

ANNEX I

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: **ICC-RoR221-04/14**

Date: **7 May 2014**

THE PRESIDENCY

Before: Judge Sang-Hyun Song, President
Judge Sanji Mmasenono Monageng, First Vice-President
Judge Cuno Tarfusser, Second Vice-President

Public Redacted

Decision concerning the “Application to the Presidency pursuant to regulation 221 of the Regulations of the Registry for judicial review of the Registrar’s decision notified on 11 April 2014”

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

Applicant
[REDACTED]

Legal representative
[REDACTED]

REGISTRY

Registrar
Mr. Herman von Hebel

Detention Section
Mr. Harry Tjonk

The Presidency of the International Criminal Court (“Court”) has before it an application notified on 11 April 2014 (“Application”) of [REDACTED] (“Applicant”) for judicial review of the Registrar’s decision dated 2 April 2014 (“Impugned Decision”) pursuant to regulation 221 of the Regulations of the Registry (“RoR”). The Impugned Decision rejected the Applicant’s complaint alleging that the Registry had failed to transmit certain information related to his release from detention to the Appeals Chamber.

For the reasons set forth below, the Presidency finds the Application to be inadmissible.

I. PROCEDURAL HISTORY

1. In March 2011, three individuals (“Detained Witnesses”), including the Applicant, were transferred to the Court¹ for the purpose of testifying as witnesses in the case of *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*² pursuant to an agreement between the Court and the Democratic Republic of the Congo (“DRC”) concluded under article 93(7) of the Rome Statute (“Statute”).³ Prior to their transfer, the Detained Witnesses were in custody in the DRC. In accordance with article 93(7)(b), the Detained Witnesses were taken into custody in the ICC Detention Centre upon their transfer to the Court.⁴
2. On 12 April 2011, the Detained Witnesses filed an application requesting Trial Chamber II (“Trial Chamber”) to, *inter alia*, delay their immediate return to the DRC following the conclusion of their testimony before the Court, as required under article 93(7)(b), so that they could apply for asylum in The Netherlands.⁵
3. The Detained Witnesses concluded their testimony on 3 May 2011.⁶

¹ See “Transfèrement des Témoins Détenus, Procédure de Fonctionnement Standard”, 9 May 2011, ICC-01/04-01/06-2732-Conf-Exp-Anx1.

² On 21 November 2012, Trial Chamber II severed the charges against Katanga and Ngudjolo. “Decision on the implementation of regulation 55 of the Regulations of the Court and severing the charges against the accused persons”, ICC-01/04-01/07-3319-tENG/FRA.

³ See “Decision on the request of Germain Katanga’s Defence for the cooperation of the Democratic Republic of the Congo for the purpose of securing the attendance of detained witnesses”, 7 January 2011, ICC-01/04-01/07-2640-Conf-Exp-tENG.

⁴ See Transcript of 12 May 2011, ICC-01/04-01/07-T-258-ENG, page 48 line 13 to page 49, line 20.

⁵ “Application for leave to present Witnesses DRC-D02-P-0236, DRC-D02-P-0228, DRC-D02-P-0350 to the authorities of the Netherlands for the purposes of asylum”, ICC-01/04-01/07-2830-Conf-tENG.

⁶ See “Decision on the application for the interim release of detained Witnesses DRC-D02-P-0236, DRC-D02-P-0228, DRC-D02-P-0350”, 1 October 2013, ICC-01/04-01/07-3405-tENG, paragraph 2. See also “Decision on an *Amicus Curiae* application and on the ‘*Requête tendant à obtenir présentations des témoins DRC-D02-P-0350, DRC-D02-P-0236, DRC-D02-P-0228 aux autorités néerlandaises aux fins d’asile*’ (articles 68 and 93(7) of the Statute)”, 9 June 2011, ICC-01/04-01/07-3003-tENG, paragraph 72.

