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TRIAL CHAMBER II

Before: Judge Bruno Cotte , Presiding Judge
Judge Fatoumata Dembele Diarra
Judge Hans-Peter Kaul

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

Public Document

**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**

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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Victims and Witnesses Unit

Detention Section

Victims Participation and Reparations Section

Other

1. On 30 June 2009, Queen's University Belfast Human Rights Centre ("the Applicant") applied for leave to submit observations as *amicus curiae* pursuant to Rule 103 of the Rules of Procedure and Evidence ("Rules"), 'to aid in the proper determination of the crimes of sexual slavery [in the current case] by considering the legal parameters of common Elements 1 of the Elements of crimes of sexual slavery.' ("the Motion")¹ In the event that leave is granted, the proposed *amicus curiae* brief is attached to the motion ("the Brief").² The Defence for Mr Katanga ("the Defence") respectfully submits that the Applicant's Motion should be denied.
2. Rule 103 of the Rules, 'Amicus curiae and other forms of submission', provides:
 1. 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.
 2. The Prosecutor and the defence shall have the opportunity to respond to the observations submitted under sub-rule 1.
 3. A written observation submitted under sub-rule 1 shall be filed with the Registrar, who shall provide copies to the Prosecutor and the defence. The Chamber shall determine what time limits shall apply to the filing of such observations.
3. The Defence submits that the main criterion to decide upon the Applicant's Motion is whether its submissions will assist the Chamber in the proper determination of the case; they should be both desirable and appropriate.³ The matters to which the Applicant refers should be related to an issue currently before the Chamber.⁴ The

¹ ICC-01/04-01/07-1257, Motion for leave to submit as *amicus curiae* on observations related to sexual slavery submitted by Queen's University Belfast Human Rights Centre, para. 14.

² ICC-01/04-01/07-1257-Anx.

³ ICC-01/04-373, Decision on the Request submitted pursuant to rule 103(1) of the Rules of Procedure and Evidence, 17 August 2007.

Para 4: "Furthermore, it is the view of the Chamber that the rationale for admitting *amicus curiae* in the proceedings is to have the opportunity to get experts' information on relevant issues of legal interest for the proceedings in order to provide the Chamber with a contribution to the proper determination of the case."

Para 6: "The second point raised by Women's Initiatives relates to the criteria for determining victim status. The Chamber observes that the position of Women's Initiatives in the present request is not acting as a legal representative of victims admitted to participate in the proceedings at the investigation stage of the Situation in the DRC but rather acting as an *amicus curiae*. The Chamber therefore deems this issue as not appropriate at the present stage of the proceedings."

ICC-01/04-01/06-1175, *Prosecutor v. Lubanga*, (TC) "Decision Inviting Observations from the Special Representative of the Secretary General of the United Nations for Children and Armed Conflict", 18 February 2008, para. 7: "The central matter to be determined on this application is whether the Chamber will be assisted in its "proper determination" of the issues in the case by receiving the particular assistance that can be supplied by the Special Representative. [...]"

ICC-02/04-01/05-333, *Prosecutor v. Kony & al.*, (PTC) "Decision on application for leave to submit observations under Rule 103", 5 November 2008:

Para 9: "CONSIDERING that the issues indicated by the Applicants might have a bearing on the determinations to be taken by the Chamber in the context of the Proceedings;"

Para 10: "CONSIDERING that, accordingly, the Chamber is of the view that granting the Applicants leave to file submissions on the proposed issues appears desirable and appropriate;"

⁴ ICC-02/05-185, (PTC) Decision on Application under Rule 103, 04 February 2009, paras 32-33: "[...] the Chamber concludes that the matters to which the Application refers are unrelated to any issue currently before

desirability and appropriateness of the submissions need to be assessed against the duty to ensure expeditious proceedings.⁵ The use of the word ‘may’ implies that the Chamber has a margin of discretion.⁶

4. The Defence submits that the Applicant’s Brief is neither desirable nor appropriate for the proper determination of the case at this stage of the proceedings. While the Pre-Trial Chamber has confirmed the charges of sexual slavery as a war crime and a crime against humanity,⁷ the legal parameters of common Element 1 of the Elements of crimes of sexual slavery are not currently challenged by any of the parties or participants. While the Defence is respectful of academic debate, the admission of academic articles in this manner is inappropriate. The Court has already denied the observations of external organisations providing information of a general nature and/or analysis of a legal nature.⁸ Those seeking to be appointed *amicus curiae* should demonstrate a particular need for the admission of their submissions or a nexus with the case, or the Court will be overwhelmed by applications. The four individuals from the Queen’s University Belfast Human Rights Centre who claim expertise in the area of the crimes of sexual slavery do not appear to be particularly specialised in this field and do no more than express a personal opinion on the interpretation of law. Their legitimacy to submit an *amicus curiae* in the current proceedings has not been established. The Court should avoid becoming a depository for academic opinions in this way. Such opinions are better published in the usual manner, in periodicals or on the web. The Defence needs to focus its time and resources reviewing disclosed

the Chamber. As a result, the Chamber considers that the first and foremost criterion for granting leave pursuant to rule 103 of the Rules has not been met.”

See also ICC-01/04-01/06-1175, *Prosecutor v. Lubanga*, (TC) “Decision Inviting Observations from the Special Representative of the Secretary General of the United Nations for Children and Armed Conflict”, 18 February 2008, paras 9-10.

⁵ ICC-02/04-01/05-333, *Prosecutor v. Kony & al.*, (PTC) “Decision on application for leave to submit observations under Rule 103”, 5 November 2008, para. 11; ICC-02/04-01/05-342, *Prosecutor v. Kony & al.*, (PTC) “Decision on application for leave to submit observations under Rule 103 dated 7 November 2008”, 10 November 2008, para. 9; ICC-01/05-01/08-401, *Prosecutor v. Bemba*, (PTC) “Decision on Application for Leave to Submit Amicus Curiae Observations Pursuant to Rule 103 of the Rules of Procedure and Evidence”, 9 April 2009, para. 15; ICC-01/05-01/08-421, *The Prosecutor v. Jean-Pierre BEMBA GOMBO*, (PTC) Decision on application for leave to submit amicus curiae observations Pursuant to Rule 103 of the Rules of Procedure and Evidence, 29 May 2009, para. 6.

⁶ ICC-01/04-01/06-1289, *Prosecutor v. Lubanga*, (AC) “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, para. 8.

⁷ ICC-01/04-01/07-716-Conf, Decision on the confirmation of charges, 26 September 2008.

⁸ ICC-02/04-01/05-333, *Prosecutor v. Kony & al.*, (PTC) “Decision on application for leave to submit observations under Rule 103”, 5 November 2008, para. 14; ICC-02/04-01/05-342, *Prosecutor v. Kony & al.*, (PTC) “Decision on application for leave to submit observations under Rule 103 dated 7 November 2008”, 10 November 2008, paras 10-13.

material or issues raised by the parties rather than responding to extraneous legal filings.

5. The Defence submits that there is no reason to suppose, at this stage of the proceedings, that particular legal issues concerning any of the charges in the case, will not be appropriately addressed by the parties themselves, and the Court thereby assisted, in the course of the trial.
6. For the foregoing reasons, the Defence respectfully prays the Chamber to deny the Applicant's Motion.

Respectfully submitted,



David HOOPER

Dated this 22 July 2009

At The Hague