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

Date: 18 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 Document

Urgent Defence Request for Clarification

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

Detention Section

**Victims Participation and Reparations
Section**

Other

1. On 15 March 2011, the Trial Chamber issued the Ordonnance déterminant les modalités et l'ordre d'audition des témoins présentés par les équipes de la Défense (normes 43 et 54 du Règlement de la Cour).¹
2. The Defence for Mr Katanga ("Defence") hereby requests clarification regarding the paragraph 19 of this Order:

En ce qui concerne les représentants légaux des victimes, la Chambre rappelle qu'ils ont la possibilité de poser des questions avec son autorisation. Elle renvoie à cet effet aux Instructions données le 1^{er} décembre 2009 pour les débats et les dépositions conformément à la règle 140 du Règlement.

3. The Decision 1665-Corr, Directions for the conduct of the proceedings and testimony in accordance with rule 140, of 1 December 2009, indicates that the representatives of victims shall notify in advance the Chamber and the Prosecution, by a written application, of the questions they intend to ask to the witnesses:

b) Anticipated questions by the Legal Representatives

87. When the Victims' Legal Representatives know in advance that they have certain specific questions for a particular witness, expert or the accused, which do not relate to issues of reparation, they shall notify the Chamber and the Prosecution about this in a written application, at least seven days before the witness appears for the first time. The application shall indicate which questions the Legal Representative proposes to ask and explain how they relate to the interests of the victims represented. If the Chamber considers that the application must be submitted to the Defence for observations, in accordance with rule 91(3)(a), it may decide to reclassify the application so as to allow the notification thereof to the Defence. In that case, the Defence will have three days to formulate its observations.

88. If, after examination-in-chief by the party calling the witness, the Chamber is of the view that the matters raised in the proposed question(s) of the victims have not been sufficiently addressed by the witness, it may authorise the Legal Representative to put the question(s) before cross-examination commences. In deciding whether it is appropriate to grant such authorisation, the Chamber will take into consideration the rights of the accused, the interests of the witness, the need for a fair, impartial and expeditious trial and the need to give effect to article 68(3) of the Statute, in accordance with rule 91(3)(b) of the Rules. The Chamber recalls, in this regard, that this provision also authorises it to put the question to the witness, expert or accused on behalf of the Victims' Legal Representative.

4. The Defence therefore requests the Chamber to clarify whether the victims' representatives shall continue to notify their questions to the Prosecution. In the Defence submissions, whilst this may have been appropriate when the questions were to be addressed to Prosecution witnesses, it is not appropriate anymore given that the coming witnesses are called by the Defence teams and not the Prosecution. The Defence submits that the anticipated questions by the victims' representatives should

¹ ICC601/04-01/07-2775.

not be addressed anymore to the Prosecution but only to the Chamber and the Defence team calling the witness in question.

Respectfully submitted,



David HOOPER Q.C.

Dated this 18 March 2011

At The Hague