

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

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

Date: 15 May2008

**PRE-TRIAL CHAMBER I**

**Before:** Judge Akua Kuenyehia, Presiding Judge  
Judge Anita Ušacka  
Judge Sylvia Steiner

**SITUATION IN THE DEMOCRATIC REPUBLIC OF CONGO  
IN THE CASE OF  
THE PROSECUTOR  
*v. Germain Katanga and Mathieu Ngudjolo Chui***

**Public  
URGENT  
Decision on the Defence's Applications for the Admission of its Late Filing  
and Leave to Appeal**

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

**The Office of the Prosecutor**

Mr Luis Moreno Ocampo, Prosecutor  
Mr Éric Macdonald, Senior Trial Lawyer

**Counsel for the Defence for Germain  
Katanga**

Mr David Hooper  
Ms Caroline Buisman

**Counsel for the Defence for Mathieu  
Ngudjolo Chui**

Mr Jean-Pierre Kilenda Kakengi Basila  
Ms. Maryse Alié

**Legal Representatives of the Victims**

Ms Carine Bapita Buyagandu  
Mr Joseph Keta  
Mr J.L. Gilissen

**Legal Representatives of the Applicants**

**Unrepresented Victims**

**Unrepresented Applicants for  
Participation/Reparation**

**The Office of Public Counsel for  
Victims**

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

**States Representatives**

**Amicus Curiae**

**REGISTRY**

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**Registrar**

Ms Silvana Arbia

**Defence Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations      Other  
Section**

**PRE-TRIAL CHAMBER I** of the International Criminal Court (“the Chamber” and “the Court”, respectively);

**NOTING** “Decision on the ‘Defence Application pursuant to Article 57(3)(b) of the Statute to Seek the Cooperation of the Democratic Republic of Congo (DRC)’”<sup>1</sup> (“the Decision”) issued by the Chamber on 25 April 2008;

**NOTING** the “Defence Application for Leave to Appeal the Decision on the “Defence Application pursuant to Article 57 (3) (b) of the Statute to Seek the Cooperation of the Democratic Republic of Congo (DRC)”<sup>2</sup> (“the Defence’s Application for Leave to Appeal”), filed by the Defence for Germain Katanga on 6 May 2008;

**NOTING** the “Defence’s Application for the Admission of its Late Filing”<sup>3</sup> (“Defence’s Application for Late Filing”) filed by the Defence for Germain Katanga on 6 May 2008;

**NOTING** article 82(1)(d) of the *Rome Statute* (“the Statute”), rule 155 of the *Rules of Procedure and Evidence* (“the Rules”) and regulations 1(1), 31(2), 33 and 35 of the *Regulations of the Court* (“the Regulations”);

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<sup>1</sup> ICC-001/04-01/07-443-Conf-Exp and its public redacted version ICC-01/04-01/07-444.

<sup>2</sup> ICC-01/04-01/07-467-Conf-Exp.

<sup>3</sup> ICC-01/04-01/07-468-Conf-Exp.

**CONSIDERING** that in the present case, the time-limit provided for in rule 155 of the Rules for the filing by the Defence of a motion for leave to appeal against the Decision started running from the notification to the Defence of the Decision;

**CONSIDERING** that the Defence for Germain Katanga (i) acknowledged that the deadline for filing the application for leave to appeal the Decision expired on Monday 5 May 2008<sup>4</sup> and (ii) explained that the lateness of its filing was due to a “miscommunication between two members of the team as to who would be filing” the application for leave to appeal the Decision;<sup>5</sup>

**CONSIDERING** that nevertheless, the Defence for Germain Katanga submits that its application for leave to appeal should not be rejected *in limine* because (i) the issue touched upon by the Decision is significant insofar as it is a new issue of law and there are different views of the judges on the correct interpretation of statutory provisions; (ii) parties should be given an opportunity to rectify their mistakes in a timely manner notably in order to avoid undue prejudice to the rights of their client; and (iii) the Chamber should, on an exceptional basis and by virtue of its inherent power, accept the late filing of the Defence in order to preserve the interests of justice;<sup>6</sup>

**CONSIDERING** that the Chamber is of the view that the request of the Defence for Germain Katanga amounts to a request for an extension of the time-limit;

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<sup>4</sup> ICC-01/04-01/07-468-Conf-Exp, para.1.

<sup>5</sup> ICC-01/04-01/07-468-Conf-Exp, para.2.

<sup>6</sup> ICC-01/04-01/07-468-Conf-Exp, para.8.

**CONSIDERING** that, pursuant to regulation 1(1) of the Regulations, the regulations shall be read subject to the Statute and Rules and therefore no extension or reduction of time-limits can be granted in relation to time-limits established by the Statute or the Rules;<sup>7</sup>

**CONSIDERING** that, as this Chamber, Pre-Trial Chamber II and Trial Chamber I have repeatedly stated, the fact that the issues for which leave to appeal is sought are new issues of law, that they may have an impact on future proceedings, and that the interpretation of the judges on the relevant statutory provisions differs, is not per se sufficient to warrant granting a request for leave to appeal, and that therefore, *a fortiori*, it is also insufficient to warrant creating an exception to the time limit established by rule 155 of the Rules;

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<sup>7</sup> ICC-01/04-01/07-466, p.4.

**FOR THESE REASONS,**

**REJECTS** the Defence's Application for the Admission of its Late Filing; and,  
consequently,

**DECIDES** to reject *in limine* the Defence's Application for Leave to Appeal.

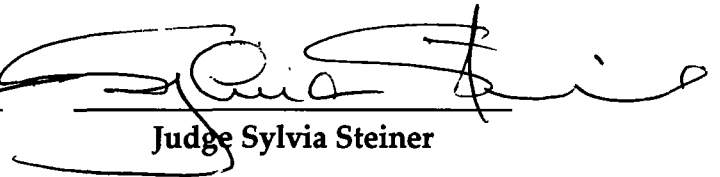
Done in both English and French, the English version being authoritative.



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**Judge Akua Kuenyehia**  
**Presiding Judge**



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**Judge Anita Ušacka**



\_\_\_\_\_  
**Judge Sylvia Steiner**

Dated this Thursday 15 May 2008

At The Hague, The Netherlands