

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original : English

No.: ICC-01/04-01/07  
Date: 22 January 2008

**THE APPEALS CHAMBER**

**Before:** Judge Philippe Kirsch, Presiding Judge  
Judge Georghios M. Pikis  
Judge Navanethem Pillay  
Judge Sang-Hyun Song  
Judge Erkki Kourula

**Registrar:** Mr Bruno Cathala

**SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO  
IN THE CASE OF  
*THE PROSECUTOR vs. GERMAIN KATANGA***

**Public**

**Prosecution's Response to the Defence Application to Request Leave to Provide Additional Details and Authorities on the "Public Defence Appeal Brief concerning the First Decision on the Prosecution Request for Authorization to Redact Witness Statements"**

**The Office of the Prosecutor**

Mr Luis Moreno-Ocampo, Prosecutor  
Ms Fatou Bensouda, Deputy Prosecutor  
Mr Fabricio Guariglia, Senior Appeals Counsel  
Mr Eric Macdonald, Trial Lawyer

**Counsel for the Defence**

Mr David Hooper  
Ms Caroline Buisman

## Introduction

1. The Prosecution hereby responds to the document entitled "Defence Application to request leave to provide Additional Details and Authorities on the 'Public Defence Appeal brief concerning the First decision on the Prosecution Request for Authorisation to redact Witness Statements'", filed on behalf of Germain Katanga (the "Appellant") on 18 January 2008. The Prosecution respectfully submits that the relief requested by the Appellant goes beyond the proper scope of Regulation 28 of the Regulations of the Court and cannot be granted by the Appeals Chamber.

## Procedural background

2. On 3 December 2007, the Single Judge issued the "First Decision on the Prosecution Request for Authorisation to Redact Witness Statements".<sup>1</sup>  
On 10 December 2007, the Prosecution sought leave to appeal the Decision in respect of two issues,<sup>2</sup> which was granted on 14 December 2007.<sup>3</sup>
3. The Prosecution sought an urgent extension of time on 17 December 2007,<sup>4</sup> which the Appeals Chamber partially granted on 18 December 2007, extending the time limit for the document in support of appeal until 12:00 noon on 2 January 2008.<sup>5</sup>
4. On 13 December 2007, the Defence also sought leave to appeal the Decision in respect of two issues,<sup>6</sup> and the Single Judge granted leave to appeal on one of these two issues on 19 December 2007.<sup>7</sup>
5. On 20 December 2007, the Defence sought an extension of time for the filing of their Document in Support of Appeal until 2 January 2008.<sup>8</sup>

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<sup>1</sup> ICC-01/04-01/07-84-US-Exp. A redacted version classified "Confidential, Ex parte only available to the Office of the Prosecutor and the Defence" was issued on 6 December 2007 (ICC-01/04-01/07-88-Conf-Exp), and a public redacted version was issued on 7 December 2007 (ICC-01/04-01/07-90).

<sup>2</sup> ICC-01/04-01/07-92-Conf.

<sup>3</sup> ICC-01/04-01/07-108.

<sup>4</sup> ICC-01/04-01/07-109.

<sup>5</sup> ICC-01/04-01/07-115.

<sup>6</sup> ICC-01/04-01/07-99.

<sup>7</sup> ICC-01/04-01/07-116.

6. On the 2 January, the Defence filed its Appeal Brief concerning the First Decision on the Prosecution Request for Authorization to Redact Witness Statements.<sup>9</sup>
7. On the 14 January, the Prosecution filed the Prosecution's Response to the Defence Appeal Brief concerning Document in Support of Appeal against the First Decision on Redaction of Witness Statements.<sup>10</sup>
8. On the 18 January, The Defence filed its Application to Request Leave to Provide Additional Details and Authorities on the "Public Defence Appeal Brief concerning the First Decision on the Prosecution Request for Authorization to Redact Witness Statements"<sup>11</sup>

### Argument

9. The Prosecution firstly notes that Regulation 28 provides an authority to the Chamber (and clearly not a right to the participants) to instruct participants to clarify or provide additional details on any document (paragraph 1) or to address specific issues. Thus, the provision operates as a vehicle for a Chamber to obtain specific information pertaining to matters which, in view of the Chamber, must be supplemented or clarified. In the instant proceedings, no instruction under this provision has been given by the Chamber.
10. The Appellant is not seeking in his Application to clarify or supplement an ambiguous point in his Appeal Brief. Rather, he is attempting to vary his first ground of appeal, claiming a different error and substituting new arguments for most of the old ones.<sup>12</sup> The Prosecution respectfully submits that Regulation 28 is not a vehicle for an appealing party to substitute or vary its grounds of appeal. The Appeals Chamber cannot, under the applicable legal framework, grant the

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<sup>8</sup> ICC-01/04-01/07-117.

<sup>9</sup> ICC-01/04-01/07-132.

<sup>10</sup> ICC -01/04-01/07-142

<sup>11</sup> ICC-01/04-01/07-150

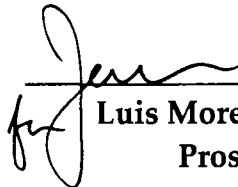
<sup>12</sup> See para. 30 of the Application

relief requested by the Appellant.<sup>13</sup> This applies both to the Appellant's request for leave to file additional arguments and to the additional or alternative request to provide authorities from other international criminal tribunals.<sup>14</sup>

11. The Prosecution respectfully submits that if the Appellant considers that, in light of his new understanding of the impugned decision, some of his grounds of appeal or aspects thereof are no longer valid, the proper course of action would be to discontinue his appeal, in whole or in part, following the prescriptions of Rule 157 of the Rules of Procedure and Evidence.

### Conclusion

12. For the above explained reasons, the Prosecution respectfully requests that the Application be dismissed in its entirety.<sup>15</sup>

  
 Luis Moreno-Ocampo  
 Prosecutor

Dated this 22<sup>nd</sup> day of January 2008  
 At The Hague, The Netherlands

<sup>13</sup> The Prosecution notes that any variation of grounds of appeal is governed by a specific provision, Regulation 61. The provision, however, appears not to be applicable to interlocutory appeals brought under Rule 155; rather, the references to Regulations 58, 59 and 60 in Regulation 61 support the conclusion that it only applies to appeals brought under Rule 150. See *Prosecutor v. Lubanga*, Case No. ICC-01/04-01/06, Appeals Chamber, Decision on the Prosecutor's "Application for leave to Reply to 'Conclusions de la defense en réponse au mémoire d'appel du Procureur'", para. 6.

<sup>14</sup> See Application, para. 31. The Appellant does not provide any arguments justifying the need for the additional authorities, or what would they add to those he already cited in his appeal brief. Further, the Appellant's reliance on an oral ruling of the Trial Chamber in the Lubanga case (see Application, footnote 7) is misplaced: in the specific circumstances of that case, quite different from the current ones, a live and concrete issue had arisen during the hearing pertaining to the scope of the Chamber's authority to authorize partial withdrawal of charges. It was in this particular context that the Trial Chamber concluded that it would be assisted by additional authorities pertaining to that confined issue.

<sup>15</sup> Should the Chamber consider that despite the arguments advanced herein the application ought to be granted, the Prosecution respectfully requests that it be given an adequate opportunity to respond to any additional submissions made, or authorities provided by the Appellant.