

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original : **English**

No.: **ICC-01/04-01/07**
Date: **20 February 2008**

THE APPEALS CHAMBER

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

Registrar: Mr Bruno Cathala

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

Public

Prosecution's Response to Appeals Chamber's Order of 19 February 2008

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
Ms Florence Darques-Lane, Legal Adviser

Counsel for the Defence

Mr David Hooper
Ms Caroline Buisman

Procedural background

1. On 3 December 2007, the Single Judge issued the “First Decision on the Prosecution Request for Authorisation to Redact Witness Statements”.¹
2. On 10 December 2007, the Prosecution sought leave to appeal two issues arising out of the Decision,² which the Single Judge granted on 14 December 2007.³ The Prosecution filed its application for leave to appeal on a confidential basis, as the original decision had been issued “under seal, *ex parte*”, however the confidential redacted version of that decision substantively addressed the issues which were the subject of the application for leave,⁴ and therefore also of this appeal.
3. On 2 January 2008, the Prosecution filed the “Prosecution's Document in Support of Appeal against the First Decision on Redaction of Witness Statements”.⁵
4. The Defence also sought and was granted leave to appeal the Decision,⁶ and filed a document in support of appeal on 2 January 2008.⁷ The Prosecution filed its response to the Defence Appeal on 14 January 2008.⁸
5. The Defence then sought leave to file additional details and authorities,⁹ which was granted by the Appeals Chamber on 24 January 2008.¹⁰ The Defence filed such additional arguments on 1 February 2008,¹¹ to which the Prosecution filed a further response on 8 February 2008.¹²

¹ ICC-01/04-01/07-84-US-Exp (“the Decision”). A redacted version of the Decision, which was confidential but available to 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).

² ICC-01/04-01/07-92-Conf (“Application for Leave to Appeal”). The Prosecution filed a public redacted version of the Application for Leave to Appeal on 14 December 2007 (ICC-01/04-01/07-107).

³ ICC-01/04-01/07-108.

⁴ Application for Leave to Appeal, para. 6. See also Appeal Brief, para. 7 and footnotes 12 and 13.

⁵ ICC-01/04-01/07-131-Conf (“Appeal Brief”).

⁶ ICC-01/04-01/07-99, 13 December 2007 ; ICC-01/04-01/07-116, 19 December 2007.

⁷ ICC-01/04-01/07-132.

⁸ ICC-01/04-01/07-142.

⁹ ICC-01/04-01/07-150, 21 January 2008.

¹⁰ ICC-01/04-01/07-164.

¹¹ ICC-01/04-01/07-176.

¹² ICC-01/04-01/07-189.

6. On 19 February 2008, the Appeals Chamber filed an order that the Prosecution indicate, and provide reasons in support of, the information in the Appeal Brief which should be kept confidential.¹³
7. The Prosecution hereby provides its reasons for why certain information in the Appeal Brief must be kept confidential, in compliance with the order of the Appeals Chamber, and attaches a public redacted version of the Appeal Brief.¹⁴

Reasons for Maintaining the Confidentiality of Certain Information

8. The Prosecution notes that in its Appeal Brief, it stated that it would file a public redacted version as soon as practicable.¹⁵ The Prosecution regrets that it has not been in a position to file such a redacted version until this point.
9. The information which the Prosecution has kept confidential, and had redacted from the public redacted version of the Appeal Brief, is substantively the same information as was kept confidential in the process of applying for leave to appeal from the Single Judge. The information falls into four categories:
 - Information which was redacted by the Single Judge in the public redacted version of the Decision, in order not to violate the confidentiality imposed by the Single Judge;¹⁶
 - Information relating to the content or focus of the Prosecution's investigative activities;¹⁷
 - Information which could lead to the identification of persons who have assisted the Prosecution in its investigations, and which could compromise the safety or privacy of individuals or ongoing investigations if disclosed to the public;¹⁸ and

¹³ ICC-01/04-01/07-208.

¹⁴ Annex A.

¹⁵ Appeal Brief, footnote 13.

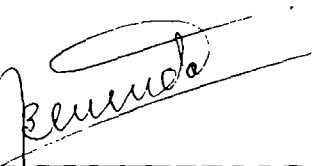
¹⁶ Annex A, footnotes 35, 38 and 68.

¹⁷ Annex A, footnote 28.

¹⁸ Annex A, para. 11.

- Information which concerns details of the investigative activities and procedures of the Prosecution, and which could compromise future investigative activities if disclosed publicly.¹⁹

10. The Prosecution emphasises that in all cases the information in question has been made available to the Defence,²⁰ and the confidentiality of this information only applies *vis-à-vis* the public.²¹



Luis Moreno-Ocampo
Prosecutor

Dated this 20th day of February 2008
At The Hague, The Netherlands

¹⁹ Annex A, paras. 35-40 and footnotes 58, 60 and 61.

²⁰ Appeal Brief, para. 7; see also Application for Leave to Appeal, para. 6.

²¹ The Prosecution is willing to provide further details of the bases for the redactions on a confidential basis, if the Appeals Chamber so requires.