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

Date: 7 January 2013

IN THE APPEALS CHAMBER

Before: Judge Sang-Hyun Song, President
Judge Sanji Mmasenono Monageng
Judge Cuno Tarfusser
Judge Erkki Kourula
Judge Ekaterina Trendafilova

**SITUATION IN THE DEMOCRATIC REPUBLIC OF CONGO
IN THE CASE
OF THE PROSECUTOR *v.* GERMAIN KATANGA**

Public Document

**Urgent Defence Application for Extension of Page Limit for its Document in Support of
Appeal against Trial Chamber II's Decision of 21 November 2012 on Regulation 55
(Decision 3319)**

Source: Defence for Mr Germain Katanga

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

The Office of the Prosecutor

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Victims and Witnesses Unit**Victims Participation and Reparations
Section****Other**

Introduction

1. The defence for Mr. Katanga (the “defence”) requests an extension of page limit for its appeal of Trial Chamber II’s Decision 3319 (“Document in Support of the Appeal Appeal”).¹ In the course of writing the Document in Support of the Appeal, the defence has realised that it is unable to make its arguments effectively within the page-limit set by the Regulations of the Court.² It therefore requests the Appeals Chamber to extend the page limit to 40 pages pursuant to Regulation 37(2) of the Regulations of the Court. The defence submits that exceptional circumstances exist that justify this request. These circumstances are elaborated upon below.

Submissions

2. The Defence does not seek to burden the Appeals Chamber unnecessarily. The issue to be addressed in the appeal (as to whether notice by a Trial Chamber that the legal characterisation of the facts relating to the mode of liability is likely to be changed after the end of deliberations is lawful and appropriate), is a complex and difficult one, and has not fallen for consideration before. The appeal involves widespread issues of both fact and law. The impact of the Appeal decision on the trial, its fairness and expedition, will be most profound.
3. The general limit of 20 pages is unnecessarily restrictive in the circumstances of this appeal, and will render the appeal grounds significantly less effective or helpful.
4. Regulation 55, the scope of which is at the heart of the appeal, is unique to the ICC. A detailed analysis of the law and comparative systems, including consideration of each of the fair trial guarantees contained in article 67(1) of the Statute, is required. With regard to the factual component, it will necessary to present fully the context in which the impugned decision arose, as well as its consequences on the case at trial and on the possible re-opening of the trial with a new mode of liability, which itself has yet to be

¹ See ICC-01/04-01/07-3327, “Decision on the ‘Defence Request to Appeal the Decision 3319’”, 28 December 2012.

² See Regulations 36(3) and 37(1) of the Regulations of the Court.

defined.³ With the assistance of the relevant appeal filings, the Appeals Chamber will contribute to the creation of new jurisprudence on a significant legal issue.

5. The defence submits that exceptional circumstances exist that justify an extension of the page limit applicable to ordinary filings.

Relief Sought

6. On the grounds set out above, and in particular, the number and complexity of the issues, together with the extraordinary nature of a possible change of legal characterisation of the facts relating to the mode of liability at this stage of the proceedings, the defence respectfully requests the Appeals Chamber to grant a variation of the page limit under Regulation 37(2) of the Regulations of the Court, and to allow the defence an additional 20 pages.

Respectfully submitted,



David HOOPER, QC

Dated this 7th day of January 2013, at London

³ See *Prosecutor v. Mbarushimana*, Decision on the Prosecutor's Application for a Warrant of Arrest against Calixte Mbarushimana, ICC-01/04-01/10-1-US, 28 September 2010, para. 39 and fn. 66 (wherein the Pre-Trial Chamber "[...] note[s] of the various interpretations of the word 'intentional' used in article 25(3)(d) of the Statute but [at the same time] does not deem it necessary to entertain in such legal discussion at this stage of the proceedings") ; In the Confirmation Charges in *Ruto*, the Pre-Trial Chamber defined the intention required as one other than "less than substantial", but limited its discussion in law and in fact to article 25(3)(d)(i). See *Prosecutor v. Ruto et al.*, ICC-01/09-01/11-373, Decision on the Confirmation of Charges Pursuant to Article 61(7)(a) and (b) of the Rome Statute, 23 January 2012, para. 354, 353-367. The definition under article 25(3)(d) of intentional remains unsettled by the Appeals Chamber as of May 2012. See *Prosecutor v. Mbarushimana*, Judgment on the appeal of the Prosecutor against the decision of Pre-Trial Chamber I of 16 December 2011 entitled "Decision on the confirmation of charges", 30 May 2012, paras 64-69.