

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

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

Date: 6 June 2013

**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**

**Decision granting leave to reply**

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

**The Office of the Prosecutor**

Ms Fatou Bensouda  
Mr Eric MacDonald

**Counsel for Germain Katanga**

Mr David Hooper  
Mr Andreas O'Shea

**Legal Representatives of the Victims**

Mr Fidel Nsita Luvengika  
Mr Jean-Louis 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**

Mr Herman von Hebel

**Defence Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

**Other**

Trial Chamber II (“Chamber”) of the International Criminal Court (“Court”), in the case of the *Prosecutor v. Germain Katanga*, having regard to regulations 24 and 34 of the Regulations of the Court (“Regulations”), issues the following decision on the “Defence Request for Leave to Appeal the Decision 3319” (“Application”).<sup>1</sup>

## I. BACKGROUND

1. On 21 November 2012, the Chamber by majority decided to activate Regulation 55 of the Regulations of the Court (“Regulations”) and to sever the cases against Mr Germain Katanga and Mr Mathieu Ngudjolo.<sup>2</sup>
2. This decision was upheld by the Appeals Chamber on 27 March 2013.<sup>3</sup>
3. On 15 May 2013, the Chamber issued its ‘Décision relative à la transmission d’éléments juridiques et factuels complémentaires (norme 55-2 et 3 du Règlement de la Cour)’, in which it provided Mr Katanga with additional ‘factual elements’ on which the Chamber might rely in relation to a potential recharacterisation of the charges.<sup>4</sup> In this decision, the Chamber invited the Prosecutor and the Legal Representatives of the victims to submit additional observations by 22 May 2013 and instructed the Defence for Mr Katanga to file new observations by 29 May 2013. These deadlines were subsequently extended until 24 May 2013 and 3 June 2013 respectively.<sup>5</sup>
4. On 24 May 2013, the Prosecutor and the Legal Representatives of the victims submitted their observations.<sup>6</sup>

<sup>1</sup> “Defence Request for Leave to Appeal the Decision 3319”, 21 December 2012, ICC-01/04-01/07-3323

<sup>2</sup> “Décision relative à la mise en œuvre de la norme 55 du Règlement de la Cour et prononçant la disjonction des charges portées contre les accusés”, 21 November 2012, ICC-01/04-01/07-3319

<sup>3</sup> “Judgment on the appeal of Mr Germain Katanga against the decision of Trial Chamber II of 21 November 2012 entitled ‘Decision on the implementation of regulation 55 of the Regulations of the Court and severing the charges against the accused persons’”, 27 March 2013, ICC-01/04-01/07-3363

<sup>4</sup> “Décision relative à la transmission d’éléments juridiques et factuels complémentaires (norme 55-2 et 3 du Règlement de la Cour)”, 15 May 2013, ICC-01/04-01/07-3371

<sup>5</sup> Electronic message from Chamber’s Legal Officer of 20 May 2013 at 17h57

<sup>6</sup> “Prosecution’s Observations on the ‘Décision relative à la transmission d’éléments juridiques et factuels complémentaires’”, 24 May 2013, ICC-01/04-01/07-3376 ; “Observations du Représentant

5. The Defence filed its observations on 3 June 2013.<sup>7</sup>

6. On 5 June 2013, the Prosecutor requested authorisation to reply to Mr Katanga's observations of 3 June 2013.<sup>8</sup>

## II. ANALYSIS AND CONCLUSION

7. In her application, the Prosecutor requests authorisation to submit a reply to Mr Katanga's observations. The Prosecutor argues that she could not have anticipated the Defence's submissions in relation to the witnesses it wishes to (re)call. The Prosecutor therefore deems it necessary to formulate comments on the question as to whether or not the Defence has already had the opportunity to question witnesses in relation to the identity of the attackers and whether the Defence should be allowed to come back to issues it has already had an opportunity to address previously.<sup>9</sup> The Prosecutor also wishes to make observations about practical and security issues.<sup>10</sup>

8. Pursuant to Regulation 24(5) of the Regulations, "Participants may only reply to a response with the leave of the Chamber, unless otherwise provided in these Regulations." There are no formal criteria for the authorisation of requests for leave to reply. However, the Chamber will, as a matter of principle, only grant leave to reply when the issue is novel or of particular importance.<sup>11</sup> In this case, the Chamber accepts that it might be helpful to receive the Prosecutor's submissions,

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légale des victimes enfants soldats déposées en application de la décision ICC-01/04-01/07-3371", 24 May 2013, ICC-01/04-01/07-3375

<sup>7</sup> "Defence Observations on the Decision transmitting additional legal and factual material (regulation 55(2) and 55(3) of the Regulations of the Court", 3 June 2013, ICC-01/04-01/07-3379-Conf-Corr

<sup>8</sup> "Demande d'autorisation de répliquer aux 'Defence Observations on the Decision transmitting additional legal and factual material (regulation 55(2) and 55(3) of the Regulations of the Court'", 5 June 2013, ICC-01/04-01/07-3380

<sup>9</sup> ICC-01/04-01/07-3380, para. 6-7

<sup>10</sup> ICC-01/04-01/07-3380, para. 6

<sup>11</sup> "Decision on the Application of the Defence for Germain Katanga to file a reply (regulation 24 of the Regulations of the Court)", 27 March 2009, ICC-01/04-01/07-1004, para. 4; "Decision on the Application of the Defence for Germain Katanga to file a reply (regulation 24 of the Regulations of the Court)", 25 February 2010, ICC-01/04-01/07-1917-Conf-Exp, para. 7; "Corrigendum of the Decision on the Prosecutor's Request for Leave to File a Reply to Filing ICC-01/04-01/07-2677-Conf", 3 February 2011, para. 7

especially with regard to the practical and security concerns involved in conducting further investigations. It may also be in the interest of having a complete judicial record to allow the Prosecutor's submissions in relation to the allegation that the Defence already had an opportunity to address certain evidentiary issues before.

9. Pursuant to Regulation 34, a reply is ordinarily to be filed, subject to leave being granted, within 10 days of notification of the relevant response. However this time frame may be altered by the Chamber. In order to expedite matters, the Chamber decides to shorten the deadline.

**FOR THESE REASONS,**

**THE CHAMBER,**

**GRANTS** the Prosecutor's request for leave to reply; and

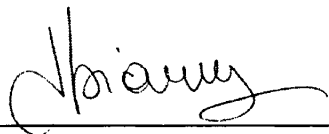
**ORDERS** the Prosecutor to file her reply no later than 11 June 2013 at 16h00.

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



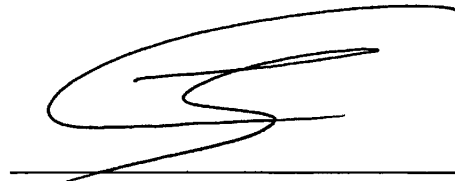

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**Judge Bruno Cotte**  
**Presiding Judge**




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**Judge Fatoumata Dembele Diarra**




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**Judge Christine Van den Wyngaert**

Dated this 6 June 2013

At The Hague, the Netherlands