

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No: ICC-01/04-01/07
Date: 30 January 2008

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 CONGO
IN THE CASE OF
THE PROSECUTOR
*v. Germain Katanga***

Public

**Decision on the Suspension of the Time-Limits Leading to the Initiation of the
Confirmation Hearing**

The Office of the Prosecutor

Mr Luis Moreno Ocampo, Prosecutor
Ms Fatou Bensouda, Deputy Prosecutor
Mr Éric MacDonald, Trial Lawyer
Mrs Florence Darques-Lane, Legal
Adviser

Counsel for the Defence

Mr David Hooper
Mr Göran Sluiter
Ms Caroline Buisman

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

NOTING the initial appearance of Germain Katanga before Pre-Trial Chamber I on 22 October 2007, during which the confirmation hearing was scheduled to start on 28 February 2008;¹

NOTING the “Decision Establishing Time Limits for Decisions on Protective Measures and Requests for Redactions”² (“the 12 December 2007 Decision”), issued by the Single Judge on 12 December 2007;

NOTING the *ex parte*, closed session hearing with the Prosecution and the Victims and Witnesses Unit (“the VWU”) held by the Single Judge on 14 December 2007;³

NOTING the “First Decision on the Prosecution Request for Authorisation to Redact Witness Statements”⁴ (“the First Decision on Redactions”), issued by the Single Judge on 6 December 2007, in which the Single Judge partially granted the Prosecution’s request for authorisation to redact information in the interview notes and statements of witnesses 1, 3, 7, 8, 12, 13 and 14;

NOTING the “Decision on the Prosecution Request for Leave to Appeal the First Decision on Redactions”⁵ issued by the Single Judge on 14 December 2007;

¹ ICC-01/04-01/07-T-5-ENG ET

² ICC-01/04-01/07-97-Conf-Exp-Corr.

³ ICC-01/04-01/07-T-12-ENG ET.

⁴ ICC-01/04-01/07-88-Conf-Exp.

⁵ ICC-01/04-01/07-108.

NOTING the “Decision on the Defence Motion for Leave to Appeal the First Decision on Redactions”⁶ issued by the Single Judge on 19 December 2007;

NOTING the “Decision on the Prosecution Request for Authorisation to Redact Statements of Witnesses 4 and 9”⁷ (“the Second Decision on Redactions”) issued by the Single Judge on 21 December 2007, in which the Single Judge partially granted the Prosecution’s request for authorisation to redact information in the interview notes and statements of witnesses 4 and 9;

NOTING the “Decision on the Defence Request Concerning Languages”⁸ filed on 21 December 2007, in which the Single Judge rejected the requests made by Duty Counsel for the Defence in the Defence Observations and found that Germain Katanga’s competency in French meets the standards of article 67(1)(a) and (f) of the Statute;⁹

NOTING the “Defence Application for Leave to Appeal the Decision on the Defence Request Concerning Language”¹⁰ filed on 27 December 2007;

NOTING the Status Conference held before the Single Judge on 14 January 2008;¹¹

NOTING the “Prosecution’s Application Pursuant to Rule 81(2) and Rule 81(4) for Redactions to Statements of Witnesses and Related Materials to Be Relied Upon at the Confirmation Hearing”¹² filed by the Prosecution on 15 January 2008;

⁶ ICC-01/04-01/07-116.

⁷ ICC-01/04-01/07-123-Conf-Exp.

⁸ ICC-01/04-01/07-127.

⁹ *Ibid.*, paras 30-43.

¹⁰ ICC-01/04-01/07-130.

¹¹ ICC-01/04-01/07-T-12-ENG ET.

¹² ICC-01/04-01/07-145 and ICC-01/04-01/07-145-Conf-Exp-Anx1 to AnxP2.

