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

Date: 24 March 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 CONGO
IN THE CASE OF
*THE PROSECUTOR v. GERMAIN KATANGA***

Public

Defence Request for Extension of Page Limit

Source: Defence for Mr Germain Katanga

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

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Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

**The Office of Public Counsel for the
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Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

Request

1. Pursuant to Regulation 37(2) of the Regulations of the Court, the defence for Germain Katanga (“the defence”) requests that the page limit for its filing on Rule 145 observations be extended to 45 pages by reason of the exceptional circumstances indicated below.

Procedural Background

2. On 7 March 2014, the Chamber instructed the parties and the Legal Representative of the victims to submit, by 24th March 2014, ‘*toutes observations qu'ils jugeront nécessaires pour qu'elle puisse se prononcer utilement au regard de la règle 145 du Règlement*’,¹ translated by the defence as ‘[...] all observations that they judge necessary and useful for the Chamber’s assessment of Rule 145’.
3. On 19th March 2014, the defence requested a two-week extension of the time limit for the observations due on 24th March 2014,² submitting that ‘if the Trial Chamber wishes a near exhaustive identification of Rule 145 matters relevant to Germain Katanga, then such detail will necessarily take time to present appropriately.’³ On 20 March 2014, the Chamber granted this request and gave the parties and victims’ legal representative until 7 April to submit their filings.⁴ The Chamber granted this request to enable the parties and participants to provide the Chamber with information which ‘is as complete as possible’.⁵
4. The Chamber, following a defence request,⁶ clarified its order, stating that the requested observations “*relèvent du fond en ce qu'elles portent sur les modalités de fixation de la peine telles qu'elles sont prévues par la Règle 145 du Règlement de procédure et de preuve (« le Règlement »), les observations sur la procédure et les*

¹ *Ordonnance portant calendrier de la procédure relative à la fixation de la peine (article 76 du Statut)*, ICC-01/04-01/07-3437, para. 5.

² Defence Requests for Extension of Time, ICC-01/04-01/07-3445-Conf.

³ *Ibid*, para. 7.

⁴ *Décision relative à diverses demandes de la Défense de Germain Katanga consécutives à l'ordonnance du 7 mars 2014 sur la procédure relative à la fixation de la peine*, ICC-01/04-01/07-3447.

⁵ *Ibid*, para. 11 (Defence translation).

⁶ Contained in defence *Observations on the Proceedings and Principles Relevant to Sentence*. ICC-01/04-01/07-3443.

principes venant d'être déposées le 17 mars 2014"⁷ - translated by the defence as 'those observations that deal with the substance of the case given that they deal with the modalities of sentencing as provided by Rule 145 [...]'.

Grounds in Support of Request

5. The defence submits that an extension is necessary to enable the defence to provide the Chamber with the fullest information relevant to Rule 145. The defence submissions on the *Proceedings and Principles Relevant to Sentence*, which related to general legal principles, ran to the full twenty pages.⁸ The observations due on 7th April are bound to be of greater length given that they are particularly significant and touch on a wide number of issues. The defence previously identified nine potential mitigating factors and indicated this was not an exhaustive list. They require analysis of previous evidence and the Chamber's findings, applying such factors to Mr. Katanga's circumstances, with citations from the trial evidence, transcripts and judgment. In addition, the defence needs to address potential aggravating factors that may be presented by both the prosecution and the victims' legal representative in their separate submissions. Further to potential mitigating and aggravating factors, issues relating to the totality of the sentence, double counting and multiple convictions will be addressed in that filing.
6. It appears that the defence may not have a further opportunity to present the Chamber with Rule 145 observations other than in oral submissions. The defence submits that the Chamber will be best served by the defence addressing these issues, as fully as possible, in its written submissions. In addition, the defence submits that it is only fair to Mr. Katanga that he is provided with an opportunity to present such significant observations without such a restrictive page limit.
7. The defence submits that its request for an extension to 45 pages is reasonable in the circumstances. It is to be noted that the *Lubanga* defence observations on sentencing, in a case relating to two charges only, contained 42 pages.⁹

⁷ *Ibid*, para. 7.

⁸ ICC-01/04-01/07-3443, Defence Observations on the Proceedings and Principles Relevant to Sentence, 17 March 2014; ICC-01/04-01/07-3444, Prosecution's Submissions on the Procedures and Principles for Sentencing, 17 March 2014.

⁹ ICC-01/04-01/06-2891-Red, Observations de la Défense sur la peine, 4 June 2012.

8. In addition to those matters contained in Rule 145, the defence, as previously indicated,¹⁰ proposes to make submissions in respect of the time spent by Mr Katanga in custody both in the Hague and in DRC. While the Chamber must deduct the ‘time spent in detention in accordance with the order of the court’ it has a discretion in respect of ‘any time otherwise spent in detention in connection with conduct underlying the crime’. Given that the issue is distinct from the matters to be addressed in Rule 145, and given the history of the detention in DRC, the defence proposes, subject to any further order of the Chamber, to make its submissions on those matters in a separate filing, to be submitted by 7th April. The defence will also, in conformity with the Chamber’s request, provide details of any witnesses it may seek to call in a further filing, again by April 7th.

Relief Sought

9. On the grounds set out above the defence requests the Chamber to extend the page limit for its Rule 145 observations from 20 pages to 45 pages.

Respectfully submitted,



David HOOPER Q.C.

Dated this 24 March 2014

London.

¹⁰ ICC-01/04-01/07-3443, Defence Observations on the Proceedings and Principles Relevant to Sentence, para. 58.