



Original: **French**

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

Date: 15 December 2011

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 AND MATHIEU NGUDJOLO CHUI***

Confidential

**Order on the arrangements for the submission of the written and oral closing
statements (regulation 54 of the Regulations of the Court)**

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

The Office of the Prosecutor

Mr Luis Moreno Ocampo, Prosecutor
Mr Éric MacDonald, Senior Trial Lawyer

Counsel for Germain Katanga

Mr David Hooper
Mr Andreas O'Shea

Counsel for Mathieu Ngudjolo Chui

Mr Jean-Pierre Kilenda Kakengi Basila
Mr Jean-Pierre Fofé Djofia Malewa

Legal Representatives of Victims

Mr Jean-Louis Gilissen
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

Ms Silvana Arbia

Counsel Support Section

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 article 64 of the Rome Statute, rule 141 of the Rules of Procedure and Evidence, and regulations 23 *bis*, 37 and 54 of the Regulations of the Court, decides the following.

1. The principal objective of this order is to set the timetable for the filing of the closing briefs of the parties and participants and the page limits for those documents.
2. At the hearing of 14 September 2011, the issue of the timetable for the written and oral submissions of the parties and participants was addressed¹ at the request of the Office of the Prosecutor (“the Prosecutor”).² Both the Prosecutor³ and the Defence for Germain Katanga⁴ suggested at that time that the parties and participants in this case should be granted as least as much preparation time as was granted in *Lubanga*,⁵ given that there are two Accused, the charges are more complex, and the volume of evidence in the case file is greater, and that the court recess should be taken into account.
3. On 25 October 2011, the Chamber sent the parties and participants an e-mail entitled “[TRANSLATION] information on the conduct of proceedings”, in which it stated, *inter alia*:⁶

[TRANSLATION] With the case for the defence of Mathieu Ngudjolo soon to be concluded, the Chamber sets 4 p.m. on 21 November 2011 as the time limit for the submission of any proposals of witnesses whom it might summon to appear or of documentary evidence whose tendering it might order, or any other application from the two Defence teams in connection with the conclusion of their case, for tendering documentary evidence by other means than through a witness, whether or not it is supported by an application under regulation 35(2) of the Regulations of the Court. The time limit for responses to any such applications shall expire at 4 p.m. on 28 November 2011.

In accordance with rule 141 of the Rules of Procedure and Evidence, the Chamber will be able to set the time limits for the filing of the written submissions and the timetable

¹ ICC-01/04-01/07-T-311-Red-FRA WT, pp. 1-19.

² E-mail from the Office of the Prosecutor to the Chamber on 9 September 2011 at 17.20.

³ ICC-01/04-01/07-T-311-Red-FRA WT, pp. 5-6.

⁴ ICC-01/04-01/07-T-311-Red-FRA WT, p. 13.

⁵ See Trial Chamber I, *Order on the timetable for closing submissions*, 12 April 2011, ICC-01/04-01/06-2722.

⁶ E-mail from a legal officer of the Chamber to the parties and participants on 25 October 2011 at 14.51.

for the oral submissions only once it has ruled on any such applications and on its potential site visit. [...]

4. Following these instructions, the Chamber received three applications, which it addressed in a joint decision on 15 December 2011.⁷ Of those, it denied the application to call additional witnesses,⁸ since the other parties and participants did not consider it necessary to make such proposals.⁹ The Chamber itself will not be summoning any additional witnesses.

5. Furthermore, by two decisions rendered on 18 November and 1 December 2011, it decided to undertake a site visit and scheduled the visit to take place in the week of 15 to 22 January 2012.¹⁰ Although it cannot declare the presentation of evidence in this case closed until the site visit has been undertaken, the Chamber considers that it can already set the time limits for the filing of the written submissions and the timetable for the oral submissions. It recalls in this respect that, at the aforementioned hearing of 14 September 2011, it did not exclude the possibility of conducting the site visit during the time period leading up to the final submissions.¹¹

6. The Chamber hereby decides on the timetable for the filing of the written submissions, having taking into account the highly constructive submissions made by the parties and participants and the translation services of the Registry at a status conference held on 14 December 2011 to address the issue of the translation into

⁷ *Décision relative à trois requêtes tendant à la production d'éléments de preuve supplémentaires et à un accord en matière de preuve*, 15 December 2011, ICC-01/04-01/07-3217.

⁸ Common legal representative of the group of child-soldier victims, "*Proposition du représentant légal du groupe des victimes enfants soldats quant à la comparution de témoins supplémentaires à citer par la Chambre*", 22 November 2011, ICC-01/04-01/07-3206.

⁹ See, *inter alia*, e-mail from the Office of the Prosecutor to the Chamber on 21 November 2011 at 14.09; Defence for Mathieu Ngudjolo, "*Soumission de la Défense de Mathieu Ngudjolo à la demande de la Chambre concernant la citation à comparaître de témoins, la production de preuves documentaires et la production de preuves documentaires sans le truchement d'un témoin assortie ou pas d'une requête fondée sur la norme 35-2 du Règlement de la Cour*", 21 November 2011, ICC-01/04-01/07-3204 and ICC-01/04-01/07-3204-Corr, 22 November 2011 (corrigendum), para. 5.

