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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 Redacted Version

Order on the execution of the warrant of arrest against Germain Katanga

The Office of the Prosecutor

Mr Luis Moreno Ocampo, Prosecutor
Ms Fatou Bensouda, Deputy Prosecutor
Ms Christine Chung, Senior Trial Lawyer
Mr Eric MacDonald, Trial Lawyer

PRE-TRIAL CHAMBER I of the International Criminal Court (“the Chamber” and “the Court”);

NOTING the “Notification to Pre-Trial Chamber I and Request for Extension of Page Limit” filed by the Prosecution on 14 June 2007;¹

NOTING the Prosecution’s application for the issuance of a warrant of arrest against Germain Katanga² (“the Prosecution Application”) filed on 22 and 25 June 2007 and the evidence and other information provided by the Prosecution,³ giving the Chamber, *inter alia*, certain information about property and assets belonging to Germain Katanga, in particular informing it that Germain Katanga allegedly possesses property and assets which could be linked to the commission of the crimes;

NOTING that in its application, the Prosecution requests *inter alia* that 1) this application be received by the Pre-Trial Chamber under seal, 2) the fact of the very existence of this application also be sealed, and 3) any determination by the Pre-Trial Chamber to issue a warrant of arrest be sealed from the public until such time as all the necessary arrangements are in place to allow for the arrest, surrender, and transfer of Germain Katanga to the Seat of the Court in The Hague.

NOTING the decision concerning supporting materials in relation with the Prosecution Application (“Decision Concerning Supporting Materials”)⁴ rendered by Judge Sylvia Steiner, single judge, inviting the Prosecution to submit supporting materials;

¹ ICC-01/04-338-US-Exp.

² ICC-01/04-348-US-Exp and ICC-01/04-350-US-Exp.

³ ICC-01/04-349-US-Exp and ICC-01/04-354-US-Exp.

⁴ ICC-01/04-352-US-Exp.

NOTING the Prosecutor's response to the Decision Concerning Supporting Materials filed by the Prosecution on 27 June 2007;⁵

NOTING the warrant of arrest for Germain Katanga issued by the Chamber on 2 July 2007;⁶

NOTING United Nations ("UN") resolution 1596 (2005)⁷ and the list of persons and entities which are subject to measures imposed by paragraphs 13 and 15 of the resolution;⁸

NOTING [REDACTED]

PURSUANT TO articles 57, 58, 60, 67, 75, 87, 88, 89, 91, 93, 96 and 97 of the *Rome Statute* ("the Statute"), rules 99, 117, 176, 184 and 187 of the *Rules of Procedure and Evidence* ("the Rules") and regulation 31 of the *Regulations of the Court*;

CONSIDERING that the Pre-Trial Chamber is the only competent organ of the Court i) to issue and amend a warrant of arrest, ii) to deal with the national authorities of the requested State concerning any incident which might affect the surrender of the person to the Court once such a person has been arrested and iii) in a position to thoroughly follow up on the execution of cooperation requests for both arrest and surrender of the relevant person;⁹

CONSIDERING therefore, that the Pre-Trial Chamber, with the Registry's assistance pursuant to rules 176(2) and 184 of the Rules, shall be considered the only competent

⁵ ICC-01/04-354-US-Exp and Anx1-Anx6 and Anx 10-Anx 14.

⁶ ICC-01/04-01/07-1-US-tENG.

⁷ United Nations Security Council resolution S/RES/1596 (2005).

⁸ List of persons and entities which are the subject of the measures imposed by paragraphs 13 and 15 of Security Council resolution 1596 (2005). Last update on 6 February 2007.

http://www.un.org/Docs/sc/committees/DRC/1533_list.htm

⁹ ICC-01/04-01/06-8-US-Corr. Anx 1, para. 117.

organ of the Court to make and transmit a request for cooperation seeking arrest and surrender;¹⁰

CONSIDERING that, to protect and respect the privacy of the witnesses and the victims within the meaning of article 57(3)(c) of the Statute, it is necessary for the Prosecution, insofar as its confidentiality obligations do not preclude it from so doing, to transmit at the earliest opportunity, to the Chamber and to the Registry any information on the risks that the transmission of the request for cooperation seeking Germain Katanga's arrest and surrender could entail for the victims and the witnesses;

CONSIDERING furthermore that, for the expeditious execution of the requests for cooperation seeking Germain Katanga's arrest and surrender, it would be appropriate for the Prosecution, insofar as its confidentiality obligations do not preclude it from so doing, to transmit at the earliest opportunity, to the Chamber and to the Registry any information which, in its opinion, would facilitate the expeditious execution of the request for cooperation seeking the arrest and surrender by the national authorities of the Democratic Republic of the Congo;

CONSIDERING that pursuant to articles 87 and 89(3) of the Statute, the Court may transmit any request for transit which may be necessary to ensure the proper execution of this request for arrest and surrender;

CONSIDERING, furthermore, that the Chamber recalls that the reparation scheme provided for by the Statute is not only one of the Statute's unique features but is also one of its key features¹¹ and that the effectiveness of the reparation scheme is greatly enhanced when the Prosecution gives due consideration to this aspect during the investigation phase;¹²

¹⁰ ICC-01/04-01/06-8-US-Corr. Anx 1, para. 117.

¹¹ ICC-01/04-01/06-8-US-Corr, Anx1 para. 136.

¹² ICC-01/04-01/06-8-US-Corr, Anx1 para. 131.

CONSIDERING that in its application, the Prosecution informed the Chamber that Germain Katanga reportedly had two residences in Aveba at the time of the events related in the Prosecution Application and that he also can be expected to have retained at least some of the fruits of the crimes in which his combatants frequently engaged; that these assets potentially could be used to satisfy a reparation award, if such an award is entered; and that, moreover, Germain Katanga has the means to place his property and assets beyond the reach of the Court .

