

Dissenting opinion of Judge Christine Van den Wyngaert

1. As expressed in my dissenting opinions of 21 November 2012¹ and 20 May 2013,² I disagree with my colleagues that the present proceedings can be prolonged consistently with the Court's statutory scheme and the accused's right to a fair trial. In my view, the present decision is only needed because the majority of the Chamber has applied Regulation 55 of the Regulations in a manner which exceeds the scope of the charges³ and violates the rights of Mr Katanga.⁴ I consider the essential points of these past opinions to be consistent with the Appeals Chamber's judgment on triggering Regulation 55 in this case,⁵ and see no justification for changing my position now. Therefore, without taking a position as to whether the present decision would be proper in a different procedural context, I am of the view that the Chamber should immediately render its decision under Article 74 of the Statute on the basis of the legal characterisations set out in the confirmation decision.

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



Judge Christine Van den Wyngaert

Dated this 26 June 2013

At The Hague, The Netherlands

¹ Décision relative à la mise en œuvre de la norme 55 du Règlement de la Cour et prononçant la disjonction des charges portées contre les accusés, 21 November 2012, ICC-01/04-01/07-3319 (dissenting opinion of J. Van den Wyngaert).

² Annex to Décision relative à la transmission d'éléments juridiques et factuels complémentaires (norme 55-2 et 3 du Règlement de la Cour), 20 May 2013, ICC-01/04-01/07-3371-Anx.

³ ICC-01/04-01/07-3319, paras 12-24 (dissenting opinion of J. Van den Wyngaert); ICC-01/04-01/07-3371-Anx, paras 5-26.

⁴ ICC-01/04-01/07-3319, paras 25-55 (dissenting opinion of J. Van den Wyngaert); ICC-01/04-01/07-3371-Anx, paras 27-34.

⁵ Judgment on the appeal of Mr Germain Katanga against the decision of Trial Chamber II of 21 November 2012 entitled "Decision on the implementation of regulation 55 of the Regulations of the Court and severing the charges against the accused persons", 27 March 2013, ICC-01/04-01/07-3363.