

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/04-01/07
Date: 21 December 2007

PRE-TRIAL CHAMBER I

Before: Judge Sylvia Steiner, Single Judge

Registrar: Mr Bruno Cathala

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

**URGENT
Public Redacted Version**

**Decision on the Prosecution Request for Authorisation for Redactions in the
Formatted Version of the Prosecution Application for a Warrant of Arrest for
Germain Katanga**

The Office of the Prosecutor

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

Counsel for the Defence

Mr David Hooper
Ms Caroline Buisman

I, Sylvia Steiner, judge at the International Criminal Court (“the Court”),

NOTING the Prosecution Application for a warrant of arrest for Germain Katanga filed in two parts on 25 June 2007 (“the Prosecution Application for a Warrant of Arrest”);¹

NOTING the “Decision Requesting the Prosecution to Provide a Formatted Version of the Prosecution Requests of 22 and 25 June 2007 and Convening a Hearing”,² issued by the Single Judge on 29 June 2007;

NOTING the Warrant of Arrest for Germain Katanga,³ issued by Pre-Trial Chamber I (“the Chamber”) on 2 July 2007;

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”,⁴ issued by the Single Judge on 6 July 2007;

NOTING the “Decision Altering the Calendar for the Submission of Formatted Version of the Arrest Warrant Application and Redacted Witness Statements”,⁵ issued by the Single Judge on 10 July 2007;

NOTING the “Submission of Formatted and Redacted Formatted Version of the Arrest Warrant Application”,⁶ filed by the Prosecutor on 18 July 2007;

¹ ICC-01/04-348-US-Exp and ICC-01/04-350-US-Exp.

² ICC-01/04-355-Conf-Exp.

³ ICC-01/04-01/07-1-US.

⁴ ICC-01/04-01/07-5-US-Exp.

⁵ ICC-01/04-01/07-9-US-Exp. Pursuant to Decision ICC-01/04-01/07-53 dated 5/11/2007, this document has been reclassified as public.

NOTING the “Decision on the Prosecution’s Request for the Variation of the Calendar for Requesting Redactions to Statements or Interview Notes of Witnesses”,⁷ issued by the Single Judge on 29 August 2007;

NOTING the “Information on the Status of the Referrals and on the Assessments”,⁸ filed by the Registry on 13 September 2007;

NOTING the *ex parte* and closed session hearing⁹ held with the Prosecution and the Victims and Witnesses Unit (“the VWU”) on 17 October 2007;

NOTING the “Decision Modifying the Calendar for the Disclosure of the Supporting Materials of the Prosecution Application for a Warrant of Arrest against Germain Katanga”,¹⁰ issued by the Single Judge on 18 October 2007;

NOTING the *ex parte* and closed session hearings held with the Prosecution and the VWU on 25,¹¹ 30¹² and 31¹³ October 2007;

NOTING the *ex parte* and closed session hearing held with the Prosecution and the VWU on 20 November 2007;¹⁴

⁶ ICC-01/04-01/07-11-US-Exp.

⁷ ICC-01/04-01/07-17-US-Exp.

⁸ ICC-01/04-01/07-19-US-Exp. Pursuant to Decision ICC-01/04-01/07-53 dated 5/11/2007, this document has been reclassified as Confidential and “*ex parte* Prosecution only”.

⁹ ICC-01/04-01/07-T-3-US-Exp-ENG [17Oct2007Edited].

¹⁰ ICC-01/04-01/07-28-US-Exp. Pursuant to Decision ICC-01/04-01/07-53 dated 5/11/2007, this document has been reclassified as Confidential.

¹¹ ICC-01/04-01/07-T-06-Conf-Exp-ENG [25Oct2007Edited].

¹² ICC-01/04-01/07-T-07-Conf-Exp-ENG[30Oct2007Edited].

¹³ ICC-01/04-01/07-T-08-Conf-Exp-ENG[31Oct2007Edited].

¹⁴ ICC-01/04-01/07-T9-Conf-Exp-ENG ET 20-11-2007.

NOTING the “First Decision on the Prosecution Request For Authorisation to Redact Witness Statements”¹⁵ (“First Decision on Redactions”) of 3 December 2007, by which the Single Judge partially granted the Prosecution request for authorisation to redact information in the interview notes and statements of witnesses 1, 3, 7, 8,12,13 and 14;

NOTING the “Prosecution's Submission Pursuant to the Single Judge's Order of 10 December 2007 relating to the Redacted Formatted Version of the Prosecution's Application for a Warrant of Arrest” (the “Submission of the Redacted Formatted Version of its Application for a Warrant of Arrest”), filed by the Prosecution on 14 December 2007;¹⁶

