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Date: 1st April 2008

PRE-TRIAL CHAMBER I

Before: Judge Akua Kuenyehia, Single Judge

**SITUATION IN THE DEMOCRATIC REPUBLIC OF CONGO
IN THE CASE OF
THE PROSECUTOR
*v. GERMAIN KATANGA and MATHIEU NGUDJOLO CHUI***

Public Document

Defence Observations relative to Germain Katanga's pre-trial detention

Source: Defence for Mr Germain Katanga

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

The Office of the Prosecutor
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Mr Jean-Pierre Kilenda Kakengi Basila

Legal Representatives of Victims
[1 name per team maximum]

Legal Representatives of Applicants
[1 name per team maximum]

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**
[2 names maximum]

**The Office of Public Counsel for the
Defence**
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Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

1. In the *Decision on the powers of the Pre-Trial Chamber to review proprio motu the pretrial detention of Germain Katanga*,¹ the Single Judge of the Pre-Trial Chamber 1 decided that the case warranted a review to determine whether the conditions for the pre-trial detention of Mr Katanga continue to be met. The Prosecution was given until the 26th of March to file its submissions on whether the conditions for the pre-trial detention of Mr Katanga continue to be met, and the Defence until the 2nd of April to respond.
2. We are currently instructed by Mr Katanga not to pursue an application for interim release and hereby inform the Chamber of that position. Mr Katanga has taken, at this stage, a pragmatic view of his current situation. This is not to be taken to indicate that Mr Katanga acquiesces in anyway with his continued detention, nor should it prejudice any future application that may be made by him for interim release.
3. The Defence take this opportunity to thank the Chamber for the *proprio motu* review. We refer to our earlier submissions in respect of the Prosecution's obligations and the appropriateness of the Chamber keeping the custody situation under careful review. The Defence emphasise the exceptional nature of pre trial detention.
The Defence have had the opportunity of seeing the *Prosecution's Observations on whether the conditions justifying the pre trial detention of Germain KATANGA pursuant to Article 58(1) of the Statute continue to be met* dated 26 March 2008² ("Prosecution's Observations of 26 March 2008") and wishes to offer the following brief response.
4. We note that the Prosecution's Observations of 26 March 2008 are highly general. We do not accept that there is material to support their assertion that Mr Katanga has resources available to him.³ We point out that, although Mr Katanga was offered the rank of Brigadier General, it is misleading to suggest that that illustrates that he has authority and contacts. The Defence have difficulty in addressing the assertions of witness interference⁴ as we have not had access to the unredacted statements. We note that paragraph 17 of the *First Decision on the Prosecution Request for Authorisation*

¹ ICC-01/04-01/07-330, pages 12-13.

² ICC-01/04-01/07-341-Conf.

³ Prosecution's Observations of 26 March 2008, para. 19.

⁴ Prosecution's Observations of 26 March 2008, para. 23, with reference to ICC-01/04-01/07-224-Anx, para. 17.

to Redact Witness Statements,⁵ based on Prosecution assertions, refers to ‘Mr Katanga and/or Mr Ngudjolo’. We are very much in the Chamber’s hands as to the weight to be attached to those statements or to any other redacted material relating to the assertion that ‘people under KATANGA’s control have already threatened witnesses in the past’.⁶

5. The Defence furthermore notes that the Prosecutor acknowledges ‘that the circumstances justifying continued detention pursuant to Article 58(1)(b)(i) has changed as KATANGA is no longer in detention at the *Centre Pénitentiaire et de Rééducation de Kinshasa*’.⁷ It is, however, difficult to reconcile with the Prosecutor’s previous assertion in the *Prosecution’s Observations on the Pre-Trial Detention of Germain KATANGA, Pursuant to the Statute and the Rules*, dated 31 January 2008,⁸ in which the Prosecutor submitted that ‘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
6. The Defence also notes that as circumstances have changed,¹⁰ the time spent in custody by Mr. KATANGA in The Hague until today lacks a proper basis, as the Prosecutor himself acknowledges that circumstances have changed since KATANGA’s transfer. In this respect, the Prosecutor submits

At the time of the issuance of the Arrest Warrant, KATANGA’s arrest was necessary pursuant to Article 58(1)(b)(i) as he was in detention with the CPRK, which prevented him from “willingly and voluntarily appearing before the Court.” Today, KATANGA’s detention continues to be warranted to ensure his appearance at trial.¹¹

It is only at this stage that the Prosecutor submits, and the Pre-Trial Chamber is in a position to consider, the possible grounds for detention at the seat of the Court. None of these grounds were requested to be considered at the time of issuing the arrest warrant and as a result none of these grounds apply in regard to the time spent in custody in *The Hague* until now. The Defence submit that any change in the basis of detention should not be applied retroactively. Consequently, the Defence submit that

⁵ ICC-01/04-01/07-224-Anx.

⁶ Prosecution’s Observations of 26 March 2008, para. 23.

⁷ Prosecution’s Observations of 26 March 2008, para. 15.

⁸ ICC-01/04-01/07-174.

⁹ ICC-01/04-01/07-174, footnote 8.

¹⁰ The Defence has already raised the fact that the circumstances have changed, in its *Response of the Defence to the Prosecution’s Observations on the Pre-Trial Detention of Mr. Germain KATANGA, pursuant to the Statute and the Rules*, ICC-01/04-01/07-186; see, for instance, paras 8, 28, 31 and 32.

¹¹ Prosecution’s Observations of 26 March 2008, para. 15.

Mr KATANGA has been detained, in our respectful submissions, unlawfully since his transfer to this Court. Mr KATANGA is therefore entitled to compensations pursuant to Article 85 (1) of the Statute.

7. As a final point the Defence submits that the decision to be taken by the Pre-Trial Chamber should be regarded as a 'ruling on the release or the detention of the person', in the sense of Article 60 (3) of the Statute.
8. We have no further observations to make at this time.

Respectfully submitted,



David HOOPER

Dated this 1st April 2008

At The Hague, The Netherlands