4. On 12 May 2011, the Detained Witnesses filed asylum applications with the Government of The Netherlands.⁷
5. On 9 June 2011, the Trial Chamber rendered a decision delaying the return of the Detained Witnesses to the DRC as a result of the pending asylum applications.⁸
6. On 24 August 2011, the Trial Chamber rendered a decision finding that “for the reasons explained in its decision of 9 June 2011, so long as the request for asylum is still pending before the Dutch authorities, the Court cannot request that the Host State facilitate [the Detained Witnesses’s] return to the DRC.”⁹
7. On 4 February 2013, the Detained Witnesses filed an application requesting that the Trial Chamber find that their detention pursuant to article 93(7) was no longer justified and order their immediate release (“Application for Release”).¹⁰
8. On 1 October 2013, the Trial Chamber held, in a majority decision, that it did not have jurisdiction to consider the Application for Release and rejected it as inadmissible.¹¹
9. On 7 October 2013, the Detained Witnesses filed a Notice of Appeal of the Trial Chamber’s 1 October 2013 decision rejecting the Application for Release.¹²
10. On 20 January 2014, the Appeals Chamber, in a majority decision, rejected the appeal by the Detained Witnesses as inadmissible.¹³ On the same day, the Appeals Chamber issued, by majority, an order mandating the Registrar (i) to “take the necessary steps to return [the Detained Witnesses] without delay” to the DRC, (ii) to “consult with The Netherlands and provide it with the opportunity to take any steps it determines to be necessary in respect of the pending asylum applications of [the Detained Witnesses]”, and (iii) “[i]n the case that the Registrar considers that the protective measures in place pursuant to article 68(1) of the Statute in relation to [the

⁷ See “Request for leave to submit Amicus Curiae Observations by mr. Schuller and mr. Sluiter, Counsel in Dutch Asylum proceedings of witnesses DRC-D02-P-0236, DRC-D02-P-0228 and DRC-D02-P-0350”, 26 May 2011, ICC-01/04-01/07-2968, paragraph 2.

⁸ “Decision on an *Amicus Curiae* application and on the ‘*Requête tendant à obtenir présentations des témoins DRC-D02-P-0350, DRC-D02-P-0236, DRC-D02-P-0228 aux autorités néerlandaises aux fins d’asile*’ (articles 68 and 93(7) of the Statute)”, ICC-01/04-01/07-3003-tENG, paragraphs 70-73, 79-81.

⁹ “Decision on the Security Situation of witnesses DRC-D02-P-0236, DRC-D02-P-0228 and DRC-D02-P-0350”, ICC-01/04-01/07-3128, paragraph 15.

¹⁰ “*Requête en mainlevée de la détention des témoins DRC-D02-P-0236, DRC-D02-P-0228 et DRC-D02-P-0350*”, ICC-01/04-01/07-3351.

¹¹ “Decision on the application for the interim release of detained Witnesses DRC-D02-P-0236, DRC-D02-P-0228 and DRC-D02-P-0350”, ICC-01/04-01/07-3405-tENG.

¹² “Notice of appeal by Witnesses DRC-D02-P-0236, DRC-D02-P-0228 and DRC-D02-P-0350 against the *Décision relative à la demande de mise en liberté des témoins détenus DRC-D02-P-0236, DRC-D02-P-0228 and DRC-D02-P-0350* issued by Trial Chamber II on 1 October 2013 (ICC-01/04-01/07-3405)”, ICC-01/04-01/07-3408-tENG.

¹³ “Decision on the admissibility of the appeal against the ‘Decision on the application for the interim release of detained Witnesses DRC-D02-P-0236, DRC-D02-P-0228 and DRC-D02-P-0350’”, ICC-01/04-01/07-3424.

