

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

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

Date: 24 July 2008

**PRE-TRIAL CHAMBER I**

**Before:** Judge Akua Kuenyehia, Presiding Judge  
Judge Anita Ušacka  
Judge Sylvia Steiner

**SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO**

***IN THE CASE OF  
THE PROSECUTOR  
v. Germain KATANGA and Mathieu NGUDJOLO CHUI***

**Public Document**

**Prosecution's Observations on the Review of the Pre-Trial Detention of Germain  
KATANGA**

**Source:** Office of the Prosecutor

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

**The Office of the Prosecutor**

**Counsel for the Defence of Germain Katanga**

Mr David Hooper  
Ms Caroline Buisman

**Counsel for the Defence of Mathieu Ngudjolo Chui**

Mr Jean-Pierre Kilenda Kakengi Basila  
Ms Maryse Alié

**Legal Representatives of Victims**

Ms Carine Bapita Buyagandu  
Mr Joseph Keta  
Mr Jean-Louis Gilissen  
Mr Hervé Diakiese  
Mr Jean Chrysostome Mulamba  
Nsokoloni

**Legal Representatives of Applicants**

**Unrepresented Victims**

**Unrepresented Applicants for Participation/Reparation**

**The Office of Public Counsel for Victims**

**The Office of Public Counsel for the Defence**

**States Representatives**

**Amicus Curiae**

**REGISTRY**

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**Registrar**

Ms Silvana Arbia

**Defence Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations Section**

**Other**

On 9 July 2008, Pre-Trial Chamber I requested the Prosecution to submit observations on the Pre-Trial Detention of Germain KATANGA.<sup>1</sup> The Prosecution herewith makes its observations on the matter.

### Background

1. On 2 July 2007, a warrant of arrest was issued against Germain KATANGA ("Arrest Warrant"),<sup>2</sup> in which Pre-Trial Chamber I ("PTC I") found reasonable grounds to believe that Germain KATANGA had committed crimes within the jurisdiction of the International Criminal Court ("ICC" or "Court").<sup>3</sup>
2. On 18 October 2007, Germain KATANGA was transferred to the seat of the Court.<sup>4</sup>
3. On 31 January 2008, the Prosecution submitted its observations on Germain KATANGA's pre-trial detention.<sup>5</sup>
4. On 21 February 2008, the Single Judge issued its "Decision Concerning Pre-Trial Detention of Germain Katanga".<sup>6</sup>

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<sup>1</sup> ICC-01/04-01/07-668.

<sup>2</sup> ICC-01/04-02/07-1.

<sup>3</sup> ICC-01/04-02/07-4. PTC I found that there are reasonable grounds to believe that Germain KATANGA is criminally responsible under Article 25(3)(a) and/or (b) of the Rome Statute of the Court ("Statute") for three counts of crimes against humanity: of murder (punishable under Article 7(1)(a) of the Statute), of inhumane acts (punishable under Article 7(1)(k) of the Statute), of sexual slavery (punishable under Article 7(1)(g) of the Statute); and six counts of war crimes: of murder (punishable under Article 8(2)(a)(i) or 8(2)(c)(i) of the Statute), of inhuman treatment (punishable under Article 8(2)(a)(ii) of the Statute) or cruel treatment (punishable under Article 8(2)(c)(i) of the Statute), of conscripting or enlisting children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities (punishable under Article 8(2)(b)(xxvi) or 8(2)(e)(vii) of the Statute), of sexual slavery (punishable under Article 8(2)(b)(xxii) or 8(2)(e)(vi) of the Statute), of intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities (punishable under Article 8(2)(b)(i) or 8(2)(e)(i) of the Statute), of pillaging of a town or place, even when taken by assault (punishable under Article 8(2)(b)(xvi) or 8(2)(e)(v) of the Statute).

<sup>4</sup> ICC-01/04-02/07-40.

<sup>5</sup> ICC-01/04-02/07-174.

<sup>6</sup> ICC-01/04-02/07-222.

