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TRIAL CHAMBER II

Before: Judge Bruno Cotte , Presiding Judge
Judge Fatoumata Dembele Diarra
Judge Hans-Peter Kaul

**SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO
IN THE CASE OF
THE PROSECUTOR
*v. GERMAIN KATANGA AND MATHIEU NGUDJOLO CHUI***

Public Document

**MOTION FOR LEAVE TO SUBMIT AS AMICUS CURIAE
ON OBSERVATIONS RELATED TO SEXUAL SLAVERY SUBMITTED BY
QUEEN'S UNIVERSITY BELFAST HUMAN RIGHTS CENTRE**

Source: Queen's University Belfast Human Rights Centre
School of Law, 29 University Square, Belfast, BT7 1NN, Northern Ireland

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

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Legal Representatives of Victims

[1 name per team maximum]

Legal Representatives of Applicants

[1 name per team maximum]

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

[2 names maximum]

**The Office of Public Counsel for the
Defence**

[2 names maximum]

States Representatives

Amicus Curiae

REGISTRY

Registrar

Ms Silvana Arbia

Deputy Registrar

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

INTRODUCTION

1. Pursuant to Rule 103 of the Rules of Procedure and Evidence, the Queen's University Belfast Human Rights Centre [hereafter: QUB Human Rights Centre] hereby applies for leave to submit observations as *amicus curiae* to aid in the proper determination of the crimes of sexual slavery in the case of the *Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui* by considering the legal parameters of common Element 1 of the Elements of Crimes of sexual slavery.
2. In accordance with Rule 103, the QUB Human Rights Centre applies for leave to submit comments in writing. If leave to submit the *amicus curiae* is granted, please find it attached to this Motion.

THE QUB HUMAN RIGHTS CENTRE IS AN APPROPRIATE ORGANISATION TO BE GRANTED LEAVE TO SUBMIT AN *AMICUS CURIAE* IN THE PRESENT MATTER

3. The QUB Human Rights Centre, housed within the School of Law at Queen's University Belfast has a wide membership. The Members have and continue to produce research of an international standard.
4. The QUB Human Rights Centre's research output includes a number of recent books including *The Slavery Conventions: The Travaux Préparatoires of the 1926 League of Nations Convention and the 1956 United Nations Convention*; *Equality and Democratic Renewal in Northern Ireland*; *Human Rights in the Community: Rights as Agents for Change*; and *Trafficking of Human Beings from a Human Rights Perspective* as well as articles published in leading international law and human rights law journals.

5. Within the QUB Human Rights Centre the following individuals have expertise in the area of the crimes of sexual slavery: Jean Allain, Julia Borgianni Batho, Yassin M'Boge, and Orlaith Minogue.

6. Dr. Jean Allain is a Reader in Public International Law, School of Law, Queen's University Belfast, and Extraordinary Lecturer, Human Rights Centre, Faculty of Law, University of Pretoria, South Africa. Previously, Dr. Allain clerked for the President and the Deputy Registrar of the International Criminal Tribunal for the former Yugoslavia. Dr. Allain is author of, *inter alia*: *The Slavery Conventions: The Travaux Préparatoires of the 1926 League of Nations Convention and the 1956 United Nations Convention*, 2008 and "The Definition of Slavery in International Law", *Howard Law Journal*, Vol. 52, 2009, pp. 239-275. Dr. Allain has also published items related to slavery and human exploitation in the *American Journal of International Law*, the *British Yearbook of International Law*, the *European Journal of International Law*, and the *Journal of the History of International Law*. Dr. Allain has worked as a consultant on issues of slavery and human exploitation for the International Labour Organisation and Anti-Slavery International. Dr. Allain's most thorough consideration of enslavement in international criminal law is: "The Parameters of 'Enslavement' in International Criminal Law", a paper presented at the *International Symposium on the New Developments of International Criminal Law*, China University of Political Science and Law, Beijing, China, 25 April 2009.

7. Julia Borgianni Batho is a Brazilian Lawyer (Bar No. 258.183), is a post-graduate student undertaking the European Master's Degree in Human Rights and Democratization and is completing a postgraduate course at QUB in Human Exploitation and Enslavement and writing coursework entitled "Where does the notion of 'by imposing on them a similar deprivation of liberty' found within the Elements of Crimes of Enslavement come from and what are its parameters?".