Detained Witnesses] are no longer adequate,” to “immediately inform the Appeals Chamber and . . . consult with the relevant Congolese authorities.”¹⁴

11. On 19 March 2014, the Applicant filed a complaint with the Registrar.¹⁵ The Applicant submitted that he met with the Director of the Division of Court Services (“Director”) at the ICC Detention Centre on 22 January 2014. According to the Applicant, the Director informed him at this meeting “qu’après la décision du 20 janvier 14 de la Chambre d’Appel, [s]on séjour à la CPI devait normalement se terminer”¹⁶ and that the Applicant “devai[t] être remis aux autorités néerlandaises, à moins qu’il décide personnellement de renoncer à l’asile parce qu’il a la chance d’être libéré, à l’instar d’un autre témoin détenu.”¹⁷ The Applicant further submitted that the Director informed him that he had learned from the Congolese authorities that the Applicant “devrai[t] être libéré ensemble avec quelques autres consorts à Makala” and that the Director had discussed this matter with the Applicant’s counsel as well as counsel for Mr Katanga.¹⁸ The Applicant argued that the Director “aurait dû en parler à la chambre, pour qu’elle convienne de mon immédiate libération.”¹⁹ The Applicant concluded that “[c]ette omission d’information constitue une faute grave et frise la complicité de la détention illégale dont [il est] victime” and demanded reparation.²⁰
12. On 2 April 2014, the Registrar rendered a decision rejecting the complaint of the Applicant.²¹
13. On 9 April 2014, the Applicant made the instant Application to the Presidency pursuant to RoR 221 for judicial review of the decision of the Registrar.²²

¹⁴ “Order on the implementation of the cooperation agreement between the Court and the Democratic Republic of the Congo concluded pursuant [sic] article 93 (7) of the Statute”, ICC-01/04-02/12-158, page 3.

¹⁵ ICC-RoR221-04/14-1-Conf-Exp-Anx2.

¹⁶ The Applicant did not specify which of the two Appeals Chamber decisions the Director was referring to, but the context indicates that it was the decision ordering the Registrar to, *inter alia*, return the Detained Witnesses without delay to the DRC. For the purposes of this judicial review, all future references to the Appeals Chamber decision of 20 January 2014 will refer to this decision unless otherwise noted.

¹⁷ ICC-RoR221-04/14-1-Conf-Exp-Anx2, page 2.

¹⁸ ICC-RoR221-04/14-1-Conf-Exp-Anx2, page 2.

¹⁹ ICC-RoR221-04/14-1-Conf-Exp-Anx2, page 2.

²⁰ ICC-RoR221-04/14-1-Conf-Exp-Anx2, page 2.

²¹ ICC-RoR221-04/14-1-Conf-Exp-Anx3.

²² ICC-RoR221-04/14-1-Conf-Exp-Anx1.

II. MERITS

A. Relevant parts of the Impugned Decision

14. The Registrar began by observing that the Director's visit to the ICC Detention Centre was the result of two requests, one from the Applicant's duty counsel and the other from counsel for Mr Katanga, on whose behalf the Applicant testified before the Court.²³ The Registrar concluded that the visit was "donc une réponse à une requête de personnes représentant en tout ou en partie les intérêts du requérant."²⁴ The Registrar noted that both duty counsel and counsel for Mr Katanga were aware of the Appeals Chamber decision of 20 January 2014.²⁵
15. The Registrar next addressed the content of the Director's discussion with the Applicant during his visit to the ICC Detention Centre.²⁶ The Registrar submitted that the discussion focused on the Appeals Chamber decision of 20 January 2014 and "les possibilités de sa mise en œuvre".²⁷ The Registrar stated that, according to the Applicant, the discussion also broached "l'existence d'une liste de personnes ayant bénéficié d'une mise en liberté conditionnelle."²⁸ The Registrar acknowledged that the Director "a ainsi confirmé ce qui était de notoriété publique, à savoir l'inscription sur cette liste d'un ancien témoin détenu retourné en RDC."²⁹
16. The Registrar noted that the Applicant had further alleged that the Director had informed him "qu'il aurait pu avoir bénéficié d'une telle mise en liberté conditionnelle s'il ne se trouvait pas à Makala."³⁰ In response to this allegation, the Registrar submitted that, until the Appeals Chamber decision of 20 January 2014, he had no official communication from the Congolese authorities "relative à l'inclusion dans les personnes mises en liberté conditionnelle qu'il ou un de ses représentants eût

²³ ICC-RoR221-04/14-1-Conf-Exp-Anx3, page 3, paragraph 2.

