

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: **French**

**No.: ICC-01/04-01/07
Date: 19 February 2014**

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***

**Public Document
with confidential annexes**

**Decision on the Application for Registration in the Record of Decisions and
Motions transmitted solely by e-mail.**

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

Office of the Prosecutor

Ms Fatou Bensouda, Prosecutor
Mr Éric MacDonald, Senior Trial Lawyer

Counsel for Germain Katanga

Mr David Hooper
Mr Andreas O'Shea

Legal Representatives of Victims

Mr Jean-Louis Gilissen
Mr Fidel Nsita Luvengika

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparations**

States' Representatives

**Office of Public Counsel for the
Defence**

REGISTRY

Registrar

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

TRIAL CHAMBER II of the International Criminal Court (“Chamber”) acting pursuant to article 64 of the Rome Statute (“Statute”), rule 134 of the Rules of Procedure and Evidence (“Rules”) and regulation 21 of the Regulations of the Registry decides as follows:

1. On 21 January 2014, the Common Legal Representative of the main group of victims applied to the Chamber for the registration in the record of a number of e-mails transmitting decisions or motions in the instant case.¹ Reiterating the arguments made in a previous and similar application,² he submitted that the prospective need to transmit a complete record of the proceedings to the Appeals Chamber in due course and the principle of public hearings require that the e-mails be filed in the record of the case.³ Accordingly, the Legal Representative submitted 15 e-mails which, in his view, merited inclusion in the record, and invited suggestions from all of the parties and participants,⁴ none of which filed submissions on the Application before expiry of the time limit for response.

2. The Chamber recalls its Decision of 8 February 2012 in which it stated that “since [...] e-mails are copied to all of the parties and participants, they afford the necessary transparency and safeguard the *inter partes* nature of the proceedings.”⁵ The Chamber further stated that it shared the Legal Representative’s concern with respect to “safeguarding the fundamental principle of public hearings and ensuring that the record of the case is as complete as possible, particularly in view of a prospective appeal.”⁶

¹ The Common Legal Representative of victims. “*Demande d’enregistrement au dossier de décisions et requêtes communiquées uniquement par courriel (Article 64-7 du Statut et Norme 21 du Règlement du Greffe)*”, 21 January 2014, ICC-01/04-01/07-3425 with one confidential annex (“Application”).

² The Common Legal Representative of victims. “*Demande d’enregistrement au dossier de décisions et requêtes communiquées uniquement par courriel (Article 64-7 du Statut et Norme 21 du Règlement du Greffe)*”, 22 December 2011, ICC-01/04-01/07-3220. See also “Decision on the application for registration in the record of decisions and motions transmitted solely by e-mail”, 8 February 2012, ICC-01/04-01/07-3237-tENG, para. 2 (“Decision of 8 February 2012”).

³ Application, paras. 7-11.

⁴ Application, para. 13.

⁵ Decision of 8 February 2012, para. 2.

⁶ Decision of 8 February 2012, para. 3.

3. The Chamber recalls that its practice has been “to include references to e-mails pertaining purely to judicial administration in the procedural background to its written or oral decisions and to reproduce or append the content of e-mails pertaining to substantive matters to decisions concerning the same matters.”⁷

4. The Chamber therefore grants the Legal Representative’s application and allows the registration in the record, as annexes to the instant Decision, the 15 e-mails identified by the Legal Representative, sometimes grouped together in a more complete e-mail exchange on the same subject. The annexes to this Decision are to be marked as “confidential” as they contain the names of staff of the Court and some e-mail addresses.

5. Lastly, and in the light of the same considerations, the Chamber finds that before the judgment in the instant case is delivered, it is also necessary to register in the record a memorandum on the notification of charges drafted by the Prosecution and transmitted solely by e-mail on 3 December 2009.

FOR THESE REASONS, the Chamber

GRANTS the Application.

Done in both English and French, the French version being authoritative.

[signed]
Judge Bruno Cotte
Presiding Judge

[signed]
Judge Fatoumata Dembele Diarra

[signed]
Judge Christine Van den Wyngaert

Dated this 19 February 2014

At The Hague, Netherlands

⁷ Decision of 8 February 2012, para. 4.