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No.: ICC-01/04-01/07
Date: 22 October 2013

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***

Public with confidential annex

**Second Defence Application for Disclosure of Confidential Documents to Dutch
Asylum Lawyers Representing Pichou Iribi and Ndjabu Ngabu**

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

Ms Fatouma Bensouda, Prosecutor
Mr Eric Macdonald, Senior Trial Lawyer

**Counsel for the Defence for Germain
Katanga**

Mr David Hooper Q.C.
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Legal Representatives of Victims

Mr Jean-Louis Gilissen
Mr Fidel Nsita Luvengika

Counsel for Mathieu Ngudjolo Chui

Mr Jean-Pierre Kilenda Kakengi Basila
Mr Jean-Pierre Fofé Djofia Malewa

REGISTRY

Registrar

Mr Herman von Hebel

Other

Ghislain M. Mabanga
Goran Sluiter
Flip Schuller
Marieke van Eik

1. The defence for Germain Katanga (“defence”) applies to the Chamber for leave to provide to Mr. Ghislain M. Mabanga and to lawyers at the Bohler Law Firm - Ms. Marieke Van Eik, Mr. Flip Schuller and Mr. Goran Sluiter -, representing Pichou Iribi and Ndjabu Ngabu in their asylum application in the Netherlands, the following documents tendered as evidence in the *Katanga & Ngudjolo* case:

- EVD-D02-00147 (confidential),
- EVD-D02-00148 (confidential),
- EVD-D02-00149 (confidential).

2. Upon the request of the lawyers named above,¹ the defence has identified these confidential documents as potentially relevant to the asylum procedure of Pichou Iribi and Ndjabu Ngabu in the Netherlands. The asylum lawyers have to present their eventual appeal against the latest decision in respect to their asylum request by November 2013. These documents may assist in this appeal as they relate to the involvement of the DRC authorities, including the EMOI and the Cabinet of the President, in the conflict in the east of the DRC in 2002/2003, in particular in Ituri, through the deployment of troops and the delivery of weapons, being one of the topics addressed by the detained witnesses during their testimony in The Hague. Given the deadline to appeal, this matter needs to be addressed urgently.

3. The Trial Chamber has already granted, at least partially,² a similar request submitted by the defence in July 2012.³ It defined specific conditions for the release of confidential documents:

7. [...] The condition for release is that both documents may only be shared with the Dutch authorities that are competent to rule on the asylum request and no one else. To the extent that it is necessary to show these documents during a hearing, the Chamber asks that the relevant parts of the hearing be conducted in closed session.⁴

4. The asylum lawyers in question are prepared to provide undertakings to preserve the

¹ See Annex. The annex is confidential because it contains personal emails.

² ICC-01/04-01/07-3312, Decision on the Defence Application for Disclosure of Confidential Documents to Dutch Asylum Lawyers Representing Pitchou Iribi and Ndjabu Ngabu, 20 July 2012.

³ ICC-01/04-01/07-3311, Defence Application for Disclosure of Confidential Documents to Dutch Asylum Lawyers Representing Pitchou Iribi and Ndjabu Ngabu, 18 July 2013.

⁴ ICC-01/04-01/07-3312, para. 7.

confidentiality of the documents, not to share them with others, nor to refer to them in any public document and only to provide them to the Netherland's court on the understanding that they are, and remain, confidential documents and would be tendered during hearings held in closed session.

Respectfully submitted,



David HOOPER Q.C.

Dated this 22 October 2013

At The Hague