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

Date: **14 March 2011**

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***

Public

**Defence Request for Defence Witnesses to Visit Germain Katanga in Prison after
Completion of their Testimony**

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 Q.C.
Mr Andreas O'Shea

Counsel for the Defence for Mathieu Ngudjolo Chui

Mr Jean-Pierre Kilenda Kakengi Basila
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

Ms Maria Luisa Martinod Jacome

Detention Section

Anders Backman

Victims Participation and Reparations Section

Other

1. The Defence for Mr. Germain Katanga ('Defence') requests the Chamber to permit its Defence witnesses, once they have concluded their evidence, to visit Mr. Germain Katanga at the Detention Unit in The Hague. This request is made in order to facilitate such visits.
2. Mr. Katanga has the right to receive visits pursuant to Regulation 100 (1) of the Court, and to Regulations 179-185 of the Registry. The Registrar has the discretion to order a monitored visit (Regulation 184).
3. Such visits are of particular importance for Mr Katanga, given that he has been detained for six years. Three years of that time was spent detained in Kinshasa with little or no opportunity for visits from people based in Ituri. The past three years have been spent in The Hague with obviously very limited contact with family or acquaintances. This constitutes a protracted period of relative isolation. Given that the witnesses have a unique opportunity to visit him, should they wish to do so, it is only right and fair that they, and he, be permitted such visits.
4. There is a general authorisation for a detained person to receive visits pursuant to Regulation 100 (1) of the Court.¹ The Defence has been informed by the relevant authority at the Detention Unit that applications by the witnesses to visit Germain Katanga will be treated in the same manner as other visitor applications. This is consistent with the practice at the *ad hoc* tribunals where defence witnesses can visit the detained person², once their testimony is completed, following the same procedure as other visitors.³
5. The Defence notes that applications to visit detained persons are a matter for the Registry⁴. The Defence nevertheless takes this opportunity, as a matter of courtesy and good practice, to inform the Chamber of its intention to apply for such visits, and to

¹ Regulation 100 (Visits) ("1. A detained person shall be entitled to receive visits"). See also, for example, Regulation 179 (Application forms for visits) of the Regulations of the Registry, in relevant part: "1. All visitors, other than counsel, diplomatic or consular representatives, representatives of the independent inspecting authority, or officers of the Court, shall first apply to the Registrar for permission to visit a detained person. [...]"

² ICTY Rule 61(a) of the Rules of Detention provides that detainees shall be entitled to receive visits from family, friends and others, which encompasses witnesses.²

³ The ICTY Application form for visiting an accused at the UNDU foresees that a person who testified before the ICTY can be a visitor, as it contains the field of whether the person was a witness in proceedings before the ICTY: "Have you ever been a witness in any proceedings before the ICTY, or do you expect to be called as a witness in any proceedings pending before the ICTY? Yes ☐ No ☐ If yes, please specify which case and when: [...]". ICTY, Application for Permission to Visit a Detainee at the ICTY UN Detention Unit, p. 1-2.

⁴ See Regulation 179 (1) of the Regulations of the Registry.

seek the agreement of the Chamber that such visits can take place. The practice at the *ad hoc* tribunals' is that requests for visits are made directly to Chambers. In the experience of the Defence this is done by an oral application at the conclusion of each defence witness's evidence⁵. This has the benefit of allowing the chamber to have some control over visits by witnesses.

6. The Defence requests the Chamber to confirm the position that visits by witnesses, that have concluded their testimony, may take place. The Defence is willing to follow the practice indicated above and therefore to make a specific, oral application on behalf of each witness that wishes to visit the Accused at the conclusion of that witness's testimony.
7. The Defence anticipates that it may not be possible or practicable to comply with Registry Regulation 179, specifically the requirement that the visitor apply 15 calendar days before the visit.⁶ The applicant may not have access to the form, may not speak the language in which the form is presented, and generally, given the circumstances of DRC, may not be in a position to complete such a form giving fifteen days notice. The Defence consequently seeks to make the application on behalf of each witness. The Defence has provided the Detention Unit authorities with a list of the Defence witnesses that wish or may wish to visit Germain Katanga. Also, the visitor or the Defence may not be in possession of all the required information, such as passport details. At present only two witnesses have a passport and the others may only receive a passport shortly before leaving for The Hague. For that reason the Defence requests the Chamber to agree that such a situation constitutes an exceptional circumstance, under Regulation 179 (2), allowing for the waiver of the 15 days rule. The passport details will, of course, be provided as soon as the Defence is provided with that information.

⁵ For example, at the ICTR, oral requests for a visit by a defence witness are routinely made and granted after the witness' testimony.

⁶ Regulation 179 (2): Other than in exceptional circumstances, the application shall be made in writing in one of the working languages of the Court using the approved standard form, to be submitted not later than 15 calendar days prior to the day of the proposed visit. The applicant shall attach a recent passport-size photograph to the standard form.

Relief Sought

The Defence requests the Chamber to confirm that visits by Defence witnesses, once they have concluded their testimony, may take place, and further that all the witnesses' circumstances constitute an exceptional circumstance within the meaning of Registry Regulation 179 (2) allowing for the waiver of the 15 days rule.

Respectfully submitted,



David HOOPER Q.C.

Dated this 14th day of March 2011

At Kinshasa