



Original: English

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

Date: 23 October 2009

TRIAL CHAMBER II

Before: Judge Bruno Cotte, Presiding Judge
Judge Fatoumata Dembele Diarra
Judge Christine Van den Wyngaert

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

IN THE CASE OF

THE PROSECUTOR v. GERMAIN KATANGA and MATHIEU NGUDJOLO CHUI

Public Document

Redacted Version

**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

Mr Andreas O'Shea

Counsel for the Defence for Mathieu Ngudjolo Chui

Mr Jean-Pierre Kilenda Kakengi Basila

Mr Jean-Pierre Fofé Djofia Malewa

Legal Representatives of the Victims

Mr Fidel Nsita Luvengika

Mr Jean-Louis Gilissen

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

The Office of Public Counsel for Victims

The Office of Public Counsel for the Defence

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Ms Silvana Arbia

Defence Support Section

Deputy Registrar

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations Other
Section**

The Office of the Prosecutor hereby submits its Observations on the review of the pre-trial detention of Germain Katanga.

Confidentiality

The Prosecution submits its Observations as confidential, *ex parte*, only available to the Office of the Prosecutor and the Defence of Mathieu Ngudjolo. A confidential, *ex parte* version, only available to the Office of the Prosecutor and the Defence and a public redacted version are also submitted.

Background

1. For the full procedural history regarding the issue of Germain Katanga's pre-trial detention, the Prosecution respectfully refers Trial Chamber II ("Chamber") to its previous filings.¹
2. On 21 July 2009², the Chamber reviewed the pre-trial detention of Germain Katanga and found that the conditions that warranted his pre-trial detention had not changed substantially, that his continued detention would guarantee his appearance before the court for trial and ensure that the court proceedings are not obstructed.³

¹ "Prosecution's Observations on the Review of the Pre-Trial Detention of Germain Katanga", ICC-01/04-01/07-775, 26 November 2008; "Prosecution's Observations on the Review of the Pre-Trial Detention of Germain Katanga", ICC-01/04-01/07-953, 12 March 2009; "Prosecution's Observations on the Review of the Pre-Trial Detention of Germain Katanga", ICC-01/04-01/07-1271-Conf-Exp, 6 July 2009. The public redacted version of this filing is ICC-01/04-01/07-1272.

² "Fourth Review of the Pre-Trial Chamber's Decision Concerning the Pre-Trial Detention of Germain Katanga pursuant to rule 118 (2) of the Rules of Procedure and Evidence", ICC-01/04-01/07-1325, 21 July 2009 ("the Review").

³ "*The Chamber considers that the circumstances of the case [...] have not changed noticeably since the last review of the pre-trial detention of the accused [...]. The Chamber is of the view that the situation in the Ituri district of the DRC remains one of insecurity and instability. Accordingly, an interim release of the accused could pose a potential risk to the security of victims and witnesses whose identities have already been communicated to the Defence and threaten to obstruct and endanger the court proceedings. In light of the gravity of the charges confirmed against the accused, the Chamber is further of the view that, in the absence of sufficient guarantees that he will appear before the Court for the start of the trial, there exists a real risk that the accused may extract himself from the jurisdiction of the Court, if he were to be released.*" The Review, paras. 16-17.

3. On 16 October 2009, the Chamber requested the Prosecution to submit its observations on the pre-trial detention of Germain Katanga.⁴

Prosecution's Observations

Article 58 (1)

4. The Appeals Chamber has held that when the conditions pursuant to Article 58(1) of the Statute continue to be met, Article 60(2) requires that the person must continue to be detained.⁵ Pursuant to Article 58(1) of the Statute, a warrant of arrest shall be issued and detention ensue i) to ensure a person's appearance at trial; ii) to prevent the obstruction of court proceedings; or iii) to prevent continuing criminal conduct by the same person.
5. The Prosecution submits that there has been no substantial change in the circumstances listed pursuant to Article 58(1) of the Statute since the last Review of the pre-trial detention of Germain Katanga. In this respect the Prosecution refers to the arguments developed in its previous filing on the matter.⁶
6. Germain Katanga's detention remains necessary to ensure that the accused does not cause "grave endangerment [to] the safety of the victims and witnesses" and does not "obstruct the court proceedings"⁷ pursuant to Article

⁴ "Decision requesting the parties' observations regarding the review of the detention of Germain Katanga pursuant to rule 118(2) of the Rules of Procedure and Evidence", ICC-01/04-01/07-1535, 16 October 2009.

