

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: English

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

Date: 15 July 2011

THE APPEALS CHAMBER

Before: Judge Sang-Hyun Song
Judge Akua Kuenyehia
Judge Erkki Kourula
Judge Anita Ušacka
Judge Daniel David Ntanda Nsereko

**SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO
IN THE CASE OF
THE PROSECUTOR V. GERMAN KANGA AND MATHIEU NGUDJOLO
CHUI**

Public

Urgent Request for Directions

Source: The Government of the Kingdom of the Netherlands

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

The Office of the Prosecutor

Mr Luis Moreno-Ocampo

Mr Fabricio Guariglia

Counsel for the Defence

Mr David Hooper

Mr Andreas O'Shea

Legal Representatives of the Victims

Mr Jean-Louis Gilissen

Mr Fidel Nsita Luvengika

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**

States' Representatives

Ms Liesbeth Lijnzaad, the Government of
the Kingdom of the Netherlands

Amicus Curiae

The Democratic Republic of the Congo

REGISTRY

Registrar

Ms Silvana Arbia

Counsel Support Section

Deputy Registrar

Mr Didier Preira

Victims and Witnesses Unit

Ms Maria Luisa Martinod-Jacome

Detention Section

**Victims Participation and Reparations
Section**

Other

Mr Marc Dubuisson

Mr Ghislain Mabanga Monga Mabanga

1. On 9 June 2011, Trial Chamber II issued its "Decision on an *Amicus Curiae* application and on the '*Requête tendant à obtenir présentations des témoins DRC-D02-P-0350, DRC-D02-P-0236, DRC-D02-P-0228 aux autorités néerlandaises aux fins d'asile*' (articles 68 and 93(7) of the Statute)" (the "Decision").¹
2. On 15 June 2011, the Netherlands requested the Trial Chamber to grant leave to appeal the Decision pursuant to Article 82(1)(d) of the Statute.² The Netherlands submitted that:

"the Decision has broad implications for the relationship between the Netherlands and the Court and, consequently, for the functioning of the Court in the Netherlands. [...] Consequently, it is of great importance for the Government of the Netherlands to be able to argue the matter before the Appeals Chamber in order for the Court to reconsider its position."³

3. On 15 July 2011, the Registry of the Court notified the Netherlands of the Trial Chamber's "Décision relative à trois demandes d'autorisation d'interjeter appel de la Décision ICC-01/04-01/07-3003 du 9 juin 2011" (the "Decision on Request for Leave to Appeal").⁴ The Trial Chamber declared inadmissible the request for leave to appeal by the Netherlands, as well as the requests for leave to appeal the Decision submitted by the Office of the Prosecutor and the Government of the Democratic Republic of the Congo.

4. In the Decision on Request for Leave to Appeal, the Trial Chamber stated:

"La Chambre considère ainsi qu'elle irait au delà des pouvoirs qui lui sont dévolus en acceptant d'examiner des demandes d'autorisation

¹ ICC-01/04-01/07-3003-tENG.

² ICC-01/04-01/07-3020.

³ *Ibid.*, paras. 9 and 13.

⁴ ICC-01/04-01/07-3073.

d'appel formées contre des décisions qui, par nature, ne sont pas concernées par l'article 82-1-d du Statut. Elle ne peut, dès lors, autoriser ou refuser d'autoriser de tels appels dont elle estime, sous réserve de leur recevabilité, qu'ils peuvent être portés directement devant la Chambre d'appel sans son autorisation.”⁵

5. The Netherlands notes the unprecedented nature of the Decision on Request for Leave to Appeal and the lack of relevant provisions in the legal framework of the Court concerning the appeal which the Netherlands intends to file against the Decision before the Appeals Chamber. The Netherlands furthermore notes the Court's judicial recess which commences today.
6. In light of the foregoing, the Netherlands respectfully requests the Appeals Chamber for urgent directions as to the procedure to follow, including the applicable time limits, concerning the appeal which the Netherlands intends to file against the Decision.


E. Linzaad
Legal Adviser of the Ministry of Foreign Affairs
on behalf of
the Government of the Kingdom of the Netherlands



Dated this 15 July 2011

At The Hague, the Netherlands

⁵ *Ibid.*, para. 9.