

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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No.: ICC-01/04-01/07
Date: 31 January 2008

PRE-TRIAL CHAMBER I

Before: Judge Sylvia Steiner, Single Judge

Registrar: Mr. Bruno Cathala

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

Public

**Prosecution's Observations on the Pre-Trial Detention of Germain KATANGA,
Pursuant to the Statute and the Rules**

The Office of the Prosecutor

Mr. Luis Moreno-Ocampo, Prosecutor
Ms. Fatou Bensouda, Deputy Prosecutor
Mr. Éric MacDonald, Trial Lawyer
Ms. Florence Darques-Lane, Legal Adviser

Counsel for the Defence

Mr. David Hooper
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Ms. Caroline Buisman

The Office of the Prosecutor ("Prosecution") respectfully presents its observations on the pre-trial detention of Germain KATANGA ("KATANGA") at the seat of the International Criminal Court ("Court"), pursuant to the Rome Statute ("Statute") and the Rules of Procedure and Evidence ("Rules").

Background

1. On 24 January 2008, the Single Judge of Pre-Trial Chamber I ("PTC I") requested observations from the Prosecution,¹ referring to the following considerations. The first consideration rests on the Appeals Chamber's ruling that "there is a distinct and independent obligation imposed upon the Pre-Trial Chamber to ensure that a person is not detained for an unreasonable period prior to trial under Article 60(4) of the Statute" and there is an additional obligation upon the Pre-Trial Chamber to review the overall period of detention of the suspect under Article 60(4) of the Statute.²
2. Furthermore, the Single Judge said that KATANGA's pre-trial detention must be reviewed by the Pre-Trial Chamber at least every 120 days, pursuant to Rule 118 of the Rules.³
3. On 18 October 2007, KATANGA was transferred to the seat of the Court.⁴ His first appearance before the Court was on 22 October 2007,⁵ on which date the hearing to confirm the charges against KATANGA ("Confirmation Hearing") was set for 28 February 2008.⁶

¹ ICC-01/04-01/07-163.

² ICC-01/04-01/07-163, pp. 2-3, citing the Appeals Chamber at ICC-01/04-01/06-824, para. 98.

³ ICC-01/04-01/07-163, pp. 2-3.

⁴ ICC-01/04-01/07-40, pursuant to the oral decision of the Single Judge at the hearing of 14 December 2007, this document is reclassified as public.

⁵ ICC-01/04-01-07-T-5-ENG, [22Oct2007Edited] 1-31 NB PT, 22-10-2007.

⁶ ICC-01/04-01-07-T-5-ENG, [22Oct2007Edited] 1-31 NB PT, 22-10-2007, p. 29, lines 12-13.

4. On 30 January 2008, PTC I issued a decision suspending the time-limits leading to the initiation of the Confirmation Hearing, including by postponing the date of the Confirmation Hearing.⁷

Observations Pursuant to Article 60(4) of the Statute⁸

5. The Prosecution submits that KATANGA has not been detained for an 'unreasonable period' prior to trial.⁹
6. KATANGA's first court appearance on Monday 22 October 2007 was held shortly after his transfer, pursuant to Article 60(1) of the Statute. At the initial appearance, PTC I set the date of the Confirmation Hearing for 28 February 2008. On 30 January 2008, PTC I postponed the date of the Confirmation Hearing. In doing so, PTC I noted that the Prosecution filed the Document Containing the Charges and the List of Evidence in French and English pursuant to the timetable set by the Single Judge.¹⁰

⁷ ICC-01/04-01/07-172, p. 9.

⁸ The Prosecution respectfully submits that there is no automatic obligation for PTC I to review KATANGA's pre-trial detention every 120 days, pursuant to Rule 118, if the person has not made an initial request for interim release. See ICC-01/04-01/06-586, p. 4; ICC-01/04-01/06-824, paras. 94-100. As PTC I held in the *Lubanga* case, which was upheld by the Appeals Chamber, Rule 118 and Article 60(3) of the Statute only require the Court to review a prior "ruling" on detention or release. However to date, no application for interim release has been submitted or, *a fortiori*, ruled upon. Furthermore, PTC I determined, which was also confirmed by the Appeals Chamber, that an arrest warrant is not a relevant "ruling" to be reviewed under these provisions. The Prosecution submits that all of the conditions of Article 58(1) of the Statute, which was the basis for the issuance of the arrest warrant, continue to be met.

⁹ Article 60(4) of the Statute does not define what constitutes an 'unreasonable period'. See ICC-01/04-01/06-586, p. 7; ICC-01/04-01/06-824, para. 122. Both the PTC I and Appeals Chamber said whether a period of pre-trial detention is unreasonable must be based on the particular features of the case. ICC-01/04-01/06-586, p.7; ICC-01/04-01/06-824, para. 123: Other factors considered relevant, also pertinent to the *Katanga* case, include complexity of the case and the amount and location of evidence. In the *Neumeister v. Austria*, ECHR Application no. 1936/63, 27 June 1968, factors considered relevant include the actual length of detention. ICC-01/04-01/06-824, para. 122: At the time of appeal, Lubanga had been held for seven months and three days at the seat of the Court, and the Appeals Chamber did not consider this to be an unreasonable period per se. To date, KATANGA has been held for 106 days.

¹⁰ ICC-01/04-01/07-172, p. 8.

Conclusion

7. The Prosecution respectfully submits that the Pre-Trial Chamber's obligation to review KATANGA's detention under Rule 118 has not been triggered. Furthermore, to date, the length of KATANGA's detention is not unreasonable.



Luis Moreno-Ocampo
Prosecutor

Dated this 31st day of January 2008

At The Hague, The Netherlands