NOTING the “Corrigendum to Prosecution's Application Pursuant to Rule 81(2) and Rule 81(4) for Redactions to Statements of Witnesses and Related Materials to Be Relied Upon at the Confirmation Hearing dated 14 January 2008 and Submission of Additional Materials”¹³ filed by the Prosecution on 16 January 2008;

NOTING the “Decision on the Defence Application for Leave to Appeal the Decision on the Defence Request Concerning Languages”¹⁴ filed on 18 January 2008 in which the Single Judge granted the Defence Application for leave to appeal in relation to the issue of whether the Decision “incorrectly found that Mr. Katanga’s competency in French meets the standards of articles 67(l)(a) and (f) of the Statute”;

NOTING the “Prosecution’s Application Pursuant to Rule 81(2) and Rule 81(4) for Redactions to Documents to Be Relied Upon at the Confirmation Hearing”¹⁵ filed by the Prosecution on 21 January 2008;

NOTING the “Prosecution’s Application Pursuant to Rule 81(2) and Rule 81(4) for Redactions to the Statement of an Additional Witness and Related Materials to Be Relied Upon at the Confirmation Hearing”¹⁶ filed by the Prosecution on 21 January 2008;

NOTING the “Second Corrigendum to Prosecution's Application Pursuant to Rule 81(2) and Rule 81(4) for Redactions to Statements of Witnesses and Related Materials to Be Relied Upon at the Confirmation Hearing Dated 14 January 2008 and Submission of Additional Materials”¹⁷ filed by the Prosecution on 22 January 2008;

¹³ ICC-01/04-01/07-147-Conf-Exp and ICC-01/04-01/07-147-Conf-Exp-AnxF1 to AnxF14, AnxJ12 to AnxJ15 and AnxK1 to AnxK6.

¹⁴ ICC-01/04-01/07-149.

¹⁵ ICC-01/04-01/07-151 and ICC-01/04-01/07-151-Conf-Exp-Anx1, AnxA1-AnxH8.

¹⁶ ICC-01/04-01/07-152 and ICC-01/04-01/07-152-Conf-Exp-AnxsA-E.

¹⁷ ICC-01/04-01/07-155-Conf-Exp and ICC-01/04-01/07-145-Conf-Exp-AnxD4-Corr.

NOTING the *ex parte* and closed session hearing held with the Prosecution, the VWU and the representative of the Registrar before the Single Judge on 28 January 2008;¹⁸

NOTING the Document Containing the Charges and the List of Evidence,¹⁹ filed by the Prosecution on 29 January 2008;

NOTING articles 61, 67 and 68 of the Rome Statute ("the Statute") and rules 76 to 83, and 121 of the Rules of Procedure and Evidence ("the Rules");

CONSIDERING that, as the Chamber has stated on a number of occasions,²⁰ according to article 61 (3) of the Statute and rule 121 of the Rules and subject to the exception provided for in rule 121 (5) of the Rules, the Defence must have access to the evidence on which the Prosecution intends to rely at the confirmation hearing 30 days before the initiation of a confirmation hearing, either in an unredacted form or with the redactions authorised by the Single Judge pursuant to rule 81 (2) and (4) of the Rules;

CONSIDERING that the confirmation hearing is currently scheduled to start on 28 February 2008; and that, therefore, if the confirmation hearing were to be held on this date, the above-mentioned 30-day time limit before the initiation of the confirmation hearing shall start to run as of today;

CONSIDERING that there are a number of pending requests for redactions to (i) the statements, investigator notes and transcripts of interviews of witnesses on which the

¹⁸ ICC-01/04-01/07-T-

¹⁹ ICC-01/4-01/07-170 and ICC-01/4-01/07-170-Conf-Exp-Anx1A-Anx2D.

²⁰ ICC-01/4-01/06-126 and ICC-01/4-01/06-454.

Prosecution intends to rely at the confirmation hearing; and (ii) documents on which the Prosecution intends to rely at the confirmation hearing; and that, to an important extent, the ruling of the Single Judge on the pending requests depends on the decision by the Registrar on whether the relevant witnesses will be accepted into the Court's witness protection program and on the subsequent implementation of the protective measures accorded to them;

CONSIDERING that, due to a variety of reasons, such as: a misunderstanding by certain witnesses of the conditions for entrance into the witness protection program; a disagreement between VWU and the Prosecution on the interpretation of the information provided by certain witnesses concerning their wishes and conditions for entering the program; a late referral by the Prosecution and a delay in the assessments by the VWU of a few witnesses; and, in particular, the unforeseen circumstances in some areas of the Ituri district (i.e., the Ebola epidemic in December 2007) – there are still pending before the Registrar requests relating to more than half of the witnesses on which the Prosecution intends to rely at the confirmation hearing;

