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

**Date: 7 April 2016**

**THE PRESIDENCY**

**Before:** Judge Silvia Fernández de Gurmendi, President  
Judge Joyce Aluoch, First Vice-President  
Judge Kuniko Ozaki, Second Vice-President

**SITUATION IN THE DEMOCRATIC REPUBLIC OF CONGO**

**IN THE CASE OF  
*THE PROSECUTOR v. GERMAIN KATANGA***

**Public**

**Decision pursuant to article 108(1) of the Rome Statute**

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

**to:**

**Office of the Prosecutor**

Ms Fatou Bensouda  
Mr James Stewart  
Mr Eric MacDonald

**Defence**

Mr David Hooper  
Ms Caroline Buisman

**State**

Democratic Republic of the Congo

**REGISTRY**

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**Registrar**

Mr Herman von Hebel

**Counsel Support Section**

Mr Esteban Peralta Losilla

The Presidency of the International Criminal Court (“Court” or “ICC”), in the case of *The Prosecutor v. Germain Katanga*, has before it a letter dated 29 February 2016<sup>1</sup> by which the Democratic Republic of the Congo (“DRC”) requested that the Court approve the prosecution of Mr. Katanga in the DRC before the *Haute Cour Militaire*, pursuant to article 108(1) of the Rome Statute (“Statute”).

## I. PROCEDURAL HISTORY

1. On 20 April 2015, the Presidency issued a confidential Order, requesting, *inter alia*, that Mr. Katanga provide his views on the designation of a State of enforcement for his sentence of imprisonment.<sup>2</sup> On 4 May 2015, Mr. Katanga provided such views, indicating that he strongly desired to serve the remainder of his sentence in the DRC and requesting the Presidency’s assistance in pursuing this possibility.<sup>3</sup> On 28 July 2015, the Presidency ordered the Registry to consult and prepare a feasibility assessment in relation to the possible enforcement of Mr. Katanga’s sentence in the DRC.<sup>4</sup> On 20 October 2015, Mr. Katanga complied with a request from the Presidency<sup>5</sup> to provide any final views on the possible designation of the DRC as the State of enforcement. Therein, Mr Katanga, *inter alia*, re-iterated his desire to be transferred to the DRC.<sup>6</sup>
2. On 24 November 2015, pursuant to rule 200(5) of the Rules of Procedure and Evidence (“Rules”) and regulation 114 of the Regulations of the Court, the signature of an “*Accord ad hoc entre le gouvernement de la République Démocratique du Congo et La Cour Pénale Internationale sur l’exécution de la peine de M. Germain Katanga, prononcée par la Cour*” (“Agreement”) was finalised which described the framework for the acceptance by the DRC of Mr. Katanga at a prison facility in the DRC to serve the remainder of his sentence of imprisonment.<sup>7</sup>

<sup>1</sup> ICC-01/04-01/07-3666-AnxI.

<sup>2</sup> Order seeking the views of Mr. Germain Katanga concerning the designation of a State of enforcement, ICC-01/04-01/07-3537-Conf.

<sup>3</sup> Defence Observations on the designation of a State of enforcement, ICC-01/04-01/07-3545-Conf, paras. 9-10.

<sup>4</sup> Order mandating consultations with the Democratic Republic of the Congo with respect to the enforcement of sentence of Mr Germain Katanga, ICC-01/04-01/07-3570-Conf-Exp.

<sup>5</sup> Order concerning the “Defence Observations on the designation of a State of enforcement”, 15 October 2015, ICC-01/04-01/07-3610-Conf-Exp.

<sup>6</sup> Defence Observations on the Possible Designation of the DRC as a State of Enforcement, ICC-01/04-01/07-3613-Conf-Exp, para. 3.

<sup>7</sup> ICC-01/04-01/07-3626-Anx.

