

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

No.: ICC-01/04-01/07

Date: 21 April 2008

**PRE-TRIAL CHAMBER I**

**Before: Judge Sylvia Steiner, Single Judge**

**SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO  
IN THE CASE OF  
*THE PROSECUTOR v. Germain Katanga and Mathieu Ngudjolo Chui***

**Public Document**

**Decision on the Conditions of the Pre-Trial Detention of Germain Katanga**

Decision to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

**The Office of the Prosecutor**  
Mr Luis Moreno Ocampo, Prosecutor  
Mr Éric Macdonald, Trial Lawyer

**Counsel for the Defence  
of Germain Katanga**  
Mr David Hooper  
Ms Caroline Buisman

**Counsel for the Defence of Mathieu  
Ngudjolo Chui**  
Mr Jean-Pierre Kilenda Kakengi Basila  
Ms Maryse Alié

**Legal Representatives of the Victims**  
Ms Carine Bapita Buyagandu  
Mr Joseph Keta  
Mr J.L. Gilissen

**Legal Representatives of the Applicants**

**Unrepresented Victims**

**Unrepresented Applicants for  
Participation/Reparation**

**The Office of Public Counsel for  
Victims**

**The Office of Public Counsel for the  
Defence**

**States Representatives**

**Amicus Curiae**

## **REGISTRY**

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**Registrar**  
Ms Silvana Arbia

**Defence Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

**Other**

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

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

**NOTING** the “Decision on the Evidence and the information provided by the Prosecution for the issuance of a warrant of arrest for Germain Katanga” (“Decision on Evidence and Information”) issued by the Chamber on 6 July 2007;<sup>2</sup>

**NOTING** the “Decision concerning observations on the review of the pre-trial detention of Germain Katanga” (“the 24 January 2008 Decision”)<sup>3</sup> issued by the Chamber on 24 January 2008;

**NOTING** the “Prosecution’s Observations on the Pre-Trial Detention of Germain KATANGA, Pursuant to the Statute and the Rules”<sup>4</sup> (“the First Prosecution Submission”) filed by the Prosecution on 31 January 2008;

**NOTING** the “Response of the Defence to the Prosecution’s Observations on the Pre-Trial Detention of Mr. Germain KATANGA, pursuant to the Statute and the Rules”<sup>5</sup> (“the Defence’s Response”) filed by the Defence on 7 February 2008, in which the Defence requested Pre-Trial Chamber I to, *inter alia*, conduct “a full and autonomous review of Mr. KATANGA’s detention, with burden of proof on the Prosecutor in respect of evidence, grounds and duration justifying continuing detention”; or “in the alternative that this response is considered as an application

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

<sup>2</sup> ICC-01/04-01/07-4

<sup>3</sup> ICC-01/04-01/07-163

<sup>4</sup> ICC-01/04-01/07-174

<sup>5</sup> ICC-01/04-01/07-186

for *interim* release, triggering the protection of Article 60 (3) of the Statute, to which Mr. KATANGA is fully entitled”;

**NOTING** the hearing held in closed session on 12 February 2008,<sup>6</sup> in which the Single Judge received and considered the observations of the Defence as a formal application for interim release and decided to give the Defence until Monday 18 February 2008 to complete the application for interim release pursuant to regulation 51 of the *Regulations of the Court* (“the Regulations”);

**NOTING** the “Defence observations in relation to the Single Judge’s oral request to file a complete application for interim release”<sup>7</sup> (“the First Defence’s Observations”) filed by the Defence on 18 February 2008, in which the Defence submitted that it was not in a position to file a complete application for interim release as requested by the Single Judge in the 12 February 2008 hearing;

**NOTING** the “Decision Concerning Pre-Trial Detention of Germain Katanga”<sup>8</sup> (“the 21 February 2008 Decision”) issued by the Single Judge on 21 February 2008, in which the Single Judge (i) gave the Prosecution until Monday 3 March 2008 to elaborate on the issues raised in paragraph 41 (a), (c), (d), (e), (f) and (h) of the Defence’s Response; and (ii) invited the relevant authorities of the Netherlands to file by 8 March 2008 observations on the conditions, if any, that would have to be met in order for the State to accept Germain Katanga’s release onto its territory;<sup>9</sup>

**NOTING** “the Prosecution’s observations on the Pre-Trial Detention of Germain Katanga”<sup>10</sup> (“the Second Prosecution Submission”) filed by the Prosecution on 3 March 2008;

<sup>6</sup> ICC-01/04-01/07-T-18-Conf-ENG E.T

<sup>7</sup> ICC-01/04-01/07-206-Conf.

<sup>8</sup> ICC-01/04-01/07-222.

<sup>9</sup> ICC-01/04-01/07-222, pp 8 and 9

<sup>10</sup> ICC-01/04-01/07-245.