²⁴ ICC-RoR221-04/14-1-Conf-Exp-Anx3, page 3, paragraph 2.

²⁵ ICC-RoR221-04/14-1-Conf-Exp-Anx3, page 3, paragraph 2.

²⁶ ICC-RoR221-04/14-1-Conf-Exp-Anx3, page 4, paragraph 3.

²⁷ ICC-RoR221-04/14-1-Conf-Exp-Anx3, page 4, paragraph 3.

²⁸ ICC-RoR221-04/14-1-Conf-Exp-Anx3, page 4, paragraph 3. The Applicant's complaint to the Registrar does not allege that he and the Director discussed the existence of such a list. Rather, the Applicant stated that he was informed by the Director that he "devai[t] être remis aux autorités néerlandaises, à moins qu'il] décide personnellement de renoncer à l'asile parce qu'il a] la chance d'être libéré, à l'instar d'un autre témoin détenu" and that the Director had learned from the Congolese authorities that the Applicant "devrai[t] être libéré ensemble avec quelques autres consorts à Makala." ICC-RoR221-04/14-1-Conf-Exp-Anx2, page 2.

²⁹ ICC-RoR221-04/14-1-Conf-Exp-Anx3, page 4, paragraph 3.

³⁰ ICC-RoR221-04/14-1-Conf-Exp-Anx3, page 4, paragraph 4. The Applicant's complaint to the Registrar does not include such an allegation. As noted above, the Applicant stated only that the Director informed him that he had learned from the Congolese authorities that the Applicant "devrai[t] être libéré ensemble avec quelques autres consorts à Makala." ICC-RoR221-04/14-1-Conf-Exp-Anx2, page 2.

transmise à la Chambre d'appel.”³¹ The Registrar further submitted that to argue that the Registry was aware that the Congolese authorities considered the Applicant “parmi les personnes ayant bénéficié d’une liberté conditionnelle en RDC outre l’absence de notification formelle” is insufficient to establish “l’existence d’une intention délibérée de ne pas communiquer ladite information à la Chambre d’appel.”³² Finally, the Registrar argued that, even supposing that there had been an omission, “il revient au requérant de démontrer en quoi cette omission est grave, c’est-à-dire intentionnelle et préjudiciable.”³³

17. The Registrar noted that the Applicant’s position has always been to obtain asylum in The Netherlands.³⁴ The Registrar submitted that, accordingly, it was not for the Registry to interfere “dans une procédure diligentée par les conseils du requérant.”³⁵ Rather, the Registrar submitted that it is for the applicant, with the aid of his counsel, “de deviser sur la stratégie la meilleure dans son affaire”.³⁶ The Registrar further observed that in the past, the Applicant and his counsel “ont semblé pouvoir se référer à des informations provenant de la RDC pour appuyer leur requêtes” and that following “l’appel interjeté par la défense, cette dernière aurait pu soumettre un complément d’informations à la Chambre d’appel.”³⁷

18. The Registrar further noted that the Applicant’s position “que l’omission est fautive” implies “qu’elle eût eu un impact sur la décision de la Chambre d’appel”.³⁸ The Registrar challenged this position by observing that he could not determine “a posteriori et encore moins préalablement à la décision” what impact the information in question would have had.³⁹

19. The Registrar also clarified an aspect of the Appeals Chamber’s 20 January 2014 decision.⁴⁰ The Registrar observed that the Appeals Chamber had ordered him to implement article 93(7)(b) of the Statute, which entails returning the Applicant to the DRC and consulting with The Netherlands “pour déterminer la procédure qui

³¹ ICC-RoR221-04/14-1-Conf-Exp-Anx3, page 4, paragraph 4.

³² ICC-RoR221-04/14-1-Conf-Exp-Anx3, page 4, paragraph 5.

³³ ICC-RoR221-04/14-1-Conf-Exp-Anx3, page 4, paragraph 5.

³⁴ ICC-RoR221-04/14-1-Conf-Exp-Anx3, page 4, paragraph 4.

