

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 5 July 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 THE CONGO
IN THE CASE OF
THE PROSECUTOR
*v. GERMAIN KATANGA and MATHIEU NGUDJOLO CHUI***

Urgent
Public with a confidential Annex
Registry's report on the orders received in document ICC-01/04-01/07-3033

Source: The Registrar

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

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Legal Representatives of Applicants

Unrepresented Victims

Unrepresented Applicants for Participation/Reparation

The Office of Public Counsel for Victims

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Amicus Curiae

REGISTRY

Registrar

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Victims and Witnesses Unit

Ms. Maria-Luisa Martinod-Jacome

Detention Section

M. Anders Backman

Victims Participation and Reparations Section

Other

The Registrar of the International Criminal Court (the “Court”)

NOTING the “Décision relative à la requête de la Défense de Germain Katanga visant à obtenir la coopération de la République démocratique du Congo en vue de la comparution de témoins détenus”, rendered by Trial Chamber II on 7 January 2011¹;

NOTING the “Décision relative à la requête de la Défense de Germain Katanga tendant à l'amendement de la décision sur sa requête visant à obtenir la coopération de la République démocratique du Congo en vue de la comparution de témoins détenus” rendered by the Trial Chamber II on 25 January 2011²;

NOTING the “Registry's report on the execution of Decisions 2640 and 2660”, submitted by the Registrar on 22 February 2011³;

NOTING the “Registry's transmission of observations received from the DRC authorities” submitted by the Registrar on 10 March 2011⁴;

NOTING the “Defence Observations on the Protective Measures for DRC-D02-P-0350, DRC-D02-P-0236 and DRC-D02-P-0228” submitted by the Defence for Germain Katanga on 22 march 2011⁵;

NOTING the “Victims and Witnesses Unit's report on the "Defence Observations on the Protective Measures for DRC-D02-P-0350, DRC-D02-P-0236 and DRC-D02-P-0228"(ICC-01/04-01/07-2790-Conf)", submitted by the Registry on 25 March 2011⁶;

¹ ICC-01/04-01/07-2640-Conf-Exp

² ICC-01/04-01/07-2660-Conf-Exp

³ ICC-01/04-01/07-2724-Conf

⁴ ICC-01/04-01/07-2767-Conf

⁵ ICC-01/04-01/07-2790-Conf

NOTING the “Registry's report on the transfer of the detained witnesses and accommodation at the Detention Centre”, submitted by the Registrar on 29 March 2011⁷;

NOTING the document entitled “Requête tendant à obtenir présentation des témoins DRC-D02-P-0236, DRC-D02-P-0228 et DRC-D02-P-0350 aux autorités néerlandaises aux fins d'asile” submitted by the Duty counsel for the detained witnesses on 12 April 2011⁸;

NOTING the document entitled “Observations de l'Unité d'aide aux victimes et aux témoins au sujet de la « requête tendant à obtenir présentation des témoins DRC-D02-P-0236, DRC-D02-P-0228 et DRC-D02-P-0350 aux autorités néerlandaises aux fins d'asile » introduite par le Conseil de permanence des témoins détenus le 12 avril 2011”, submitted by the Registry on 14 April 2011⁹;

NOTING the document entitled “Observations du Greffe en relation avec la Requête ICC-01/04-01/07-2830-Conf” submitted by the Registry on 21 April 2011¹⁰;

NOTING the “Observations des témoins DRC-D02-P-0236, DRC-D02-P-0228 et DRC-D02-P-0350 en réponse aux “Observations du Greffe en relation avec la Requête ICC-01/04-01/07-2830-Conf”, submitted by the Duty Counsel for the detained witnesses on 4 May 2011¹¹;

⁶ ICC-01/04-01/07-2799-Conf

⁷ ICC-01/04-01/07-2809-Conf

⁸ ICC-01/04-01/07-2830-Conf

⁹ ICC-01/04-01/07-2834-Conf

¹⁰ ICC-01/04-01/07-2849-Conf

¹¹ ICC-01/04-01/07-2861-Conf

NOTING the “Observations complémentaires du Greffe au sujet de la « requête tendant à obtenir présentation des témoins DRC-D02-P-0236, DRC-D02-P-0228 et DRC-D02-P-0350 aux autorités néerlandaises aux fins d'asile »”, submitted by the Registry on 16 May 2011¹²;

NOTING the document entitled “Observations des témoins DRC-D02-P-0236, DRC-D02-P-0228 et DRC-D02-P-0350 en réponse aux Observations complémentaires n° 2900 du Greffe” submitted by the Duty Counsel for the detained witnesses on 20 May 2011¹³;

NOTING the “Defence Observations on « *Observations complémentaires du Greffe au sujet de la 'Requête tendant à obtenir la présentation des témoins DRC-D02-P-0236, DRC-D02-P-0228 et DRC-D02-P-0350 aux autorités néerlandaises aux fins d'asile* » ” submitted by the Defence for Germain Katanga on 20 May 2011¹⁴;

NOTING the “Order to provide further assurances regarding the security of DRC-D02-P-0236, DRC-D02-P-0228 and DRC-D02-P-0350”, rendered by Trial Chamber II on 24 May 2011¹⁵;

NOTING the document entitled “Rapport du Greffe soumis en vertu de l'Ordonnance ICC-01/04-01/07-2952” submitted by the Registrar on 7 June 2011¹⁶;