⁵ "Judgment on the appeal of Mr. Thomas Lubanga Dyilo against the decision of Pre-Trial Chamber I entitled "Décision sur la demande de mise en liberté provisoire de Thomas Lubanga Dyilo", ICC-01/04-01/06-824, 13 February 2007, para. 134.

⁶ ICC-01/04-01/07-1271-Conf-Exp, para. 8.

⁷ "Second Review of the Decision on the Conditions of Detention of Germain Katanga", ICC-01/04-01/07-794-tENG, 12 December 2008, para. 13.

58(1)(b)(ii). This is particularly so given the volatile situation in the DRC⁸ and the disclosure of Prosecution witnesses' identity to the Defence. Trial Chamber II has confirmed that there exists an objectively justifiable risk for the safety of witnesses, victims and members of their families.⁹

7. The Prosecution reiterates that supporters of Germain Katanga have the capability to interfere with Prosecution witnesses and their families.¹⁰ *Front des Nationalistes et Intégrationnistes* ("FNI") and/or *Forces de Résistance Patriotique en Ituri* ("FRPI") members have already interfered with Prosecution witnesses, allegedly directly under the instructions of Germain Katanga.¹¹ If Germain Katanga were to be released, he would be in a position to exert more direct pressure on these witnesses.
8. The Prosecution notes in this context the relationship between Germain Katanga and the *Front Populaire pour la Justice au Congo* ("FPJC"), [REDACTED].¹² [REDACTED].¹³ This information indicates that the need for the protection of witnesses is still existent and compelling, especially in light of the fact that the identities of most of the witnesses are now known to the accused.

⁸ ICC-01/04-01/07-794-tENG, para. 13. See also "Grounds for the Oral Decision on the Prosecutor's Application to Redact the Statements of Witnesses 001, 155, 172, 280, 281, 284, 312 and 323 and the Investigator's Note concerning Witness 176 (rule 81 of the Rules of Procedure and Evidence)", ICC-01/04-01/07-889-Conf-tENG, 10 February 2009, para. 9; the Review, para. 16.

⁹ ICC-01/04-01/07-889-Conf-tENG, para. 9. See further ICC-01/04-01/07-1046-Conf-Exp.

¹⁰ PTC I found that Germain Katanga still wields influence as a powerful figure within the Ituri province, and in particular among current members of the FRPI and that there were reasonable grounds to believe that he was the highest-ranking commander of the FRPI; indeed, he signed a document as Brigadier-General of the FARDC at the time of his transfer to the seat of the Court. See ICC-01/04-01/07-426, p. 8. See also ICC-01/04-01/07-224-Anx, para. 16: A number of former FNI and FRPI commanders have joined the FARDC and are currently in Kinshasa, Kisangani or Bunia, or their whereabouts remain unknown.

¹¹ FRPI members under Germain Katanga's control have threatened witnesses in the past, see ICC-01/04-01/07-88-Conf, at para. 18. See also list of evidence ICC-01/04-01/07-170-Conf-Anx1D, Document DRC-OTP-0155-0106, at 0109, at para. 18; ICC-01/04-01/07-224-Anx, at para. 17. The FRPI members under Germain Katanga's control have also obstructed investigations into the attack at Bogoro, See ICC-01/04-01/07-4, para. 63; see also list of evidence ICC-01/04-01/07-170-Conf-Anx1D, Document DRC-OTP-0129-0267, at para. 66. See also ICC-01/04-01/07-224-Anx, para. 17: An OTP witness has explained that individuals were trying to identify individuals close to the FNI and/or FRPI who may have cooperated or might cooperate with the OTP in relation to the investigation of crimes allegedly committed by FNI and/or FRPI members.

