

Dissenting opinion of Judge Christine Van den Wyngaert

1. For the same reasons as expressed in my previous dissenting opinions,¹ I dissent from the current decision because I consider the current proceedings to be inappropriate and in violation of both the letter and the spirit of several statutory provisions as well as Regulation 55 itself. I strongly believe that the Chamber should render its verdict under article 25(3)(a) without further delay. Moreover, even assuming, for the sake of argument, that the current proceedings were, in fact, appropriate, I would still not agree with my colleagues for the following reasons.

2. First, as indicated in my dissenting opinion of 2 October 2013,² I believe that it is necessary to have an exhaustive debate about the twin issues of (a) whether or not the Defence can reasonably conduct an effective investigation in the DRC under the current circumstances, and (b) whether or not it is possible for Mr Katanga to meaningfully defend himself against the charges under article 25(3)(d) without further investigations. I note, in this regard, that even if the first issue has already been addressed to some extent in the written submissions of the parties and participants, the second issue has so far not been discussed by the parties in any level of detail. I am firmly of the view that the Defence should be given a genuine opportunity to explain how the alleged inability to conduct any further investigations impacts on its ability to mount a proper defence against the new charges under article 25(3)(d). I repeat and stress my view that simply 'inviting' the Defence to make submissions on a limited number of factual issues on the basis of the existing evidence is unsatisfactory in this regard.³

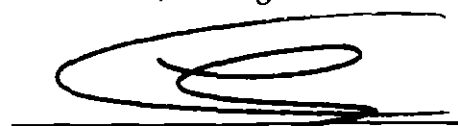
¹ ICC-01/04-01/07-3319, ICC-01/04-01/07-3371-Anx, ICC-01/04-01/07-3388-Anx, ICC-01/04-01/07-3406-Anx.

² ICC-01/04-01/07-3406-Anx, paras 2 and 5.

³ ICC-01/04-01/07-3406-Anx, para. 4.

3. Second, it seems to me that a number of factual questions about the practical feasibility of conducting useful investigations in the DRC require further clarification. An oral debate would, in my view, be the most efficient method for resolving these issues.
4. In short, I think that a status conference is 'necessary' in the sense of regulation 55(2) of the Regulations, because not all matters relevant to the proposed change have been adequately considered. In particular, I believe that the Defence has not had a genuine opportunity to make submissions on whether it is able to effectively prepare its defence in accordance with article 67(1)(b) of the Statute. This is because there never has been a meaningful discussion before this Chamber about whether or not it is essential for the Defence to be able to call new witnesses or present other fresh evidence in relation to the charges under article 25(3)(d). This issue is fundamental for the determination as to whether it is fair to recharacterise charges against Mr Katanga under the current circumstances. It should therefore be exhaustively litigated by the parties. I note, in this regard, that the Majority cannot reasonably rely on any argument of expediency, as the short delay that would be caused by holding one status conference is insignificant in comparison with the importance of the rights involved and pales in comparison with the significant delays which the Majority has already inflicted upon these proceedings by activating regulation 55 at such a late stage.

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



Judge Christine Van den Wyngaert

Dated this 10 October 2013
At The Hague, The Netherlands