

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 20 March 2012

REGISTRAR

Before: MS. Silvana Arbia

**SITUATION IN THE DEMOCRATIC REPUBLIC OF CONGO
IN THE CASE OF
THE PROSECUTOR
*v. GERMAIN KATANGA and MATHIEU NGUDJOLO CHUI***

Public Redacted version of the

**Defence Request for Review of Registrar's Decision to Deny Mr. Katanga the
Right to Communicate with Four Family Members and Friends**

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	Counsel for the Defence for Germain Katanga Mr David Hooper Q.C. Mr Andreas O'Shea
	Counsel for the Defence for Mathieu Ngudjolo Chui
Legal Representatives of Victims	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 Trial Chamber II

Introduction

1. On behalf of Mr. Germain Katanga, the Defence requests the Registrar to reconsider her decision to disallow Mr. Katanga to be in communication with [REDACTED]. The Chamber and Defence were made aware of this decision [REDACTED],¹ [REDACTED].
2. In its *Decision on the Application of Mr Germain Katanga in respect of the new policy in the detention centre on the registration of telephone contacts*,² the Presidency set out the complaint procedure in respect of decisions concerning the detention of a detained person rendered by the Registrar. The Presidency held that a detained person, with the assistance of counsel, may complain in writing against such a decision at any time. The Registrar must issue a written reasoned decision on such a complaint within the time limits set out in regulations 219 and 220(5) of the Regulations of the Registry. Within 48 hours of notification of the Registrar's decision on the detainee's complaint, the detainee may address the Presidency in accordance with regulation 221(1) of the Regulations of the Registry.³
3. By letter of 15 October 2009, the Director Division of Court Services informed defence counsel of this complaint procedure.⁴ In accordance with this procedure, the Defence for Mr. Katanga hereby submits, on behalf of Mr. Katanga, a complaint against the Registrar's refusal to add a number of names to Mr. Katanga's list of contacts, thereby depriving him of his right to communicate with those persons. Arguments in support of this complaint are set forthwith.

Insufficient Detail

4. The Registrar has allowed Mr. Katanga to be in communication with 18 out of 22 persons requested by Mr. Katanga. The Registrar rejected Mr. Katanga's request to be in contact with four persons, namely: [REDACTED].
5. In rejecting Mr. Katanga's request to be in communication with these persons, the Registrar gave the following reasons:

¹ [REDACTED].

² ICC-RoR221-02/09-6-Conf, issued on 17 September 2009.

³ Ibid, para. 16.

⁴ Reference : DCS/2009/284/MD/DSA/mr.

- As for [REDACTED], the Registrar alleges that he has been informed [REDACTED].
 - As for [REDACTED], the Registrar alleges that Mr. Katanga frequently asked her [REDACTED] and her identity is unclear as she has sometimes been presented [REDACTED].
 - As for [REDACTED], the Registrar alleges that she has a direct relation with [REDACTED], a former FRPI member with alleged links with the militia currently active in Ituri.
 - As for J[REDACTED], the Registrar alleges that he has been actively implicated [REDACTED].
6. Given these circumstances, the Registrar submits that it is necessary to avoid contact between these persons and Mr. Katanga to protect the fair administration of justice.
 7. The Defence respectfully requests the Registrar to reconsider her refusal of contact with these four persons. It is not denied that Mr. Katanga has discussed [REDACTED]. The Defence is, however, unaware of [REDACTED]. The Defence is also unclear about the frequent contact between Mr. Katanga and [REDACTED], unless it is the Registrar's position that [REDACTED] is the same person as [REDACTED]. Even if, according to the Registrar, they are one and the same person, it appears that Mr. Katanga only asked him or [REDACTED] and not on a regular basis. The Defence is also at a loss regarding the foundation of the Registrar's allegation concerning [REDACTED]. The Defence found one reference to a [REDACTED]. Even if it is the same person, the Defence fails to see how that conversation supports the Registrar's allegation regarding [REDACTED].
 8. Given these uncertainties, the Defence would appreciate receiving further details in support of the Registrar's allegations which led her to refuse Mr. Katanga's request to communicate with these four persons. The Defence submits that the provision of further details forms part of the Registrar's obligation to provide 'sufficiently clear reasons for her initial decision at the time of its taking; to enable the detained person affected to properly exercise his/her right to seek review'.⁵

No Legal Basis for Complete Ban on Communication

⁵ Ibid.

9. Irrespective of the foundation of the allegations, the Defence submits that Mr. Katanga should be allowed to communicate with these persons. The Defence submits that the Registrar has no legal basis for disallowing Mr. Katanga to communicate with any person he wishes to speak to. Pursuant to Regulation 99(1)(i) of the Regulations of the Court (“RoC”), any detainee has the right to communicate freely with his or her family and other persons. The Registrar may restrict this right in accordance with Regulation 99(4) RoC where ‘necessary in the interests of the administration of justice or for the maintenance of the security and good order of the detention centre’. In line with Regulation 99(4) RoC, any such restriction shall be set out in the Regulations of the Registry.

