quoted substance matters from a confidential document during the hearing
 20 and that the requested redactions would give appropriate respect to
 21 confidential status of this document."

22 The Chamber notes that the relevant excerpts of the transcript do
 23 not identify any person other than Mr. Germain Katanga. No victim or
 24 witness shall be put at risk as a result of the disclosure to the public
 25 of the excerpts of the confidential document in question, and therefore
 1 the requested redactions will serve no purpose. The Chamber is of the
 2 view that although the information comes from a confidential document,
 3 the excerpts can remain on the public record. The Chamber therefore
 4 decides to reject the request of the Defence for Germain Katanga for
 5 redactions to transcript as numbered above.

6 Furthermore, the Chamber finds no reason why the request should
 7 remain confidential and hereby reclassifies document

6. On 21 July 2008, the Defence filed the *Notification of Defence Request for leave to Appeal the Pre-Trial Chamber's Oral Decision of 11 July 2008 on Redactions of the Transcripts*⁷ ("Defence Notification"), in which it informed Pre-Trial Chamber I of its intention to request leave to appeal the Oral Decision of 11 July 2007.
7. On 25 July 2008, Mr Diakiese filed a response to the Defence Notification.⁸
8. On 26 September 2008, Pre-Trial Chamber I issued the *Decision on the confirmation of charges*,⁹ in which it declared that the procès-verbal is admissible for the purpose of the confirmation hearing.¹⁰
9. In light of the *Decision on the confirmation of charges*, declaring the procès-verbal admissible, the Defence Notification is now moot. Accordingly, the Defence does not pursue the Defence Notification.

Respectfully submitted,



David HOOPER

Dated this 6th October 2008

At London

⁸ ICC-01/04-01/07-663-Confidential as public.

⁷ ICC-01/04-01/07-688.

⁸ ICC-01/04-01/07-697.

⁹ ICC-01/04-01/07-716-Conf. See also the Public Redacted Version of the 1st of October 2008, ICC-01/04-01/07-717.

¹⁰ ICC-01/04-01/07-717, para. 99.