¹⁰ *Decision on a judicial site visit to the Democratic Republic of the Congo*, 18 November 2011, ICC-01/04-01/07-3203-Conf-tENG and *Decision on the judicial site visit to the Democratic Republic of the Congo*, 1 December 2011, ICC-01/04-01/07-3213-Conf-tENG.

¹¹ ICC-01/04-01/07-T-311-Red-FRA WT, p. 16.

English and French of the various filings.¹² That same day, the Chamber also received e-mails from both Defence teams and a Legal Representative of Victims stating when they intended to file their closing briefs.

7. The Chamber is of the view that, given the circumstances of this case, it must grant both Defence teams additional time after the filing of the closing briefs of the Prosecutor and the Legal Representatives of Victims to allow them to file their respective submissions.

8. Accordingly, the Prosecutor and the Legal Representatives of Victims shall file their respective briefs by 4 p.m. on 20 February 2012, a time limit of approximately 11 weeks if the starting point is taken to be 11 November 2011, the date on which the substantive hearings concluded. The Legal Representatives will file one document each. The Chamber suggests that all documents should be filed in French, and orders that any footnote references to transcripts of the hearings shall refer to both the French and English transcripts. Furthermore, the Chamber instructs the Registry to provide the Defence for Germain Katanga with a draft, unrevised translation of the Prosecutor's brief not later than 12 March 2012, which should enable his Lead Counsel to familiarise himself with it fully in a relatively short timeframe.

9. The Defence teams shall file their respective briefs by 4 p.m. on 26 March 2012. Once again, the Chamber orders that any footnote references to transcripts of the hearings shall also refer to both the French and English transcripts. In light of the difficulties currently faced by the translation services, the Chamber accepts that an unrevised translation of the closing brief of the Defence for Germain Katanga will be communicated to it and the parties and participants by 1 May 2012; this time limit is mandatory.

10. In respect of the content of the briefs, the Chamber instructs the parties and participants to set out their legal and factual submissions concerning the contextual

¹² ICC-01/04-01/07-T-335-FRA ET WT 14-12-2011.

elements of the crimes against humanity and war crimes, the elements of the crimes contained in the decision on the confirmation of charges, and the criminal responsibility of the Accused, on the understanding that they should focus on the aspects of the case which are most in dispute. In this regard, the Chamber orders each Defence to recapitulate, for each part of the Prosecutor's brief, the facts which it considers to be undisputed in relation to the issue under discussion.

11. In the event that the parties and participants notice discrepancies between the English and French transcripts, they shall add [discrepancy noted] in a footnote. If need be, the Chamber will request the services of the Registry to review the impugned transcripts on a case-by-case basis.

12. The Chamber decides that the Prosecutor's brief shall not exceed 300 pages, Mr Luvengika's and Mr Gilissen's, 80 and 40 pages respectively, and the Defence teams shall each submit 300 pages. The document format shall comply strictly with that set out at regulation 36 of the Regulations of the Court.

13. Lastly, the Chamber considers that, as matters stand, the filing of replies and rejoinders will not be necessary. In this respect, it recalls that the oral closing statements, provided for by rule 141 of the Rules, will enable the parties and participants to advance their final arguments, and that sufficient time will be allocated to each of the speakers at that juncture.

14. The Chamber hereby decides that the oral submissions will be presented as from 15 May 2012, in open court. The parties and parties must be prepared to respond to the Chamber's questions, and may seek a right to reply and rejoinder, subject to the Chamber's discretion. As stated above, the sequence and duration of these submissions will be set out in a subsequent order.

15. Given the confidentiality of the decision ordering a site visit, the present order has the same classification. However, it will be reclassified as a public document once

the site visit has taken place. For ease of reference, a public redacted version will be filed as soon as practicable.

FOR THESE REASONS, the Chamber

ORDERS the Prosecutor and the Legal Representatives of Victims to file their closing briefs not later than 4 p.m. on 20 February 2012 and the Defence teams to file theirs by 4 p.m. on 26 March 2012;

ORDERS the parties and participants to provide the Chamber with their legal and factual submissions in accordance with paragraph 10 above, and to refer in their respective briefs to both the French and English transcripts, highlighting any discrepancies between the two in a footnote in accordance with paragraph 11 above;

INSTRUCTS the two Defence teams to recapitulate, for each part of the Prosecutor's brief, the facts which appear to them to be undisputed in relation to the issue under discussion;

ORDERS the Registry to provide the Defence for Germain Katanga with a draft, unrevised translation of the Prosecutor's brief not later than 12 March 2012 and to provide an unrevised translation of the closing brief of the Defence for Germain Katanga to the Chamber, the parties and the participants not later than 1 May 2012; and

RULES that the oral submissions will be presented as from 15 May 2012, in open court, in accordance with paragraph 14 of the present order.

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 15 December 2011,

At The Hague, The Netherlands