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

Date: **26 August 2015**

**THREE JUDGES OF THE APPEALS CHAMBER APPOINTED FOR THE REVIEW
CONCERNING REDUCTION OF SENTENCE**

Before: Judge Piotr Hofmański, Presiding Judge
Judge Sanji Mmasenono Monageng
Judge Christine Van den Wyngaert

SITUATION IN THE DEMOCRATIC REPUBLIC OF CONGO

IN THE CASE OF

*THE PROSECUTOR
v. GERMAIN KATANGA*

Public

**Prosecution's urgent request to modify the schedule for written submissions for
Germain Katanga's sentence review**

Source: Office of the Prosecutor

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

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**Victims Participation and Reparations Other
Section**

Introduction

1. The Office of the Prosecutor (“Prosecution”) respectfully requests the Panel¹ to modify the schedule in its Order of 13 August 2015,² which currently requires that written submissions from the Defence and the Prosecution regarding Germain Katanga’s sentence review be simultaneously filed. Instead, the Prosecution requests the Panel to adopt a staggered schedule and to permit the Prosecution to file its written submissions by Friday 25 September 2015, two weeks after the Defence has filed its own on 11 September 2015.³ The Prosecution has consulted Mr Hooper on whether the Defence would object to this alteration to the filing schedule and he has stated that the Defence has no objection.

2. The Prosecution files this submission on an urgent basis, requesting a ruling at the Panel’s earliest possible convenience so that any potential change to the current schedule may be known in advance.

Submissions

3. In the Prosecution’s submission, a staggered scheduling of the written submissions would benefit the Panel’s consideration of the request for early release. Allowing the Prosecution the opportunity to respond to the Defence submissions will be highly beneficial to the proper conduct of the sentence review proceedings. The Prosecution can then present to the Panel responsive submissions, based on the Defence’s previously articulated position, and also include information from any necessary investigations that it may conduct following the Defence submissions. In turn, the Prosecution’s submissions reflecting its clear position would assist the Panel in identifying the points of agreement and/or disagreement, if any, between the Parties in advance of the hearing.

¹ Three Judges of the Appeals Chamber appointed for the review concerning reduction of sentence.

² ICC-01/04-01/07-3574 (“Order of 13 August 2015”), p.4, stating that “Mr. Germain Katanga, the Prosecutor [...] shall file written submissions [...] by 16h00 on Friday, 11 September 2015 [...]”.

³ Order of 13 August 2015, p.4.

4. Rather, if the Prosecution is not permitted to first review the Defence's position before responding in writing, it will be deprived of essential information relevant to its views on certain criteria under article 110 of the Rome Statute and rule 223 of the Rules of Procedure and Evidence. Without crucial information that only the Defence can provide, the Prosecution will be prevented from addressing these criteria and formulating a clear overall position. For example, without the Defence's submissions on the location to which Germain Katanga seeks release, the Prosecution will only be able to address the criteria in rules 223(b) and (c)⁴—both criteria contingent on the location sought for early release— in very general terms. Nor by the time it files its written submissions will the Prosecution be able to fully explore the contours of its position, for example, by conducting investigations.

5. Further, although under the current schedule, the Prosecution may add to its submissions at the oral hearing after having read the Defence submissions, this information will come too late. The Panel, the Defence and the participants would only learn of any further details which could result from the Prosecution's interim investigations at the hearing. This could hamper the Panel in considering the full scope of the Prosecution's submissions in time; in addition, it would not assist the other Parties and participants to prepare for the hearing.

6. The Defence does not oppose such a staggered schedule. Indeed, such a schedule will not cause any prejudice to the Defence, or to the conduct of the proceedings. First, even if the Defence cannot reply in writing to the Prosecution's position, it will have ample opportunity to address the entirety of the Prosecution's position at the oral hearing, including by having the last word.⁵ Second, allowing the Defence to file its written submissions first will enable it to discharge its burden of

⁴ Rule 223(b): the prospect of the resocialisation and successful resettlement of the sentenced person; Rule 223(c): whether the early release of the sentenced person would give rise to significant social instability.

⁵ See e.g. ICC-01/04-01/06-3155 ("*Lubanga* Scheduling Order of 7 August 2015").

meeting the early release criteria. Indeed, a similarly constituted Panel, in the recently held sentence review in *Lubanga*, instructed the Defence to make its oral submissions first and allowed the Prosecution to respond accordingly.⁶ Although the *Lubanga* Panel followed a different procedure for the filing of written submissions,⁷ making the entire process (written and oral submissions) responsive—as the *Lubanga* Panel ensured for the oral submissions—will result in a smoother course overall.

7. Finally, the Prosecution’s requested change will not impact on the scheduling of the hearing, which can proceed as planned on 6 October 2015. To the contrary, the requested modification will place the Prosecution in a position to be properly responsive to the Defence submissions, which will assist the Panel and the efficient conduct of the proceedings.

Relief

8. For these reasons, the Prosecution respectfully requests the Panel’s permission to file its written submissions by Friday 25 September 2015, two weeks after the Defence has filed its submissions on 11 September 2015. The Prosecution requests that the Panel rule on this issue at its earliest possible convenience.

⁶ *Lubanga* Scheduling Order of 7 August 2015, para.1, ordering the Defence submissions first, followed by those of the Prosecution.

⁷ The Prosecution notes that in *Lubanga*, both the Prosecution and the Defence were ordered to file their written submissions simultaneously on 10 July 2015 (ICC-01/04-01/06-3137). The Panel then extended the time limit for the *Lubanga* Defence to file its submissions by 14 July 2015, because it found that Lubanga should first have access to the redacted versions of the Prosecution’s notices on potentially relevant information. (ICC-01/04-01/06-3145-Red).



Fatou Bensouda, Prosecutor

Dated this 26th day of August 2015

At The Hague, The Netherlands

Word Count: 1,132⁸

⁸ The Prosecution hereby makes the required certification: ICC-01/11-01/11-565 OA6, para.32.