

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original : English

No.: ICC-01/04-01/07
Date: 17 December 2007

THE APPEALS CHAMBER

Before: Judge Philippe Kirsch
Judge Erkki Kourula
Judge Sang-Hyun Song
Judge Navanethem Pillay
Judge Georghios M. Pikis

Registrar: Mr Bruno Cathala

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

**URGENT
Public**

**Prosecution's Urgent Application for Extension of Time to File
Document in Support of Appeal**

The Office of the Prosecutor

Mr Luis Moreno-Ocampo, Prosecutor
Ms Fatou Bensouda, Deputy Prosecutor
Mr Fabricio Guariglia, Senior Appeals Counsel
Mr Eric Macdonald, Trial Lawyer

Counsel for the Defence

Mr David Hooper
Ms Caroline Buisman

Introduction

1. At 5.36pm on 14 December 2007, the Prosecution was notified of a decision of the Single Judge of Pre-Trial Chamber I granting the Prosecution leave to appeal two issues in the recent Decision on the Redaction of Witness Statements. In light of the judicial recess, which commenced at 5.30pm on 14 December 2007,¹ the Prosecution requests, pursuant to Regulation 35(2), an extension of time for the submission of the document in support of appeal, so that the time limit prescribed in Regulation 65(4) is taken to commence running at the end of the court recess. The Prosecution submits that, as the Defence has already received disclosure of the documents in question to facilitate their preparation for the confirmation hearing, and the redactions which are affected by this appeal do not materially impair that preparation, these issues do not require determination during the recess.

Procedural History

2. On 3 December 2007, the Single Judge issued the "First Decision on the Prosecution Request for Authorisation to Redact Witness Statements".²
3. On 10 December 2007, the Prosecution sought leave to appeal the Decision in respect of two issues.³
4. On 14 December 2007, the Single Judge issued the "Decision on the Prosecution Request for Leave to Appeal the First Decision on Redactions".⁴ The Decision was notified at 5.36pm, after the commencement of the judicial recess.

¹ <http://intranet/Court%20Activities/default.aspx>.

² ICC-01/04-01/07-84-US-Exp ("the Decision"). A redacted version classified "Confidential, Ex parte only available to Office of the Prosecutor and the Defence" was issued on 6 December 2007 (ICC-01/04-01/07-88-Conf-Exp). A public redacted version was issued on 7 December 2007 (ICC-01/04-01/07-90).

³ ICC-01/04-01/07-92-Conf. The Prosecution filed a public redacted version of this Application on 14 December 2007 (ICC-01/04-01/07-107). The Prosecution also urgently sought a variation of the disclosure order so as not to render the issues moot, which was granted on 11 December 2007 (ICC-01/04-01/07-94).

⁴ ICC-01/04-01/07-108.

5. The Prosecution hereby seeks an extension of the time limit for filing its document in support of appeal, pursuant to Regulation 35(2).

Discussion

6. The Prosecution appreciates the Single Judge's efforts to deal with both aspects of its Request in an expeditious manner.⁵ However the Prosecution submits that, in light of the relevance of the issue and the timing of the Decision granting leave to appeal and the current judicial recess, it will not be in a position to adequately address these important issues and assist the Appeals Chamber in its determination within the time limit prescribed in Regulation 65(4).
7. The Prosecution notes that the court recess generally constitutes a suspension of judicial activity.
8. Furthermore, the Prosecution submits that even if the appeal could be dealt with during the recess, the issues at bar do not require such a determination during the recess. The Defence has received disclosure of the documents in question, in order to facilitate their immediate preparation for the confirmation hearing.⁶ As explained in the Prosecution's request that the Single Judge vary the disclosure order, the Prosecution submits that the redactions in question do not materially impair the Defence's ability to comprehend or make use of the documents in its preparation for the confirmation hearing: those relating to innocent third parties affect small

⁵ While the Prosecution had filed the Request for Leave to Appeals and Variation of the Disclosure Order on an urgent basis, the urgent nature of the filing attached to the Application for a Variation of the Disclosure Order (so as not to render moot the issues under appeal, see ICC-01/04-01/07-107, paras. 40, 43, 44), and not to the Request for Leave to Appeal.

⁶ ICC-01/04-01/07-100 and ICC-01/04-01/07-101. The Single Judge, in authorizing the variation of the disclosure decision to permit temporary maintenance of the redactions in question held "that the disclosure of the said interview notes and witnesses statements as requested in the Prosecution Request for Leave to Appeal would allow the Defence to immediately start its preparation for the confirmation hearing" – ICC-01/04-01/07-94, p. 3.

portions of approximately 26 paragraphs⁷ in the seven statements addressed in the Decision; and those relating to the identities of OTP and VWU personnel present during the interview and the location of the interview do not affect the substance of the statements.⁸ The Prosecution thus submits that these security issues require a thorough analysis and there is no need to decide them during the recess, but rather that it is important that a well reasoned decision be taken after proper argument and full consideration of the issues.

9. The Prosecution also notes that the Defence has also sought leave to appeal the Decision.⁹ Should the Defence be granted leave to appeal any issue within the Decision, the Prosecution submits that it would be in the interests of judicial economy for all issues arising out of the Decision to be dealt with together. Accordingly, an extension of time of the nature sought may not significantly delay the overall determination of the matter.
10. In contrast, the Prosecution submits that the proper and expeditious determination of the issues will be facilitated by granting the extension sought. The Prosecution submits that the issues under appeal are significant, insofar as they bear on the protection of persons who may be endangered as a result of the Court's activities and the effectiveness and efficiency of investigations into serious international crimes under difficult circumstances, and have a substantive and complex factual dimension which is important to their proper resolution. The Prosecution submits that the Appeals Chamber should have the benefit of properly researched and reasoned submissions

⁷ In addition, these redactions also affect a small number of details from page 3 of one of the statements. The redactions are minor in nature, and they do not go to the conduct or responsibility of the accused, nor to any other element of the crimes charged.

⁸ ICC-01/04-01/07-107, para. 42. While the Single Judge refers to the requirement under Rule 121(3) for the Prosecution to disclose the evidence on which it intends to present at the confirmation hearing 30 days before the date of that hearing, the Prosecution notes that (a) the Prosecution has already disclosed the evidence referred to in the first decision; and (b) Rule 121(5) permits the Prosecution to disclose new evidence no later than 15 days before the hearing.

⁹ ICC-01/04-01/07-99.

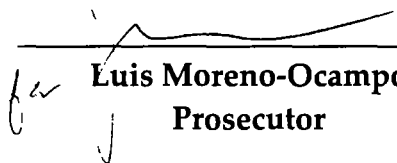
which fully develop the issues under appeal in order to assist it in its determinations.

11. The Prosecution submits that the reasons set out above constitute good cause for an extension of time pursuant to Regulation 35(2).

Conclusion

12. For the above referred reasons the Prosecution respectfully requests:

- an extension of time for the filing of its document in support of appeal pursuant to Regulation 35(2), so that the time limit for the filing of the document in support of appeal be taken to commence running at the end of the court recess; and
- that the Appeals Chamber rule on this application for an extension of time on an urgent basis.



Luis Moreno-Ocampo
Prosecutor

Dated this 17th day of December 2007
At The Hague, The Netherlands