3. On 8 December 2015, the Presidency designated the DRC as the State in which the remainder of Mr. Katanga's sentence of imprisonment would be served.<sup>8</sup> On 19 December 2015, Mr. Katanga was transferred to a prison facility in the DRC.<sup>9</sup>
4. On 13 January 2016, a number of documents transmitted by the DRC to the Court were filed before the Presidency, including a "*Décision de renvoi*" dated 30 December 2015<sup>10</sup> issued by the *Haute Cour Militaire* against Mr. Katanga which referred to a number of offences allegedly committed by Mr. Katanga between 2002 and 2006. A letter from the *Procureur Général de la République* dated 8 January 2016 was also provided in which reference was made to article 108(1) of the Statute and article 6(2)(a) of the Agreement.<sup>11</sup>
5. On 14 January 2016, the Presidency requested that the DRC assist the Court by explaining the legal consequences of the "*Décision de renvoi*", as well as explaining the next procedural steps foreseen, bearing in mind that Mr. Katanga's sentence would be completed on 18 January 2016. The Presidency also sought clarification as to whether the letter dated 8 January 2016 constituted a request for the Court's approval of the prosecution and punishment of Mr. Katanga, pursuant to article 108(1) of the Statute and article 6(2) of the Agreement.<sup>12</sup>
6. On 18 January 2016, the sentence of imprisonment imposed by the Court was completed.<sup>13</sup> Mr. Katanga was not released from custody.
7. On 20 January 2016, the Registrar transmitted to the Presidency a letter from the Minister of Justice of the DRC,<sup>14</sup> dated 20 January 2016, in which the DRC clarified that the "*Décision de Renvoi*" acted to remit a suspect at the disposition of "*une juridiction de jugement aux fins de poursuites*" and re-iterated its intention to conduct domestic criminal proceedings against Mr. Katanga, referring to its sovereignty and the principle of complementarity.<sup>15</sup>

<sup>8</sup> Decision designating a State of enforcement, ICC-01/04-01/07-3626, p. 5.

<sup>9</sup> Press Release, "Thomas Lubanga Dyilo and Germain Katanga transferred to the DRC to serve their sentences of imprisonment", 19 December 2015, ICC-CPI-20151219-PR1181.

<sup>10</sup> ICC-01/04-01/07-3631-AnxI, pp. 20-21.

<sup>11</sup> ICC-01/04-01/07-3631-AnxI, p. 2.

<sup>12</sup> Order requesting information in relation to the "Communication des autorités congolaises concernant les poursuites nationales à l'encontre de Germain Katanga", ICC-01/04-01/07-3632, p. 4.

<sup>13</sup> Decision on the review concerning reduction of sentence of Mr Germain Katanga, 13 November 2015, ICC-01/04-01/07-3615, para. 116.

<sup>14</sup> Réponse des autorités congolaises à l'Ordonnance ICC-01/04-01/07-3632 en date du 14 janvier 2016, ICC-01-04-01/07-3633.

<sup>15</sup> ICC-01/04-01/07-3633-Conf-Anx, pp. 3-4.

8. On 21 January 2016, the Presidency issued an Order in which it recalled article 108(1) of the Statute and article 6(2) of the Agreement and explained that it understood the DRC's reference to article 108(1) of the Statute and article 6(2) of the Agreement in the letter dated 8 January 2016 to indicate the DRC's desire to ensure compliance with these provisions. Accordingly, as the letter of 8 January 2016 did not provide the documents required by the Presidency, pursuant to rule 214(1) of the Rules, so that it could make its determination under article 108(1) of the Statute, the Presidency sought the DRC's continuing assistance in providing such documents, including the protocol containing the views of Mr. Katanga.<sup>16</sup>
9. On 22 January 2016, Mr. Katanga filed "Preliminary observations by the defence concerning the continued and unlawful detention of Mr Germain Katanga by the Democratic Republic of Congo" ("Preliminary Observations"),<sup>17</sup> in which the defence directly made preliminary submissions as to the matters which should be taken into account by the Court in the application of article 108.<sup>18</sup>
10. On 27 January 2016, the Presidency expressed its concern at the apparent progression of the criminal proceedings against Mr. Katanga even though it had not yet been able to consider its approval pursuant to article 108(1) of the Statute. The Presidency reiterated its request that the DRC act promptly to provide the documents required by rule 214(1) of the Rules and article 6(2)(a) of the Agreement, including the protocol containing the views of Mr. Katanga, so that the Presidency could make its determination under article 108(1) of the Statute as soon as possible.<sup>19</sup>
11. The Presidency received some additional information from the DRC on 2 February 2016.<sup>20</sup> On 16 February 2016, the Presidency noted that, from all the information before it, it appeared that the prosecution of Mr. Katanga before the *Haute Cour Militaire* was ongoing. The Presidency requested that the DRC seek the approval of the Court, as envisaged by article 108 and requested that the DRC provide the

