

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/04-01/07
Date: 17 October 2012

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
URGENT**

Order in relation to the request by duty counsel of DRC-D02-P-0236,
DRC-D02-P-0228 and DRC-D02-P-0350 to be transferred to hearings
before the Court of Appeals of The Hague

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

The Office of the Prosecutor

Ms Fatou Bensouda

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 for Participation/Reparation

States Representatives

Kingdom of The Netherlands

The Office of Public Counsel for the Defence

REGISTRY

Registrar

Ms Silvana Arbia

Mr Marc Dubuisson

Victims and Witnesses Unit

Counsel Support Section

Others

Mr. Ghislain Mabanga

Trial Chamber II of the International Criminal Court (“the Chamber” and “the Court” respectively), acting pursuant to articles 21 and 93(7) of the Rome Statute (“Statute”), rule 192 of the Rules of Procedure and Evidence (“Rules”), and article 44 of the Headquarters Agreement between the International Criminal Court and the host State (“Headquarters Agreement”), decides as follows:

I. PROCEDURAL HISTORY

1. For a brief procedural overview of the antecedents of this order, the Chamber refers to the procedural history contained in paragraphs 1 to 4 of its Order of 7 September 2012.¹
2. On 6 September 2012, Duty Counsel for DRC-D02-P-0236, DRC-D02-P-0228 and DRC-D02-P-0350 (“detained witnesses”) seized the Chamber with a motion to request the host State to transport them to a hearing to be held before the District Court of The Hague on 12 September 2012, on the basis of article 44(3) of the Headquarters Agreement.²
3. On 7 September 2012, the Chamber issued an order containing such request.³
4. The detained witnesses were duly transported to the hearing on 12 September 2012 and the District Court of The Hague rendered its decision on 26 September 2012. It is against this decision that the Host State has now launched an appeal, in the context of which two hearings have been scheduled on 23 October 2012 and 19 November 2012 before the Court of Appeals in The Hague.

¹ “Ordonnance protant sur la requête du conseil de permanence relative au transfèrement des témoins DRC-D02-P-0236, DRC-D02-P-0228, et DRC-D02-P-0350 devant la Cour de district de la Haye (Article 44-3 de l’Accord de siège)”, 7 September 2012, ICC-01/04-01/07-3314

² “Requête tendant à obtenir demande de transport des témoins DRC-D02-P-0236, DRC-D02-P-0228, et DRC-D02-P-0350 devant la Cour de district de la Haye (article 44-3 de l’Accord de siège)”, 6 September 2012, ICC-01/04-01/07-3313

³ ICC-01/04-01/07-3314

5. On 17 October 2012, Duty Counsel of the detained witnesses filed another motion asking the Court to request the Host State to transport the detained witnesses to the said hearings.⁴

II. ANALYSIS

6. The Chamber refers to its analysis contained in paragraphs 6 to 9 of its Order of 7 September 2012.⁵ For the same reasons, the Chamber finds it appropriate to request the Host State to cooperate with the transport of the detained witnesses to all future hearings in the current proceedings, if the detained witnesses express the wish to be present at such hearings and if such presence is permitted by the Dutch court in question.

⁴ “Requête tendant à obtenir demande de transport des témoins DRC-D02-P-0236, DRC-D02-P-0228, et DRC-D02-P-0350 devant la Cour d’appel de la Haye (article 44-3 de l’Accord de siège)”, 17 October 2012, ICC-01/04-01/07-3317

⁵ ICC-01/04-01/07-3314

**FOR THESE REASONS,
THE CHAMBER,**

REQUESTS the Host State to lend its support for the transport of the detained witnesses to all future hearings in the current proceedings before its jurisdiction, in accordance with paragraph 6 of this order.

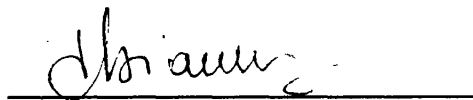
ORDERS the Registry to consult with the Host State in order to make the necessary practical arrangements and to report back to the Chamber after each hearing.

ORDERS the Registry to ensure that counsel for the detained witnesses who are called to appear before the Dutch Courts are able to communicate with their clients in relation to any matters arising in relation to the implementation of the transport and surveillance

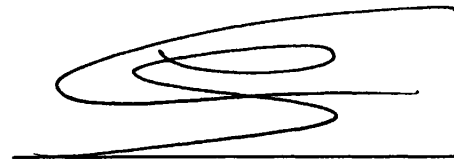
Done in both English and French, the English version being authoritative.



**Judge Bruno Cotte
Presiding Judge**



Judge Fatoumata Dembele Diarra



Judge Christine Van den Wyngaert

Dated this 17 October 2012

At The Hague, The Netherlands