

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **French**

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

Date: **7 October 2013**

THE APPEALS CHAMBER

Before: Judge Sang-Hyun Song, Presiding Judge
Judge Sanji Mmasenono Monageng
Judge Cuno Tarfusser
Judge Erkki Kourula
Judge Ekaterina Trendafilova

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO IN THE CASE OF *THE PROSECUTOR v. GERMAIN KATANGA*

Public Document

Notice of appeal by Witnesses DRC-D02-P-0236, DRC-D02-P-0228 and DRC-D02-P-0350 against the *Décision relative à la demande de mise en liberté des témoins détenus DRC-D02-P-0236, DRC-D02-P-0228 et DRC-D02-P-0350* issued by Trial Chamber II on 1 October 2013 (ICC-01/04-01/07-3405)

Source: Duty Counsel

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

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States' Representatives

The Democratic Republic of the Congo
The Kingdom of the Netherlands

Amicus Curiae

REGISTRY

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Victims and Witnesses Unit

Detention Section

I. Procedural background and prayers

1. *The document instituting proceedings.*- Witnesses DRC-D02-P-0236, DRC-D02-P-0228 and DRC-D02-P-0350 (“the detained witnesses”) were temporarily transferred from the Democratic Republic of the Congo to the Detention Centre of the International Criminal Court on 27 March 2011 to testify for the Defence in the case of *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui* (ICC-01/04-01/07). After testifying, they applied to the Dutch authorities for asylum on 12 May 2011. Proceedings concerning this application are still pending. On 4 February 2013, the detained witnesses applied to Trial Chamber II of the International Criminal Court (“the Trial Chamber”) for release.¹
2. *The impugned decision.*- On 1 October 2013, the Trial Chamber, by majority, Judge Christine Van den Wyngaert dissenting, issued a decision (“the Impugned Decision”), whose operative part reads: “[TRANSLATION] *FOR THESE REASONS, the Chamber, by majority, FINDS that it lacks jurisdiction and FINDS the Application inadmissible*”.² The decision was notified on 2 October 2013.
3. *Appeal taken by the detained witnesses.*- Pursuant to article 82(1)(b), applicable *mutatis mutandis* to the matter at hand, and rule 154(1), the detained witnesses seek to appeal the Impugned Decision, as set forth in its operative part on page 21. In accordance with regulation 64(5) of the Regulations of the Court, the detained witnesses will, in their appeal brief, expound on not only the arguments for the admissibility of their appeal, but also the grounds of appeal and the legal and/or factual arguments in sustenance thereof.

¹ Duty Counsel, “*Requête en mainlevée de la détention des témoins DRC-D02-P-0236, DRC-D02-P-0228 et DRC-D02-P-0350*”, 4 February 2013, ICC-01/04-01/07-3351.

² Trial Chamber II, *Décision relative à la demande de mise en liberté des témoins détenus DRC-D02-P-0236, DRC-D02-P-0228 et DRC-D02-P-0350*, 1 October 2013, ICC-01/04-01/07-3405, p. 21.

4. *Request for suspensive effect of the appeal.*- The date of delivery of the Appeals Chamber's judgment is unknown. Were delivery to be subsequent to a final determination of the asylum applications to the detriment of the detained witnesses, they will have already been returned to their country of origin, whereas the due judgment may set aside the Impugned Decision and order their release. To obviate such irremediable prejudice, the detained witnesses move the Appeals Chamber to afford suspensive effect to the present appeal by virtue of both article 82(3) and rule 156(5).

II. For these reasons

5. Witnesses DRC-D02-P-0236, DRC-D02-P-0228 and DRC-D02-P-0350 respectfully pray the Appeals Chamber to:

- **Take note** of the present appeal;
- **Set aside** the Impugned Decision in every respect;

AND;

In a fresh determination, as it behoved the Bench *a quo*;

- **Order** the release of the detained witnesses.

[signed]

Ghislain M. Mabanga
Duty Counsel

Dated this 7 October 2013
At Paris, France