



Original: **French**

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

Date: **7 April 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 THE CONGO
IN THE CASE OF
THE PROSECUTOR *v.* GERMAIN KATANGA AND MATHIEU NGUDJOLO CHUI**

Public Document

Decision on the motion filed by the Queen's University Belfast Human Rights Centre for leave to submit an *amicus curiae* brief on the definition of crimes of sexual slavery

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

Defence Support Section

Victims and Witnesses Unit

**Victims Participation and Reparations
 Section**

TRIAL CHAMBER II of the International Criminal Court (“the Chamber” and “the Court” respectively), acting pursuant to rule 103 of the Rules of Procedure and Evidence (“the Rules”), decides the following.

1. On 30 June 2009, the Queen’s University Belfast Human Rights Centre (“the QUB Human Rights Centre”) moved the Chamber under rule 103 of the Rules for leave to submit, as *amicus curiae*, written observations on the definition of crimes of sexual slavery. The QUB Human Rights Centre wishes to make a submission on the parameters of the common Element in paragraph 1 of articles 7(1)(g) and 8(2)(b)(xxii) of the Elements of Crimes (“the Motion”).¹

2. Only the Defence for Germain Katanga exercised its right to respond. It objected to the Motion,² arguing that the submission of observations by the QUB Human Rights Centre is neither desirable nor appropriate at this stage of the proceedings. It stressed that, while it respects academic debate, the legal parameters of common Element 1 of the Elements of Crimes of sexual slavery have not been challenged by any of the parties or participants.³

3. The Chamber recalls that rule 103(1) of the Rules provides that at “any stage of the proceedings, a Chamber may, if it considers it desirable for the proper determination of the case, invite or grant leave to a State, organization or person to submit, in writing or orally, any observation on any issue that the Chamber deems appropriate.”

4. To rule on an application for leave to participate as *amicus curiae*, the Chamber must determine, at its discretion, whether the observations which the applicant

¹ Queen's University Belfast Human Rights Centre, “Motion for leave to submit as *amicus curiae* on observations related to sexual slavery”, 30 June 2009, ICC-01/04-01/07-1257 and ICC-01/04-01/07-1257-Anx.

² Defence for Germain Katanga, “Defence Objection to the Motion for leave to submit as *amicus curiae* observations related to sexual slavery submitted by Queen’s University Belfast Human Rights Centre”, 22 July 2009, ICC-01/04-01/07-1327.

³ *Ibid.*, p. 4.

proposes to submit will be useful for a proper determination of the case.⁴ The Chamber must therefore be satisfied that the QUB Human Rights Centre's proposals may assist the Chamber in ruling on the case.⁵

5. The Chamber has read the submitted observations on the crime of sexual slavery. It notes that the observations emphasise the difficulties of interpretation that the Chamber might face in its analysis of common material Element 1 of articles 7(1)(g)-2 and 8(2)(b)(xxii)-2 of the Elements of Crimes, particularly in the light of the clarifications provided in the footnote to common paragraph 1.

6. However, at the current stage of the proceedings, the Chamber does not consider that the QUB Human Rights Centre's submission would be an indispensable aid to the Chamber, or that it would provide information that otherwise would not be available to the Chamber. Accordingly, the Chamber is not required, for the proper determination of the case, to grant the motion submitted by this academic institution.

⁴ Trial Chamber I, *The Prosecutor v. Thomas Lubanga Dyilo, Decision Inviting Observations from the Special Representative of the Secretary General of the United Nations for Children and Armed Conflict*, 18 February 2008, ICC-01/04-01/06-1175, para. 7.

⁵ Appeals Chamber, *The Prosecutor v. Thomas Lubanga Dyilo, Decision on "Motion for Leave to File Proposed Amicus Curiae Submission of the International Criminal Bar Pursuant to Rule 103 of the Rules of Procedure and Evidence"*, 22 April 2008, ICC-01/04-01/06-1289, para. 8; Appeals Chamber, *The Prosecutor v. Jean-Pierre Bemba Gombo, Decision on the application of 14 September 2009 2009 for participation as an amicus curiae*, 9 November 2009, ICC-01/05-01/08-602, para. 11.

FOR THESE REASONS, the Chamber

REJECTS the Motion.

Done in 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 7 April 2011

At The Hague, The Netherlands