³⁵ ICC-RoR221-04/14-1-Conf-Exp-Anx3, page 4, paragraph 4.

³⁶ ICC-RoR221-04/14-1-Conf-Exp-Anx3, page 4, paragraph 4.

³⁷ ICC-RoR221-04/14-1-Conf-Exp-Anx3, page 4, paragraph 4. The Registrar appears here to refer to the appeal of the Trial Chamber’s 1 October 2013 decision rejecting the Application for Release. The Presidency notes that this application was submitted by counsel for Detained Witnesses and not by the defence. *See* “Notice of appeal by Witnesses DRC-D02-P-0236, DRC-D02-P-0228 and DRC-D02-P-0350 against the *Décision relative à la demande de mise en liberté des témoins détenus DRC-D02-P-0236, DRC-D02-P-0228 and DRC-D02-P-0350* issued by Trial Chamber II on 1 October 2013 (ICC-01/04-01/07-3405)”, 7 October 2013, ICC-01/04-01/07-3408-tENG.

³⁸ ICC-RoR221-04/14-1-Conf-Exp-Anx3, page 5, paragraph 6.

³⁹ ICC-RoR221-04/14-1-Conf-Exp-Anx3, page 5, paragraph 6.

⁴⁰ ICC-RoR221-04/14-1-Conf-Exp-Anx3, page 5, paragraph 7.

conviendrait en raison de la procédure d’asile.”⁴¹ The Registrar noted, however, that the Appeals Chamber had further ordered him, prior to the implementation of article 93(7)(b), to inform the Chamber and consult with the Congolese authorities, regarding the adequacy of the protective measures pursuant to article 68(1).⁴² The Registrar stated that the Registry is currently in the process of conducting “cette double consultation”.⁴³ The Registrar concluded that the fact that the Applicant “ait pu être informé de l’imminence de la fin de son séjour au quartier pénitentiaire . . . n’exclut pas qu’aient lieu avant tout des consultations” in accordance with the instructions of the Appeals Chamber in its decision of 20 January 2014.⁴⁴

20. With respect to the Applicant’s “demande de réparation”, the Registrar submitted that because the Applicant had not established proof of the omission, “pas plus que son caractère fautif”, or that communication of information “sur sa possible mise en liberté conditionnelle” would have impacted the Appeals Chamber’s decision, it was accordingly “prématuré de se prononcer sur une éventuelle réparation.”⁴⁵
21. Finally, the Registrar concluded that his administrative responsibility for the Applicant’s detention was insufficient to justify “une réparation dont la mise en œuvre ne rentre pas dans les prérogatives du Greffier” as defined by the legal texts of the Court.⁴⁶ The Registrar added that the Applicant did not indicate “la base juridique sur laquelle il fonde sa requête.”⁴⁷

B. Arguments of the Applicant

22. The Applicant began by noting that he had never requested that his duty counsel or counsel for Mr Katanga contact the Registry “pour lui parler de la possibilité d’un retour volontaire en RDC”.⁴⁸ Rather, the Applicant submitted that the Director had

⁴¹ ICC-RoR221-04/14-1-Conf-Exp-Anx3, page 5, paragraph 7 (citing ICC-01/04-02/12-158, 20 January 2014, page 12, paragraph 30).

⁴² ICC-RoR221-04/14-1-Conf-Exp-Anx3, page 5, paragraph 7. The Registrar’s discussion of the Appeals Chamber’s order with respect to article 68(1) is a slight misrepresentation. The Appeals Chamber ordered the Registrar to inform it “immediately and to consult with the relevant Congolese authorities, if the Registrar considers that the protective measures pursuant to article 68(1) of the Statute *are no longer adequate*.” ICC-01/04-02/12-158, 20 January 2014, pages 12-13, paragraph 31 (emphasis added).

⁴³ ICC-RoR221-04/14-1-Conf-Exp-Anx3, page 5, paragraph 7.

⁴⁴ ICC-RoR221-04/14-1-Conf-Exp-Anx3, page 5, paragraph 7.