<sup>16</sup> Order to the Registrar concerning the communication of information to the Democratic Republic of the Congo in relation to the "Réponse des autorités congolaises à l'Ordonnance ICC-01/04-01/07-3632 en date du 14 janvier 2016", ICC-01/04-01/07-3634, p. 4.

<sup>17</sup> ICC-01/04-01/07-3635.

<sup>18</sup> See also the "Further matters concerning the 'Preliminary observations made by the defence concerning the continued and unlawful detention of Mr Germain Katanga by the Democratic Republic of Congo'", 25 January 2016, ICC-01/04-01/07-3638-Red.

<sup>19</sup> Order to the Registrar concerning the "Further matters concerning the 'Preliminary observations made by the defence concerning the continued and unlawful detention of Mr Germain Katanga by the Democratic Republic of Congo'", ICC-01/04-01/07-3640, pp. 3-4.

<sup>20</sup> Second complément d'informations soumis par les autorités congolaises et information sur les procédures nationales, ICC-01/04-01/07-3647.

outstanding information in support referred to in rule 214(1) of the Rules and article 6(2)(a) of the Agreement by 11 March 2016.<sup>21</sup>

12. On 26 February 2016, Mr. Katanga filed “Further observations following the defence mission to Kinshasa” (“Further Observations”) providing a number of observations for the Presidency to consider in the exercise of its discretion pursuant to article 108 and submitting that the prosecution of Mr. Katanga for the offences listed in the “*Décision de renvoi*” should not be approved.<sup>22</sup>
13. On 10 March 2016, the Registry transmitted to the Presidency a letter from the *Procureur Général de la République* dated 29 February 2016 which addressed a number of matters and annexed the documents required pursuant to rule 214(1) of the Rules of Procedure and Evidence.<sup>23</sup> One of the annexed documents was presented by the DRC as the views of Mr. Katanga pursuant to rule 214(1)(d) of the Rules. This document was entitled “Declaration” and was signed by Mr. Katanga on 6 February 2016. In this Declaration, Mr. Katanga stated that his final views to the Presidency would be forthcoming.<sup>24</sup>
14. Accordingly, on 14 March 2016, the Presidency sought clarification from the defence for Mr. Katanga as to whether the Further Observations of 26 February 2016 were intended to constitute Mr. Katanga’s final views, pursuant to article 108(2) of the Statute.<sup>25</sup>
15. On 21 March 2016, the defence for Mr. Katanga filed a number of additional observations (“Final Observations”), submitting that these be considered by the Presidency in addition to his Preliminary Observations and Further Observations. The defence for Mr. Katanga repeats the submission that the prosecution for the offences listed in the “*Décision de renvoi*” should not be approved.<sup>26</sup>

<sup>21</sup> Order to the Registrar concerning the “Second complément d’informations soumis par les autorités congolaises et information sur les procédures nationales”, ICC-01/04-01/07-3654.

<sup>22</sup> ICC-01/04-01/07-3662.

