

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: 14 March 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***

Confidential

**Order concerning the “Rapport du Greffe dans le cadre des consultations entre la
Présidence de la Cour et les autorités congolaises sur l’application de l’article 108 du
Statut de Rome”**

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

Counsel Support Section

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 would be served,¹ noting also that Mr. Katanga was transferred to a prison facility in the DRC on 19 December 2015.² The Presidency notes that the sentence of imprisonment imposed by the Court was completed on 18 January 2016.³

The Presidency notes the “*Décision de renvoi*” dated 30 December 2015⁴ issued by the *Haute Cour Militaire* of the DRC against Mr. Katanga, which acts to remit a suspect at the disposition of “*une juridiction de jugement aux fins de poursuites*”.⁵

The Presidency notes its “Order to the Registrar concerning the ‘Second complément d’informations soumis par les autorités congolaises et information sur les procédures nationales’” dated 16 February 2016⁶ (“Order of 16 February 2016”) in which it requested that the DRC seek the approval of the Court for the prosecution of Mr. Katanga, pursuant to article 108(1) of the Rome Statute, and provide certain specific information pursuant to rule 214(1) of the Rules of Procedure and Evidence (“Rules”) and article 6(2)(a) of the *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”).⁷

The Presidency has before it the “Rapport du Greffe dans le cadre des consultations entre la Présidence de la Cour et les autorités congolaises sur l’application de l’article 108 du Statut de Rome”⁸ (“Registry Report”) which transmits certain documents from the DRC, namely,

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

⁴ ICC-01/04-01/07-3631-AnxI, pp. 20-21.

⁵ ICC-01/04-01/07-3633-Conf-Anx, p. 3.

⁶ ICC-01/04-01/07-3654; See also “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’”, 21 January 2016, ICC-01/04-01/07-3634; “Order to the Registrar concerning the ‘Further matters concerning the ‘Preliminary observations made by the defence concerning the continued and unlawful detention of Mr Germain Katanga by the Democratic Republic of Congo’”, 27 January 2016, ICC-01/04-01/07-3640.

⁷ ICC-01/04-01/07-3626-Anx.

⁸ ICC-01/04-01/07-3666, 10 March 2016.

those documents specified under rule 214(1) of the Rules and a Note Verbale requesting that the Presidency examine this matter.⁹

The Presidency notes that the Registry Report includes two public annexes and three confidential annexes. The Registry Report indicates that the confidential annexes were classified as such because they are official communications from the Congolese authorities. The Registry indicates that it remains available to engage with the Congolese authorities in relation to whether any redactions would be necessary in order to render public versions of these documents. The Presidency notes that a number of the documents classified by the Registrar as confidential have already been filed publicly.¹⁰ The Presidency also notes that a number of other documents classified by the Registrar as confidential are legal documents similar in nature to other documents which have already received a public classification. The Presidency further notes that one of the documents classified as confidential, is a document entitled "Declaration" signed by Mr. Katanga ("Mr. Katanga's Declaration")¹¹ and the substantive content of much of this Declaration has already been stated by Mr. Katanga in public documents.¹² In view of the above, the Registry is requested to immediately seek the agreement of the DRC authorities that annexes II, IV and V of the Registry Report be reclassified as public, with redactions if necessary.

The Presidency files this present Order confidentially only because it refers in detail to the content of Mr. Katanga's Declaration,¹³ which the Registrar has classified as confidential. The Presidency notes that as soon as Mr. Katanga's Declaration is reclassified as public, in accordance with the above paragraph, this present Order must also be reclassified as public.

The Presidency recalls that article 108(1) provides that a sentenced person "shall not be subject to prosecution or punishment or to extradition to a third State for any conduct engaged in prior to that person's delivery to the State of enforcement, unless such prosecution, punishment or extradition has been approved by the Court at the request of the State of enforcement". The Presidency notes that, in considering whether to approve, it shall,

⁹ ICC-01/04-01/07-3666-AnxI.

