



Original: **French**

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

Date: **8 February 2012**

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 document with confidential annexes

**Decision on the application for registration in the record of decisions and motions
transmitted solely by e-mail**

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

Office of the Prosecutor

Mr Luis Moreno Ocampo, Prosecutor
Mr Éric MacDonald, Senior Trial Lawyer

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 Victims

Mr Jean-Louis Gilissen
Mr Fidel Nsita Luvengika

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

Office of Public Counsel for Victims

**Office of Public Counsel for the
Defence**

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Ms Silvana Arbia

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

Mr Ghislain Mabanga Monga Mabanga

TRIAL CHAMBER II of the International Criminal Court (“the Chamber” and “the Court” respectively), acting pursuant to article 64 of the Rome Statute and rule 134 of the Rules of Procedure and Evidence decides as follows.

1. On 22 December 2011, the common legal representative of the main group of victims (“the Legal Representative”) applied to the Chamber for the registration in the record of a certain number of e-mails transmitting decisions or motions in the instant case (“the Application”).¹ He argued that the prospective need to transmit a complete record of the proceedings to the Appeals Chamber in due course and the principle of public hearings require that the e-mails be filed in the record of the case.² Citing in this respect a list of 25 e-mails which, in his view, merit inclusion in the record,³ he invited suggestions from all of the parties and participants,⁴ none of which filed submissions on the Application before expiry of the time limit for response.

2. The Chamber recalls that the sending of e-mails in the case at bar has generally been driven by two considerations: urgency and celerity, on the one hand, and the purely procedural nature of certain matters of judicial administration, on the other. It underscores that since such e-mails are copied to all of the parties and participants, they afford the necessary transparency and safeguard the *inter partes* nature of the proceedings.

3. The Chamber nonetheless shares the Legal Representative’s concern with respect to safeguarding the fundamental principle of public hearings and ensuring that the record of the case is as complete as possible, particularly in view of a prospective appeal. It concurs that the use of e-mail to transmit motions, decisions or

¹ Common legal representative of the main group of victims, “*Demande d’enregistrement au dossier de décisions et requêtes communiquées uniquement par courriel (Article 64-7 du Statut et Norme 21 du Règlement du Greffe)*”, 22 December 2011, ICC-01/04-01/07-3220.

² ICC-01/04-01/07-3220, paras. 3, 8 to 11, 13 and 16.

³ ICC-01/04-01/07-3220-Conf-AnxA.

⁴ ICC-01/04-01/07-3220, para. 15.

directions calls for greater vigilance in the maintenance of the record. The Chamber has therefore endeavoured to include the content of such e-mails in the record at hearings or in its filings.

4. The practice of the Chamber in this regard has effectively been to include references to e-mails pertaining purely to judicial administration in the procedural background to its written or oral decisions and to reproduce or append the content of e-mails pertaining to substantive matters to decisions concerning the same matters. The parties themselves have adhered to this practice in their own written submissions.

5. In any event, the Chamber finds the Application meritorious insofar as the parties and participants may legitimately so move the Court. Accordingly, the Chamber rules that the 25 e-mails identified by the Legal Representative shall be filed in the record of the case as annexes to this decision⁵ and, in some instances, shall be incorporated within more extensive e-mail correspondence on the same matter. In certain cases⁶ the Chamber requires that the e-mails be appended to the submissions to which they pertain.⁷

⁵ Annexes A to P; Annex A must be notified to Mr Ghislain Mabanga, who is one of the recipients of the e-mails contained therein, and Annexes G and P are classified *ex parte* on account of the recipients of the e-mails contained therein.

⁶ E-mails nos. 3, 4 and 5 (see ICC-01/04-01/07-3220-Conf-AnxA, p. 3) from participants and e-mail no. 10 from the Chamber (see ICC-01/04-01/07-3220-Conf-AnxA, p. 5).

⁷ See “*Annexe de la Décision ICC-01/04-01/07-3218*” and “*Annexe de l’Ordonnance ICC-01/04-01/07-2714-Conf*”, appended to the present decision.

FOR THESE REASONS, the Chamber

GRANTS the Application; and

ORDERS the Registry to append:

- “*Annexe de la Décision ICC-01/04-01/07-3218*” to Decision ICC-01/04-01/07-3218; and

- “*Annexe de l’Ordonnance ICC-01/04-01/07-2714-Conf*” to Decision ICC-01/04-01/07-2714-Conf.

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

[signed]

Judge Bruno Cotte
Presiding Judge

[signed]

Judge Fatoumata Dembele Diarra

[signed]

Judge Christine Van den Wyngaert

Dated this 8 February 2012

At The Hague, The Netherlands