

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **French**

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

Date: **10 October 2013**

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***

Public Document

**Order on the Defence's observations concerning the observations of the Registrar,
the Prosecutor and the Legal Representatives (document 3407-Conf of 4 October 2013)**

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

Office of the Prosecutor

Ms Fatou Bensouda, Prosecutor

Mr Éric MacDonald, Senior Trial Lawyer

Counsel for Germain Katanga

Mr David Hooper

Mr Andreas O'Shea

Legal Representatives of Victims

Mr Jean-Louis Gilissen

Mr Fidel Nsita Luvengika

Legal Representatives of Applicants

Unrepresented Victims

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**Unrepresented Applicants for
Participation/Reparations**

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States' Representatives

Office of Public Counsel for the Defence

REGISTRY

Registrar

Mr Herman von Hebel

Mr Didier Preira

Mr Marc Dubuisson

Counsel Support Section

Detention Section

Victims and Witnesses Unit

**Victims Participation and Reparations
Section**

TRIAL CHAMBER II of the International Criminal Court (“the Chamber”), acting pursuant to articles 64 and 67 of the Rome Statute of the International Criminal Court (“the Statute”) and regulations 30 and 55 of the Regulations of the Court, orders:

1. In a submission entitled “Second Observations”, filed on 17 September 2013, within the Chamber’s prescribed time limit,¹ the Defence for Germain Katanga informed the Chamber that it was impossible for it to conduct the investigations in the Democratic Republic of the Congo (“DRC”) which it considered necessary in view of a recharacterisation of the mode of liability on the basis of article 25(3)(d) of the Statute, owing, it underscored, to the deterioration of the situation in the east of the country. It set out the various difficulties it had faced and invited the Chamber, mindful of “its obligation to preserve a fair and expeditious trial, [to] exercise its discretion so as not to requalify the mode of liability under which Mr. Katanga is charged, pursuant to Regulation 55”.²
2. Once apprised of the observations that the Chamber had directed from the Registrar,³ the Prosecutor⁴ and the Legal Representatives of Victims,⁵ the Defence for Germain Katanga, in two submissions of 30 September and 1 October 2013,⁶ sought the Chamber’s leave to reply to the observations of the Prosecutor and the

¹ Defence for Germain Katanga, “Defence Second Observations following the *Décision relative aux requêtes présentées par la Défense dans ses observations 3379 et 3386 des 3 et 17 juin 2013*”, 17 September 2013, ICC-01/04-01/07-3397-Conf.

² *Ibid.*, para. 46

³ Registry, “*Observations du Greffe en application de la Décision ICC-01/04-01/07-3398*”, 23 September 2013, ICC-01/04-01/07-3400-Conf.

⁴ Office of the Prosecutor, “*Corrigendum de la Réponse de l’Accusation aux ‘Defence Second Observations following the Décision relative aux requêtes présentées par la Défense dans ses observations 3379 et 3386 des 3 et 17 juin 2013’ ICC-01/04-01/07-3397-Conf*”, 26 September 2013, ICC-01/04-01/07-3402-Conf-Red-Corr.

⁵ Legal Representatives of Victims, “*Observations sur le document intitulé « Defence second Observations following the Décision relative aux requêtes présentées par la défense dans ses observations 3379 et 3386 des 3 et 7 juin 2013 » (ICC-01/04-01/07-3397-Conf)*”, 25 September 2013, ICC-01/04-01/07-3401-Conf.

⁶ Defence for Germain Katanga, “Defence Request for leave to Reply”, 30 September 2013, ICC-01/04-01/07-3403-Conf; “ADDENDUM to: Defence Request for Leave to Reply”, 1 October 2013, ICC-01/04-01/07-3404-Conf.

Legal Representatives and state its views on the Registrar's observations ("the Application to Reply").

3. By decision of 2 October 2013, the Chamber, *inter alia*, directed from the Defence not a reply but observations on the above-mentioned submissions of the Registrar, the Prosecutor and the Legal Representatives. Furthermore, in response to a request from the Prosecutor for a status conference to be convened, the Chamber stated that it would rule thereon once in receipt of the Defence's observations.⁷
4. On 4 October 2013, the Defence filed its observations in response to those of the Registrar, the Prosecutor and the Legal Representatives.⁸ Therein it advanced its views on much of the criticism and observations from the Registrar, Prosecutor and Legal Representatives, reiterating the difficulties it had encountered and the diligence it had exercised, offering no opinion on the Prosecutor's request for a status conference. Expressing concern at the excessive length of the proceedings, it invited the Chamber to rule forthwith on the sole basis of article 25(3)(a) of the Statute.⁹
5. At this stage and in view of the all of the information received from the parties, the participants and the Registrar, and in light of the additional clarification from the Defence for Germain Katanga, the Chamber considers that a status conference would not further enlighten the Bench. The Chamber also wishes to recall that, as stated in the decision of 2 October 2013 *aforecited*, it will rule on the relevance of all of the Defence's filings on the investigations it sought to conduct in the DRC only in the judgment to be delivered pursuant to article 74 of the Statute.¹⁰ Finally,

⁷ *Décision relative aux observations de la Défense (document 3397-Conf du 17 septembre 2013)*, 2 October 2013,

ICC-01/04-01/073406("Decision of 2 October 2013").

⁸ Defence for Germain Katanga, "Defence Observations on the Registry, Prosecution and Victims Representatives' Observations", 4 October 2013, ICC-01/04-01/07-3407-Conf and Annex.

⁹ *Ibid.*, para. 43.

¹⁰ Decision of 2 October 2013, para. 14.

the Defence is further reminded that it should, if it so wishes and as the Chamber invited it to do, submit any observations before 24 October 2013.¹¹

FOR THESE REASONS, THE CHAMBER

FINDS IT UNNECESSARY to convene a status conference.

Done in both English and French, the French version being authoritative.

Judge Van Den Wyngaert appends a dissenting opinion to this decision.

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 10 October 2013

At The Hague, The Netherlands

¹¹ *Ibid.*, paras. 17 and 18.