<sup>23</sup> ICC-01/04-01/07-3666-AnxI.

<sup>24</sup> ICC-01/04-01/07-3666-AnxV (“Declaration”).

<sup>25</sup> Order concerning the “Rapport du Greffe dans le cadre des consultations entre la Présidence de la Cour et les autorités congolaises sur l’application de l’article 108 du Statut de Rome”, ICC-01/04-01/07-3667.

<sup>26</sup> Defence observations on the *Rapport du Greffe dans le cadre des consultations entre la Présidence de la Cour et les autorités congolaises sur l’application de l’article 108 du Statut de Rome*, ICC-01/04-01/07-3673-Conf (“Final Observations”).

## II. MERITS

### A. Interpretation of Article 108(1)

16. Article 108(1) of the Statute provides that “[a] sentenced person in the custody of the State of enforcement shall not be subject to prosecution or punishment ... for any conduct engaged in prior to that person’s delivery to the State of enforcement, unless such prosecution [or] punishment ... has been approved by the Court at the request of the State of enforcement”.<sup>27</sup> Article 108(3) indicates that this provision ceases to apply if a sentenced person, *inter alia*, remains voluntarily for more than 30 days in the territory of the State of enforcement after having served the full sentence imposed by the Court.
17. The Presidency notes that Mr. Katanga was not released from custody by the DRC authorities following the completion of the sentence imposed by the Court on 18 January 2016. In such circumstances, he has not been given the opportunity to remain voluntarily for more than 30 days in the territory of the DRC, pursuant to article 108(3) of the Statute.
18. The Presidency also notes, as pointed out by the defence for Mr. Katanga,<sup>28</sup> that article 108(1) implicitly requires that, ordinarily, the approval of the Court would be sought *prior* to the commencement of the relevant prosecution, punishment or extradition.
19. Nonetheless, while delayed, the letter dated 29 February 2016 does constitute a request by the DRC for the approval of the Court, pursuant to article 108(1) of the Statute.<sup>29</sup> The DRC annexed to this letter the necessary documents referred to in rule 214(1) of the Rules and article 6(2)(a) of the Agreement.<sup>30</sup> These documents were also transmitted by the Registry to the Prosecutor, in accordance with rule 214(5) of the Rules which provides that “[a]ny information or documents transmitted to the Presidency under sub-rules 1 to 4 shall be transmitted to the Prosecutor, who may comment”. The Prosecutor did not make any comments.

<sup>27</sup> Rule 199 of the Rules of Procedure and Evidence provides, *inter alia*, that the powers of the Court under this provision shall be exercised by the Presidency.

<sup>28</sup> Preliminary Observations, para. 16.

<sup>29</sup> The DRC requested such approval in the following terms: “la République Démocratique du Congo, soucieuses de sauvegarder leur bonne coopération avec la Cour, invitent la Présidence de la Cour à accélérer le processus de l’examen des pièces lui soumises par la présente afin de permettre le bon déroulement de la procédure interne devant la Haute Cour Militaire”, ICC-01/04-01/07-3666-AnxI.

<sup>30</sup> Mr. Katanga submits that the DRC has not produced a document under rule 214(1)(c), see Final Observations, paras 45-52. However, article 214(1)(c) is satisfied in that the DRC has provided the “*Décision de renvoi*”, which itself constitutes a legal writ which the DRC intends to enforce.

20. The legal texts of the Court do not expressly set out any relevant criteria to be applied by the Court when considering the approval of the prosecution, punishment or extradition of a sentenced person by a State of enforcement.<sup>31</sup> The Presidency thus considers that such provisions need to be interpreted in context, taking into account the purpose of the Rome Statute and the nature of the Court. The Presidency notes that the Court only has jurisdiction over a limited number of international crimes and that even in this respect, it is an institution of last resort, intended to complement and not replace national systems. These essential features of the Rome Statute system, compounded with the general fundamental objective of ensuring accountability for serious crimes, suggest that the Court's approval should only be denied when the prosecution, punishment or extradition of sentenced persons may undermine certain fundamental principles or procedures of the Rome Statute or otherwise affect the integrity of the Court.