NOTING the “Decision on an *Amicus Curiae* application and on the “*Requête tendant à obtenir présentations des témoins DRC-D02-P-0350, DRC-D02-P-0236,*

¹² ICC-01/04-01/07-2900-Conf

¹³ ICC-01/04-01/07-2923-Conf

¹⁴ ICC-01/04-01/07-2924-Conf

¹⁵ ICC-01/04-01/07-2952-Conf

¹⁶ ICC-01/04-01/07-2989

DRC-D02-P-0228 aux autorités néerlandaises aux fins d'asile" (articles 68 and 93(7) of the Statute)" rendered by Trial Chamber II on 9 June 2011¹⁷;

NOTING the document entitled "Observations des témoins DRC-D02-P-0236, DRC-D02-P-0228 et DRC-D02-P-0350 sur l'"*Ordre de fournir des assurances supplémentaires concernant la sécurité de DRC-D02-P-0236, DRC-D02-P-0228 et DRC-D02-P-0350*"", submitted by the Duty Counsel for the detained witnesses on 14 June 2011¹⁸;

NOTING the "Demande d'autorisation d'interjeter appel de la Décision sur une requête en *amicus curiae* et sur la « requête tendant à obtenir présentations des témoins DRCD02-P-0350, DRC-D02-P-0236, DRC-D02-P-0228 aux autorités néerlandaises aux fins d'asile)" submitted by the Democratic Republic of the Congo (the « DRC ») on 16 June 2011¹⁹;

NOTING the "Decision on the security situation of three detained witnesses in relation to their testimony before the Court (art. 68 of the Statute) and Order to request cooperation from the Democratic Republic of the Congo to provide assistance in ensuring their protection in accordance with article 93(1)(j) of the Statute" rendered by Trial Chamber II on 22 June 2011²⁰;

CONSIDERING the Status Conference held on 12 May 2011.

CONSIDERING that Trial Chamber II, in its decision of 22 June 2011, "*ORDERS the Registry to urgently dispatch a cooperation request to the DRC in order to put in place the protective measures detailed in paragraph 41 and to report back before 5 July 2011, indicating*

¹⁷ ICC-01/04-01/07-3003-tENG

¹⁸ ICC-01/04-01/07-3017

¹⁹ ICC-01/04-01/07-3023

²⁰ ICC-01/04-01/07-3033

if and how soon the measures will be ready to be put in place; and INVITES the DRC to enter into contact with the Registry in order to arrange the provision of technical or logistical assistance, as provided in paragraph 43.”²¹

NOTING Articles 68 and 87 to 93 of the Rome Statute, Regulation 23*bis* and 24*bis* of the Regulations of the Court.

NOTING that the Registrar registered the annex to this present document as confidential as it contains contact details of Registry staff.

TRANSMITS hereby, respectfully, the following observations:

A. Context

1. Due to the final submissions in the case of *The Prosecutor v. Thomas Lubanga Dyilo* (ICC-01/04-01/06), the French version of document ICC-01/04-01/07-3033 only was available on 29 June 2011 and was subsequently notified to the Prosecutor-General of the Democratic Republic of the Congo on 30 June 2011.

2. Taking into consideration the specific situation on the ground (in the DRC), and because various interlocutors are concerned and needed to be consulted, the deadline set out by the Trial Chamber decision did not enable the Registry to fulfill all of the issues raised in the 22 June decision. In light of the above, the Registry limits itself to report on the actions taken with regards to the preparation of the execution of document ICC-01/04-01/07-3033.

²¹ ICC-01/04-01/07-3033, page 20.

B. Actions taken

B.1. General

3. As requested by the Trial Chamber, a request for cooperation was sent to the DRC outlining the relevant passages of the decision of 22 June that require the Congolese initiatives. The Note Verbale and Memorandum of Service are attached as a confidential annex to this present document.

B.2. Protective measures

4. Following internal consultations, the Registry is able to provide the following services:

- Consultation and assistance to the DRC authorities in order to identify the detention facility *most conducive to offering maximum protection*;
- Identify measures *protecting [the detained witnesses] from possible aggression by co-detainees*;
- The preparation and presentation of a training package for prison guards specially selected;
- Consultation with the relevant authorities on the monitoring of the national procedures.

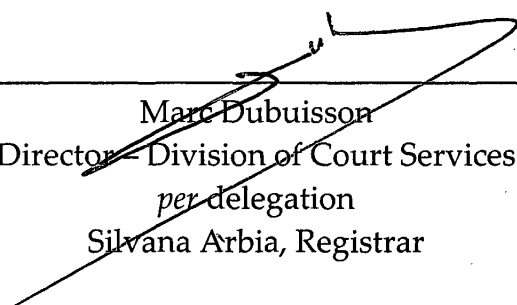
5. The relevant DRC authorities have been contacted on 4 and 5 July on these issues. Should a mission be necessary, the earliest possible date at which the DRC authorities are available to receive the Registry delegation would be as of week 29. The Chamber will be timely informed on the measures taken.

B. 2. National Criminal Proceedings

6. Information as to the technical and logistical requirements necessary to guarantee the continuation of the national proceedings has been collected and will be made available to the DRC authorities, should they so desire.

C. Conclusion

7. The Registry will carry on updating the Chamber with forthcoming progresses made in the implementation of its Decision of 22 June 2011.



Marc Dubuisson
Director – Division of Court Services
per delegation
Silvana Arbia, Registrar

Dated this 5 July 2011

At The Hague, the Netherlands