⁴⁵ ICC-RoR221-04/14-1-Conf-Exp-Anx3, page 5, paragraph 8.

⁴⁶ ICC-RoR221-04/14-1-Conf-Exp-Anx3, page 6, paragraph 10.

⁴⁷ ICC-RoR221-04/14-1-Conf-Exp-Anx3, page 6, paragraph 10.

⁴⁸ ICC-RoR221-04/14-1-Conf-Exp-Anx1, page 2, paragraph 1. The Applicant stated in full: “Je n’ai jamais demandé ni à Me Mabanga ni à Me Hooper de contacter le Greffe pour lui parler de la possibilité d’un retour volontaire en RDC de ma part comme le directeur des Services de la Cour m’a fait savoir à cette rencontre du 12 mars 14.” The Applicant then stated: “C’est à cette occasion qu’il m’a aussi dit que j’avais la chance d’être libéré directement ou après quelques jours, comme c’est le cas avec un des témoins détenus, retourné au

informed him that he “avait la chance d’être libéré directement ou après quelques jours, comme c’est le cas avec un des témoins détenus, retourné au Congo.”⁴⁹

23. The Applicant next submitted that while the Registrar “ne nie pas de l’existence d’une telle liste,”⁵⁰ he had not responded “à la possibilité de la détention de l’information” concerning the Applicant “sous prétexte que c’est [au requérant] de fournir la preuve.”⁵¹ The Applicant acknowledged this point but argued that the absence of evidence could be attributed to the Congolese government, which did not want “l’accorder à [son] avocat à Kinshasa pour des raisons inavouées.”⁵² Nevertheless, the Applicant insisted that the Director “[lui] en a parlé et à [s]es avocats” and “[c]ela est une preuve pour [lui].”⁵³
24. The Applicant observed that his application “n’interfère en rien à la procédure d’asile.”⁵⁴ The Applicant submitted that the justification for his detention had ceased to exist “depuis octobre, à la libération des autres, à Kinshasa” and asked “quelle serait la raison que cela ne s’applique pas à [lui].”⁵⁵ The Applicant further submitted that it was not possible to explain “l’illégalité de [s]on séjour ici par les consultations avec les Pays-Bas” for “[l]es consultations n’ôtent pas ce caractère à la procédure qui explique [s]a présence ici.”⁵⁶

C. Determination of the Presidency

25. It is recalled that prior to any judicial review regarding the propriety of the procedure by which the Registrar reached a particular decision as well as the outcome of that

Congo.” The Applicant’s original complaint to the Registrar described a meeting with the Director at the ICC Detention Centre on 22 January 2014, not on 12 March 2014. The Applicant appears to be responding to that portion of the Impugned Decision where the Registrar submitted that the Director’s visit to the ICC Detention Centre was the result of two requests, one from the Applicant’s duty counsel and the other from counsel for Mr Katanga. ICC-RoR221-04/14-1-Conf-Exp-Anx3, page 3, paragraph 2. Although the Impugned Decision does not provide the date of the Director’s visit, it does not suggest that the 22 January 2014 date provided in the Applicant’s original complaint was in error. Moreover, the Applicant’s description of his discussion with the Director accords with the description of his discussion with the Director in the original complaint. See ICC-RoR221-04/14-1-Conf-Exp-Anx2, page 2. Therefore, the Presidency construes the discussion in question to have taken place on 22 January 2014.

⁴⁹ ICC-RoR221-04/14-1-Conf-Exp-Anx1, page 2, paragraph 1.

⁵⁰ ICC-RoR221-04/14-1-Conf-Exp-Anx1, page 2, paragraph 2. The Applicant’s reference to “une telle liste” is his first reference to a list in his filings. He appears, however, to be referring to the “liste de personnes ayant bénéficié d’une mise en liberté conditionnelle” mentioned by the Registrar in the Impugned Decision. ICC-RoR221-04/14-1-Conf-Exp-Anx3, page 4, paragraph 3.

⁵¹ ICC-RoR221-04/14-1-Conf-Exp-Anx1, pages 2-3, paragraph 2.