**NOTING** the “Report of the Registrar on the Execution of the Decision Inviting Observations on the Defence's Application for Interim release of Germain Katanga”<sup>11</sup> filed by the Registrar on 6 March 2008, in which the Host State makes its observations pursuant to the 21 February 2008 Decision (“the Observations of the Host State”);

**NOTING** the “Request from the relevant authorities of the Host State to reclassify as Public their observations on the interim release of Germain Katanga (ICC-01/04-01/07-251-Conf-Anx1)” filed by the Registrar on 14 March 2008;

**NOTING** the “Decision on the powers of the Pre-trial Chamber to review *proprio motu* the pre-trial detention of Germain Katanga”<sup>12</sup> issued by the Single Judge on 18 March 2008;

**NOTING** the “Prosecution’s Observations on whether the conditions justifying the pre-trial detention of Germain KATANGA pursuant to Article 58(1) of the Statute continue to be met”<sup>13</sup> (“The Third Prosecution Submission”) filed by the Prosecution on 26 March 2008, in which the Prosecution submitted that the conditions set out in article 58(1) of the *Rome Statute* (“the Statute”) continue to be met and opposed the Defence request for the interim release of Germain Katanga;

**NOTING** the “Defence Observations relative to Germain Katanga’s pre-trial detention”<sup>14</sup> (“the Second Defence’s Observations”) filed by the Defence for Germain Katanga on 1 April 2008;

**NOTING** articles 21, 58, 60, 61 and 67 of the Statute and rules 118 and 122 of the *Rules of Procedure and Evidence* (“the Rules”);

<sup>11</sup> ICC-01/04-01/07-251, ICC-01/04-01/07-251-Conf-Anx1, ICC-01/04-01/07-251-Conf-Anx2.

<sup>12</sup> ICC-01/04-01/07-330.

<sup>13</sup> ICC-01/04-01/07-341-Conf.

<sup>14</sup> ICC-01/04-01/07-352.

**CONSIDERING** that the Single Judge decided in the 21 February 2008 Decision to conduct, pursuant to article 60(3) of the Statute, a *proprio motu* review of Germain Katanga's conditions of pre-trial detention in which the Single Judge stated that:

[...] the power to carry out a *proprio motu* review of the conditions for the pre-trial detention of a person when the circumstances so warrant is a necessary tool to properly perform its functions as the ultimate guarantor of the rights of the Defence; and that, therefore, the contextual interpretation of article 60(3) of the Statute and rule 118 of the Rules in light of articles 55, 57 and 67 of the Statute lead to the conclusion that:

[...] even in the absence of a specific obligation, the Single Judge, as the ultimate guarantor of the rights of the Defence, would not be precluded from conducting, when the circumstances so require, a *proprio motu* review to determine whether the conditions for pre-trial detention continue to be met;<sup>15</sup>

**CONSIDERING** that, as the Single Judge has already stated, "pre-trial detention is not the general rule, but it is the exception, and shall only be resorted to when the Pre-Trial Chamber is satisfied that the conditions set forth in article 58(1) of the Statute are met";<sup>16</sup>

**CONSIDERING** that the Chamber in its Decision on Evidence and Information set out the analysis of the evidence and information provided by the Prosecution in connection with its application for a warrant of arrest against Germain Katanga and concluded that there were reasonable grounds to believe that crimes within the jurisdiction of the court were committed by Germain Katanga;<sup>17</sup>

**CONSIDERING** that in the view of the Single Judge, the condition set forth in article 58(1)(a) of the Statute continues to be fulfilled insofar as there are still reasonable grounds to believe that Germain Katanga has committed crimes within the jurisdiction of the Court;

<sup>15</sup> ICC-01/04-01/07-330, pp 8-9

<sup>16</sup> ICC-01/04-01/07-330, pp. 6-7

<sup>17</sup> ICC-01/04-01/07-4, para 60

**CONSIDERING** that the Chamber, in its Decision on Evidence and Information set out the analysis of the evidence and information, concluded that the arrest of Germain Katanga appeared necessary for *inter alia* the following reasons:

Although the Chamber must be satisfied of only one of the conditions set forth in article 58(1)(b) of the Statute, the Chamber further notes that according to the Prosecution Application, Germain Katanga also has the means to obstruct or endanger the investigation within the meaning of article 58(1)(b)(ii) of the Statute.<sup>18</sup>

Accordingly, in the view of the Chamber, on the basis of the evidence and information contained in the Prosecution Application, the Prosecution Supporting Materials and the Prosecution Response, and without prejudice to any subsequent determination under article 60 of the Statute and rule 119 of the Rules of Procedure and Evidence, *the arrest of Germain Katanga appears necessary pursuant to article 58(1)(b)(i) and (ii) of the Statute*, both to ensure his appearance at trial and to ensure that he does not obstruct or endanger the investigation or the court proceedings.<sup>19</sup> [Emphasis added]

**CONSIDERING** that the Single Judge, in analysing the security situation and context in the DRC (particularly, in the Ituri and Kinshasa areas) in the “First Decision on the Prosecution Request for Authorisation to Redact Witness Statements”,<sup>20</sup> found that it appears that (i) the supporters of Germain Katanga have the capability to interfere with ongoing and future Prosecution investigations and/or Prosecution witnesses, and with victims and members of their families;<sup>21</sup> and (ii) that there are several recorded incidents of interference with Prosecution witnesses by FNI and/or FRPI members;<sup>22</sup>

