

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 10 August 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

Public

**Order to provide confirmation of full implementation of
Decision ICC-01/04-01/07-3033**

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
Ms Fatou Bensouda
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 for Participation/Reparation

States Representatives

Democratic Republic of the Congo
Kingdom of the Netherlands

The Office of Public Counsel for the Defence

REGISTRY

Registrar

Counsel Support Section

Victims and Witnesses Unit

Ms Maria-Luisa Martinod-Jacome

Others

Mr Ghislain Mabanga Monga Mabanga

Trial Chamber II of the International Criminal Court (“the Chamber” and “the Court” respectively), acting pursuant to articles 68 and 93 of the Rome Statute (“the Statute”), rules 86, 87, 88 and 192 of the Rules of Procedure and Evidence (“the Rules”), decides as follows:

I. PROCEDURAL HISTORY

1. On 9 June 2011, the Chamber rendered its “Decision on an *Amicus Curiae* application and on the ‘*Requête tendant à obtenir présentation des témoins DRC-D02-P-350, DRC-D02-P-0236, DRC-D02-P-0228 aux autorités néerlandaises aux fins d’asile*’ (articles 68 and 93(7) of the Statute)”.¹ In this decision the Chamber held that “the Statute unequivocally places an obligation on the Court to take all protective measures necessary to prevent the witnesses incur on account of their cooperation with the Court.”² The Chamber refers to the procedural history of that decision for the purposes of the present order.

2. On 22 June 2011, the Chamber rendered a further decision, in which it instructed the Registry to dispatch a cooperation request to the DRC in order to put in place the following protective measures:

- The witnesses shall be detained in a detention centre which, in terms of infrastructure and population, is most conducive to offering maximum protection. The VWU is instructed to consult with the DRC authorities to identify whether this is the CPRK Kinshasa, the Ndolo prison, or any other detention centre where the witnesses can be legally detained.
- If the witnesses are transported or transferred to another location, the VWU must be informed in advance.

¹ ICC-01/04-01/07-3003

² ICC-01/04-01/07-3003, para. 61

- The detained witnesses shall be held under conditions which protect them from possible aggression by co-detainees. However, this should not lead to their permanent isolation.
- There shall be permanent surveillance of the security of the detained witnesses by guards who are specifically selected and trained for this purpose in close consultation between the Congolese prison authorities and the VWU. These guards must be reachable at all times by the VWU.
- A member of the VWU must be able to visit each detained witness twice per week and must be allowed to speak with them confidentially.
- When the detained witnesses are to be tried, an observer of the Court must be allowed to attend the proceedings. The Registry must thus be informed in advance of the date and location of any legal proceedings involving one of the detained witnesses.

3. The Chamber decided that these measures should be in place before the Court could return the three detained witnesses to the DRC and should remain in place until the end of their respective trials.³

4. On 5 July 2011, the Registry informed the Chamber that it had entered into contact with the relevant DRC authorities and transmitted a formal cooperation request on the basis of article 93(1)(j) for the implementation of the abovementioned protective measures on 27 June 2011.⁴

5. On 5 August 2011, the Registry submitted another report on the results of a visit to the DRC by the ICC Chief Custody Officer and a representative of the Division of Court services.⁵ In this report, the Registry indicates that Ndolo military prison offers the best conditions for offering maximum protection to

³ "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", 22 June 2011, ICC-01/04-01/07-3033, para. 41

⁴ "Registry's report on the orders received in document ICC-01/04-01/07-3033", 5 July 2011, ICC-01/04-01/07-3061

⁵ "Registry's report on the implementation of ICC-01/04-01/07-3033", 5 August 2011, ICC-01/04-01/07-3087-Conf

the three detained witnesses.⁶ The Registry further states that the DRC authorities have agreed to place a security guard at the entrance of the wing where the three detained witnesses would be kept.⁷ In addition, the DRC authorities have agreed to cooperate with the Court and the MONUSCO Corrections Unit in the selection of the other persons with whom the detained witnesses will be accommodated.⁸

II. ANALYSIS

6. The Chamber welcomes the positive response from the DRC authorities to the cooperation request. However, before concluding that the conditions for the return of the three detained witnesses have been met, the Chamber wishes to receive the following confirmations:

First, with regard to the affirmation by the Registry that there are no jurisdictional impediments against transferring the three detained witnesses to the Ndolo prison, the Chamber wishes to have it confirmed by the Congolese authorities that the charges against the three detained witnesses do indeed fall under military jurisdiction.

Second, the Chamber wants explicit confirmation that the VWU will be able to be in contact with the designated guards at all times and that the VWU will be allowed to meet privately with the detained witnesses at least twice per week.

Third, the Chamber wants confirmation that the DRC authorities have agreed to inform the VWU whenever the detained witnesses are to be transported.

⁶ ICC-01/04-01/07-3087-Conf, para. 3

⁷ ICC-01/04-01/07-3087-Conf, para. 6

⁸ ICC-01/04-01/07-3087-Conf, para. 7

Fourth, the Chamber wants explicit confirmation that the Court will be informed in advance of any legal proceedings against the three detained witnesses and will be allowed to send observers to any hearings.

7. As the Chamber indicated in its decision of 22 June 2011, once these points have been clarified and the measures are ready to be put in place, the Court will have fulfilled its obligation under Article 68 of the Statute to protect the detained witnesses against any harm that may result from the fact that they have testified before it.⁹ Therefore, as soon as the Chamber has received confirmation on the above points, and assuming that the asylum proceedings before the Dutch authorities will still be pending at that time, the Chamber will instruct the Registry to initiate the consultation process referred to in paragraph 85 of its decision of 9 June 2011.¹⁰

⁹ ICC-01/04-01/07-3033, para. 42

¹⁰ ICC-01/04-01/07-3003

FOR THESE REASONS,

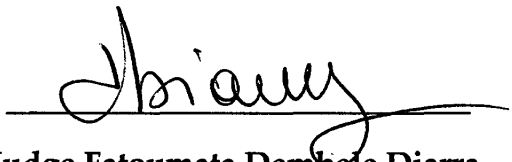
THE CHAMBER,

ORDERS the Registry to enter into contact with the relevant DRC authorities in order to obtain the confirmations mentioned in paragraph 6 of the present order; and to report to the Chamber by Friday 19 August 2011.

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 10 August 2011

At The Hague, The Netherlands