

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **French**

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

Date: **22 May 2018**

TRIAL CHAMBER II

Before: Judge Marc Perrin de Brichambaut, Presiding Judge
Judge Olga Herrera Carbuccion
Judge Péter Kovács

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

**IN THE CASE OF
THE PROSECUTOR V. GERMAIN KATANGA**

CONFIDENTIAL

Motion to Dismiss the "Defence Response to OPCV *Requête aux fins de modification partielle de l'Ordonnance de réparation rendue en vertu de l'article 75 du Statut de Rome*"

Source: Office of Public Counsel for Victims

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

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Trust Fund for Victims

REGISTRY

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Mr Peter Lewis

Counsel Support Section

Victims and Witnesses Section

Detention Section

**Victims Participation and Reparations
Section**

I. INTRODUCTION

1. The Principal Counsel of the Office of Public Counsel for Victims (“OPCV”) moves the Chamber to dismiss the “Defence Response to OPCV *Requête aux fins de modification partielle de l’Ordonnance de réparation rendue en vertu de l’article 75 du Statut de Rome*” for being late and out of time.

II. PROCEDURAL HISTORY

2. On 19 April 2018, the Principal Counsel filed an application to resume the claims brought by some of the victims whom she represents and for partial variation of the Order for Reparations issued pursuant to article 75 of the Rome Statute (“Application”).¹

3. On 8 May 2018, the Chamber instructed the Defence to file observations on the Application “by 18 May” (“Order”).²

4. At 16.12 on 18 May 2018, the Defence filed a response to the Application (“Response”).³

III. CONFIDENTIALITY

5. In accordance with regulation 23 *bis*(2) of the Regulations of the Court, this motion is filed as confidential following the classification chosen by the Defence, and

¹ “Application to Resume the Claims Brought by Victims a/0117/09 and a/0351/09 and Motion for Partial Variation of the Order for Reparations Issued Pursuant to Article 75 of the Rome Statute”, 19 April 2018, ICC-01/04-01/07-3789-Conf-Exp. A public redacted version was filed on 14 May 2018.

² “Order Instructing the Defence Team for Germain Katanga to File Observations on the Application of the Office of Public Counsel for Victims of 19 April 2018, and for the Office of Public Counsel for Victims to File a Public Redacted Version of its Application”, 8 May 2018, ICC-01/04-01/07-3791-tENG.

³ “Defence Response to OPCV *Requête aux fins de modification partielle de l’Ordonnance de réparation rendue en vertu de l’article 75 du Statut de Rome*”, 18 May 2018, ICC-01/04-01/07-3795-Conf.

because it refers to confidential documents. A public redacted version will be filed as soon as possible.

IV. SUBMISSIONS

6. The Principal Counsel notes that the Response was filed at 16.12.35 on 18 May 2018,⁴ in violation of regulation 33(1) and (2) of the Regulations of the Court that requires documents to be filed with the Registry by 16.00. The Principal Counsel states that she was not notified of any Defence request for an extension of time, much less of any decision of the Chamber to that effect.

7. The Principal Counsel notes, moreover, that although the Defence had the opportunity to respond to the Application within the normal time limits prescribed by regulations 24(1) and 34(b) of the Regulations of the Court, it did not file its response until it was instructed to do so by the Chamber.⁵ Therefore, and while Principal Counsel is aware that the delay is a mere 12 minutes, she respectfully moves that the Response be dismissed for being filed out of time. Indeed, after having been afforded the opportunity to respond to the Application within the time limit prescribed by the Regulations of the Court, which was extended *de facto* by the Order, the Defence neither explains the late filing nor sets out the particular and exceptional circumstances that might have accounted for it. The Principal Counsel notes, therefore, that given the time limits prescribed by the Regulations of the Court and the Order, the Defence had had 20 days in which to respond to the Application, which is double the normal time allowed.

8. The Principal Counsel also notes that the Response was filed as “confidential” whereas the Application was filed as “confidential” *ex parte* OPCV and the Defence.

⁴ Email notifying the Response.

⁵ See above, footnote 2, Order.

Even though this unilateral re-classification does not comply with rule 23 *bis*(2) of the Regulations of the Court – as the Defence specifically includes in its response *ex parte* information – Principal Counsel does not consider it necessary to request its re-classification since the resulting prejudice is minimal.

9. For all these reasons, Principal Counsel moves the Chamber to dismiss the Response.

[signed]

Paolina Massidda
Principal Counsel

Dated this 22 May 2018

At The Hague, Netherlands