

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: **French**

No.: **ICC-01/04-01/07**
Date: **11 January 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 on the Prosecutor's application for an extension of time to file
submissions on the legal recharacterisation pursuant to article 25(3)(d) of the
Statute**

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 Eric MacDonald, Senior Trial Lawyer

Counsel for the Defence

Mr David Hooper
Mr Andreas O'Shea

Legal Representatives of Victims

Mr Jean-Louis Gillissen
Mr Fidel Nsita Luvengika

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparations**

Office of Public Counsel for Victims

**Office of Public Counsel for the
Defence**

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Counsel Support Section

Deputy Registrar

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

TRIAL CHAMBER II of the International Criminal Court (“the Chamber” and “the Court”, respectively), acting pursuant to regulation 35(2) of the Regulations of the Court, decides the following.

1. On 21 November 2012, in its *Decision on the implementation of regulation 55 of the Regulations of the Court and severing the charges against the accused persons* (“Decision on the implementation of regulation 55”),¹ the Chamber, *inter alia*, informed the parties and the participants that the mode of liability under which Germain Katanga stands charged could be subject to legal recharacterisation on the basis of article 25(3)(d) of the Statute. It further invited the Office of the Prosecutor (“the Prosecutor”) and the Legal Representatives of Victims to file submissions on this point no later than 15 January 2013 at 4 pm. It also invited the Defence to file its submissions no later than 21 January 2013 at 4 pm.

2. Having ordered that the charges against Mathieu Ngudjolo be severed in its Decision on the implementation of regulation 55, on 18 December 2012, the Chamber delivered its judgement pursuant to article 74 of the Statute against Mr Ngudjolo.²

3. On 18 December 2012, the Chamber granted the Defence for Germain Katanga authorisation to appeal the Decision on the implementation of regulation 55.³ At the same time, it dismissed an application by the Legal Representatives of Victims and a request by the Defence that the time limits of 15 and 21 January 2013 to file their submissions should only begin to run on

¹ *Decision on the implementation of regulation 55 of the Regulations of the Court and severing the charges against the accused persons*, 21 November 2012, ICC-01/04-01/07-3319.

² *Judgment pursuant to article 74 of the Statute*, 18 December 2012, ICC-01/04-02/12-3.

³ *Decision on the “Defence Request for Leave to Appeal the Decision 3319”*, 28 December 2012, ICC-01/04-01/07-3327.

the seventh and the fourteenth days following the Appeals Chamber's judgment.

4. On 8 January 2013, the Prosecutor applied for an extension of time to 4 February 2013 for the purposes of filing submissions on the legal recharacterisation on the basis of article 25(3)(d) of the Statute.⁴ By way of grounds, the Prosecutor argued, *inter alia*, that at the end of the closing arguments in May 2012, members of his team were reassigned to other cases currently before the Court.⁵ He also emphasised that a careful reading of the judgment against Mathieu Ngudjolo was necessary for a proper identification of the facts, whether accepted or disregarded, which might be relevant or could affect the "legal recharacterisation" being considered in the case.⁶ He further recalled that the acquittal of Mathieu Ngudjolo was pronounced during the judicial recess and that some members of his team were absent while others were called upon to deal with separate issues pertaining to the developments in the *Katanga* and the *Ngudjolo* cases before the Appeals Chamber.⁷ Accordingly, the Prosecutor submitted in particular that "[TRANSLATION] there is no immediate need" to file the submissions requested by the Chamber on 15 January and that "[TRANSLATION] experience has shown that the Appeals Chamber will need a few months to determine the appeal, especially given the importance of the issues at stake".⁸ He further noted that an extension of time would allow him to make "[TRANSLATION] more concise and targeted" observations, thereby facilitating

⁴ Office of the Prosecutor, *Requête de l'Accusation sur la base de la norme 35 du Règlement de la Cour aux fins de prorogation de délai pour soumettre ses observations sur la requalification juridique sur le fondement de l'article 25-3-d du Statut*, 8 January 2013, ICC-1/04-01/07-3331 ("Prosecutor's Application").

⁵ Prosecutor's Application, para. 5.

⁶ Prosecutor's Application, para. 6.

⁷ Prosecutor's Application, paras. 7-9.

