



Original: **English**

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

Date: 14 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 requesting information in relation to the “Communication des autorités congolaises concernant les poursuites nationales à l’encontre de Germain Katanga”

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 Pieter Vanaverbeke

Other

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*, 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 pursuant to articles 103, 105, 106 and 108 of the Rome Statute and rules 200-208 of the Rules of Procedure and Evidence, noting further that Mr. Katanga was transferred to a prison facility in the DRC on 19 December 2015.²

The Presidency has before it a filing from the Registrar transmitting a letter from the *Procureur Général de la République* to the President of the Court (“letter”), dated 8 January 2016, together with a number of annexes which concern ongoing domestic legal proceedings against a number of individuals before the *Haute Cour Militaire*.³ The annexes include a “*Décision de Renvoi*”, dated 30 December 2015, which concerns Mr. Katanga and refers to a number of offences allegedly committed by him in 2002-2006. The “*Décision de Renvoi*” states: “[r]envoyons ce jour ... [Mr. Katanga] devant la Haute Cour Militaire pour y être jugé conformément à la loi”.

The Presidency notes that, pursuant to article 108 of the Rome Statute and article 6 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”),⁴ Mr. Katanga may not, *inter alia*, be subject to prosecution or punishment for any conduct engaged in prior to his delivery to the State of enforcement without the approval of the Court. However, pursuant to article 108(3) of the Rome Statute, this ceases to apply if he, *inter alia*, remains voluntarily for more than 30 days in the territory of the State of enforcement after having served the full sentence imposed by the Court.

The Presidency notes that although the letter refers to article 108(1) of the Rome Statute and article 6(2)(a) of the Agreement, it does not expressly request the Court’s approval of the prosecution or punishment of Mr. Katanga and does not provide all of the documents required by rule 214(1) of the Rules of Procedure and Evidence and article 6(2)(a) of the

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.

⁴ ICC-01/04-01/07-3626-Anx.

Agreement in the event of such request, such as a protocol containing the views of Mr. Katanga.

The Presidency recalls rule 214(3) of the Rules of Procedure and Evidence and article 6(2)(c) of the Agreement by which it may request any document or additional information.

The Presidency requests that the DRC assist the Court by:

- i. explaining the legal consequences of the “*Décision de Renvoi*”, including an explanation as to the next procedural steps which are foreseen in proceedings of this nature before the *Haute Cour Militaire*, bearing in mind that the date of the completion of Mr. Katanga’s sentence is 18 January 2016;⁵ and
- ii. clarifying whether or not the letter constitutes a request for the approval of the Court for the prosecution and punishment of Mr. Katanga, pursuant to article 108(1) of the Rome Statute and article 6(2) of the Agreement.

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



Judge Silvia Fernández de Gurmendi
President

Dated this 14 January 2016

At The Hague, The Netherlands

⁵ Decision on the review concerning reduction of sentence of Mr Germain Katanga, 13 November 2015, ICC-01/04-01/07-3615, para. 116.