

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: **English**

**No.: ICC-01/04-01/07  
Date: 8 December 2015**

**THE PRESIDENCY**

**Before:** Judge Silvia Fernández de Gurmendi, President  
Judge Joyce Aluoch, First Vice-President  
Judge Kuniko Ozaki, Second Vice-President

**SITUATION IN THE DEMOCRATIC REPUBLIC OF CONGO**

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

**Confidential with confidential annex**

**Decision designating a State of enforcement**

**Decision to be notified in accordance with regulation 31 of the *Regulations of the Court*****to:****Office of the Prosecutor**

Ms Fatou Bensouda  
Mr James Stewart  
Mr Eric MacDonald

**Defence**

Mr David Hooper  
Ms Caroline Buisman

**State**

Democratic Republic of the Congo  
Kingdom of the Netherlands

**REGISTRY**

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**Registrar**

Mr Herman von Hebel

**Division of Court Services**

Mr Marc Dubuisson

**Detention Section**

Mr Paddy Craig

**Other**

Trial Chamber II

Judges appointed pursuant to decision  
ICC-01/04-01/07-3572

The Presidency of the International Criminal Court (“Court”), in the case of *The Prosecutor v. Germain Katanga* (“case”), notes the “Jugement rendu en application de l’article 74 du Statut” of 7 March 2014 in which Mr. Germain Katanga (“sentenced person”) was found guilty as an accessory of one crime against humanity and four war crimes,<sup>1</sup> the “Décision relative à la peine (article 76 du Statut)” of 23 May 2014 in which the sentenced person was sentenced to a total period of 12 years’ imprisonment<sup>2</sup> and the notices of discontinuance of the appeals against the “Jugement rendu en application de l’article 74 du Statut”, which thereby rendered that Judgment final.<sup>3</sup>

The Presidency also notes its “Order seeking the views of Mr. Germain Katanga concerning the designation of a State of enforcement” dated 20 April 2015 in which, pursuant to article 103(3)(c) of the Rome Statute and rule 203 of the Rules of Procedure and Evidence (hereinafter all references to rules are to the Rules of Procedure and Evidence), the Presidency sought the views of the sentenced person on the designation of a State in which his sentence of imprisonment would be served.<sup>4</sup>

The Presidency further notes the “Defence Observations on the designation of a State of enforcement”<sup>5</sup> dated 4 May 2015 (“Observations”) in which the sentenced person requested, *inter alia*, that the Presidency examine the possibility that he serve his sentence in the Democratic Republic of the Congo (“DRC”).<sup>6</sup> The sentenced person referred, in particular, to principle 20 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, which provides that “[i]f a detained or imprisoned person so requests, he shall if possible be kept in a place of detention or imprisonment reasonably near his usual place of residence”.<sup>7</sup>

The Presidency notes its “Order concerning the ‘Defence Observations on the designation of a State of enforcement’” dated 15 October 2015<sup>8</sup> in which it requested that the sentenced person make any final observations on the possible designation of the DRC as a State of

<sup>1</sup> Trial Chamber II, ICC-01/04-01/07-3436, pp. 709-710.

<sup>2</sup> Trial Chamber II, ICC-01/04-01/07-3484, pp. 70-71.

<sup>3</sup> Notice of Discontinuance of the Prosecution’s Appeal against the Article 74 Judgment of Conviction of Trial Chamber II dated 7 March 2014 in relation to Germain Katanga, 25 June 2014, ICC-01/04-01/07-3498; Defence Notice of Discontinuance of Appeal against the “Jugement rendu en application de l’article 74 du Statut” rendered by Trial Chamber II on 7 April 2014, 25 June 2014, ICC-01/04-01/07-3497.

<sup>4</sup> ICC-01/04-01/07-3537-Conf.

<sup>5</sup> ICC-01/04-01/07-3545-Conf.

<sup>6</sup> *Id.* at paras. 9-10.

<sup>7</sup> Adopted by General Assembly Resolution 43/173 of 9 December 1988.

<sup>8</sup> ICC-01/04-01/07-3610-Conf-Exp.

enforcement and the final observations of the sentenced person dated 20 October 2015 ("Final Observations").<sup>9</sup> In his Final Observations, the sentenced person requested, *inter alia*: the opportunity to review a draft *ad hoc* agreement with the DRC on the enforcement of sentences;<sup>10</sup> clarification that any sentence served in the DRC would be supervised by the Court, pursuant to article 106 of the Rome Statute;<sup>11</sup> the provision of certain information concerning his prospective conditions of detention in the DRC;<sup>12</sup> and certain forms of assistance from the Court in the event that any other proceedings are brought against him in the DRC.<sup>13</sup>

The Presidency notes articles 103, 105, 106 and 108 of the Rome Statute and rules 200-208.

