

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

No.: ICC-01/04-01/07  
Date: 4 September 2015

**THREE JUDGES OF THE APPEALS CHAMBER  
APPOINTED FOR THE REVIEW CONCERNING REDUCTION OF SENTENCE**

**Before: Judge Piotr Hofmánski, Presiding Judge  
Judge Sanji Mmasenono Monageng  
Judge Christine Van den Wyngaert**

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

**PUBLIC**

**Registrar's Observations on the criteria  
set out in rule 223 of the Rules of Procedure and Evidence**

**Source: The Registry**

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

**The Office of the Prosecutor**

Ms Fatou Bensouda, Prosecutor

Mr James Stewart, Deputy Prosecutor

**Counsel for Mr Katanga**

Mr David Hooper

Ms Caroline Buisman

**Legal Representatives of Victims**

Mr Jean-Louis Gilissen

Mr Fidel Nsita Luvengika

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**Registrar**

Herman von Hebel

**Division of Judicial Services**

Marc Dubuisson

**Detention Section**

Patrick Craig

**Other**

The Presidency

**THE REGISTRAR** of the International Criminal Court (the “Court”):

**NOTING** the “Scheduling Order for the review concerning reduction of sentence of Mr Germain Katanga” (“the Scheduling Order”)<sup>1</sup> issued on 13 August 2015 by the Panel of Three Judges of the Appeals Chamber appointed for review concerning reduction of sentence (“the Panel”);

**NOTING** article 110 of the Rome Statute, rules 211, 223 and 224 of the Rules of Procedure and Evidence (“the Rules”) and regulation 156 of the Regulations of the Registry; and

**CONSIDERING** that according to the Scheduling Order, the Registrar is to file written observations on the criteria set out in rule 223 (a) to (e) of the Rules;

**HEREBY SUBMITS THE FOLLOWING OBSERVATIONS:**

1. As a preliminary comment, the Registrar informs the Panel that consultations with the authorities of the Democratic Republic of Congo (“DRC”) are ongoing. A subsequent filing will be made where necessary.

**(a) Conduct of the sentenced person in detention**

2. With the exception of one disciplinary incident dating more than four years ago, Mr Katanga’s behavior in detention has been very good and respectful towards the detention personnel, guards and his co-detainees in general. Mr Katanga is well behaved and contributes actively, including by his work – e.g. cooking -, to the smooth running of the detention wing and to the well-being of the rest of the detention community.

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<sup>1</sup> ICC-01/04-01/07-3574.

**(b) Prospect of resocialization and successful resettlement of the sentenced person**

3. Since his conviction, Mr Katanga has not been introduced to a rehabilitation programme due to his continued detention at the ICC Detention Centre. The ICC Detention Centre is not mandated by the Court's legal texts to undertake those responsibilities, does not have the specialist staff with the requisite skills and is not designed for that purpose.
4. Mr Katanga's interaction with other detainees, staff and custody officers in detention does not suggest any impediment to his resocialization.

**(c) Whether the early release of the sentenced person would give rise to significant social instability**

5. The Registry is not yet in a position to provide reliable conclusions on the possible impact of an early release of Mr Katanga as to social stability in the region. Indeed, a number of key parameters required for a detailed assessment are unknown to the Registry at this juncture. These parameters include the location to which Germain Katanga seeks release, the timing envisaged, his intentions upon release, as well as the views of the Office of the Prosecutor and the Legal Representatives of Victims and the position of the Congolese government on the matter.
6. In anticipation of providing an impact assessment ahead of a potential early release of Mr Katanga in the DRC, the following issues are being taken into consideration :

i) **Timing of early release:** The DRC is currently expected to hold national and local elections from October 2015 to November 2016. As a result, tensions appear likely to increase across the country during this period. Indeed, election-related

violence has already been observed this year in Kinshasa and regional capitals. It should also be noted that local elections scheduled this fall may be stirring tensions as politicians appear to be using armed groups to collect funds for the electoral campaign.

Additionally, tensions could emerge from the on-going administrative process aimed at dividing the country's 11 provinces into 26. This process, known as *découpage* in DRC,<sup>2</sup> was officially implemented on 30 June 2015 but it is likely to take several months to become a reality on the ground as power is redistributed between new provinces. For example, Ituri has become a province in its own right rather than a District in Province Orientale. In reaction, political leaders in Ituri have indicated intent to strive for greater autonomy or even full independence for Ituri.

Although the abovementioned factors are not directly related to the issue of the early release of Mr Katanga, the existing instability in the region and potential increased volatility of the security and political environment make that the timing of early release may be still more problematic should it coincide with local elections.