¹⁰ ICC-01/04-01/07-3666-Conf-AnxII, p. 4 is the same as ICC-01/04-01/07-3631-AnxI, p. 21; ICC-01/04-01/07-3666-Conf-AnxIV, pp. 18-31 are the same as ICC-01/04-01/07-3631-AnxI, pp. 4-19.

¹¹ ICC-01/04-01/07-3666-Conf-AnxV, p.4.

¹² Preliminary observations by the defence concerning the continued and unlawful detention of Mr Germain Katanga by the Democratic Republic of the Congo, ICC-01/04-01/07-3635; Further observations following the defence mission to Kinshasa, ICC-01/04-01/07-3662.

¹³ ICC-01/04-01/07-3666-Conf-AnxV.

pursuant to article 108(2) of the Rome Statute, hear the views of the sentenced person. Pursuant to rule 214(1)(d) of the Rules and article 6(2)(a)(iv) of the Agreement, it is envisaged that these views would ordinarily be provided by the State of enforcement in the form of a protocol obtained after the sentenced person has been sufficiently informed about the proceedings.

The Presidency notes that, on 21 January 2016, Mr. Katanga was requested by the relevant Congolese authorities to provide his written views on the “*Décision de renvoi*”.¹⁴

The Presidency notes that Mr. Katanga’s Declaration of 6 February 2016¹⁵ makes certain observations in relation to the “*Décision de renvoi*”, further indicating that “[j]e fournirai mes observations complètes à la Présidence de la CPI en temps voulu, et lorsque cela me sera demandé”.¹⁶

The Presidency recalls that in its Order of 16 February 2016, it clarified the content of the information required pursuant to rule 214(1)(d) of the Rules and article 6(2)(a)(iv) of the Agreement, namely, that these views should address whether the current prosecution against Mr. Katanga should be approved by the Court and should elucidate the factors which Mr. Katanga submits should be taken into account by the Court when considering whether to grant such approval.¹⁷

The Presidency further notes that it has received two public observations from the defence for Mr. Katanga, dated 22 January 2016 (“Preliminary Observations”)¹⁸ and 26 February 2016 (“Further Observations”),¹⁹ in which, *inter alia*, the defence for Mr. Katanga makes submissions as to the matters which the Court should consider in determining whether to approve a prosecution pursuant to article 108(1).

The Presidency notes that the Further Observations conclude by requesting that the Presidency consider the Further Observations “in addition to the Preliminary Observations

¹⁴ ICC-01/04-01/07-3647-Conf-AnxI, 2 February 2016, pp. 5-6.

¹⁵ ICC-01/04-01/07-3666-Conf-AnxV.

¹⁶ ICC-01/04-01/07-3666-Conf-AnxV.

¹⁷ ICC-01/04-01/07-3654, pp. 5-6,

¹⁸ Preliminary observations by the defence concerning the continued and unlawful detention of Mr Germain Katanga by the Democratic Republic of the Congo, ICC-01/04-01/07-3635.

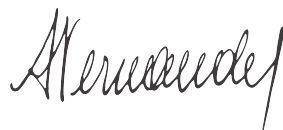
¹⁹ Further observations following the defence mission to Kinshasa, ICC-01/04-01/07-3662.

already submitted when considering the exercise of its discretion pursuant to article 108”.²⁰
The Presidency thereby understands that the Further Observations constitute the “observations complètes à la Présidence de la CPI” referred to in Mr. Katanga’s Declaration of 6 February 2016. If this understanding is erroneous, the defence for Mr. Katanga should inform the Presidency thereof and provide any final views of Mr. Katanga on the Court’s exercise of its functions under article 108(1) of the Rome Statute.

The Presidency *hereby orders* that:

- i. the defence for Mr. Katanga makes any necessary filings referred to in the previous paragraph by 17h00 on 21 March 2016; and
- ii. the Registrar make arrangements for the reclassification as public, with redactions if necessary, of annexes II, IV and V of the Registry Report and reclassifies this present Order as public as soon as annex V of the Registry Report is reclassified as public.

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



Judge Silvia Fernández de Gurmendi
President

Dated this 14 March 2016

At The Hague, The Netherlands

²⁰ *Ibid.*, para. 47.