

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

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

Date: 1 April 2019

**THE PRESIDENCY**

**Before:** Judge Chile Eboe-Osuji, President  
Judge Robert Fremr, First Vice-President  
Judge Marc Perrin de Brichambaut, Second Vice-President

**SITUATION IN THE DEMOCRATIC REPUBLIC OF CONGO**

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

**Public**

**Defence Request for disclosure of the Views of the Congolese Authorities on the  
“Defence Application for Reconsideration of the Presidency Decision pursuant to article  
108(1) of the Rome Statute”**

**Source:** Defence for Mr Germain Katanga

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

**The Office of the Prosecutor**  
Ms Fatou Bensouda

**Counsel for the Defence for Germain  
Katanga**  
Mr David Hooper Q.C.  
Ms Caroline Buisman

**State**  
Democratic Republic of the Congo

**REGISTRY**

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**Registrar**  
Mr Peter Lewis

## Procedural Background

1. On 30 January 2019, the defence for Germain Katanga (“the defence”) filed its Defence Application for Reconsideration of the Presidency Decision pursuant to article 108(1) of the Rome Statute (the “Application”).<sup>1</sup>

2. On 4 February 2019, the Presidency issued its Order concerning the “Defence Application for Reconsideration of the Presidency Decision pursuant to article 108(1) of the Rome Statute”, by which it requested the competent authorities of the Democratic Republic of Congo (the “DRC”) to provide any views on any matters raised in the Application by 20 March 2019.<sup>2</sup>

3. On 20 March 2019, the Registry filed the Transmission of the Views of the Congolese Authorities on the “Defence Application for Reconsideration of the Presidency Decision pursuant to article 108(1) of the Rome Statute” (the “Transmission”), pursuant to which “it transmits, as an annex to this filing, a letter signed on behalf of the Minister of Justice of the [DRC] dated 18 March 2019 and its annexes, containing the views of the Congolese authorities” (the “Annex”); the Registry decided to classify the Annex “as confidential ex parte only available to the Registry as the Congolese authorities have not yet indicated the level of classification of the documents which they have provided.”<sup>3</sup>

## Discussion

4. Pursuant to Regulation 23 *bis* of the Regulations of the Court (“RoC”),

*1. Any document filed by the Registrar or a participant and marked “ex parte”, “under seal” or “confidential”, shall state the factual and legal basis for the chosen classification and, unless otherwise ordered by a Chamber, shall be treated according to that classification throughout the proceedings.*

*2. Unless otherwise ordered by a Chamber, any response, reply or other document referring to a document, decision or order marked “ex parte”, “under seal” or “confidential” shall be filed with the same classification. If there are additional reasons why a response, reply or any other document filed by the Registrar or a participant should be classified “ex parte”, “under seal”, or “confidential”, or reasons why the original document or other related documents should not be so classified, they shall be provided in the same document.*

*3 Where the basis for the classification no longer exists, whosoever instigated the classification, be it the Registrar or a participant, shall apply to the Chamber to reclassify the document. A Chamber may also re-classify a document upon request by any other participant or on its own motion. In*

*The case of an application to vary a protective measure, regulation 42 shall apply.*

*4. This regulation shall apply mutatis mutandis to proceedings before the Presidency.*

<sup>1</sup> ICC-01/04-01/07-3821-Conf and ICC-01/04-01/07-3821-Red.

<sup>2</sup> ICC-01/04-01/07-3822.

<sup>3</sup> ICC-01/04-01/07-3828.

5. The defence respectfully requests the Presidency to order the reclassification of the Annex as confidential, pursuant to Regulation 23 *bis* (3) of the RoC, in order that it be available to the defence.

6. According to Regulation 23 *bis* (2) of the Roc, the DRC views on the Defence Application should have been filed with the same classification, i.e. either confidential or public redacted.

7. The defence submits that the content of the Annex must be disclosed to Mr Katanga to ensure the fairness of the proceedings and to allow the defence to determine whether it should apply for leave to reply.

### **Conclusion**

8. For these reasons, the defence respectfully requests the Presidency to order the reclassification of the Annex as confidential.

Respectfully submitted

A handwritten signature in black ink, appearing to read 'D Hooper', with a long horizontal flourish extending to the left.

David Hooper Q.C.

Dated this 1<sup>st</sup> April 2019,

25 Bedford Row, London. WC1.