

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 25 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 THE CONGO
IN THE CASE OF
*THE PROSECUTOR v. GERMAIN KATANGA***

Public with Confidential Annex

**Decision on the Defence Application for Disclosure of
Confidential Documents to Dutch Asylum Lawyers
Representing Pitchou Iribi and Ndjabu Ngabu**

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

The Office of the Prosecutor

Ms Fatou Bensouda

Mr Eric MacDonald

Counsel for Germain Katanga

Mr David Hooper

Mr Andreas O'Shea

Counsel for Mathieu Ngudjolo Chui

Legal Representatives of the Victims

Mr Fidel Nsita Luvengika

Mr Jean-Louis Gilissen

Legal Representatives of the Applicants

Unrepresented Victims

Unrepresented Applicants for Participation/Reparation

States Representatives

The Office of Public Counsel for the Defence

REGISTRY

Registrar

Mr Herman von Hebel

Mr Marc Dubuisson

Victims and Witnesses Unit

Counsel Support Section

Mr Esteban Peralta Losilla

Others

Trial Chamber II of the International Criminal Court ("the Chamber" and "the Court" respectively), acting pursuant to articles 21, 64 and 68 of the Rome Statute of the International Criminal Court ("Statute") and rule 82 of the Rules of Procedure and Evidence ("Rules"), decides as follows:

1. Between 30 March 2011 and 3 May 2011, three witnesses who were detained by the authorities of the Democratic Republic of the Congo ("DRC"), including Mr Pichou Iribi and Mr Ndjabu Ngabu, appeared before the Chamber. They had been transferred to The Hague for that purpose in cooperation with the DRC authorities in accordance with article 93(7) of the Statute. On 12 May 2011, the three detained witnesses filed an application for asylum with the competent authorities of The Netherlands.¹
2. On 17 July 2012, the Defence for Mr Katanga seized the Chamber of a request for leave to provide the Dutch lawyers representing Mr Pichou Iribi and Mr Ndjabu Ngabu in their asylum proceedings in The Netherlands with six documents that were admitted into evidence before this Chamber.²
3. This Chamber granted this Request in part on 20 July 2012,³ defining specific conditions for the release of the confidential documents as follows:

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

¹ "Request for leave to submit Amicus Curiae Observations by mr. Schuller and mr. Sluiter, Counsel in Dutch Asylum proceedings of witnesses D02-P-0236, DRC-D02-P-0228 and DRC-D02-P-0350", 26 May 2011, ICC-01/04-01/07-2968, para. 2

² "Defence Application for Disclosure of Confidential Documents to Dutch Asylum Lawyers Representing Pichou Iribi and Ndjabu Ngabu", 17 July 2012, ICC-01/04-01/07-3311 ("Request of 17 July 2012").

³ "Decision on the Defence Application for Disclosure of Confidential Documents to Dutch Asylum Lawyers Representing Pitchou Iribi and Ndjabu Ngabu", 20 July 2012, ICC-01/04-01/07-3312 ("Decision of 20 July 2012").

⁴ Decision of 20 July 2012, para 7.

4. The Defence for Mr Katanga has now seized the Chamber of a request for leave to provide Mr Ghislain Mabanga and the Dutch lawyers representing Mr Pichou Iribi and Mr Ndjabu Ngabu in their asylum proceedings in The Netherlands with an additional five documents that were admitted into evidence before this Chamber.⁵ The Defence has identified these confidential documents as potentially relevant to Mr Pichou Iribi and Mr Ndjabu Ngabu's appeal against the latest decision in respect to their asylum request.⁶

5. The Prosecution does not oppose the disclosure of documents EVD-D02-00147, EVD-D02-00148, EVD-D02-00149, EVD-D02-00202, and EVD-D02-00203 to the Dutch lawyers representing Mr Pichou Iribi and Mr Ndjabu Ngabu under the conditions specified in paragraph 4 of the Request of 22 October 2013,⁷ namely that the asylum lawyers in question provide undertakings "to preserve the 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 Netherlands' court on the understanding that they are, and remain, confidential documents and would be tendered during hearings held in closed session".⁸

6. The Chamber decides that documents EVD-D02-00147, EVD-D02-00148, EVD-D02-00149, EVD-D02-00202, and EVD-D02-00203 can be released to the Dutch counsel of Mr Pichou Iribi and Mr Ndjabu Ngabu on the conditions specified in paragraph 5 above. As with the Decision of 20 July 2012, the 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

⁵ "Second Defence Application for Disclosure of Confidential Documents to Dutch Asylum Lawyers Representing Pichou Iribi and Ndjabu Ngabu", 22 October 2013, ICC-01/04-01/07-3415 ("Request of 22 October 2013"). The Defence later clarified that its Request of 22 October 2013 also covered EVD-D02-00202 and EVD-D02-00203.

⁶ Request of 22 October 2013, para. 2.

⁷ See Annex. The annex is confidential because it contains personal emails.

⁸ Request of 22 October 2013, para. 4.

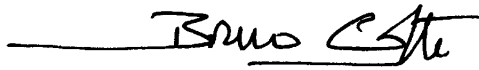
to show these documents during a hearing, the Chamber asks that the relevant parts of the hearing be conducted in closed session.

7. Furthermore, to the extent that the provider(s) of documents EVD-D02-00147, EVD-D02-00148, EVD-D02-00149, EVD-D02-00202, and EVD-D02-00203 only consented to allow for the disclosure of the documents in the proceedings before the Court in the present case, it is the Defence's responsibility to obtain prior consent to use the documents for purposes other than the trial against Mr Katanga.

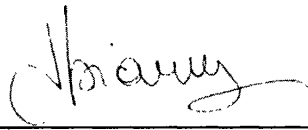
**FOR THESE REASONS,
THE CHAMBER,**

AUTHORISES the release of EVD-D02-00147, EVD-D02-00148, EVD-D02-00149, EVD-D02-00202, and EVD-D02-00203 under the conditions mentioned in paragraphs 6 and 7.

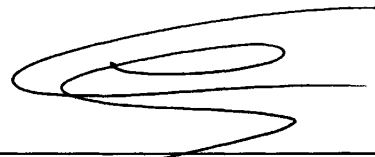
Done in both English and French, the English version being authoritative.



**Judge Bruno Cotte
Presiding Judge**



Judge Fatoumata Dembele Diarra



Judge Christine Van den Wyngaert

Dated this 25 October 2013

At The Hague, The Netherlands