8. Yassin M'Boge LLB (Honours) Law, LLM (International Criminal Justice and Armed Conflict) is a doctoral student at Queen's University Belfast and her research investigates the relationship between the International Criminal Court and the United Nations Security Council and is entitled '*A Constructive Partnership in Peace, Security and Justice: The Relationship between the International Criminal Court and*

the UN Security Council. She has interned with the Legal Advisory Section of the Registry at the International Criminal Court.

9. Orlaith Minogue BCL (Hons) (Law and French) is a post-graduate student on the Human Rights Law LLM at Queen's University Belfast. Her dissertation is focused upon gender-based crime in international criminal law. She is an intern at Amnesty International Northern Ireland since January 2009.

THE *AMICUS CURIAE* WILL ASSIST THE COURT IN RESOLVING ISSUES RAISED WITH REGARD TO THE CRIMES OF SEXUAL SLAVERY

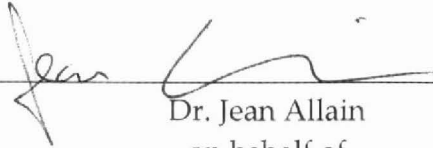
10. This is an important question, given that this is the first case in which the crimes of sexual slavery will be tried before the International Criminal Court.
11. The QUB Human Rights Centre submits its *amicus curiae* to the International Criminal Court to assist in the proper determination of the crimes of sexual slavery in the case of the *Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui* by considering the legal parameters of common Element 1 of the Elements of Crimes of sexual slavery.
12. QUB Human Rights Centre examines common Element 1 of the Elements of Crimes of sexual slavery and its relationship to the definition of enslavement as set out in the Statute of the International Criminal Court.
13. QUB Human Rights Centre demonstrates the manner in which common Element 1 of the crimes of sexual slavery and its footnote can be read so as to be consistent with the Statute of the International Criminal Court.

THE *AMICUS CURIAE* WILL DEMONSTRATE THAT:

- i. the Statute of the International Criminal Court limits the crime of enslavement to that of slavery as defined by the 1926 Slavery Convention;
- ii. common Element 1 of the Elements of Crimes of sexual slavery requires that powers attaching to the right of ownership be exercised for a crime of sexual slavery to transpire;
- iii. the powers attaching to the right of ownership are given content through a 1953 Report by the United Nations Secretary-General;
- iv. the apparent wider scope of enslavement under customary international law is not applicable before the International Criminal Court, if the Elements of Crimes are to be consistent with the Statute, as per Article 9(3) of the Statute of the International Criminal Court;
- v. if the Court considers issues of the exacting forced labour or otherwise reducing a person to servile status, then the *circumstances* in which such a deprivation of liberty would fall under its jurisdiction is where the exacting of forced labour or the reduction of a person to servile status would demonstrate the exercise of any or all of the powers attaching to the right of ownership;
- vi. if the Court considers issues of trafficking, it must focus not on *the action* or *the method* of trafficking, but ask if the type of exploitation taking place meets the threshold of slavery; that is: the exercise of the powers attaching to the right of ownership as found in common Element 1 of the Elements of Crimes of sexual slavery; and
- vii. in essence, where common Element 1 of the Elements of Crimes of sexual slavery is concerned, no matter the nomenclature one wishes to attribute to an act of exploitation (for instance: forced labour); that exploitation will only come under the jurisdiction of the International Criminal Court as 'one of the most serious crimes of concern to the international community as a whole', where there is the exercise of the powers attaching to the right of ownership.

CONCLUSION

14. For the reasons set forth above, the QUB Human Rights Centre requests that it be granted leave to submit the proposed *amicus curiae* brief pursuant to Rule 103 of the Rules of Procedure and Evidence to aid in the proper determination of the crimes of sexual slavery in the case of the *Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui* by considering the legal parameters of common Element 1 of the Elements of Crimes of sexual slavery.



Dr. Jean Allain
on behalf of
Queen's University Belfast Human Rights Centre

Dated this 30th day of June 2009

At Fergus, Canada