

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 30 May 2012

TRIAL CHAMBER II

Before: Judge Bruno Cotte, Presiding Judge
Judge Fatoumata Dembele Diarra, Judge
Judge Christine Van den Wyngaert, Judge

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

IN THE CASE OF

***THE PROSECUTOR v. GERMAIN KATANGA AND MATHIEU NGUDJOLO
CHUI***

Confidential

Registry's observations following the "Requests concerning the Detention of
Witnesses DRC-D02-P-0236, DRC-D02-P-0228, and DRC-D02-P-0350" (Document
ICC-01/04-01/07-3291-Conf)

Source: The Registrar

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. Eric MacDonald

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Legal Representatives of the Victims

Me Fidel Nsita Luvengika

Me Jean-Louis Gilissen

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

Amicus Curiae

REGISTRY

Registrar

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Detention Section

M. Patrick Craig

**Victims Participation and Reparations
Section**

Other

Me Ghislain Mabanga Monga Mabanga

The Registrar of the International Criminal Court (the "Court")

NOTING the "Requests concerning the Detention of Witnesses DRC-d02-P-0236, DRC-D02-P-0228, and DRC-D02-P-0350" (hereinafter the "Requests") submitted by the Duty Counsel for the detained witnesses on 14 May 2012¹;

CONSIDERING that the parties and participants and the Registry were invited to submit their observations on the Requests before 16.00 hours on 30 May 2012²;

NOTING Articles 68 and 87 to 93 of the Rome Statute, Regulation 23*bis* of the Regulations of the Court.

TRANSMITS hereby, respectfully, the following observations:

A. Regarding the use of the note verbale of the Host State of 15 March 2012

1. The Registry wishes to bring to the Chamber's attention that the Host State has agreed to the fact that the note verbale of 15 March 2012 (referenced DKP- 2012/255) can be transmitted to the Dutch counsel of the detained witnesses for use in national proceedings with the obligation to use the said note verbale only in proceedings linked to the specific asylum procedures currently ongoing.

¹ ICC-01/04-01/07-3291-conf

² Email from the Legal officer of Trial Chamber II sent on 16 May 2012 at 16.22 hours

B. Regarding the order for the Registrar to assist the detained witnesses to be present at Dutch court hearings

2. The Registry wishes to reiterate her previous position by reminding the Chamber that there is no obligation incumbent on the Registry with regards to the transportation of the detained witnesses to Dutch court hearings. The Registry simply has no mandate to provide such transportation and has no jurisdiction whatsoever to secure the detained witnesses' safety on the Host State's territory. This matter squarely falls under the exclusive competence of the Host State.

3. However, the Registry, mindful of the fact that the detained witnesses should be able to participate to the full extent in the asylum proceedings before the Dutch national courts, would like to put the following suggestions to the Trial Chamber with regards to facilitating the presence of the detained witnesses:

- As (successfully) done in previous hearings related to the ongoing asylum requests, the Registry is willing to again facilitate the use of video-link conference, together with all other technical facilities, such as, but not limited to privileged communication, between the ICC Detention Centre and any given Dutch courtroom as such enabling the detained witnesses to participate in the proceedings.

- Alternatively, the asylum related court hearings could equally be hosted at the ICC detention Centre, though this would be more problematic for logistical reasons.

4. In the event the Host State agrees to transport the detained witnesses from the ICC Detention Centre to a Dutch courtroom, the Registry undertakes to make the detained witnesses available for transportation by the relevant Host State authorities.

C. Regarding the responsibility for the ongoing detention of the detained witnesses

5. The Registry refers to its earlier submissions on this issue³ and has nothing to add that may assist the Trial Chamber in its determination.

6. The Registry would like to reiterate that it is currently implementing the Trial Chambers decision⁴ until the completion of the asylum proceedings, including the appeals and is of the view that, in the event the asylum requests are rejected, the detained witnesses are to be returned to the Democratic Republic of the Congo, in accordance with article 93(7) of the Rome Statute

7. In the event asylum is granted to the detained witnesses, the Registry respectfully seeks guidance from the Trial Chamber on the appropriate actions to take regarding their detention.

8. The Registry will inform the Trial Chamber on any update as to the ongoing asylum proceedings.

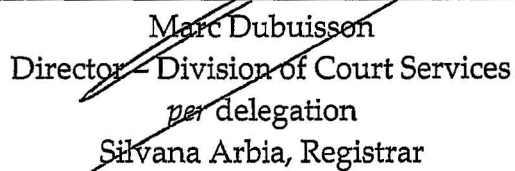
9. The Registry wishes to stress that consultations with the Host State, regarding the detention of the detained witnesses, are ongoing.

³ ICC-01/04-01/07-2849-Conf; ICC-01/04-01/07-2900-Conf.

⁴ ICC-01/04-01/07-3003-tENG, pages 37-38, paragraphs 80-81

D. Notification of document ICC-01/04-01/07-3291-Conf to the Host State

10. The Registry is of the view that the requests forwarded by the Duty Counsel for the detained witnesses in document ICC-01/04-01/07-3291-Conf should be notified to the Host State with a view to obtaining their observations on the various demands.



Marc Dubuisson
Director – Division of Court Services
per delegation
Silvana Arbia, Registrar

Dated this 30 May 2012

At The Hague, The Netherlands