

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

No: ICC-01/04-01/07  
Date: 5 November 2007

**PRE-TRIAL CHAMBER I**

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

**Registrar:** Mr Bruno Cathala

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

**PUBLIC DOCUMENT**

**Decision on the appointment of a duty counsel**

**The Office of the Prosecutor**  
Mr Luis Moreno Ocampo  
Mrs Fatou Bensouda  
Mr Éric MacDonald

**Mr Germain Katanga**

**PRE-TRIAL CHAMBER I** (“the Chamber”) of the International Criminal Court (“the Court”):

**NOTING** the “Warrant of Arrest for Germain Katanga”, issued by Pre-Trial Chamber I on 2 July 2007;<sup>1</sup>

**NOTING** the “Decision to unseal the warrant of arrest against Germain Katanga” issued by the Single Judge on 18 October 2007;<sup>2</sup>

**NOTING** the “Information to the Chamber on the execution of the Request for the arrest and surrender of Germain Katanga” filed by the Registry on 22 October 2007;<sup>3</sup>

**NOTING** the “*Désignation d’un conseil de permanence*” filed by the Registry on 19 October 2007 in which Germain Katanga appointed the Office of Public Counsel for the Defence (“the OPCD”) as duty counsel;<sup>4</sup>

**NOTING** the “*Déclaration d’acceptation de désignation*” filed by the Registry on 19 October 2007 in which Mr Xavier-Jean Keïta, Principal Counsel of the OPCD accepted appointment as duty counsel to Germain Katanga for the purpose of his first appearance before the Chamber;<sup>5</sup>

---

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

<sup>2</sup> ICC-01/04-01/07-24.

<sup>3</sup> ICC-01/04-01/07-40-Conf-Exp and Anx1 to Anx9.

<sup>4</sup> ICC-01/04-01/07-39-Anx1.

<sup>5</sup> ICC-01/04-01/07-39-Anx2.

**NOTING** the public hearing held by the Chamber on 22 October 2007 for the first appearance of Germain Katanga before the Chamber, following his arrest and surrender to the Court;<sup>6</sup>

**NOTING** the "Rapport relative à la notification de documents enregistrés au dossier de l'affaire et au choix du conseil de la defense par Germain Katanga"<sup>7</sup> filed by the Registry on 2 November 2007 whereby it informs the Chamber that Germain Katanga has refused notification of a certain number of documents because he did not know the content of the documents notified and that he would receive notification only in the presence of a counsel or an interpreter;

**NOTING** the article 67 (1) (d) of the Rome Statute ("the Statute"), rules 20 and 22 of the Rules of Procedure and Evidence ("the Rules"), regulations 73, 75 and 77 of the Regulations of the Court ("the Regulations");

**CONSIDERING** that Mr Xavier-Jean Keïta, Principal Counsel of the OPCD has accepted appointment as duty counsel to Germain Katanga for the sole purpose of his first appearance before the Chamber;

**CONSIDERING** that it is in the interests of justice for the suspect to be represented as soon as possible by a counsel of his choosing for the continuation of the proceedings;

**CONSIDERING** that Germain Katanga has not yet chosen counsel;

---

<sup>6</sup> ICC-01/04-01/07-26.

<sup>7</sup> ICC-01/04-01/07-49-Conf.

**CONSIDERING** that pursuant to regulation 73 (2) of the Regulations, if any person requires urgent legal assistance and has not yet secured legal assistance, or where his or her counsel is unavailable, the Registrar may appoint duty counsel, taking into account the wishes of the person, and the geographical proximity of, and the languages spoken by, the counsel;

**CONSIDERING** that pursuant to *inter alia* articles 61 (3)(b) and 67 (2) the Prosecution may start to disclose to the defence (i) any evidence currently in the possession or control of the Prosecution which it might have already identified as exculpatory evidence and (ii) any incriminating evidence on which the Prosecution might have already decided to rely at the confirmation hearing;

**CONSIDERING** therefore, that the disclosure process is about to start, and that is in the interests of justice for the suspect to be represented as soon as possible;

**CONSIDERING** however that, as already indicated by the OPCD, “sharing confidential information [...] would prevent the Office from providing, under the same conditions of equality and equity, the same assistance to another Defense team which might be given responsibility for differing and contrary interests” and that “the conflict of interest would paralyse the remit which would normally be that of the OPCD”;<sup>8</sup>

**CONSIDERING** therefore, that in the process of appointing a duty counsel, Germain Katanga and the Registrar shall refrain from designating the OPCD in order to avoid any conflict of interest in the future;

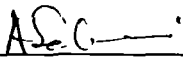
---

<sup>8</sup> ICC-01/04-01/06-823-tENG.

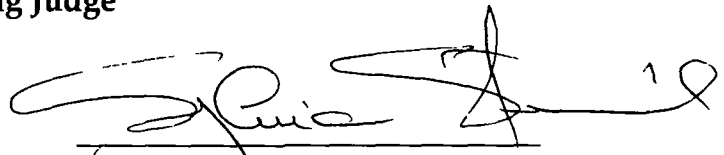
**FOR THESE REASONS**

**ORDERS** the Registrar to appoint, as soon as possible, in consultation with Germain Katanga, a new duty counsel to represent him until he exercises his right to choose a counsel under article 67 (1) of the Statute.

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

  
\_\_\_\_\_  
**Judge Akua Kuenyehia**  
**Presiding Judge**

  
\_\_\_\_\_  
**Judge Anita Ušacka**

  
\_\_\_\_\_  
**Judge Sylvia Steiner**

Dated this Monday 5 November 2007

At The Hague (the Netherlands)