



Original: English

No.: ICC-01/04-01/07
Date: 15 February 2010

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***

URGENT Public

Defence Request for Leave to Reply to *Réponse conjointe des Représentants légaux des victimes à la demande de la Défense de Germain Katanga d'être autorisée à interjeter appel de la décision de la Chambre relative aux modalités de participation des victimes*

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

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Mr Eric Macdonald, Senior Trial Lawyer

Counsel for the Defence for Germain Katanga

Mr David Hooper
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Counsel for the Defence for Mathieu Ngudjolo Chui

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Mr Jean-Pierre Fofé Djofia Malewa

Legal Representatives of Victims

Mr Jean-Louis Gilissen
Mr Fidel Nsita Luvengika

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

Request for Leave to Reply

1. The Defence for Mr. Katanga (“Defence”) seeks leave to reply to *Réponse conjointe des Représentants légaux des victimes à la demande de la Défense de Germain Katanga d’être autorisée à interjeter appel de la décision de la Chambre relative aux modalités de participation des victimes*,¹ which was filed by the victim representatives on 4 February 2010.
2. The Defence requests leave to reply because the victim representatives raise a matter which was not discussed in the Defence’s request for leave to appeal the *Décision relative aux modalités de participation des victimes au stade des débats sur le fond (ICC-01/04-01/07-1788)*.² This new matter arises from their request to dismiss this request for leave to appeal on the ground that the Defence had not sought leave to appeal the earlier *Directions for the conduct of the proceedings and testimony in accordance with rule 140*,³ rendered on 20 November 2009. In doing so, the victim representatives are requesting the Chamber to raise a procedural bar to submitting a request for leave to appeal this Decision. This is a new matter that warrants further observations from the Defence.
3. It is submitted that the points raised by the Defence in its proposed appeal go beyond the Directions issued on 20 November 2009 which are more general and consequently less pointed in their terms of application than the decision under challenge. Accordingly, the Defence should not be prevented from appealing the Decision specifically addressing the modalities of victim participation.
4. The Defence further submits that the proposed procedural bar is not founded on any rule, regulation or provision in the statute. There is also no precedent for it. In addition, the proposition affects the fairness of the proceedings because it proposes a bar to the right of the accused to appeal decisions which are in error. It would not be fair to bar an accused from appealing a decision on the mere ground that there has been a preceding decision dealing, in part, with similar matters. That would mean that the accused would lose his right to appeal the Decision in issue, even if it were in error. Thus, this is an issue that is not only new to the present proceedings, it also has the potential to affect more generally the right of the accused to appeal.

¹ ICC-01/04-01/07-1841.

² ICC-01/04-01/07-1815.

³ ICC-01/04-01/07-1665, corrigendum filed on 1 December 2009.

5. Accordingly, given the importance of this issue and its far-reaching consequences, the Defence submits that further observations from the Defence before the Chamber issues its decision are clearly warranted.

Relief Sought

The Defence prays that the Trial Chamber grants it leave to reply to *Réponse conjointe des Représentants légaux des victimes à la demande de la Défense de Germain Katanga d'être autorisée à interjeter appel de la décision de la Chambre relative aux modalités de participation des victimes*.

Respectfully submitted,



David HOOPER

Dated this 15th February 2010

At The Hague, Netherlands