



Original: **English**

**No.: ICC-01/04-01/07
Date: 21 January 2016**

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***

Public

Order to the Registrar concerning the communication of information to the Democratic Republic of the Congo in relation to the “Réponse des autorités congolaises à l’Ordonnance ICC-01/04-01/07-3632 en date du 14 janvier 2016”

Document 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

REGISTRY

Registrar

Mr Herman von Hebel

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Mr Esteban Peralta Losilla

The Presidency of the International Criminal Court (“Court”), in the case of *The Prosecutor v. Germain Katanga*, notes its “Decision designating a State of enforcement” of 8 December 2015, by which it designated the Democratic Republic of the Congo (“DRC”) as the State in which the remainder of Mr. Katanga’s sentence of imprisonment shall be served,¹ noting also that Mr. Katanga was transferred to a prison facility in the DRC on 19 December 2015.²

The Presidency further notes a letter from the *Procureur Général de la République* to the President of the Court, dated 8 January 2016 (“letter of 8 January 2016”), which annexed a number of documents concerning ongoing domestic legal proceedings, including a “*Décision de Renvoi*” referring to offences allegedly committed by Mr. Katanga in 2002-2006.³ In response to this letter, the Presidency requested that the DRC assist the Court by explaining the legal consequences of the “*Décision de Renvoi*”. It also requested the DRC to clarify whether the letter of 8 January 2016 sought the approval of the Court for the prosecution and punishment of Mr. Katanga,⁴ pursuant to article 108(1) of the Rome Statute and article 6(2) of the “*Accord ad hoc entre le gouvernement de la République Démocratique du Congo et La Cour Pénale Internationale sur l’exécution de la peine de M. Germain Katanga, prononcée par la Cour*” (“Agreement”).⁵

On 19 January 2016, the DRC clarified that the “*Décision de Renvoi*” acts to remit a suspect at the disposition of “*une juridiction de jugement aux fins de poursuites*”⁶ and re-iterated its intention to conduct domestic criminal proceedings against Mr. Katanga, referring to its sovereignty and the principle of complementarity.⁷

The Presidency notes that the possibility that a State of enforcement may, subject to certain conditions, prosecute a person sentenced by the Court is clearly envisaged by article 108 of the Rome Statute and article 6 of the Agreement. The Presidency further appreciates that the DRC has kept the Court fully informed of the possibility of domestic criminal proceedings

¹ ICC-01/04-01/07-3626, p. 5.

² Press Release, “Thomas Lubanga Dyilo and Germain Katanga transferred to the DRC to serve their sentences of imprisonment”, 19 December 2015, ICC-CPI-20151219-PR1181.

³ ICC-01/04-01/07-3631-AnxI, pp. 20-21.

⁴ Order requesting information in relation to the “Communication des autorités congolaises concernant les poursuites nationales à l’encontre de Germain Katanga”, 14 January 2016, ICC-01/04-01/07-3632, p. 4.

⁵ ICC-01/04-01/07-3626-Anx.

⁶ ICC-01/04-01/07-3633-Conf-Anx, p. 3.

⁷ *Ibid.*, pp. 3-4.

against Mr. Katanga and notes that Mr. Katanga himself was fully aware of this when indicating his desire for the DRC to be designated as the State of enforcement.⁸

The Presidency also notes that in the letter of 8 January 2016, the DRC cited article 108(1) of the Rome Statute and article 6(2)(a) of the Agreement.⁹ The Presidency recalls that article 108(1) provides that Mr. Katanga:

“shall not be subject to prosecution or punishment ... for any conduct engaged in prior to [his] delivery to the [DRC] ... unless such prosecution [or] punishment ... has been approved by the Court at the request of the [DRC]”.

This is re-iterated in article 6(2) of the Agreement which provides that:

“[l]a personne condamnée détenue par la RDC ne peut être poursuivie [ou] condamnée ... pour un comportement antérieur à son transfèrement en RDC, à moins que la Présidence n’ait approuvé ces poursuites [ou] cette condamnation ... à la demande de la RDC”.

In view of the DRC’s record of providing excellent assistance to the Court in relation to the enforcement of Mr. Katanga’s sentence of imprisonment, the Presidency understood the DRC’s above reference to article 108(1) of the Rome Statute and article 6(2) of the Agreement to indicate the DRC’s desire to ensure compliance with these provisions. As, however, the letter of 8 January 2016 did not contain the documents required by article 6(2)(a) of the Agreement and rule 214(1) of the Rules of Procedure and Evidence (“Rules”), the Presidency sought clarification as to the DRC’s intentions in its Order of 14 January 2016.

In view of all of the above, the Presidency now seeks the DRC’s continuing assistance by providing the documents required by article 6(2)(a) of the Agreement and rule 214(1) of the Rules, including the protocol containing views of Mr. Katanga referred to in article 6(2)(a)(iv) of the Agreement and rule 214(1)(d) of the Rules, so that the Presidency may, pursuant to article 6(2)(e) of the Agreement and rule 215(1) of the Rules, make its determination under article 108(1) of the Rome Statute as soon as possible.

The DRC has indicated that Mr. Katanga will remain in detention in the DRC at least until a request for release is examined by the appropriate domestic judicial authority,¹⁰ even though

⁸ Decision designating a State of enforcement, 8 December 2015, ICC-01/04-01/07-3626, p. 4.

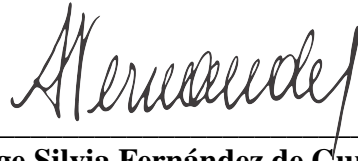
⁹ ICC-01/04-01/07-3631-AnxI, p. 2.

¹⁰ ICC-01/04-01/07-3633-Conf-Anx, p. 3.

his sentence of imprisonment imposed by the ICC was completed on 18 January 2016.¹¹ The Presidency recalls that, pursuant to article 108(3) of the Rome Statute and article 6(3) of the Agreement, article 108(1) ceases to apply if Mr. Katanga remains *voluntarily* on the territory of the DRC for more than 30 days.

The Presidency *hereby orders* the Registrar to communicate this Order to the DRC.

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



Judge Silvia Fernández de Gurmendi
President

Dated this 21 January 2016

At The Hague, The Netherlands

¹¹ Decision on the review concerning reduction of sentence of Mr Germain Katanga, 13 November 2015, ICC-01/04-01/07-3615, para. 116.