

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: **English**

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

Date: 5 October 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

**Defence Response to the Requête de l'Accusation aux fins de prendre une
déclaration additionnelle du témoin P-28**

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
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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
Ms Silvana Arbia

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

1. On 27 September 2010, the Prosecution filed the *Requête de l'Accusation aux fins de prendre une déclaration additionnelle du témoin P-28*.¹ The Prosecution requests leave to interview P-28 on incriminating and potentially exonerating issues, following information obtained on 6 and 7 September 2010 from P-28 and his lawyer, Ms Marie-Louise Mbida Kanse Tah.²
2. P-28 was due to testify at the end of last year. He arrived in The Hague in November 2009 and entered the process of witness familiarization.³ His testimony was postponed. According to the Prosecution's submission, pursuant to an email received *ex parte* from the Unit on 6 January 2010, "1. *La Chambre n'entend pas, en l'état, prononcer la levée du processus de familiarisation qui a débutée en novembre dernier lors de l'arrivée du témoin 28 à La Haye. Elle estime que le prononcé de la levée est pour l'instant prématuré puisque le report, voire le retrait, de la déposition de ce témoin demeurent en suspens. C'est la raison pour laquelle la Chambre souhaite soumettre à son autorisation tout contact futur entre le témoin et le Procureur.* »⁴
3. The Prosecution only recently confirmed, on 8 September 2010, that it will call P-28.⁵
4. The Prosecution states that it is ready to interview P-28 shortly, in order to disclose his new statement to the Defence as soon as possible.⁶
5. The Prosecution submits that it reserves the right to disclose this statement either as incriminating evidence or pursuant to Rule 77 of the Rules.⁷
6. The Defence for Mr Katanga ("Defence") agrees that it would, in the particular circumstances, be in the interest of a fair and expeditious trial for the Prosecution to – re-interview P-28 before his testimony in Court. If P-28 were to disclose new information during his testimony, for which the Defence would have had no notice, this may lead to the Defence having to make further investigations and the possible recall of P-28. Therefore, the Defence supports the Prosecution request to interview P-28 and to disclose his statement to the Defence as soon as possible. In light of the current particular circumstances, where the witness has already come to The Hague, and where he was at some point reluctant to testify, the Defence requests that the interview of P-28 be audio-recorded and transcribed and that the audio record be

¹ ICC-01/04-01/07-2406-Conf-Red.

² ICC-01/04-01/07-2406-Conf-Red, paras 1, 4, 7.

³ Cf. ICC-01/04-01/07-2406-Conf-Red, fn. 2, and ICC-01/04-01/07-T-88-CONF-ENG ET 01-12-2009

⁴ ICC-01/04-01/07-2406-Conf-Red, fn. 2.

⁵ ICC-01/04-01/07-T-185.

⁶ ICC-01/04-01/07-2406-Conf-Red, para. 13.

⁷ ICC-01/04-01/07-2406-Conf-Red, para. 14.

disclosed to the Defence at the same time as the signed statement, pursuant to Rule 77, in accordance with the *Décision sur la Requête de la Défense de Germain Katanga tendant à obtenir la communication de l'enregistrement d'un entretien avec le témoin P-219*.⁸

7. Regarding the mode of disclosure of the statement, as incriminating evidence or pursuant to Rule 77, the Defence maintains that it should be disclosed as soon as possible pursuant to Rule 77. If the Prosecution wishes to add it to its list of incriminating evidence, it will have to follow the usual procedure, i.e. to show good cause pursuant to Regulation 35 of the Regulations of the Court, given that the initial deadline to disclose incriminating material to the Defence was the 31st of January 2009.
8. Once the new statement will be disclosed, the Defence reserves its right to request further time to investigate any new matters that merit inquiry before the testimony of P-28.

Respectfully submitted,



David HOOPER Q.C.

Dated this 5 October 2010

At The Hague

⁸ ICC-01/04-01/07-2309-Red, paras 3-4, 30 August 2010.