**CONSIDERING** that the Single Judge recently found in her “Sixth Decision on the Prosecution Request for Authorisation to Redact the Interviews Transcripts of Witness 238”<sup>23</sup>, issued on 18 April 2008, that the security situation and context remained the same as the ones mentioned in the “First Decision on the Prosecution Request for Authorisation to Redact Witness Statements”;<sup>24</sup>

<sup>18</sup> ICC-01/04-01/07-4, para. 63

<sup>19</sup> ICC-01/04-01/07-4, para. 64.

<sup>20</sup> ICC-01/04-01/07-224.

<sup>21</sup> ICC-01/04-01/07-224-Anx. paras. 15 and 22.

<sup>22</sup> ICC-01/04-01/07-341-Conf at paras. 23, 25-28, and ICC-01/04-01/07-244-Anx at paras. 17-22

<sup>23</sup> ICC-01/04-01/07-414-Conf, para. 7.

<sup>24</sup> ICC-01/04-01/07-247-Conf-Exp-Corr, para. 9, ICC-01/04-01/07-248-Conf-Corr, para. 9 and ICC-01/04-01/07-249, para.

**CONSIDERING** that it appears that Germain Katanga - for whom there are still reasonable grounds to believe that he was the highest ranking commander of the FRPI at the time the events referred to in the Charging Document allegedly took place,<sup>25</sup> and who signed a document as a Brigadier-General in the national army of the *Forces Armées de la République Démocratique du Congo* ("FARDC") in the DRC during the procedure of his surrender and transfer to the seat of the Court;<sup>26</sup> - still wields influence as a powerful figure within the Ituri province, and in particular among current member of the FRPI;<sup>27</sup>

**CONSIDERING** therefore, that in the view of the Single Judge, the condition set forth in article 58(1)(b)(ii) of the Statute continues to be fulfilled insofar as the detention of Germain Katanga remains necessary to ensure that he will not obstruct or endanger the investigation or the court proceedings;

**CONSIDERING** that, having found that the conditions for the pre-trial detention of Germain Katanga set forth in article 58(1) of the Statute continue to be met, it is the view of the Single Judge that it is not necessary to address the issues raised by the relevant authorities of the Netherlands in relation to the interim release of Germain Katanga;

**CONSIDERING** further, that at the time the warrant of arrest for Germain Katanga was issued, the Chamber considered that the conditions set forth in article 58 (1) (a) and (b)(ii) of the Statute were met; that according to the Single Judge, such

<sup>25</sup> In the Decision on Evidence and Information, the Chamber set out the analysis of the evidence and information provided by the Prosecution in connection with its application for a warrant of arrest against Germain Katanga and concluded that there were reasonable grounds to believe that "at the beginning of 2003, after the creation of the FRPI and before the attack on Bogoro on or about 24 February 2003, Germain Katanga became the highest ranking commander of the FRPI" See ICC-01/04-01/07-4, para 55

<sup>26</sup> ICC-01/04-01/07-1, ICC-01/04-01/07-40-Anx3.3. Also see in le "PV d'audition" in which it was added that "le comparant précise qu'il est actuellement dispo EMG FARDC and which Germain Katanga also signed (ICC-01/04-01/07-40-Anx3.5.). The Defence Counsel of Germain Katanga also confirmed that he signed the above-mentioned document (ICC01/04-01/07-T-11-ENG ET, pages 41, line 17 to page 42, line 5.

<sup>27</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ L 2008:057 0037:0037 EN:PDF>, United Nations Security Council Resolution 1596 (2005) and United Nations Security Council Resolution 1807 (2008) and [http://www.un.org/sc/committees/1533/pdf/1533\\_list.pdf](http://www.un.org/sc/committees/1533/pdf/1533_list.pdf); <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ L 2008:057 0037:0037 EN:PDF>, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ L 2005:152:0022:0024 EN:PDF>, and <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ L 2008:057 0037:0037 EN:PDF>



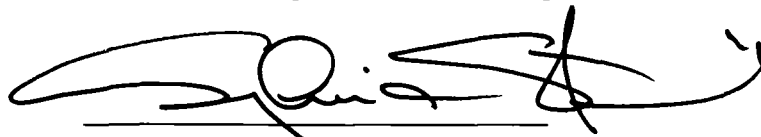
conditions continue to be met; and that, therefore, the claim of Germain Katanga pursuant to article 85 (1) of the Statute is without merit.

**FOR THESE REASONS,**

**DECIDE**, pursuant to article 60 (3) of the Statute, that Germain Katanga shall continue to be detained.

**DECIDE** to reject the request of Germain Katanga pursuant to article 85 (1) of the Statute.

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



Judge Sylvia Steiner  
Single Judge

Dated this Monday 21 April 2008

At The Hague

The Netherlands