### **B. Application of article 108(1)**

21. Accordingly, the Presidency will first consider whether there is a potential undermining of the key relevant principle of *ne bis in idem*. Mr. Katanga makes a number of submissions concerning the inter-relationship between the principle of *ne bis in idem* and article 108(1) of the Statute. Mr. Katanga submits that the Court should only grant approval pursuant to article 108(1) in relation to the prosecution or punishment of a sentenced person if such prosecution or punishment concerns offences which did not fall within the temporal and geographical ambit of the ICC investigation.<sup>32</sup> He submits that the language of article 108(1), referring to "conduct", has a wider ambit than the principle of *ne bis in idem* reflected in article 20(2) of the Statute.<sup>33</sup> He further submits that, during his trial before the ICC, evidence pertaining to the localities and events which feature in the "*Décision de renvoi*" were presented to the Court.<sup>34</sup> He makes a further, related submission, that, just as it would not be correct for the Court's Prosecutor to now pursue new charges against him, it is unfair

<sup>31</sup> The only criterion expressly included in the Court's legal texts is a requirement to consider the principles of international law on re-extradition, however, this applies in situations where the sentenced person was surrendered to the Court by a State other than the State of enforcement or the State seeking extradition, which is not currently the case: see rule 214(4) of Rules of Procedure and Evidence and regulation 115, Regulations of the Court.

<sup>32</sup> Preliminary Observations, paras 31-36; Further Observations, para. 22; Declaration.

<sup>33</sup> Further Observations, para. 18.

<sup>34</sup> Preliminary Observations, paras 37-43.



for the DRC to do so,<sup>35</sup> submitting that his current prosecution is inconsistent with various statements made by representatives of the DRC to the Court in the context of an admissibility challenge made by the defence.<sup>36</sup>

22. The Presidency recalls that article 20(2) of the Statute provides that “[n]o person shall be tried by another court for a crime referred to in article 5 for which that person has already been convicted or acquitted by the Court”. The requirement in rule 214(1) of the Rules that a State of enforcement seeking approval of a prosecution under article 108(1) must provide a number of documents detailing the intended prosecution, including a statement of the facts of the case and their legal characterization, further implies that the Court should consider the application of the principle of *ne bis in idem* in assessing any requests for approval.
23. In applying article 108(1) in conjunction with article 20(2), the Presidency cannot widen the scope of the latter which only prohibits trial for a *crime* referred to in article 5 for which that person has already been convicted or acquitted by the Court and does not prohibit trials for conduct within the ambit of the ICC’s investigations. The Presidency notes that the interpretation of article 108(1) advanced by Mr. Katanga, which considers the entire ambit of the investigation, would have the result that the choices of the Prosecutor following the referral of a situation to the Court would shield individuals subject to investigation from domestic prosecution for other crimes, including crimes of potentially equal gravity. Such outcome would be inconsistent with the notion of complementarity and the objective of ensuring accountability for crimes. This objective is explicitly espoused in the preamble of the Statute which declares that “the most serious crimes of concern to the international community as a whole must not go unpunished and that their effective prosecution must be ensured by taking measures at the national level”. Accordingly, when the Presidency considers, under article 108(1), whether the prospective prosecution of Mr. Katanga may offend the principle of *ne bis in idem*, it does so by reference only to the content of that rule specified in article 20(2).
24. The Court found Mr. Katanga guilty, as an accessory under article 25(3)(d) of the Statute, of the following crimes committed on 24 February 2003 during an attack on the village of Bogoro in the Ituri district if the DRC: murder as a crime against humanity under article 7(1)(a) of the Statute, murder as a war crime under article

<sup>35</sup> Preliminary Observations, paras 2, 45; Further Observations, paras 21, 23.