CONSIDERING that for the purpose of awarding reparations to persons with victim status in a case, if property and assets are not identified, located and frozen or seized at the time of the execution of a cooperation request for arrest and surrender of the person, or very soon thereafter, it is likely that the subsequent efforts of the Chamber, the Prosecution or the victims participating in the case will be fruitless because existing technology makes it possible for a person to place most of his assets and moveable property beyond the Court's reach in only a few days.¹³

CONSIDERING that the Chamber has already found that there are reasonable grounds to believe that Germain Katanga is criminally responsible for certain crimes against humanity and war crimes committed during and in the aftermath of the joint FNI/FRPI attack on the village of Bogoro on or around 24 February 2003; and that the Chamber observes that although Germain Katanga is detained at the *Centre pénitentiaire et de rééducation de Kinshasa* [Kinshasa Penitentiary and Re-education Centre], the following reasons indicate that he has the means to put his property and assets beyond the reach of the Court as soon as he learns that a warrant of arrest has been issued for him:

¹³ ICC-01/04-01/06-8-US-Corr, para. 137.

- i) he appears to be able to make unmonitored telephone calls to persons outside the Centre;¹⁴
- ii) he has a network of national contacts which he established from early 2003 onwards when he was the highest ranking FRPI commander and subsequently from early December 2004 onwards when he was an FARDC Brigadier-General;

CONSIDERING that the requests for cooperation made to the States under articles 57(3)(e) and 93(1)(k) of the Statute for the purpose of taking protective measures to guarantee the execution of future orders for reparations should be transmitted at the same time as the request for cooperation seeking the arrest and surrender of the person concerned;

CONSIDERING that it appears necessary to keep under seal the Prosecution Application, any document filed by the Prosecution pertaining thereto, any decision of the Pre-Trial Chamber pertaining to the Prosecution Application and the warrant of arrest for Germain Katanga until all the necessary steps have been taken for his arrest, surrender and transfer to the Seat of the Court in The Hague because unsealing could:

- i) cause Germain Katanga to obstruct or endanger the investigation by arranging false testimonies with the other detainees in the *Centre pénitentiaire et de rééducation de Kinshasa* who are also former FNI and FRPI members;
- ii) cause Germain Katanga to threaten, corrupt or influence other potential witnesses outside the prison; and
- iii) endanger Germain Katanga's physical well-being.

¹⁴ Prosecution Application, para 12. See also ICC-01-04-T-11-CONF-EXP-EN[19June2007Edited], page 17, lines 7-8. Additionally, according to the Prosecution, no later than early this year, two of Germain Katanga's co-detainees made telephone calls, from two telephone numbers, to an individual located in the Ituri District, who at the time were being interviewed by the Office of the Prosecutor (Prosecution Application, para. 12).

FOR THESE REASONS

DECIDES that the Prosecution Application, any document filed by the Prosecution pertaining thereto, any decision of the Pre-Trial Chamber pertaining to the Prosecution Application and the warrant of arrest for Germain Katanga be sealed until the Chamber decides otherwise;

DECIDES that, at the earliest opportunity, the Registrar: i) shall prepare a request for cooperation seeking Germain Katanga's arrest and surrender and containing the information and documents required by article 91 of the Statute; and ii) shall transmit this request to the competent authorities of the Democratic Republic of the Congo ("the DRC") in accordance with rule 176(2) of the Rules;

DECIDES to authorise the Registrar, where necessary prior to the transmission of the request for cooperation for Germain Katanga's arrest and surrender, to inform the following persons of the existence of the warrant of arrest for him:

- i) the DRC authorities which are competent to receive from the Court a request for cooperation seeking the arrest and surrender, so as to ensure the proper execution of the warrant of arrest;
- ii) the persons participating in the transfer of Germain Katanga to the seat of the Court in the Hague; and
- iii) the UN Under-Secretary-General for Peacekeeping Operations and the Special Representative of the United Nations Secretary-General for the Democratic Republic of the Congo for the purpose of taking protective measures;

FURTHER ORDERS the Registrar, where necessary, to prepare and transmit to any other State concerned, any additional request for arrest and surrender which may be necessary to proceed with the arrest and surrender to the Court of Germain Katanga in accordance with articles 89 and 91 of the Statute;

ORDERS the Registrar to prepare and submit to any State concerned any request for transit which may be necessary to proceed with the transfer of Germain Katanga to the seat of the Court in The Hague in accordance with article 89(3) of the Statute;

DECIDES that, at the earliest opportunity, the Registrar shall prepare a request for cooperation addressed to the competent DRC authorities in order for them to identify, locate and freeze or seize Germain Katanga's property and assets as soon as possible without prejudice to the rights of third parties and that pursuant to rule 176(2) of the Rules, he shall transmit this request for cooperation to the competent DRC authorities together with the request for the cooperation seeking arrest and surrender;

ORDERS the Registrar to fulfill the obligations set out in rule 187 of the *Rules of Procedure and Evidence*;

ORDERS the Prosecution, in so far as its confidentiality obligations allow it to do so, to provide to the Chamber and to the Registrar, any information in its possession which would enable it to avoid the risks that the transmission of any of the abovementioned requests for cooperation, could entail for victims and witnesses;

INVITES the Prosecution to provide to the Chamber and to the Registrar, in so far as its confidentiality obligations allow it to do so, any information in its possession

which, in its opinion, would facilitate the transmission and the execution of any of the abovementioned requests for cooperation;

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

[signed]

Judge Akua Kuenyehia
Presiding Judge

[signed]

Judge Anita Ušacka

[signed]

Judge Sylvia Steiner

Dated this Monday 5 November 2007

At The Hague, the Netherlands