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

Date: 22 June 2009

THE APPEALS CHAMBER

Before: Judge Daniel David Ntanda Nsereko, Presiding Judge
Judge Sang-Hyun Song
Judge Akua Kuenyehia
Judge Erkki Kourula
Judge Anita Ušacka

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

Public Document

**Appeal of the Defence for Germain Katanga against the Decision of the Trial
Chamber '*Motifs de la décision orale relative à l'exception d'irrecevabilité de
l'affaire*'**

Source: Defence for Mr Germain Katanga

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

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Legal Representatives of Applicants

Unrepresented Victims

Unrepresented Applicants for Participation/Reparation

The Office of Public Counsel for Victims

The Office of Public Counsel for the Defence

States Representatives

Amicus Curiae

REGISTRY

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Defence Support Section

Victims and Witnesses Unit

Detention Section

Victims Participation and Reparations Section

Other

Introduction

1. The Defence for Germain Katanga ('the Defence') hereby appeals the decision of the Trial Chamber *Motifs de la décision orale relative à l'exception d'irrecevabilité de l'affaire (article 19 du Statut)*,¹ issued on 16 June 2009, pursuant to Articles 19(6), 82(1)(a) and 83(2)(a) of the Rome Statute, Rule 154 of the Rules of Procedure and Evidence and Regulation 64 of the Regulations of the Court.

Procedural History

2. On 10 February 2009, the Defence filed its Motion Challenging the Admissibility of the Case by the Defence of Germain Katanga, pursuant to Article 19(2)(a) of the Statute.²
3. On 19 March 2009, the Prosecution filed a Response to Motion Challenging the Admissibility of the Case by the Defence of Germain Katanga pursuant to Article 19(2)(a),³ to which the Defence filed a Reply on 30 March 2009.⁴
4. On 16 April 2009, the victim representatives filed their observations,⁵ and on 28 April 2009, the Public Counsel for Victims filed its observations.⁶
5. On 1 June 2009, an oral hearing took place where the Defence, the Prosecution, the victim representatives, the Public Counsel for Victims and the authorities of the DRC presented their views on Mr. Katanga's challenge of the admissibility of his case before the ICC.⁷
6. On 12 June 2009, Trial Chamber II gave its oral ruling, dismissing the Defence's Motion Challenging the Admissibility of the Case.⁸ On 16 June 2009, Trial Chamber II issued its *Motifs de la décision orale relative à l'exception d'irrecevabilité de*

¹ ICC-01/04-01/07-1213, public.

² ICC-01/04-01/07-891-Conf-Exp, a redacted public version of which was issued on 11 March 2009, ICC-01/04-01/07-949.

³ ICC-01/04-01/07-968-Conf-Exp, a redacted public version of which was issued on 30 March 2009, ICC-01/04-01/07-1007. Observations of the DRC were attached to this Response.

⁴ ICC-01/04-01/07-1008-Conf-Exp, a redacted public version of which was issued on 1 April 2009, ICC-01/04-01/07-1015.

⁵ ICC-01/04-01/07-1058-Conf; ICC-01/04-01/07-1059-Conf; ICC-01/04-01/07-1060.

⁶ ICC-01/04-01/07-1082.

⁷ ICC-01/04-01/07-T-65-ENG ET WT.

⁸ ICC-01/04-01/07-T-67-ENG ET WT.

l'affaire (article 19 du Statut),⁹ against which this appeal is filed.

The Law Regarding Appeal concerning Challenges to Admissibility

7. Pursuant to Article 82(1)(a), either party may appeal, in accordance with the Rules of Procedure, a decision with respect to jurisdiction or admissibility.
8. Such an appeal lies as of right; no leave to appeal needs to be sought because it is covered by Rule 154, not Rule 155. In accordance with Rule 154, such an appeal may be filed not later than five days from the date upon which the party filing the appeal is notified of the decision.
9. Pursuant to Regulation 64 of the Regulations of the Court, such an appeal must state: the name and number of the case or situation (see above: Prosecutor v. Katanga and Ngudjolo, ICC-01/04-01/07); the title and date of the decision being appealed, the specific provision of the Statute pursuant to which the appeal is filed, and the relief sought (see below).
10. In accordance with Articles 19(6) 82(1)(a) and 83(2)(a) of the Statute, Rule 154 of the Rules and Regulation 64 of the Regulations of the Court, the Defence hereby submits to the Appeals Chamber its appeal of Trial Chamber II's *Motifs de la décision orale relative à l'exception d'irrecevabilité de l'affaire (article 19 du Statut)*.¹⁰ The Defence will within 21 days of notification of this Decision, which was on 16 June 2009, file a document in support of this appeal, setting out the grounds of appeal, pursuant to Regulation 64(2) of the Regulations of the Court.

Relief Sought

11. Pursuant to Article 83(2)(a), the Appeals Chamber may, if it finds that the proceedings appealed from were unfair in a way that affected the reliability of the decision, or that the decision appealed from was materially affected by error of fact or law or procedural error, reverse or amend the decision.

⁹ ICC-01/04-01/07-1213, public.

¹⁰ ICC-01/04-01/07-1213, public.

12. On the basis of this provision, the Defence seeks the following relief:

- (a) that the Appeals Chamber rules that Trial Chamber II's findings as to when and under which circumstances a Challenge to the Admissibility of a case may be declared admissible are erroneous in law and amend the decision accordingly pursuant to Article 83(2)(a);
- (b) that the Appeals Chamber finds that Trial Chamber II's conclusions on the substance matter were erroneous in law and in fact; to reverse the decision accordingly, pursuant to Article 83(2)(a), and to find that the case before the ICC against Germain Katanga is inadmissible.

Respectfully submitted,



David HOOPER

Dated this 22 June 2009

At London