CONSIDERING that, as a result, the Single Judge has not, to date, been in a position to rule on the Prosecution requests for redactions to the statements, investigator notes, transcripts of interviews and documents relating to witnesses on which the Prosecution intends to rely at the confirmation hearing; and that therefore the Defence cannot have access, as of today, to the versions of the statements, notes, transcripts and documents on which the Prosecution will rely at the confirmation hearing;

CONSIDERING, nevertheless, that at the hearing held on 28 January 2008, the VWU and the representatives of the Registrar have assured the Single Judge that they will make utmost efforts to decide upon all pending requests and will implement the

protective measures that are granted, if any, by 25 February 2008; that the Prosecution has assured the Single Judge that it will fully cooperate with the VWU to speed up the processes and will file before the Single Judge, at the earliest opportunity, any requests for protective measures if the Registrar reaches a final decision declining to include any of the relevant witnesses in the witness protection program;

CONSIDERING, further, that the Appeals Chamber has not yet ruled on the pending appeals against the First Decision on Redactions issued by the Single Judge on 6 December 2007; that therefore, the versions of the statements, interview notes and transcripts of witnesses 1, 3, 7, 8, 9, 12, 13 and 14 given to the Defence are not necessarily the versions on which the Prosecution will rely at the confirmation hearing; and that a resolution by the Appeals Chamber of the pending appeals will materially advance the proceedings in relation to the pending requests for authorization for redactions;

CONSIDERING, that the Appeals Chamber has not yet ruled on the pending appeal against the Decision on the Defence Request Concerning Languages issued by the Single Judge on 21 December 2007; and that the proceedings leading up to and the conduct of the confirmation hearing will be affected by the decision of the Appeals Chamber;

CONSIDERING that Defence Counsel for Germain Katanga is not available to appear before the Single Judge at the seat of the Court prior to 5 February 2008 due to his previous professional commitments at a trial currently taking place before the International Criminal Tribunal for Rwanda in Arusha, Tanzania; and that Defence Counsel has made clear that after this date he will be fully available to the present

case and that, in the meantime, his two assistant counsels will do their utmost efforts not to delay the proceedings;²¹

CONSIDERING that therefore, despite the efforts made by the Prosecution to file the Charging Document and List of Evidence on 29 January 2008 as requested by the Single Judge in the 12 December 2007 Decision,²² the 30-day time limit provided for in article 61 (3) of the Statute and rule 121 of the Rules still cannot start running as of today because the Defence does not have access to all the evidence on which the Prosecution intends to rely at the confirmation hearing either in an unredacted form or with the redactions authorised by the Single Judge pursuant to rule 81 (2) and (4) of the Rules; and that, as a consequence, in light of the delay caused by the outbreak of the Ebola virus in December 2007 and the ongoing security concerns in certain areas of the Ituri district and also in view of the pending issues with the VWU, Registrar, Prosecution, Defence Counsel, and Appeals Chamber, it is necessary to reschedule the date of the confirmation hearing in the case of *the Prosecution v. Germain Katanga*;

FOR THESE REASONS

DECIDES that the 30-day time-limit provided for in article 61(3) of the Statute and rule 121 of the Rules for the Defence to have access to the evidence on which the Prosecution intends to rely at the confirmation hearing in either an unredacted form or with the redactions authorised by the Single Judge pursuant to rule 81 (2) and (4) of the Rules, shall not begin to run until otherwise decided by the Chamber;

²¹ ICC-01/04-01/07-T-12-ENG ET WT 14-12-2007, page 2 line 20 to page 4 line 1.

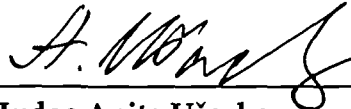
²² ICC-01/04-01/07-97-Conf-Exp-Corr.

DECIDES that, accordingly, the confirmation hearing is postponed, and a new date will be determined by the Chamber.

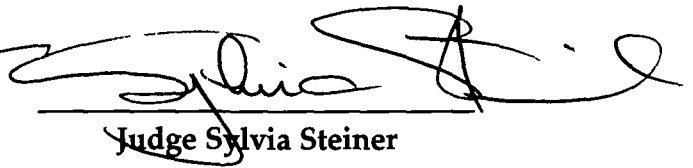
Done in both English and French, the English version being authoritative.



Judge Akua Kuenyehia
Presiding Judge



Judge Anita Ušacka



Judge Sylvia Steiner

Dated this Wednesday 30 January 2008

At The Hague

The Netherlands