



Original: **English**

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

Date: **26 May 2016**

**THE APPEALS CHAMBER**

**Before:** Judge Piotr Hofmański, Presiding Judge  
Judge Sanji Mmasenono Monageng  
Judge Christine Van den Wyngaert  
Judge Howard Morrison  
Judge Raul C. Pangalangan

**SITUATION IN THE DEMOCRATIC REPUBLIC OF CONGO**

**IN THE CASE OF  
THE PROSECUTOR v. GERMAIN KATANGA**

**PUBLIC**

**Defence Request for Leave to Reply to Prosecution's submissions on Germain Katanga's "Notice of Appeal against the Presidency 'Decision pursuant to article 108(1) of the Rome Statute'"**

**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**

Ms Fatou Bensouda

Mr James Stewart

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**Counsel for the Defence for Germain****Katanga**

Mr David Hooper Q.C.

Ms Caroline Buisman

Ms Sophie Menegon

**Legal Representatives of Victims**

Mr Fidel Nsita Luvengika

**REGISTRY**

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**Registrar**

Mr Herman von Hebel

## SUBMISSIONS

1. The defence for Mr Katanga ('defence') hereby requests the Appeals Chamber's leave to reply to the "Prosecution's submissions on Germain Katanga's "Notice of Appeal against the Presidency 'Decision pursuant to article 108(1) of the Rome Statute'"<sup>1</sup> pursuant to Regulation 24 of the Regulations of the Court ('RoC'). The defence requests that the Appeals Chamber extends the deadline under Regulation 34(c) RoC to seven days after notification of its decision on this leave request. Alternatively, the defence requests that the Appeals Chamber provide the defence an opportunity to file a reply in the interests of justice pursuant to Regulation 60 RoC within such time deemed appropriate by the Appeals Chamber.
2. The Regulations do not define the standard by which the Appeals Chamber must determine whether to grant leave. Chambers have granted leave in cases where "good cause" has been shown,<sup>2</sup> or the issues of law or fact raised are novel or important.<sup>3</sup>
3. The defence submits that such a reply would be warranted in the circumstances of this appeal on the basis of all of the above grounds. The subject matter of the appeal is entirely new and important, given the far-going consequences of the Presidency's decision. Accordingly, the Appeals Chamber would, or at least could be assisted by further observations of the defence in direct response to the Prosecutor's submissions. The defence does not intend to repeat its arguments contained in its Document in support of its appeal. Rather, it intends to respond to novel issues raised in the Prosecutor's submissions. The main issue is whether the jurisprudence cited by the Prosecutor,<sup>4</sup> which relates to appeal possibilities as regards decisions by Pre-Trial or Trial Chambers, is applicable to decisions issued by the Presidency. An appeal against a Presidency's decision is of a different nature than an appeal against Chambers' decisions. While the Rome Statute sets out the right to appeal decisions issued by Pre-Trial and Trial Chambers, it is completely silent on decisions issued by the

<sup>1</sup> ICC-01/04-01/07-3690 OA15.

<sup>2</sup> ICC-01/05-01/08-294, para. 3.

<sup>3</sup> ICC-01/04-01/10-61, pp. 3-4; ICC-02/05-03/09-294-Red, para. 6(iv).

<sup>4</sup> ICC-01/04-01/06-2799, Decision on the "Urgent Request for Directions" of the Kingdom of the Netherlands of 17 August 2011, paras. 7-8; ICC-01/04-01/07-3424, Decision on the admissibility of the appeal against the "Decision on the application for the interim release of detained Witnesses DRC-D02-P0236, DRCD02-P0228 and DRC-D02-P0350", paras. 27-31.

Presidency. Any appeal against a Presidency's decision therefore necessarily falls outside the ambit of any of the codified provisions relating to appeal.

4. In addition, the jurisprudence cited by the Prosecutor refers to interlocutory appeals submitted under Article 81. Such jurisprudence does not provide a precedent in relation to appeals against final decisions, as is the present appeal. Indeed, in the Appeals Chamber's decision "*Judgment on the Prosecutor's Application for Extraordinary Review of Pre-Trial Chamber I's 31 March 2006 Decision Denying Leave to Appeal*",<sup>5</sup> which has been the basis for subsequent Appeals Chamber's decisions on the same issue, it was made plain that « ...In these proceedings the Appeals chamber is only concerned with decisions of the character falling within article 82 (1) (d) of the Statute.»<sup>6</sup>
5. For these reasons, the defence requests to be given the opportunity to provide a detailed analysis of these cases to the Appeals Chamber, and to explain how they can be distinguished from the present appeal, which is without precedent. The defence submits that the Appeals Chamber would benefit from such an analysis, as it has the difficult task to determine this very significant and novel issue. It would therefore be in the interests of justice to grant the defence request for leave to submit a reply. The issues raised are important and could potentially influence the Appeals Chamber in its determination of the appeal. Accordingly, the defence has shown good cause to justify its request for leave to reply.

## **REMEDY SOUGHT**

6. On the basis of the above submissions, the defence requests that the Appeals Chamber grant this request for leave to reply to the "Prosecution's submissions on Germain Katanga's "Notice of Appeal against the Presidency 'Decision pursuant to article 108(1) of the Rome Statute'".

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<sup>5</sup> ICC-01/04-168, 13 July 2006.

<sup>6</sup> *Ibid*, para. 25.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'D Hooper', with a long horizontal stroke underneath.

David Hooper Q.C

Dated this 26<sup>th</sup> May 2016

The Hague, Netherlands