¹² [REDACTED].

¹³ [REDACTED].

9. The Prosecution recalls that in September and October 2008, members of the FRPI and other forces now in the FPJC, tried to re-take Bogoro and neighbouring villages, leading to mass displacement of civilians.¹⁴ The fighting between the FPJC and the *Forces Armées de la République Démocratique du Congo* ("FARDC") continued between July and September 2009.¹⁵ Moreover, as the most recent press reports indicate, the FPJC has since July 2009 attacked several towns and villages in the area, displacing thousands of persons.¹⁶ A number of Prosecution witnesses reside in or close to those areas. On 6 October, the leader of the FPJC, Sharif Manda, issued a press release to denounce attempts by official representatives of the Ituri district to resolve the conflict in southern Irumu and the involvement of the MONUC in the peace negotiations.¹⁷

10. The Prosecution also contends that Germain Katanga's detention is justified pursuant to Article 58(1)(b)(i). Given the serious nature of the charges for which the accused has been committed to trial and the impending commencement of the trial, there is a more pressing need to keep the accused detained in order to secure his appearance in Court. In this respect the Prosecution recalls that on 25 September 2009 the Appeals Chamber upheld the Trial Chamber's decision that the case against Germain Katanga is admissible.¹⁸

¹⁴ See "Ituri: reprise des combats entre FARDC et la milice FRPI à Bogoro", *Radio Okapi*, 30 September 2008 (available at <http://www.radiookapi.net/index.php?i=53&a=20494>, last accessed on 20 October 2009).

¹⁵ See "Bunia: poursuite des combats entre FARDC et miliciens du FPJC", *Radio Okapi*, 24 July 2009 (available at <http://www.radiookapi.net/index.php?i=53&a=24070>, last accessed on 21 October 2009); "Irumu: FARDC et miliciens FPJC s'affrontent vers Tchekele", *Radio Okapi*, 17 September 2009 (available at <http://www.radiookapi.net/index.php?i=53&a=24738>, last accessed on 21 October 2009).

¹⁶ See "Bunia: les miliciens de FPJC encerclent plusieurs villages de Walendu Bindi", *Radio Okapi*, 22 July 2009 (available at <http://www.radiookapi.net/index.php?i=53&a=24052>, last accessed on 21 October 2009); "Walendu Bindi: situation humanitaire déplorable pour plus de 17 mille déplacés", *Radio Okapi*, 16 October 2009 (available at <http://www.radiookapi.net/index.php?i=53&a=25108>, last accessed on 20 October 2009).

¹⁷ See FPJC Communiqué de presse numéro 003/2009, signed by Sharif Manda, Brigade General, published on the *Congo Forum* website, 15 October 2009 (available at <http://www.congoforum.be/fr/nieuwsdetail.asp?subitem=2&newsid=161974&Actualiteit=selected>, last accessed on 21 October 2009).

¹⁸ "Judgment on the Appeal of Mr. Germain Katanga against the Oral Decision of Trial Chamber II of 12 June 2009 on the Admissibility of the Case", ICC-01/04-01/07-1497 OA8.

Article 60 (4)

11. The Prosecution submits that Germain Katanga's detention is not unreasonable in the context of Article 60(4). Since the last decision of the Chamber¹⁹, the commencement of the trial has been postponed by two months to 24 November 2009. The Prosecution maintains that the limited extent of this delay does not have an incidence on the reasonableness of Germain Katanga's pre-trial detention.

Conclusion

12. For the foregoing reasons, the Prosecution respectfully submits that Germain Katanga must remain detained pending trial.



Luis Moreno-Ocampo, Prosecutor

Dated this 23rd day of October 2009

At The Hague, The Netherlands

¹⁹ See the Review, para. 24.