

# **Annex 1**

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: French

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

Date: 22 August 2011

**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**

**Observations of the authorities of the Democratic Republic of the Congo on the  
confirmation of the full and complete implementation of decision  
ICC-01/04-01/07-3033**

**Source: Authorities of the Democratic Republic of the Congo**

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

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## **I. PROCEDURAL BACKGROUND**

1. On 22 June 2011, Trial Chamber II of the International Criminal Court (“the Chamber”) made an order to request cooperation from the Democratic Republic of the Congo (DRC) to provide assistance in ensuring the protection of three witnesses who had appeared before the Court, in accordance with article 68 of the Rome Statute (“the Statute”).
2. To this end, the Registry was to assess, in consultation with the competent Congolese authorities, the implementation of the following protective measures:
  - The witnesses shall be detained in a detention centre which, in terms of infrastructure and population, is most conducive to offering maximum protection.
  - If the witnesses are transported or transferred to another location, the VWU must be informed in advance.
  - The detained witnesses shall be held under conditions which protect them from possible aggression by co-detainees. However, this should not lead to their permanent isolation.
  - There shall be permanent surveillance of the security of the detained witnesses by guards who are specifically selected and trained for this purpose in close consultation between the Congolese prison authorities and the VWU. These guards must be reachable at all times by the VWU.
  - A member of the VWU must be able to visit each detained witness twice per week and must be allowed to speak with them confidentially.

- When the detained witnesses are to be tried, an observer of the Court must be allowed to attend the proceedings. The Registry must thus be informed in advance of the date and location of any legal proceedings involving one of the detained witnesses.
3. From 26 to 29 July 2011, representatives of the Registry (the Chief Custody Officer and a representative of the Division of Court Services) travelled to the DRC to consult the Congolese authorities on the implementation of the protective measures proposed by the Chamber in document ICC-01/04-01/07-3033. The mission included visits to the *Prison Centrale de Makala* ("PCM") and the Ndolo military prison, both of which are located in Kinshasa.
  4. The Report prepared for the Chamber by the delegation from the Registry shows the following:
    - Ndolo prison is most conducive to offering maximum protection to the witnesses.
    - Since the Registry has established a good working relationship with the competent authorities of the DRC, this will facilitate the monitoring of the detained persons, access to them and their well-being, and information on the progress of their respective trials and their possible transfers.
  5. The Chamber welcomed the positive response from the DRC authorities to the cooperation request, but wished to receive the following assurances:
    - that the Congolese authorities confirm that the charges against the three detained witnesses do indeed fall under military jurisdiction;

- that they confirm explicitly that the VWU will be able to be in contact with the designated guards at all times and that the VWU will be allowed to meet privately with the detained witnesses at least twice per week;
- that the DRC authorities have agreed to inform the VWU whenever the detained witnesses are to be transported; and
- that the Court will be explicitly informed in advance of any legal proceedings against the three detained witnesses and will be allowed to send observers to any hearings.

## II. PRELIMINARY REMARKS

6. First and foremost, the Congolese authorities wish to attest to the outstanding collaborative relationships they have forged with all organs of the Court over more than five years, especially with the Registry and the Office of the Prosecutor. Furthermore, it is because of this excellent cooperation that the Court may now be proud of conducting its very first trials.
7. In this respect, the Congolese authorities note that this cooperation is in stark contrast with a certain degree of animosity observed in relations between certain States Parties and the Court. Accordingly, the Congolese authorities would be grateful to receive in return appropriate consideration from the Court, taking such factors into account. They bitterly regret the aspersions cast on their good faith in the execution of the standard procedure for the transfer of detained witnesses, the terms of which were in fact the subject of months of frank discussions between themselves and the Registry.
8. As for the specific aspects for which the Court is seeking confirmation, the Congolese authorities hereby respond as follows:

### III. OBSERVATIONS OF THE DRC AUTHORITIES

9. In respect of the charges against the witnesses, the authorities hereby confirm that the crimes for which those individuals are being prosecuted in the DRC do indeed fall under military jurisdiction: Charif Manda is charged with participation in an insurrectionary movement, and Floribert Ndjabu Ngabu, Mbodina Iribi Pitchou and Djokaba Lambi Bede are charged with the war crime of killing MONUC military personnel. These crimes are provided for and punishable under articles 136 to 139 and 173 to 175 of the Military Criminal Code.
  
10. Moreover, the Congolese authorities remain true to their word and hereby confirm that:
  - the VWU will be able to be in contact with the designated guards at all times and that the VWU will be allowed to meet privately with the detained witnesses at least twice per week;
  - the VWU will be informed whenever the detained witnesses are to be transported; and
  - the Court will be informed in advance of any legal proceedings against the three detained witnesses and will be allowed to send observers to any hearings. In this respect, the Congolese authorities take this opportunity to inform the Court that the case against Charif Manda has already been called before the Military Court of Kinshasa-Gombe and that that court has ordered a postponement of the case, pending the repatriation of the suspect to the DRC.

**LUZOLO Bambi Lessa, Minister of Justice and Human Rights of the  
Democratic Republic of the Congo**

[seal] [signed]

Dated this 22 August 2011

At Kinshasa

OBSERVATIONS OF THE DRC