

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: **English**

No.: ICC-01/04-01/07
Date: 10 September 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***

CONFIDENTIAL

**URGENT Defence Request to be authorised to use pictures of Prosecution
witnesses in the course of its investigations**

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

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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

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

1. The Defence for Mr Katanga respectfully requests leave from the Chamber to show the pictures of incriminating witnesses 249,¹ 268² and 353³ in the course of its investigations, in order to be able to identify them properly, pursuant to the *Décision sur la requête de la Défense de Germain Katanga relative à la communication et l'utilisation de photographies de témoins protégés*⁴. The Defence submits the following reasons:
2. As noted by the Chamber in its Decision on the Prosecution Motion for leave to disclose and add the investigator's report concerning Witness P-268 to the List of Incriminating Evidence,⁵ the quality of civilian or soldier of Witness 268 is in question. It is the prosecution case that the person identified by Witness 323 as a soldier is not witness 268. This must be clarified. The name of Witness 268 appears to be common and only a photo will allow the Defence to ensure that the subject is accurately identified. Further, Defence investigations on Witness 268 are justified and urgent in light of the Chamber's Decision to recall Witness 323, who will be questioned about Witness 268.
3. Regarding Witness 249, there appeared to be some confusion about her name in the course of her testimony. The Defence encounters a problem of identification with her also, and the names used appear to be common, as demonstrated by Witness 132⁶.
4. The identity and unredacted transcripts of Witness 353 have been recently disclosed. The redactions appear on examination, in the Defence submission, to have been excessive and certainly prevented any purposeful investigation into the account provided. Also, the Defence has little time to make investigations. The disclosure was made after the recent mission by to DRC by members of the team and a further mission will not be possible before the time this witness is due to give testimony. The Defence needs to have a photo of Witness 353 to conduct investigations, given the

¹ DRC-OTP-1024-0128.

² DRC-OTP-1055-0196.

³ DRC-OTP-1055-0183.

⁴ ICC-01/04-01/07-2148:

9. La Chambre est d'avis que la présentation de la photographie d'un témoin protégé à des tiers doit faire préalablement l'objet d'une demande d'autorisation motivée, lorsque l'identification d'un témoin protégé se révèle particulièrement difficile sur le terrain. [...] La Chambre a toutefois bien conscience des impératifs de célérité de ces enquêtes ce qui, si elle estime devoir le faire, la conduira à consulter, en urgence, l'Unité. Une telle démarche lui paraît préférable à l'obtention préalable du consentement du témoin concerné, l'information de ce dernier pouvant, en revanche, être assurée par l'Unité si, ayant été consultée, celle-ci estime que cela s'impose. [...]

15. Enfin, elle invite la Défense de Germain Katanga à la saisir, si cela s'avère indispensable, d'une requête spécifique aux fins d'une éventuelle utilisation de leurs photographies en ce qui concerne les autres témoins du Procureur.

⁵ ICC-01/04-01/07-2325-Conf.

⁶ ICC-01/04-01/07-T-141-CONF-ENG CT (14/05/10), p. 60.

nature of the account she has provided and the probability, given that account, that she will only be recognised in some quarters by a photo rather than by name. For instance, she says that she does not know the name of the combatants who kept her as a 'wife' for two months; she also says that she does not know the name of the woman who helped her to escape.

5. For the reasons above, the Defence submits that the difficulties of identifying Witnesses 249, 268 and 353 other than by photo justifies the Defence being authorized to show photos of the witnesses. The pictures will be among a panel of other pictures prepared by the Defence and agreed by the VWU, and which will be in the possession of any investigating party in the course of Defence investigations.

Respectfully submitted,



David HOOPER Q.C.

Dated this 10th September 2010

At The Hague