⁵² ICC-RoR221-04/14-1-Conf-Exp-Anx1, page 3, paragraph 2.

⁵³ ICC-RoR221-04/14-1-Conf-Exp-Anx1, page 3, paragraph 2.

⁵⁴ ICC-RoR221-04/14-1-Conf-Exp-Anx1, page 3, paragraph 3.

⁵⁵ ICC-RoR221-04/14-1-Conf-Exp-Anx1, page 3, paragraph 3.

⁵⁶ ICC-RoR221-04/14-1-Conf-Exp-Anx1, page 3, paragraph 4.

decision, the Presidency must be satisfied that it has jurisdiction to decide upon the matter before it.⁵⁷

26. The present request for judicial review is brought pursuant to RoR 221 and concerns the Registry's alleged failure to transmit certain information related to the Applicant's release from detention to the Appeals Chamber.⁵⁸
27. In addressing the admissibility of the Application, the Presidency begins by considering the legal texts governing the Registry and its responsibilities with respect to detention matters. Article 43(1) of the Statute provides that "[t]he Registry shall be responsible for the non-judicial aspects of the administration and servicing of the Court".
28. Chapter 6 of the Regulations of the Court ("RoC") governs "Detention matters" and provides in RoC 90(1) that "the Registrar shall have overall responsibility for all aspects of management of the detention centre, including security and order, and shall make all decisions relating thereto." The chapter consists of two sections, the first addressing "General provisions" related to detention and the second addressing the "Rights of a detained person and conditions of detention". RoC 106, which is the final provision of Section 2, provides that "[a] detained person shall have the right to file a complaint against any administrative decision or order or with regard to any other matter concerning his or her detention" and that "[t]he complaints procedure shall be set out in the Regulations of the Registry".
29. Chapter 5 of the RoR governs "Detention matters" and fleshes out the Registrar's responsibilities with respect to management of the detention centre. The first two sections of the chapter mimic the structure of Chapter 6 of the RoC, addressing respectively "General provisions" related to detention and the "Rights of a detained person and conditions of detention". Section 3, which addresses the "Management of the Detention Centre", articulates the Registrar's responsibilities over the general administration of the Detention Centre, including the arrival and admission of detained persons, the provision of clothing and food, and accommodation

⁵⁷ The Presidency notes that the Registrar did not challenge the admissibility of the Application, expressly directing the Applicant that it was possible to seek review of the Impugned Decision by the Presidency, despite observing that the Applicant failed to indicate "la base juridique sur laquelle il fonde sa requête." ICC-RoR221-04/14-1-Conf-Exp-Anx3, page 6. Nevertheless, the Presidency must satisfy itself that it has jurisdiction to decide upon the matter before it.

⁵⁸ The Presidency notes a number of factual discrepancies between the Applicant's filings and the Impugned Decision, including the specific content of the discussion that took place between the Applicant and the Director at the ICC Detention Centre on 22 January 2014. The Presidency need not resolve these factual discrepancies in determining the admissibility of the application, which considers as a preliminary matter whether it has jurisdiction to review the complaint raised by the Applicant. The Registrar does not dispute that the Applicant's complaint concerns the Registry's alleged failure to transmit certain information related to the Applicant's release from detention to the Appeals Chamber.

arrangements. Section 4 addresses in detail matters related to “Discipline and Control” of detained persons. Finally, Section 5 sets out the “Complaints Procedure”.

