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

Date: **1 October 2010**

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

**Prosecution's Observations on the Legal Representative's Requête aux fins
d'obtention d'une déclaration d'une victime participante
recueillie par la Défense de Germain Katanga**

Source: Office of the Prosecutor

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

The Office of the Prosecutor

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Mr Fidel Nsita Luvengika

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Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

The Office of Public Counsel for Victims

The Office of Public Counsel for the Defence

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Section**

Other

Pursuant to the Trial Chamber II's ("Chamber") request,¹ the Office of the Prosecutor ("Prosecution") respectfully submits its observations on the Legal Representative's « Requête aux fins d'obtention d'une déclaration d'une victime participante recueillie par la Défense de Germain Katanga » ("Request"), filed on 24 September 2010.² In his Request, the Legal Representative acting on behalf of the principal group of victims seeks to obtain from the Defence of Germain Katanga the disclosure of a statement taken from victim a/0010/09, one of the Legal Representative's clients³. The Legal Representative also conveys his concerns regarding the manner in which his clients may be approached by members of the Defence teams and requests that the Chamber take these into consideration when rendering its decision on a protocol governing contact between parties and represented victims. The Prosecution supports the Legal Representative's Request, in its entirety, for the reasons detailed below.

Background

1. In its oral decision of 10 May 2010, the Chamber stated that to obtain a copy of the statement that Victim a/0010/09 gave to the Katanga Defence, the Legal Representative should first inquire with his client. In the event that obtaining such copy is not possible, the Legal Representative should then contact Mr Hooper to obtain such a copy.⁴ During the 14 May 2010 hearing, the Chamber invited the Katanga Defence to provide a copy of the statement to the Legal Representative.⁵
2. On 23 September 2010, when mentioning the possibility of calling certain victims to testify before the Chamber, the Legal Representative informed the Chamber that he had been unable to obtain a copy of the statement from his client, which

¹ Email sent by the Trial Chamber's Legal Officer, on 27 September 2010.

² ICC-01/04-01/07-2416, 24 September 2010.

³ This victim is the father of witness P-159.

⁴ ICC-01/04-01/07-T-138-CONF-ENG ET, p. 9.

⁵ ICC-01/04-01-07-T-141-CONF-ENG CT, p. 7.

bore on the Legal Representative's ability to decide whether to seek leave to call his client to testify. The Chamber ordered the Legal Representative to make a written submission. The Legal Representative filed his "Request" on 24 September 2010.

Submissions on the Legal Representative's Request

3. In his Request, the Legal Representative reiterates his right and his need to receive a copy of his client's statement taken by the Defence team of Germain Katanga based on the following arguments. First, to be in a position to make an informed decision whether to propose his client as a witness, the Legal Representative needs to have access to all his statements. With such information he will be able to determine the victim's ability to recollect certain facts and the consistency and clarity of his memories, despite having suffered traumatizing events. Second, the right to have access to all the material related to his client emanates from the principles applicable to the counsel-client relationship and from a counsel's right to obtain all necessary elements for the representation of his client. Third, the Legal Representative submits that his client, a victim, has a legitimate right to receive a copy of his own statement and to discuss it with his lawyer. The importance of such access is verified particularly when – as is the case in the current situation – the Legal Representative has concerns about the conditions under which his client was interviewed by the Defence, including that he was led to sign the statement without first being able to review and verify its contents. The Legal Representative adds that his client is illiterate and that the person who interviewed him merely introduced himself as "someone working for the Court". The fact that this assertion was, at the least, misleading lends additional reason to suspicion and, accordingly, importance to the Legal Representative's ability to review the statement. Last, the Legal Representative

stresses that it is inadequate and unfair to both counsel and client to require the victim to recollect what he was asked and what he said during the interview.

4. The Prosecution agrees that the Legal Representative has a legitimate claim for access to information the Defence obtained from his client, victim a/0010/09, to properly represent the client and protect his rights and interests. Indeed, it is unthinkable that a lawyer would be required to represent a client and make informed decisions on his client's behalf while being denied access to a statement made by the client, disclosure of which is essential for proper representation. The communication of his client's statement, taken by the Defence, would enable the Legal Representative to better assess important aspects of his client's representation which are instrumental when determining whether to call him to testify before the Chamber, such as his ability to convey clear and concise evidence and to recollect particular events.
5. Finally, the Prosecution shares the Legal Representative's concern about the manner in which victims may have been approached by members of the Defence teams. If, as has been asserted here, the Defence team member represented itself as "working for the Court" – with the implication that he is objective and not aligned with the Defence – the Legal Representative has additional reason for concern that the investigator may have unduly influenced or misled his client, to the client's prejudice. Under those additional circumstances, it is entirely appropriate that the Legal Representative be given a copy of his client's purported statement.

Conclusion

For the foregoing reasons, the Prosecution supports the Legal Representative's Request and submits that it should be granted.



Luis Moreno-Ocampo, Prosecutor

Dated this 1st day of October 2010

At The Hague, The Netherlands