

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: **English**

No.: ICC-01/04-01/07
Date: **28 February 2014**

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

**Prosecution Response to “Defence Request regarding the Translation and
Notification of the Article 74 Decision”**

Source: Office of the Prosecutor

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

The Office of the Prosecutor

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Section**

1. The Defence seeks an order from the Trial Chamber that the official notification of the Article 74 Decision takes place only when both a French and English translation is provided to the Defence.¹ In the circumstances of this case, the Prosecution does not object to the Defence request, provided that the same applies to the Prosecution.
2. To equally extend any delay of notification of the Article 74 Decision to both parties is mandated by considerations of fairness and judicial economy. First, it will ensure equality of arms between the parties by giving them the same amount of time to analyse the decision for the purposes of any appeal. Second, it will allow for a synchronised briefing schedule of the parties in eventual appellate proceedings.² Synchronising the briefing schedule will facilitate the Appeals Chamber's organisation of work in the event of an appeal by one or both parties. It will also ensure that the Defence does not gain an undue advantage by receiving advance notice of all the arguments on appeal by the Prosecution before filing its own appeal brief.
3. While the delayed notification sought by the Defence should affect the commencement of the potential appellate phase in this case, it is permissible and fair to move to the sentencing and reparations phases (in the event of a conviction) or to the release of the accused (in the event of an acquittal) even before the parties and participants are provided with a translation of the decision into both languages. Trial Chamber I in this context found that "it is generally accepted that the Chamber would need to move to the next phase whatever the result, avoiding the delay that would be caused by waiting for the complete [...] translation".³ In the *Lubanga* case, the Trial Chamber ordered that some

¹ ICC-01/04-01/07-3433.

² See for instance *Prosecutor v. Popovic et al.*, IT-05-88-A, Decision on Joint Motion for Extension of Time to File Notice of Appeal, 25 June 2010; *Prosecution v. Prlic et. al*, IT-04-74-A, Decision on Motions for Extension of Time to File Appeal Briefs and for Authorization to Exceed Word Limit, 22 August 2013, para.15.

³ ICC-01/04-01/06-2834, para.20.

“essential” extracts of the Article 74 Decision should be translated into French before moving to the next phase.⁴ In this case a translation of such “essential” extracts would not be necessary if the Article 74 Decision is issued in French, since Mr Katanga is fluent in French, which he has demonstrated by testifying in that language.⁵



Fatou Bensouda, Prosecutor

Dated this 28th day of February 2014

At The Hague, The Netherlands

⁴ *Ibid.*, para.21.

⁵ ICC-01/04-01/07-T-314 to ICC-01/04-01/07-T-325 ; see also ICC-01/04-01/07-3173, p.6, last paragraph.