



Original: English

**No. ICC-01/04-01/07
Date: 31 August 2015**

**THREE JUDGES OF THE APPEALS CHAMBER APPOINTED FOR THE
REVIEW CONCERNING REDUCTION OF SENTENCE**

Before: Judge Piotr Hofmański, Presiding Judge
Judge Sanji Mmasenono Monageng
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 on the requests to modify the schedule for written submissions

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

The Office of the Prosecutor
Ms Fatou Bensouda, Prosecutor
Mr James Stewart

Counsel for Mr Germain Katanga
Mr David Hooper
Ms Caroline Buisman

Legal Representatives of Victims
Mr Jean-Louis Gilissen
Mr Fidel Nsita Luvengika

REGISTRY

Registrar
Mr Herman von Hebel

Other
The Presidency

The three judges of the Appeals Chamber of the International Criminal Court,

In the review by the Court concerning reduction of sentence of Mr Germain Katanga pursuant to article 110 of the Statute,

Having before them the “Prosecution’s urgent request to modify the schedule for written submissions for Germain Katanga’s sentence review” of 26 August 2015 (ICC-01/04-01/07-3575) and the “Requête urgente du Représentant légal en modification des délais pour soumettre ses observations sur la réduction de peine de Germain Katanga” of 27 August 2015 (ICC-01/04-01/07-3577),

Render unanimously the following

DECISION

The requests to modify the schedule for written submissions are granted in part. The Prosecutor and the Legal Representative of Victims shall file their written submissions by 16h00 on Friday 18 September 2015.

REASONS

I. PROCEDURAL HISTORY

1. On 13 August 2015, the three judges of the Appeals Chamber appointed for the review concerning reduction of sentence (hereinafter: “three judges of the Appeals Chamber”) issued the “Scheduling order for the review concerning reduction of sentence of Mr Germain Katanga”¹ (hereinafter: “Scheduling Order”), ordering, *inter alia*, that “Mr Germain Katanga, the Prosecutor and the Legal Representatives of Victims shall file written submissions [...] by 16h00 on Friday, 11 September 2015” addressing the criteria for review concerning reduction of sentence, as further specified in the Scheduling Order, and observations to be filed by the Registrar, as appropriate.²

¹ ICC-01/04-01/07-3574.

² Scheduling Order, para. 4.

2. On 26 August 2015, the Prosecutor filed the “Prosecution’s urgent request to modify the schedule for written submissions for Germain Katanga’s sentence review”³ (hereinafter: “Prosecutor’s Request”).

3. On 27 August 2015, Mr Germain Katanga (hereinafter: “Mr Katanga”) filed the “Defence Response to Prosecution’s urgent request to modify the schedule for written submissions for Germain Katanga’s sentence review”⁴ (hereinafter: “Mr Katanga’s Response”).

4. On 27 August 2015, the legal representative of the victims (hereinafter: “Legal Representative of Victims”) filed the “Requête urgente du Représentant légal en modification des délais pour soumettre ses observations sur la réduction de peine de Germain Katanga”⁵ (hereinafter: “Victims’ Request”).

5. On 28 August 2015, the Prosecutor filed the “Prosecution’s response to the Legal Representative for Victims’ request to modify the schedule for written submissions for Germain Katanga’s sentence review”⁶ (hereinafter: “Prosecutor’s Response to the Victims’ Request”).

6. On 31 August 2015, further to an order issued by the three judges of the Appeals Chamber,⁷ the Appeals Chamber was notified of Mr Katanga’s “Defence Response to *Requête urgente du Représentant légal en modification des délais pour soumettre ses observations sur la réduction de peine de Germain Katanga*” (hereinafter: “Mr Katanga’s Response to the Victims’ Request”).⁸

II. MERITS

7. In the Prosecutor’s Request, the Prosecutor requests the three judges of the Appeals Chamber to modify the schedule for the filing of written submissions set out in the Scheduling Order, so as to permit the Prosecutor to file her written submissions

³ ICC-01/04-01/07-3575.

⁴ ICC-01/04-01/07-3576.

⁵ ICC-01/04-01/07-3577.

⁶ ICC-01/04-01/07-3578.

⁷ “Order on the filing of a response by Mr Katanga”, 28 August 2015, ICC-01/04-01/07-3579.