**ii) Potential impact on the Force de résistance patriotique en Ituri ("FRPI")**

**militia**: Information available to date does not suggest that FRPI could reorganise around Mr Katanga, who is a former leader of this militia, should he return to DRC. While FRPI continues to be active in Ituri, it has been weakened by the arrest of its main leader, Cobra Matata, last year and by the failure of peace negotiations in May 2015. The militia's chain of command is reportedly disrupted. FRPI appears to be split in small groups focused on their survival in the face of continued military pressure from DRC and MONUSCO. There has been no

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<sup>2</sup> Loi organique n° 08/016 du 7 octobre 2008 portant composition et fonctionnement des entités territoriales décentralisées et leur rapport avec l'État et les provinces : <http://www.leganet.cd/Legislation/Droit%20Public/Administration.ter/L.08.16.17.10.2008.htm>

identified trend or pattern in terms of FRPI militia activity that is linked to the ICC judicial proceedings against either Mathieu Ngudjolo or Germain Katanga. It should also be noted that Mr Ngudjolo's return to DRC has not triggered any social instability. In this context, there is currently no information indicating that Mr Katanga's return to Ituri would lead to either the strengthening of FRPI, regrouping and mobilising around his return, or triggering of significant social instability.

**iii) Local grievances and perceptions:** Local population in general and respective ethnic communities have not been consulted specifically to obtain views on a potential early release of Mr Katanga. However, initial reports received by Registry staff from local communities suggest that early release may be perceived negatively by the affected communities, especially in Bogoro. The potential level of antagonism and tensions that early release could trigger has not yet been assessed.

**(d) Any significant action taken by the sentenced person for the benefit of the victims as well as any impact on the victims and their families as a result of the early release**

7. The Registry observes that, in order to be relevant for the purpose of a determination under rule 223(d) of the Rules of Procedure and Evidence, the action of the sentenced person needs to be "significant" and "for the benefit of the victims".
8. No specific consultation with victims or affected communities has taken place with respect to a potential release of Mr Katanga.
9. The Registry observes that Trial Chamber II found that Mr Katanga's oral statement in courtroom did not constitute a sincere expression of compassion or

remorse for the victims in Bogoro.<sup>3</sup> The Registry further refers to the observations already submitted in its earlier “Report on applications for reparations in accordance with Trial Chamber II’s Order of 27 August 2014” that Mr Katanga’s oral statement had provoked very strong – negative – reactions amongst victims.<sup>4</sup>

10. The Registry observes that, as announced by the Defence,<sup>5</sup> Mr Katanga recently contributed to a documentary movie where he expresses apologies to any victims and their next of kin. The impact of this video, if broadcast, remains unknown but some victims have already expressed the view that presenting the dissemination of an apology from Mr Katanga as a possible reparations measure would be inconsiderate towards victims.<sup>6</sup>

11. Although related to the issue of apologies as a possible reparation measure – and not as a possible factor under rule 223(d) of the Rules -, the factors highlighted by the Queen’s University of Belfast Human Rights Centre and the University of Ulster’s Transitional Justice Institute in their *amicus curiae* submissions on reparations issues<sup>7</sup> might assist the Panel in its assessment.

**(e) Individual circumstances of the sentenced person, including a worsening state of physical or mental health or advanced age**

12. Born on 28 April 1978, and thus currently 37 years of age, Mr Katanga is married and has six children, including 2 adopted children, ranging from 4 to 23 years old.

13. The Registry has no significant issue regarding Mr Katanga’s health, physical or mental, to report. However, it is worth noting that, unless Mr Katanga has

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<sup>3</sup> ICC-01/04-01/07-3484, par. 121.

<sup>4</sup> ICC-01/04-01/07-3512-Anx1-Red2, par. 28.

<sup>5</sup> ICC-01/04-01/07-3564, par. 151.

<sup>6</sup> ICC-01/04-01/07-3512-Anx1-Red2, par. 28.

<sup>7</sup> ICC-01/04-01/07-3551, par. 83-89.

requested the Medical Officer to inform the Chief Custody Officer of any such issue(s), these would remain covered by doctor-patient privilege pursuant to regulation 156 of the Regulations of the Registry. The Registry thus might not be aware of such issues.

**RESPECTFULLY SUBMITTED,**

A handwritten signature in black ink, appearing to read 'Nigel Verrill', is written over a horizontal line.

Nigel Verrill, Acting Chief of Staff  
On behalf of the Registrar

Dated this 4 September 2015

At The Hague, The Netherlands