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No.: ICC-01/04-01/07
Date: 22 September 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 Response to Prosecution's 'Requête Urgente de l'Accusation aux fins de prohibition des contacts entre les accusés Mathieu Ngudjolo et Germain Katanga et avec leur équipe de Défense pendant la durée de leur témoignage sous serment'

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

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Unrepresented Victims

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REGISTRY

Registrar
Ms Silvana Arbia

Defence Support Section

Victims and Witnesses Unit

Detention Section
Mr. Harry Tjonk

Victims Participation and Reparations Section

Other

DEFENCE RESPONSE

1. The Defence for Mr. Katanga (“Defence”) hereby responds to the Prosecution’s *‘Requête Urgente de l’Accusation aux fins de prohibition des contacts entre les accusés Mathieu Ngudjolo et Germain Katanga et avec leur équipe de Défense pendant la durée de leur témoignage sous serment’*.¹
2. The Defence submits that contact, direct or indirect, between the accused and members of the Defence team during the time that he is giving testimony is wholly inappropriate. The Defence has already discussed this with Mr Katanga and has no desire to be in contact with him while he is giving evidence. In the event of some exceptional circumstance arising, whether related to the evidence or other matters, such as the detention regime, then an application can be made to the court.
3. The Defence suggests that in the event of some exceptional problem arising that Mr Katanga be permitted to convey that problem, if unrelated to evidence, to Miss Menegon by telephone. Miss Menegon does not have privileged status and such telephone calls will be recorded. The accused has the right to contact his counsel in relation to matters affecting his rights, for instance in respect of prison matters or other non evidential matters that may arise in the course of his testimony and which need immediate attention. If such contact takes place, the Defence will inform the Chamber at the earliest opportunity.
4. The Defence objects to the proposed prohibition of contact between the two accused due to the further difficulties this will impose on the already burdened detention regime. The Defence points out that the Chamber is not sitting every day in the forthcoming weeks, which prolongs the anticipated duration of the testimony of the accused and could thus further burden the detention regime. In all frankness, the Defence can assure the Chamber that no indirect contact will take place and that the relationship between the two accused is not such as to allow more than polite relations between them.
5. Prohibition of contact between the two accused would impose too severe a condition on the accused and require them to be locked up in their cell even longer. The hours

¹ ICC-01/04-01/07-3160.

spent by Mr. Katanga and Mr. Ngudjolo outside their cell have already been cut significantly. This prohibition of contact has proved difficult for the detention unit to manage and imposed a burdensome regime on the accused. Further restrictions will have a negative impact on their mental well-being at a critical time and may have an adverse impact on their testimony.

6. The Defence submits that the proposed prohibition of contact is unnecessary to achieve the aim sought. The contact between the accused and co-accused is subject to monitoring. The Defence does not object to their contact being subject to closer monitoring than usual during their testimony. Nor does the Defence object to their physical contact and communication being limited to situations where other detainees are present.
7. The Defence is unaware of any case in any of the international courts and tribunals where an accused was not allowed to be in contact with his co-accused in the course of his testimony. As any witness, the accused should undertake not to discuss his testimony with anyone outside the courtroom including his co-accused.

Respectfully submitted,



David HOOPER, Q.C.
Lead Counsel for Germain Katanga

Dated this 22nd September 2011

At The Hague, Netherlands