⁸ ICC-01/04-01/07-3580. The filing was dated 28 August 2015 and was registered on 31 August 2015.

by Friday 25 September 2015, two weeks after Mr Katanga has filed his written submissions.⁹

8. The Prosecutor submits that her request would be beneficial to the conduct of the review proceedings, enabling her to respond to the submissions of Mr Katanga, including information from any investigations the Prosecutor may conduct further to the receipt of Mr Katanga's submissions.¹⁰ The Prosecutor submits that her request would enable the three judges of the Appeals Chamber to identify points of agreement and/or disagreement between the parties in advance of the hearing.¹¹

9. The Prosecutor submits that, unless she receives the submissions of Mr Katanga in advance of filing her own submissions, she will be deprived of essential information, that only Mr Katanga can provide, which is relevant to her views on certain of the criteria under article 110 of the Statute and rule 223 of the Rules of Procedure and Evidence and, without which, she would be prevented from appropriately addressing those criteria.¹² The Prosecutor further submits that, if she only adds to her submissions filed under the present timetable at the hearing, that would neither assist the three judges of the Appeals Chamber nor the other parties and participants to prepare for the hearing.¹³ The Prosecutor notes that her request is different from the procedure for the filing of written submissions that took place in the sentence review proceedings in the case of the *Prosecutor v. Thomas Lubanga Dyilo*.¹⁴ However, she argues that her request is not opposed by Mr Katanga and does not prejudice him, as he will be able to address the Prosecutor's complete submissions at the hearing and it will also enable him to discharge "his burden of meeting the early release criteria".¹⁵ The Prosecutor further contends that her request will not impact upon the scheduling of the hearing.¹⁶

⁹ Prosecutor's Request, para. 1.

¹⁰ Prosecutor's Request, para. 3.

¹¹ Prosecutor's Request, para. 3.

¹² Prosecutor's Request, para. 4.

¹³ Prosecutor's Request, para. 5.

¹⁴ Prosecutor's Request, para. 6.

¹⁵ Prosecutor's Request, para. 6.

¹⁶ Prosecutor's Request, para. 7.

10. In his response, Mr Katanga states that he has no objection to the Prosecutor's Request.¹⁷

11. In the Victims' Request, the Legal Representative of Victims also requests that he be permitted to file written submissions on behalf of the victims, in response to those filed by Mr Katanga, by 25 September 2015.¹⁸ The Legal Representative of Victims submits that, just like the Prosecutor, without knowing Mr Katanga's position in relation to the criteria in article 110 of the Statute and rule 223 of the Rules of Procedure and Evidence, he will be deprived of the opportunity of presenting complete and helpful submissions.¹⁹ The Legal Representative of Victims submits that the Statute and the Rules of Procedure and Evidence assume that parties and participants will be able to respond to the submissions of the defence on the applicable criteria – and that it is only on the basis of those observations that he is able to present meaningful submissions.²⁰ The Legal Representative of Victims emphasises that he needs to obtain the views and concerns of the victims he represents upon the submissions of Mr Katanga, failing which any views expressed would be made without knowing which factors were being put forward in favour of early release.²¹ He refers specifically to the criteria set out in rule 223 (d) of the Rules of Procedure and Evidence in relation to any action taken by the sentenced person for the benefit of victims and any impact upon them of early release – and that they should be able to respond to matters that directly concern them.²²

12. The Prosecutor and Mr Katanga do not oppose the Victims' Request.²³

13. The Appeals Chamber considers, in light of their submissions, that enabling the Prosecutor and the Legal Representative of Victims to respond to the submissions of Mr Katanga in advance of the hearing of this matter is likely to assist with the efficient conduct of these proceedings as a whole. The Appeals Chamber further notes that Mr Katanga does not oppose either the Prosecutor's Request or the Victims'

¹⁷ Mr Katanga's Response, para. 2.

¹⁸ Victims' Request, para. 6 and p. 5.

¹⁹ Victims' Request, para. 7.

²⁰ Victims' Request, para. 8.

²¹ Victims' Request, para. 9.


²² Victims' Request, paras 10-11.

²³ Prosecutor's Response to the Victims' Request, para. 2; Mr Katanga's Response to the Victims' Request, para. 2.

Request. In the particular circumstances of the present case, the three judges of the Appeals Chamber grant the Prosecutor's Request and the Victims' Request to the extent that they request a modification to the schedule set out in the Scheduling Order for the filing of their written submissions.

14. However, the Appeals Chamber deems it appropriate to require the Prosecutor and the Legal Representative of Victims to file their submissions by 16h00 on Friday 18 September 2015, as opposed to the date of 25 September 2015 that they requested, so as to receive the submissions sufficiently in advance of the hearing.

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



Judge Piotr Hofmański
Presiding Judge

Dated this 31st day of August 2015

At The Hague, The Netherlands