

**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

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)’”¹ (“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)”² (“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”³ (“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”);

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

² ICC-01/04-01/07-467-Conf-Exp.

³ 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 2008⁴ 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;⁵

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;⁶

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;

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

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

⁶ 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;⁷

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;

⁷ 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.

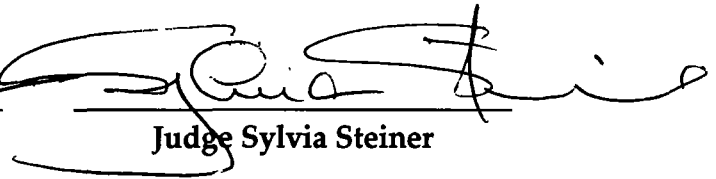
Done in both English and French, the English version being authoritative.



Judge Akua Kuenyehia
Presiding Judge



Judge Anita Ušacka



Judge Sylvia Steiner

Dated this Thursday 15 May 2008

At The Hague, The Netherlands