

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

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

Date: 22 March 2011

**TRIAL CHAMBER II**

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

**SITUATION IN THE DEMOCRATIC REPUBLIC OF CONGO**

**IN THE CASE OF**

***THE PROSECUTOR v. GERMAIN KATANGA and MATHIEU NGUDJOLO CHUI***

**Public Document**

**Decision on Defence Request for Leave to Submit a Reply**

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  
Mr Eric MacDonald

**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 Fidel Nsita Luvengika  
Mr Jean-Louis Gilissen

**Legal Representatives of the Applicants**

**Unrepresented Victims**

**Unrepresented Applicants  
(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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**Registrar**

Ms Silvana Arbia  
**Deputy Registrar**

**Counsel Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

**Other**

Trial Chamber II of the International Criminal Court (“the Chamber” and “the Court”), pursuant to Articles 64 and Regulation 24 of the Regulations of the Court, decides as follows:

1. On 14 March 2011, the Defence for Mr. Katanga filed its *Request for Defence Witnesses to Visit Germain Katanga in Prison after Completion of their Testimony*.<sup>1</sup>
2. On 18 March 2011, the Prosecution responded to this Request.<sup>2</sup>
3. On the same day, the Registry submitted its observations on the matter.<sup>3</sup>
4. On 21 March 2011, the Defence for Mr. Katanga submitted a request for leave to reply to the Prosecution’s response and the Registry’s observations.<sup>4</sup> The Defence argues that it has not had the opportunity to address new issues arising from the Prosecution’s Response, as well as the Registry’s Observations.<sup>5</sup>
5. With regard to the Registry’s Observations, the Defence mentions the following issues:
  1. The impact on the psychological state of the Defence witnesses.
  2. The practice of the *ad hoc* Tribunals in relation to visits of accused persons by witnesses called on their behalf.
  3. The scheduled dates of departure of the witnesses that wish to see Mr. Katanga and their ability to visit him prior to their departure.<sup>6</sup>

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<sup>1</sup> ICC-01/04-01/07-2773 (hereinafter ‘Request’)

<sup>2</sup> “Réponse de l’Accusation à la Defence Request for Defence Witnesses to Visit Germain Katanga in Prison after Completion of their Testimony (ICC-01/04-01/07-2773, 14 mars 2011)”, 18 March 2011, ICC-01/04-01/07-2779 (hereinafter ‘Response’)

<sup>3</sup> “Observations du Greffe s’agissant de la ‘Defence Request for Defence Witnesses to Visit Germain Katanga in Prison after Completion of Their Testimony (ICC-01/04-01/07-2773)”, 18 March 2011, ICC-01/04-01/07-2784 (hereinafter ‘Observations’)

<sup>4</sup> “Defence Request for Leave to Reply to *Observations du Greffe s’agissant de la ‘Defence Request for Defence Witnesses to Visit Germain Katanga in Prison after Completion of their Testimony (ICC-01/04-01/07-2773)*, of 14 March 2011 (ICC-01/04-01/07-2784-conf) and to *Réponse de l’Accusation à la Defence Request for Defence Witnesses to Visit Germain Katanga in Prison after Completion of their Testimony (ICC-01/04-01/07-2773, 14 mars 2011)*, of 18 March 2011, ICC-01/04-01/07-2779”, 21 March 2011, ICC-01/04-01/07-2789-Conf

<sup>5</sup> ICC-01/04-01/07-2789-Conf, para 6

<sup>6</sup> *Ibid.*, para 4

6. The Chamber considers that with regard to these three points, it is sufficiently informed to reach a decision.

7. The Defence also wants to comment on the “proper interpretation” of the Chamber’s *Décision relative à la requête du Bureau du Procureur aux fins de communiquer avec le témoin P-250* of 18 February 2011, which is mentioned by both the Prosecutor and the Registry.<sup>7</sup>

8. In this regard, the Chamber notes that this is not a new issue. In fact, when the question of contact between witnesses and the parties calling them was raised before this Chamber, the Defence for Mr. Katanga did not avail itself of the opportunity to submit observations on the question, despite having been invited to do so by the Chamber.<sup>8</sup> The Defence also failed to mention the Chamber’s decision of 18 February 2011 in its Request, even though the aforementioned decision is drafted in general terms and adopts the established practice of Trial Chamber I.<sup>9</sup>

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<sup>7</sup> ICC-01/04-01/07-2711-Conf

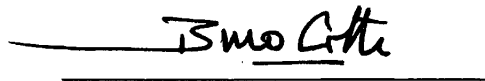
<sup>8</sup> E-mail message sent by a Legal Officer of Trial Chamber II on 19 January 2011 at 9h25

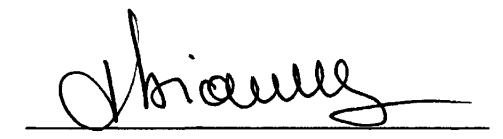
<sup>9</sup> ICC-01/04-01/07-2711-Conf, para 10

**FOR THESE REASONS, THE CHAMBER**

**REJECTS** the request for leave to submit a reply.

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

  
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**Judge Bruno Cotte**  
**Presiding Judge**

  
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**Judge Fatoumata Dembele Diarra**

  
\_\_\_\_\_  
**Judge Christine Van den Wyngaert**

Dated this 22 March 2011

At The Hague, The Netherlands