5. On 3 March 2008, the Prosecution filed observations on the pre-trial detention of Germain KATANGA.<sup>7</sup>
6. On 26 March 2008, the Prosecution filed its "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".<sup>8</sup>
7. On 21 April 2008, the Single Judge issued its "Decision on the conditions of the Pre-Trial Detention of Germain Katanga" ("Decision") whereby the Single Judge found that Germain KATANGA shall "remain in pre-trial detention because the condition set forth in article 58(l)(b)(ii) of the Rome Statute continue to be fulfilled insofar as the detention of Germain Katanga remains necessary to ensure that he will not obstruct or endanger the investigation or the court proceedings".<sup>9</sup>
8. From 27 June to 16 July 2008, the Confirmation Hearing was held before Pre-Trial Chamber I and a decision on the confirmation of the charges is expected to be delivered by latest 26 September 2008.<sup>10</sup>

### **Prosecution's Observations**

9. The Prosecution submits that the condition set forth in Article 58(1)(a) continue to be met, as supported by the evidence presented during the Confirmation Hearing.
10. Pursuant to Article 58(1) of the Statute, a warrant of arrest shall be issued and detention ensue, i) to ensure the person's appearance at trial; ii) to prevent the

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<sup>7</sup> ICC-01/04-02/07-245.

<sup>8</sup> ICC-01/04-02/07-341-Conf. See public version at ICC-01/04-01/07-342.

<sup>9</sup> ICC-01/04-01/07-426, p.8.

<sup>10</sup> ICC-01/04-01/07-T-50-ENG ET, p. 8, lines 4-7.

obstruction or endangerment of the investigation or the court proceedings or iii) to prevent continuing criminal conduct by the same person.

11. The Prosecution contends that there has been no substantial change of the conditions pursuant to Article 58(1)(ii) or any related factors since the Decision, to warrant a variation or the interruption of the current detention regime. The detention of Germain Katanga remains necessary to ensure that he will not obstruct or endanger the investigation or the court proceedings.
12. Furthermore, pursuant to the Prosecution's disclosure obligations, Germain KATANGA has knowledge of the identities of Prosecution witnesses. If Germain KATANGA were to be released, he would be in a position to exert pressure on these witnesses and could thereby obstruct the Court's proceedings.
13. Additionally, the Prosecution submits that in light of the substantial evidence presented during the Confirmation Hearing and Germain KATANGA's subsequent awareness of the weight of this evidence, there is a substantial risk that he may try to abscond from the jurisdiction of the Court. The assessment, that this substantial risk does exist, is also supported by the recent mind-set of Germain KATANGA as revealed by his refusal to attend the Confirmation Hearing.<sup>11</sup>
14. The Prosecution submits that in the circumstances, the condition set forth in Article 58(1)(b)(i) is also fulfilled insofar that the detention of Germain KATANGA is necessary to ensure his appearance at trial.

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<sup>11</sup> It is not Germain KATANGA's refusal to attend the Confirmation Hearing, but rather the underlying reason of his refusal which provides reason now, not apparent on 21 April, to believe he will abscond if released, ICC-01/04-01/07-670-AnxA. See also ICC-01/04-01/07-T-45-ENG ET 09-07-2008, p. 1 lines 21-26, and p. 2 lines 1-3, 7-12, 17-19; and ICC-01/04-01/07-T-46-ENG ET 11-07-2008, p. 8 lines 8-22, p.9 lines 17-25, p. 10 lines 1-25, p. 11 lines 1-6.

15. Any person detained or arrested is entitled to a trial within a reasonable time.

The Prosecution submits that Germain KATANGA's detention since his transfer to the seat of the Court is not unreasonable. As confirmed by the Appeals Chamber in the case of *The Prosecutor v Thomas Lubanga Dyilo*, "the unreasonableness of any period of detention prior to trial cannot be determined in the abstract, but has to be determined on the basis of the circumstances of each case".<sup>12</sup>

16. The Confirmation Hearing of Germain KATANGA has taken place in an expeditious manner and in accordance with the Court's legal regime.<sup>13</sup> Accordingly, the statutory grounds for considering interim release, pursuant to Articles 60(3) or 60(4) of the Statute, are not satisfied.

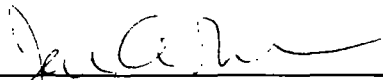
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<sup>12</sup> ICC-01/04-01/06-824, para. 122.

<sup>13</sup> Trial Chamber I concluded that a pre-trial detention of over 2 years in the case of *The Prosecutor v Thomas Lubanga Dyilo* was not unreasonable pursuant to Article 60(4), ICC-01/04-01/06-1359. For a comparative analysis of the international jurisprudence on the reasonableness of the period of pre-trial detention, see ICC-01/04-01/06-1337, para. 26.

### Conclusion

In light of the foregoing reasons and taking into account the need to ensure the appearance of Germain KATANGA at trial and the security of victims and witnesses, the Prosecution submits that there are no grounds justifying Germain KATANGA's interim release.



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**Fatou Bensouda, Deputy Prosecutor**  
on behalf of  
**Luis Moreno-Ocampo, Prosecutor**

Dated this 24<sup>th</sup> day of July 2008

At The Hague, The Netherlands