10. The Regulations of the Registry (“RoR”) include the possibility for passive and active monitoring of telephone calls under Regulations 174 and 175. The RoR do not include any regulation allowing a complete ban on communication with any person. The Chamber is the only organ of the court which is allowed to impose such a complete ban on communication under Regulation 101 RoC. [REDACTED].⁶ [REDACTED]. If there are [REDACTED] grounds for imposing [REDACTED] restrictions on Mr. Katanga’s right to freely communicate with his family and friends, this can only be done by the Chamber on request of the Prosecutor under Regulation 101 RoC. [REDACTED].⁷

11. The Defence submits that the Registrar cannot circumvent Regulation 99(4) RoC, requiring a legal basis for any restriction on a detainee’s right to communicate with the outside world, by relying on her overall responsibility for all aspects of management of the detention centre, including security and order, under Regulation 90(1) RoC. Regulation 99(4) RoC is explicitly applicable to any restrictions on the rights of the detainee set out in Regulation 99(1) RoC. As such, it is a *lex specialis* of the more general obligation set out under Regulation 90(1) RoC, which cannot be bypassed in any circumstances.

12. In respect of the Registrar’s powers under Regulation 90(1) RoC, the Presidency has held that this regulation allows the Registrar and the Chief Custody Officer “to control the communications of detained persons, which must include the imposition of

⁶ [REDACTED].

⁷ [REDACTED].

restrictions upon communication with specific individuals where justified, for example in order to prevent the detained persons from engaging in the activities outlined in regulation 175(1) of the Regulations of the Registry.”⁸ To enable the Registrar and the Chief Custody Officer to properly exercise this power, the Presidency held that they should be allowed “to have access to information about the persons with whom the detained persons are in contact”.⁹ Thus, the Presidency allowed the Registrar to have access to information about the contacts of the detainees with a view to ensure that the detainees are not engaged in behaviour described under Regulation 175(1) RoR. In the respectful submission of the Defence, this reasoning from the Presidency cannot be interpreted as granting the Registrar authority under Regulation 90(1) RoC to completely ban contact between Mr. Katanga and persons he wishes to communicate with. Such ban can only be imposed temporarily if Mr. Katanga does not provide the Registrar and Chief Custody Officer with accurate details of the person he wishes to contact.

13. If the Chief Custody Officer has reasonable grounds to believe that the detained person may be attempting to engage in conduct described under Regulation 175(1), the detained person’s telephone calls may be actively monitored for a period of two weeks. Regulation 175(1), however, does not authorize the Registrar or Chief Custody Officer to disallow the detained person from calling certain persons.

14. Therefore, the Defence submits that the Registrar is not authorized under the RoC or RoR to prohibit Mr. Katanga from communicating with his family and friends. The Defence requests the Registrar to reconsider her decision on this basis.

The prohibition is not necessary or justified

15. Even if the Registrar has the authority to prohibit Mr. Katanga from communicating with the four persons mentioned, the Defence submits that this restriction on his right to freely communicate with his family and friends is unnecessary and unjustified. [REDACTED].¹⁰

⁸ ICC-RoR221-02/09-6-Conf, issued on 17 September 2009, para. 46.

⁹ Ibid, para. 46.

¹⁰ [REDACTED].

16. [REDACTED].¹¹ Thus, the Defence submits that the Registrar should not deny communication between Mr. Katanga and persons on the basis that [REDACTED]. The Defence fails to see the harm in allowing Mr. Katanga to be in direct communication with [REDACTED].

17. [REDACTED].¹² [REDACTED]. In completely disallowing Mr. Katanga to communicate with these persons, the Registrar seriously undermines Mr. Katanga's right to communicate with the outside world. [REDACTED].

18. [REDACTED].

19. [REDACTED].¹³

20. [REDACTED]. The Defence, therefore, fails to see any good reason for denying Mr. Katanga communication with [REDACTED], even if she has some relation with the wife of someone who has links with the militia.

21. The restriction imposed by the Registrar on Mr. Katanga's right to communicate with his family and friends is also excessive to any wrong that he has not yet committed. [REDACTED]. To prohibit Mr. Katanga from communicating with his direct family members and close friends is, therefore, excessive as a preventive measure.

Relief Sought

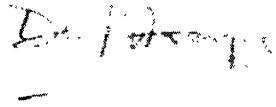
22. On those grounds, the Defence respectfully requests the Registrar to allow Mr. Katanga to be in communication with the above four persons. In case the Registrar refuses to reconsider her decision to deny this right to communicate, the Defence requests for further details underlying the allegations, in order to fairly allow Mr. Katanga and his team to meaningfully consider Mr. Katanga's position and seek review where appropriate.

¹¹ [REDACTED].

¹² [REDACTED].

¹³ [REDACTED].

Respectfully submitted,



David HOOPER, Q.C.

Dated this 20 March 2012

At The Hague

The Netherlands