The Presidency notes that the sentenced person has expressed a clear view, pursuant to article 103(3)(c) of the Rome Statute and rule 203, that his preference is to return to the DRC, his state of nationality, in order to serve his sentence of imprisonment, noting in particular his need to maintain ties with his family and that the crimes for which he has been convicted and sentenced were committed there.<sup>14</sup>

The Presidency notes that, on 24 November 2015, pursuant to rule 200(5) and regulation 114 of the Regulations of the Court, the signature of an "Accord ad hoc entre le gouvernement de la République Démocratique du Congo et La Cour Pénale International sur l'exécution de la peine de M. Germain Katanga, prononcée par la Cour" ("Agreement") was finalised (Annex D), in which the DRC accepted that the sentenced person would serve the remainder of his sentence of imprisonment at a prison facility in the DRC.<sup>15</sup>

The Presidency further notes that, pursuant to articles 103(3)(b) and 106 of the Rome Statute and article 4 of the Agreement, the enforcement of the sentence of imprisonment shall be subject to the supervision of the Court and shall be consistent with widely accepted international standards governing the treatment of prisoners. The Presidency notes, in this respect, that the DRC has agreed to allow the inspection of the conditions of imprisonment

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<sup>9</sup> Defence Observations on the Possible Designation of the DRC as a State of Enforcement, ICC-01/04-01/07-3613-Conf-Exp.

<sup>10</sup> *Id.* at para. 7.

<sup>11</sup> *Id.* at para. 11.

<sup>12</sup> *Id.* at para. 13.

<sup>13</sup> *Id.* at paras. 15-18.

<sup>14</sup> *Id.* at para. 3; Observations, *supra* note 5, para. 9.

<sup>15</sup> This Agreement, in the same manner as other agreements on the enforcement of sentences which have been concluded with a number of different States, closely reflects the Court's legal texts.

and treatment of the sentenced person by the International Committee of the Red Cross. Further, article 108 of the Rome Statute and article 6 of the Agreement provide that a sentenced person in the custody of a State of enforcement shall not be subject to prosecution or punishment for any conduct engaged in prior to that person's delivery to the State of enforcement, except if approved by the Court.<sup>16</sup>

The Presidency further notes that, in his Observations, the sentenced person submits that his transfer to a State of enforcement should be delayed until after 1 January 2016 in light, *inter alia*, of the outstanding reparations proceedings before Trial Chamber II.<sup>17</sup> The Presidency observes that this request is not repeated in the Final Observations, although the sentenced person notes the importance of privileged and secure communications with his legal advisers for the purpose of the reparations proceedings.<sup>18</sup> The Presidency notes that, pursuant to rule 202, the delivery of a sentenced person to the designated State of enforcement can occur any time after the decisions on conviction and sentence have become final. The Presidency has identified nothing in the legal framework for the enforcement of sentences of imprisonment requiring it to delay such transfer in view of ongoing reparations proceedings, with the control of such proceedings being a matter for Trial Chamber II.

The Presidency further notes that on 13 November 2015, the three judges of the Appeals Chamber appointed for the review concerning reduction of sentence,<sup>19</sup> pursuant to article 110(3) of the Rome Statute and rule 224(1), determined that it is appropriate to reduce the sentence by 3 years and 8 months, thus setting 18 January 2016 as the date of completion of the sentence.<sup>20</sup>

In light of the foregoing the Presidency *hereby designates* the DRC as the State in which the sentenced person's sentence of imprisonment shall be served until such date.

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<sup>16</sup> These key provisions address the legal concerns raised by the sentenced person in his Final Observations. The sentenced person's request for further information concerning details of his imprisonment refers to matters which will be resolved at an operational level. Subject to the Court's supervision and the standards referred to in this paragraph, upon transfer to a State of enforcement, the details and conditions of imprisonment become largely matters for the State of enforcement.

<sup>17</sup> Observations, *supra* note 5, paras. 14-19, 22.

<sup>18</sup> Final Observations, *supra* note 9, para. 13(x). In this regard, article 106(3) of the Rome Statute and article 4(3) of the Agreement provide that communication between a sentenced person and the Court shall be unimpeded and confidential.

<sup>19</sup> Decision appointing three judges of the Appeals Chamber for the review concerning reduction of sentence of Germain Katanga, 3 August 2015, ICC-01/04-01/07-3572.

<sup>20</sup> Decision on the review concerning reduction of sentence of Mr Germain Katanga, 13 November 2015, ICC-01/04-01/07-3615, para. 116.

The Presidency *hereby orders* the Registry to:

- transmit to the DRC the information and documents referred to in rule 204 and Article 2(3) of the Agreement, noting, in this regard, that the sentenced person has consented in writing to the transmission to the State of enforcement, on a confidential basis, of necessary information concerning his state of health, including any medical treatment that he is receiving;<sup>21</sup>
- take the necessary steps to ensure the delivery of the sentenced person to the State of enforcement, pursuant to rule 206; and
- reclassify this present Order and its Annex as public following the completion of the transfer of the sentenced person to the DRC.

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



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**Judge Silvia Fernández de Gurmendi**  
**President**

Dated this 8 December 2015

At The Hague, The Netherlands

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<sup>21</sup> Observations, *supra* note 5, para. 21.