

**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, Single Judge

Registrar: Mr Bruno Cathala

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

Public Redacted Version

**Decision Modifying the Calendar for the Disclosure of the Supporting Materials
of the Prosecution Application for a Warrant of Arrest against Germain Katanga**

The Office of the Prosecutor

Mr Luis Moreno-Ocampo, Prosecutor
Ms Fatou Bensouda, Deputy Prosecutor
Mr Eric MacDonald, Trial Lawyer

I, Judge Akua Kuenyehia, judge at the International Criminal Court (“the Court”);

NOTING the Warrant of Arrest for Germain Katanga, issued by Pre-Trial Chamber I on 2 July 2007;¹

NOTING the “Decision Rejecting the Prosecution Urgent Request and Establishing a Calendar for the Disclosure of the Supporting Materials of the Prosecution Application for a Warrant of Arrest against Germain Katanga”² (“Decision Establishing the Calendar on Disclosure”) issued by the Single Judge on 6 July 2007;

NOTING the “Prosecution’s Request for the Variation of the Calendar for the Submission of a Formatted Version of the Arrest Warrant and Redacted Witness Statements”³ filed by the Prosecution on 10 July 2007;

NOTING the “Decision Altering the Calendar for the Submission of Formatted Version of the Arrest Warrant Application and Redacted Witness Statements”⁴ issued by the Single Judge on 10 July 2007;

NOTING the “Prosecution’s Request for the Variation of the Calendar for Requesting Redactions to Statements or Interview Notes of Witnesses”⁵ filed by the Prosecution on 24 August 2007;

¹ ICC-01/04-01/07-1.

² ICC-01/04-01/07-5-US-Exp.

³ ICC-01/04-01/07-8-US-Exp.

⁴ ICC-01/04-01/07-9-US-Exp.

⁵ ICC-01/04-01/07-15-US-Exp.

NOTING the “Decision on the Prosecution’s Request for the Variation of the Calendar for Requesting Redactions to Statements or Interview Notes of Witnesses”⁶ issued by the Single Judge on 29 August 2007;

NOTING the “Information on the Status of the Referrals and on the Assessments”⁷ (“the Registry’s Information on Referrals’ Status”) filed by the Registry on 13 September 2007;

NOTING the “Decision convening a Hearing”⁸ issued by the Single Judge on 16 October 2007;

NOTING the Hearing *ex parte* and in closed session held on 17 October 2007 with the Prosecution and VWU⁹ (“the 17 October 2007 Hearing”);

NOTING articles 61(2) and 67 of the Rome Statute (“the Statute”) and rules 76 to 83 and 121 of the Rules of Procedure and Evidence (“the Rules”);

CONSIDERING that Germain Katanga has been surrendered to the officials of the Court and is now at the Detention Center of the Court;

CONSIDERING that the Chamber has already established a calendar for disclosure in its decisions of 6 July 2007,¹⁰ 10 July 2007¹¹ and 29 August 2007;¹²

⁶ ICC-01/04-01/07-17-US-Exp.

⁷ ICC-01/04-01/07-19-US-Exp.

⁸ ICC-01/04-01/07-22-US-Exp.

⁹ ICC-01/04-01/07-T-3-US-Exp-ENG[17Oct2007Realtime].

¹⁰ ICC-01/04-01/07-5-US-Exp.

¹¹ ICC-01/04-01/07-9-US-Exp.

¹² ICC-01/04-01/07-17-US-Exp.

CONSIDERING that according to the Registry (i) protective measures have already been granted and implemented for witnesses REDACTED and REDACTED; (ii) protective measures have already been granted for witnesses REDACTED and REDACTED and that by the end of October 2007 they will be implemented; (iii) protective measures for witnesses REDACTED and REDACTED are currently being assessed; and (iv) that the Prosecution has withdrawn the referrals for witness REDACTED and witness REDACTED – who recently died;

CONSIDERING that the Prosecution (i) has already requested authorization for redactions of the statements of witnesses REDACTED and REDACTED; (ii) has stated that he could file requests for authorization for redactions of the statements of witnesses REDACTED and REDACTED by Monday 22 October 2007; and (iii) has stated that he could file requests for authorization for redactions of the statements of witnesses REDACTED and REDACTED by Monday 29 October 2007;

CONSIDERING that, in the Decision of 29 August 2007, the Single Judge gave to “the Prosecution 10 days from the notification of the Registry's final decision on the assessment of protective measures for all witnesses and their family members to submit its requests for authorisation for redactions”;

CONSIDERING that according to the Prosecution only a few additional witnesses will be relied upon for the purpose of the confirmation hearing; that additional documents for which the Prosecution intends to rely upon for the purpose of the confirmation hearing will be far less than in the case ICC-01/04-01/06; and that additional witnesses will be referred to the Victims and Witnesses Unit (“the VWU”) as soon as the Prosecution has decided to rely on their statements for the purpose of the confirmation hearing;

CONSIDERING therefore that there is a need to modify the calendar on disclosure on the basis of the updates given by the Prosecution, the representatives of the Registry and VWU at the 17 October 2007 Hearing;

FOR THESE REASONS,

DECIDE to modify the calendar for the disclosure of the Supporting Materials to the Prosecution Application for a Warrant of Arrest against Germain Katanga as follows:

- (i) Statements of witnesses REDACTED and REDACTED: the Prosecution shall have until Monday 22 October 2007 to either disclose unredacted versions of their statements to the Defence, or to request, following the example provided for in Annex I to the *Decision on the confirmation of charges* in the case ICC-01/04-01/06, the authorisation of the Single Judge for any redaction that the Prosecution might still consider necessary;
- (ii) Statements of witnesses REDACTED and REDACTED: if the Prosecution decides to disclose unredacted versions, the Prosecution shall file by Monday 29 October 2007 an electronic version with the details required under the *Draft Protocol on the Presentation of Evidence* followed in the case ICC-01/04-01/06. Moreover, prior to the filing of the Document containing the charges, the relevant fields will be provisionally filled out by reference to the relevant parts to the warrant of arrest for Germain Katanga;
- (iii) Statements of witnesses REDACTED and REDACTED: the Prosecution shall have until Monday 29 October 2007 to request, following the example provided for in Annex I to the *Decision on the confirmation of charges* in the case ICC-01/04-01/06, the authorisation of the Single Judge for any redaction that the Prosecution might still consider necessary;

- (iv) Statements of witnesses REDACTED and REDACTED: the Registry shall do its utmost to implement the protective measures already granted to witnesses REDACTED and REDACTED by the end of October 2007;
- (v) Statements of witnesses REDACTED and REDACTED: if the Prosecution considers that no redaction is necessary on the statements of witnesses REDACTED and REDACTED, it shall, within 7 days after the Registrar's notification that the protective measures granted for such witnesses have been implemented, (i) disclose the unredacted versions of such statements to the defence and (ii) file an electronic version with the details required under the *Draft Protocol on the Presentation of Evidence* followed in the case ICC-01/04-01/06. Moreover, prior to the filing of the Document containing the charges, the relevant fields will be provisionally filled out by reference to the relevant parts of the warrant of arrest for Germain Katanga;
- (vi) Statements of witnesses REDACTED and REDACTED: the Registry shall do its utmost to (i) decide upon the Prosecution requests for protective measures for witnesses REDACTED and REDACTED by Thursday 15 November 2007; and (ii) implement the granted protective measures, if any, by no later than Monday 10 December 2007;
- (vii) Statements of witnesses REDACTED and REDACTED: the Prosecution shall have 10 days after the Registrar's notification of his decision on the Prosecution requests for protective measures to request, following the example provided for in Annex I to the *Decision on the confirmation of charges* in the case ICC-01/04-01/06, the authorisation of the Single Judge for any redaction that the Prosecution might still consider necessary;
- (viii) Statements of witnesses REDACTED and REDACTED: if the Prosecution considers that no redaction is necessary on the statements of witnesses REDACTED and REDACTED it shall, within 7 days after

the Registrar's notification that the protected measures granted for such witnesses have been implemented, (i) disclose the unredacted versions of such statements to the defence and (ii) file an electronic version with the details required under the *Draft Protocol on the Presentation of Evidence* followed in the case ICC-01/04-01/06. Moreover, prior to the filing of the Document containing the charges, the relevant fields will be provisionally filled out by reference to the relevant parts of the warrant of arrest for Germain Katanga;

ORDER the Prosecution to inform (i) witnesses REDACTED and REDACTED that their statements will be used as evidence for the purpose of the confirmation hearing in the case of The Prosecutor v. Germain Katanga and that their identity will be revealed to the Defence; and (ii) witnesses REDACTED and REDACTED that their statements will be used as evidence for the purpose of the confirmation hearing in the case of The Prosecutor v. Germain Katanga and that protective measures requested for them by the Prosecution are currently being assessed by the Registry;

ORDER the Prosecution to request the consent of witness REDACTED for his statement to be used as evidence for the purpose of the confirmation hearing in the case of The Prosecutor v. Germain Katanga and for his identity to be revealed to the Defence;

DECIDE that:

- (i) the Prosecution searches for potentially exculpatory materials under rule 67(2) of the Statute shall continue on an ongoing basis;
- (ii) as soon as the Prosecution identifies any item of a potentially exculpatory nature under article 67(2) of the Statute, it shall:
 - a. disclose it to the Defence;

- b. request, pursuant to articles 54(3)(e), 73 or 93 of the Statute, the consent of the providers to disclose them without any redaction to the Defence, and bring to the attention of the Chamber any delay in disclosure caused by the procedure under such provisions; or
 - c. request an exception to the disclosure requirement under rule 81 of the Rules;
- (iii) as soon as practicable after disclosure of potentially exculpatory materials to the Defence, the Prosecution shall file disclosure notes listing the potentially exculpatory materials so disclosed.
 - (iv) that by 15 November 2007 the Prosecution will file a report on the status of the procedures initiated under articles 54(3)(e), 73 and 93 of the Statute in relation to those items identified as of a potentially exculpatory nature under article 67(2) of the Statute;

DECIDE that:

- (i) towards the second half of November 2007, once the Defence team of Germain Katanga is fully operational, a hearing will be held to gather the views of the parties in order to set a calendar for the disclosure of the additional evidence on which the Prosecution intends to rely at the confirmation hearing;
- (ii) in the meantime:
 - a. the Prosecution shall, in relation to those additional witnesses on which the Prosecution may decide to rely upon at the confirmation hearing, do its utmost to make the necessary requests for operational protective measures to the Registry as soon as practicable; and

- b. the Prosecution shall, in relation to those additional books, documents, photographs and other tangible objects on which the Prosecution may decide to rely at the confirmation hearing and which have been obtained under article 54(3)(e) of the Statute, do its utmost to request as soon as practicable the consent of the providers to disclose them to the Defence;

ORDER the Registry to do its utmost to, with full respect for the rights of Germain Katanga under article 67(1) of the Statute, ensure that the Defence Team in this case will be fully operational and will have the necessary access to databases and training in software by no later than 1 December 2007.

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



Judge Akua Kuenyehia
Single Judge

Dated this Monday 5 November 2007

At The Hague, The Netherlands