NOTING the “Decision on the Prosecution Request for Authorisation to Redact Statements of Witnesses 4 and 9” (“Second Decision on Redactions”), issued on 21 December 2007 by which the Single Judge partially granted the Prosecution request for authorisation to redact information in the interview notes and statements of witnesses;¹⁷

NOTING articles 57, 61, 67, 68 of the *Rome Statute* (“the Statute”) and rules 76 to 83 of the *Rules of Procedure and Evidence* (“the Rules”);

CONSIDERING that the Prosecution requests, pursuant to rule 81(2) of the Rules, authorisation to redact part of the information included in footnote 11 of the its Submission of the Redacted Formatted Version of its Application for a Warrant of Arrest; that, in the view of the Single Judge, disclosing such information to the Defence in the context described in Section II of the First Decision on Redactions is

¹⁵ ICC-01/04-01/07-84-US-Exp. 3 December 2007. The confidential, ex parte, redacted version only available to the Office of Prosecutor and the Defence, ICC-01/04-01/07-88-Conf-Exp. was issued on 6 December 2007 and the public redacted version, ICC-01/04-01/07-90, was filed on 7 December 2007.

¹⁶ ICC-01/04-01/07-106 and ICC-01/04-01/07-106-Conf-Exp-AnxA-C

¹⁷ ICC-01/04-01/07-123-Conf-Exp.

likely to prejudice the Prosecution further investigations; that the redaction of this information is an adequate measure to minimize such risk; that, at this stage, there is no less intrusive alternative measure that can be taken to achieve the same goal; and that, in the view of the Single Judge, the redaction of this information is not prejudicial to or inconsistent with the rights of the Defence and a fair and impartial trial because authorisation has been sought to redact only information which merely gives notice of certain Prosecution investigative activities.

CONSIDERING that the Prosecution further seeks to redact at paragraph 203 and related footnotes 74 and 75, a reference to a decision issued by Appeals Chamber which is classified as “under seal”;¹⁸

CONSIDERING that the Prosecution seeks to redact the name and identifying information of Witness 4; and that in the Second Decision on Redactions, the Single Judge has already granted authorisation to redact this information from the statement of Witness 4.

CONSIDERING that the remaining information which the Prosecution seeks to redact constitutes identifying information of witnesses on whose interview notes and/or statements the Prosecution intends to rely at the confirmation hearing and for whom the Prosecution has requested protective measures which the Registrar has neither decided on, nor implemented; and that the Single Judge considers that such redactions are justified pursuant to rule 81(4) of the Rules until the Registrar decides on the pending requests for protective measures and implements his decisions.

CONSIDERING however, that for the purpose of consistency and in order not to reveal the identity of Witness 11 at this stage of the proceedings, the Single Judge is

¹⁸ ICC-01/04-01/07-106-Conf-Exp-Anx.B, para.203.

also of the view that the term “[REDACTED]” at paragraph 191 (line 5) must be redacted;¹⁹

CONSIDERING that immediate access to a redacted version of the formatted version of the Prosecution Application for a Warrant of Arrest would facilitate Defence preparation for the confirmation hearing; and that the redactions provisionally authorised in the present decision shall be reviewed prior to 29 January 2008, once the Prosecution requests for redactions concerning the relevant witnesses have been decided upon by the Single Judge.

FOR THESE REASONS,

DECIDE, pursuant to rules 81(2) and (4) of the Rules, to provisionally authorise the redactions proposed in the Prosecution Request;

DECIDE, pursuant to rule 81 (4) of the Rules, to authorise on its own motion, the redaction of the term “[REDACTED]” at paragraph 191 (line 5);

ORDER the Prosecution to file, no later than Monday 24 December 2007, in the record of the case of *The Prosecutor v. Germain Katanga*, the redacted version of the formatted English version of the Prosecution Application for a Warrant of Arrest, as provisionally authorised by the Single Judge;

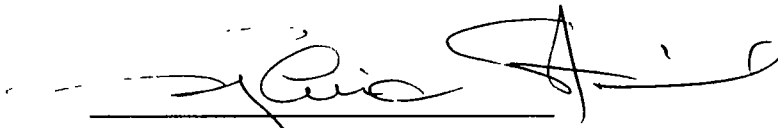
ORDER the Prosecution to file as soon as practicable, and no later than Friday 4 January 2008, in the record of the case of *The Prosecutor v. Germain Katanga*, the

¹⁹ ICC-01/04-01/07-106-Conf-Exp-Anx.B, para.191.

redacted version of the formatted French version of the Prosecution Application for a Warrant of Arrest as provisionally authorised by the Single Judge;

DECIDE that the redactions provisionally authorised by the Single Judge in the present decision shall be reviewed prior to 29 January 2008.

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



Judge Sylvia Steiner
Single Judge

Dated this Friday 21 December 2007

At The Hague, the Netherlands