



Original: English

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

Date: 4 December 2008

TRIAL CHAMBER II

Before: Judge Bruno Cotte , Presiding Judge
Judge Fatoumata Dembele Diarra
Judge Fumiko Saiga

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

Public Document

Defence observations on the detention of Mr Germain Katanga

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 Hervé Diakiese
Mr Jean-Christostome Mulamba
Nsokoloni
Mr Joseph Keta
Mr J.L. Gilissen

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

Registrar

Ms Silvana Arbia

Defence Support Section

Victims and Witnesses Unit

Detention Section

Victims Participation and Reparations Section

Other

1. The Defence for Germain Katanga does not, at present, apply for provisional release for Mr. Katanga. At this stage, the Defence has no particular observations to make regarding Mr. Katanga's imprisonment but simply reiterates its observations made in paragraph 2 of its *Observations on the Review of Germain Katanga's Pre-Trial Detention (Article 60 (3) of the Statute and Rule 118 of the Rules of Procedure and Evidence)*,¹ filed before the Pre-Trial Chamber on 8 August 2008. The Defence does, however, wish to make two observations in response to the submissions of some of the victim representatives.
2. Firstly, two victim representatives refer to Mr. Katanga's decision not to appear for part of the confirmation hearing as a sign of his lack of cooperation.² The Defence has already indicated that Mr. Katanga's absence was not through disrespect for the Court or any deliberate attempt to frustrate court proceedings but caused by "the deep dissatisfaction and distress felt by him at that time due to prolonged separation from his family."³ The victim representatives do not explain the relevance of Mr. Katanga exercising his right not to be present at the confirmation proceedings to the issue of whether provisional detention remains legitimate and necessary in the circumstances. Mr Katanga was present and fully cooperative at the recent status conference.
3. The Defence objects to the sweeping and unsubstantiated statements made regarding an alleged link between Mr Katanga and the recent appearance of rebel groups in Ituri.⁴ These prejudicial statements are made with no evidentiary basis. Victim representatives are not authorised to give evidence personally. The Defence submits that they should exercise great care when making statements to the prejudice of the accused. Mere rumours reported in news reports, if any, about any link between former militia groups, such as FNI and FRPI, and the current FPJC are completely inadequate to justify making such highly incriminating statements. Mr Katanga has been in The Hague for over a year and has had limited access to visitors. His phone calls are monitored. It is difficult to see how he could maintain relations with rebels in Ituri in those circumstances.
4. The Defence urges the Trial Chamber to order the victim representatives to refrain in future from making such highly prejudicial statements without the proper evidentiary

¹ ICC-01/04-01/07-701.

² ICC-01/04-01/07-768, para. 10; ICC-01/04-01/07-774, para. 5.

³ ICC-01-04-01-07-701, para. 6; ICC-01/04-01/07-T-45-ENG, page 2 lines 6-16; ICC-01/04-01/07-T-46-ENG, page 9 line 17 – page 11 line 6.

⁴ ICC-01/04-01/07-768, para. 15; ICC-01/04-01/07-774, paras 15-16; ICC-01/04-01/07-766, para. 12.

basis for doing so. If the victim representatives are presently in possession of such evidence the Chamber is requested to order them to disclose it.



David HOOPER

Lead Counsel for Mr Germain Katanga

Dated this 4th of December 2008

At London