⁸ Prosecutor's Application, para. 10.

the Chamber's work without delaying it. Finally, he took the view that the Defence would not be prejudiced by such extension of the initial time limit.⁹

5. On the same date, given the urgency of the matter, the Chamber invited the Defence for Germain Katanga and the Legal Representatives of Victims to provide it with a response to the Prosecutor's Application before 10 January 2013 at 4 pm.¹⁰

6. The common legal representative of the main group of victims filed submissions on 9 January 2013, as did the legal representative of child soldiers on 10 January 2013. Both moved the Chamber to grant the Prosecutor's Application and a similar extension of time ("Requests of the Legal Representatives of Victims").¹¹ They both emphasised that they must henceforth represent their clients in two parallel proceedings and that it behoves them to carry out within very brief time limits such essential tasks as informing their clients of the latest developments in the case against Mr Ngudjolo as well as in the still ongoing case against Germain Katanga, examining the judgement acquitting Mr Ngudjolo in light of the possible implications for the proceedings against Germain Katanga, and finally participating in the pending proceedings before the Appeals Chamber, whereas both representatives have small teams. In the view of the Legal

⁹ Prosecutor's Application, para. 11.

¹⁰ E-mail from a legal officer of the Chamber to the parties and participants on 8 January 2013 at 6:10 pm.

¹¹ Common legal representative of the main group of victims, "*Observations du représentant légal sur la demande du Procureur aux fins de prorogation de délai pour soumettre ses observations sur la requalification en vertu de l'article 25-3-d) du Statut*", 9 January 2013, ICC-01/04-01/07-3335 ("Submissions of the common legal representative of the main group of victims"); Legal Representative of Child Soldier Victims, "*Observations du représentant légal des victimes enfants soldats sur la «Requête de l'Accusation sur la base de la norme 35 du Règlement de la Cour aux fins de prorogation de délai pour soumettre ses observations sur la requalification juridique sur le fondement de l'article 25-3-d) du Statut»* (ICC-ICC-01/04-01/07-3331)", 10 January 2013, ICC-01/04-01/07-3338 ("Submissions of the Legal Representative of child soldier victims").

Representatives of Victims, the requested new time limit would have little or no impact on the ongoing proceedings before the Chamber, and the Defence for Germain Katanga would suffer no prejudice as a result.¹²

7. The Defence for Germain Katanga filed its observations on 10 January 2013¹³. It objected to the Prosecutor's Application, arguing in particular that, the Prosecutor had been afforded sufficient time to file submissions within the specified time limits, that anything that is likely to prolong the proceedings must be strictly limited in view of the Accused's right to trial without undue delay and that, contrary to the Defence, which intends to seek suspensive relief from the Appeals Chamber pending judgment on the appeal of the Decision on the implementation of regulation 55, the Prosecutor would not suffer any prejudice if it were to file its submissions within the time limit set by the Chamber.¹⁴

8. The Chamber has taken careful note of the arguments advanced by the parties and participants in support of the request for an extension of time on the one hand, and the objection to the granting of such extension raised by the Defence for Germain Katanga on the other hand. It would recall that the time limits it is now being moved to extend were set on 21 November 2012 in a decision scheduling Mathieu Ngudjolo's judgement for 18 December 2012. It notes accordingly that all arrangements could have and should have been made to comply with the prescribed time limit. Nonetheless, given the significance of the issue arising from the Decision on the implementation of

¹² Submissions of the Common Legal Representative of the main group of victims, para. 9; Submissions of the Legal Representative of child soldier victim, paras. 8-12.

¹³ Defence for Germain Katanga, "Defence Observations on the '*Requête de l'Accusation sur la base de la norme 35 du Règlement de la Cour aux fins de prorogation de délai de soumettre ses observations sur la requalification juridique sur le fondement de l'article 25-3-d du Statut*'", 10 January 2013, ICC-01/04-01/07-3337 ("Observations of the Defence for Germain Katanga").

¹⁴ Observations of the Defence for Germain Katanga, paras. 2 and 3.

regulation 55, the Chamber is of the opinion that it is essential to receive as elaborate, clear and relevant submissions as possible. Moreover, it is mindful that the parties and participants have had to reorganise their work as a matter of urgency in order to take account of the Chamber's decision of 21 November 2012 decision to sever the cases and that they must now comply, at short notice and following the judicial recess, with the time limits set by both the Appeals Chamber and this Chamber. In view of the foregoing, the Chamber is minded to grant an extension of the initial time limits albeit briefer than requested.

FOR THESE REASONS, the Chamber,

PARTIALLY GRANTS the Prosecutor's Application and the Requests of the Legal Representatives of Victims;

INVITES the Prosecutor and the Legal Representatives of Victims to file their observations as requested in the Decision on the implementation of regulation 55 no later than 22 January 2013 at 12:00pm; and

INVITES the Defence to file its observations by 29 January 2013 at 12:00 pm.

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 11 January 2013,

At The Hague, The Netherlands