

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 22 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

Decision on Defence Request for Leave to Submit a Reply

Decision to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

The Office of the Prosecutor

Mr Luis Moreno-Ocampo

Mr Eric MacDonald

Counsel for Germain Katanga

Mr David Hooper

Mr Andreas O'Shea

Counsel for Mathieu Ngudjolo Chui

Mr Jean-Pierre Kilenda Kakengi Basila

Mr Jean-Pierre Fofé Djofia Malewa

Legal Representatives of the Victims

Mr Fidel Nsita Luvengika

Mr Jean-Louis Gilissen

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(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

Deputy Registrar

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

Trial Chamber II of the International Criminal Court (“the Chamber” and “the Court”), pursuant to Articles 64 and Regulation 24 of the Regulations of the Court, decides as follows:

1. On 14 March 2011, the Defence for Mr. Katanga filed its *Request for Defence Witnesses to Visit Germain Katanga in Prison after Completion of their Testimony*.¹
2. On 18 March 2011, the Prosecution responded to this Request.²
3. On the same day, the Registry submitted its observations on the matter.³
4. On 21 March 2011, the Defence for Mr. Katanga submitted a request for leave to reply to the Prosecution’s response and the Registry’s observations.⁴ The Defence argues that it has not had the opportunity to address new issues arising from the Prosecution’s Response, as well as the Registry’s Observations.⁵
5. With regard to the Registry’s Observations, the Defence mentions the following issues:
 1. The impact on the psychological state of the Defence witnesses.
 2. The practice of the *ad hoc* Tribunals in relation to visits of accused persons by witnesses called on their behalf.
 3. The scheduled dates of departure of the witnesses that wish to see Mr. Katanga and their ability to visit him prior to their departure.⁶

¹ ICC-01/04-01/07-2773 (hereinafter ‘Request’)

² “Réponse de l’Accusation à la Defence Request for Defence Witnesses to Visit Germain Katanga in Prison after Completion of their Testimony (ICC-01/04-01/07-2773, 14 mars 2011)”, 18 March 2011, ICC-01/04-01/07-2779 (hereinafter ‘Response’)

³ “Observations du Greffe s’agissant de la ‘Defence Request for Defence Witnesses to Visit Germain Katanga in Prison after Completion of Their Testimony (ICC-01/04-01/07-2773)”, 18 March 2011, ICC-01/04-01/07-2784 (hereinafter ‘Observations’)

⁴ “Defence Request for Leave to Reply to *Observations du Greffe s’agissant de la ‘Defence Request for Defence Witnesses to Visit Germain Katanga in Prison after Completion of their Testimony (ICC-01/04-01/07-2773)*, of 14 March 2011 (ICC-01/04-01/07-2784-conf) and to *Réponse de l’Accusation à la Defence Request for Defence Witnesses to Visit Germain Katanga in Prison after Completion of their Testimony (ICC-01/04-01/07-2773, 14 mars 2011)*, of 18 March 2011, ICC-01/04-01/07-2779”, 21 March 2011, ICC-01/04-01/07-2789-Conf

⁵ ICC-01/04-01/07-2789-Conf, para 6

⁶ *Ibid.*, para 4

6. The Chamber considers that with regard to these three points, it is sufficiently informed to reach a decision.

7. The Defence also wants to comment on the “proper interpretation” of the Chamber’s *Décision relative à la requête du Bureau du Procureur aux fins de communiquer avec le témoin P-250* of 18 February 2011, which is mentioned by both the Prosecutor and the Registry.⁷

8. In this regard, the Chamber notes that this is not a new issue. In fact, when the question of contact between witnesses and the parties calling them was raised before this Chamber, the Defence for Mr. Katanga did not avail itself of the opportunity to submit observations on the question, despite having been invited to do so by the Chamber.⁸ The Defence also failed to mention the Chamber’s decision of 18 February 2011 in its Request, even though the aforementioned decision is drafted in general terms and adopts the established practice of Trial Chamber I.⁹

⁷ ICC-01/04-01/07-2711-Conf

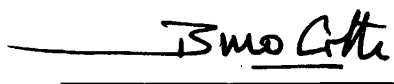
⁸ E-mail message sent by a Legal Officer of Trial Chamber II on 19 January 2011 at 9h25

⁹ ICC-01/04-01/07-2711-Conf, para 10

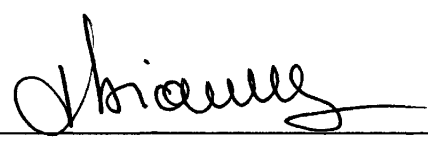
FOR THESE REASONS, THE CHAMBER

REJECTS the request for leave to submit a reply.

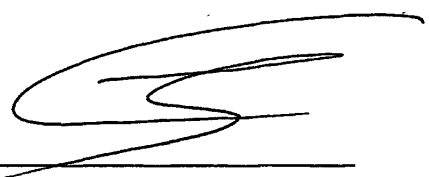
Done in both English and French, the English version being authoritative.



Judge Bruno Cotte
Presiding Judge



Judge Fatoumata Dembele Diarra



Judge Christine Van den Wyngaert

Dated this 22 March 2011

At The Hague, The Netherlands