30. The language and structure of the RoC and the RoR make clear that the Registrar’s responsibilities with respect to detention matters concern the management of the Detention Centre, specifically the conditions of detention and the maintenance of security and safety. As described above, Chapter 6 of the RoC consists of only two sections, one laying out general provisions and the other dedicated to addressing the most critical aspects of conditions of detention, such as the detained person’s right to, *inter alia*, communicate with counsel, visits, and medical services.⁵⁹ Chapter 5 of the RoR similarly focuses its attention on conditions of detention,⁶⁰ in addition to setting out a list of disciplinary offenses and a disciplinary procedure.
31. The complaints procedure, as set forth in the RoC and the RoR, permits a detained person to challenge those actions of the Registrar pertaining to his management of the Detention Centre. Thus, RoC 106, which provides that “[a] detained person shall have the right to file a complaint against any administrative decision or order or with regard to any matter concerning his or her detention”, is located within that section of the RoC addressing conditions of detention. Section 5 of Chapter 5 of the RoR refers back to RoC 106 as the source of authority for its articulation of a multi-step complaints procedure for matters related to detention.⁶¹
32. The Applicant’s request for judicial review is brought pursuant to RoR 221, which is contained within Section 5 of Chapter 5 of the RoR. It concerns the Registrar’s alleged failure to transmit certain information related to his release from detention to the Appeals Chamber. This request does not challenge any action (or omission) by the Registrar as part of his administrative responsibility for detention matters, namely the management of the Detention Centre, as defined by the legal texts of the Court.⁶² Accordingly, the Application is inadmissible for want of legal basis.

⁵⁹ RoC 95, which is contained in Section 1 of the chapter, explicitly addresses “Discipline”. It provides, in paragraph 1, that “[d]iscipline and order shall be maintained by the Chief Custody Officer in the interests of safe custody and good administration of the detention centre” and provides, in paragraph 2, that “the disciplinary procedure for detained persons shall be set out in the Regulations of the Registry.”

⁶⁰ Section 2 explicitly addresses the “Rights of detained persons and conditions of detention”, but Section 3, which addresses “Management of the Detention Centre”, also touches upon conditions of detention by dealing with such topics as searches and the segregation of detained persons.

⁶¹ RoR 216 *bis* provides that “[p]ursuant to regulation 106 of the Regulations of the Court, a detained person may enter a complaint on any matter concerning his or her detention”. The RoC and RoR articulate a parallel complaints procedure for challenges related specifically to the disciplinary procedure. *See* RoC 95(2), RoR 215-16.

⁶² *Cf.* “Public Redacted Version of the ‘Decision on the Application for Judicial Review of 18 February 2014’, ICC-RoR221-02/14-2-Conf-Exp, 6 March 2014”, 1 April 2014, ICC-RoR221-02/14-2-Red (concerning the

33. The Presidency notes that the crux of the Applicant's request concerns his release from detention (as opposed to any particular aspect of his detention). The question of the Applicant's release is a judicial matter that has been litigated before the Trial Chamber and Appeals Chamber of this Court.⁶³ To the extent that the Applicant challenges the Registrar's alleged failure to take certain action, including the transmission of information, related to these proceedings, that is a matter over which the Presidency has no jurisdiction to review.

III. CLASSIFICATION

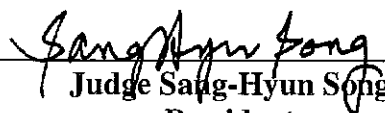
34. The Presidency notes that all documents in the instant Application have been filed confidentially and *ex parte*. The Presidency considers that, *prima facie*, there is no reason to retain the confidential *ex parte* classification of this decision, subject to ensuring the redaction of any information that may identify the Applicant.
35. If there is any factual and/or legal basis for retaining the confidential *ex parte* classification of this decision, or if there is any specific information requiring redaction before publication, the Applicant and the Registrar are each ordered to inform the Presidency thereof by 5 pm on 23 May 2014. The Presidency will thereafter rule on whether the classification should be maintained and, if necessary, the need for any redactions.

For the above reasons, the Presidency finds the Application to be inadmissible.

registration of contacts on detained person's telephone contact list); "Decision on the application for judicial review dated 4 November 2013", 3 February 2014, ICC-RoR221-04/13-4-Red (concerning the authorization of visits to the ICC Detention Centre); "Decision on the application for judicial review dated 21 July 2013", 18 September 2013, ICC-RoR221-02/13-4-Red (concerning the provision of medication to a detained person in the presence of a custody officer).

⁶³ See the Procedural History of this decision, pages 3-5.

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


Judge Sang-Hyun Song
President

Dated this 7 May 2014

At The Hague, The Netherlands