<sup>36</sup> Preliminary Observations, paras 64-69; Declaration.

8(2)(c)(i) of the Statute, attacking a civilian population as such or individual civilians not taking direct part in hostilities as a war crime under article 8(2)(e)(i) of the Statute, destroying enemy property as a war crime under article 8(2)(e)(xii) of the Statute and pillaging as a war crime under article 8(2)(e)(v) of the Statute. Mr. Katanga was acquitted of charges of being an accessory, under article 25(3)(d) of the Statute, to the crimes of rape and sexual slavery as both crimes against humanity under article 7(1)(g) of the Statute and as war crimes under article 8(2)(e)(vi) of the Statute. Mr. Katanga was also acquitted of the charge of committing, under article 25(3)(a), the war crime of using children under the age of 15 years to participate actively in hostilities under article 8(2)(e)(vii).<sup>37</sup> Article 20(2) of the Statute operates so as to prevent any other court from trying Mr. Katanga for the abovementioned crimes.

25. The DRC has clearly indicated that the domestic prosecution of Mr. Katanga reflected in the “*Décision de renvoi*” relates to crimes other than those for which he has been convicted and acquitted by the Court. The DRC has stated that: “[i]l est à noter qu’en vertu du principe « ne bis in idem », les massacres commis à Bogoro en date du 24 février 2003 ne sont pas concernés par la présente cause, car ayant fait l’objet d’un arrêt définitif de la CPI”.<sup>38</sup> Accordingly, to the extent that the domestic prosecution of Mr. Katanga does not relate to the same crimes of which he has been convicted and acquitted by the Court, the principle of *ne bis in idem* espoused in article 20(2) is not undermined.
26. The Presidency must also consider whether the prosecution, punishment or extradition referred to in article 108(1) undermines other fundamental principles or procedures or otherwise affects the integrity of the Court.
27. In the current circumstances, where the State of enforcement is also the State of nationality of Mr. Katanga, there is clearly no question of the procedure for the designation of a State of enforcement having been used inappropriately as a guise to obtain custody over a sentenced person. The Presidency designated the DRC as the State of enforcement following a request from Mr. Katanga himself.<sup>39</sup> Mr. Katanga was informed of the possibility that he would face domestic criminal proceedings

<sup>37</sup> Judgment pursuant to article 74 of the Statute, 7 March 2014, ICC-01/04-01/07-3436-tENG, pp. 658-659.

<sup>38</sup> ICC-01/04-01/07-3666-AnxII, p.3; See also Rapport du Greffe dans le cadre des consultations entre la Présidence de la Cour et les autorités congolaises sur l’application de l’article 108 du Statut de Rome, 9 March 2016, ICC-01/04-01/07-3666, para. 9 (“Registry Report”).

<sup>39</sup> Decision designating a State of enforcement, 8 December 2015, ICC-01/04-01/07-3626, p. 3.

relating to his alleged conduct in the DRC prior to his transfer to the Court in 2007, although he does not seem to have been forewarned of the precise charges in the “*Décision de renvoi*”.<sup>40</sup> Mr Katanga still expressed his desire to return to the DRC, a view which the Presidency then took into account in its designation of the DRC as the State of enforcement.<sup>41</sup>

28. Mr. Katanga expresses concern that war crimes and crimes against humanity remain punishable by death in the DRC.<sup>42</sup> However, the DRC has provided formal written assurances to the Court that the death penalty will not be sought against Mr. Katanga and that any such penalty would not, in any event, ever be carried out.<sup>43</sup>
29. The Presidency notes that there is no claim that Mr. Katanga will be prosecuted for offences of a political character and the assertions of the defence that “several persons” consider that the prosecution of Mr. Katanga may be improperly motivated<sup>44</sup> are unsubstantiated.
30. The Presidency notes that Mr. Katanga has presented a number of arguments expressing concern that he may not receive a fair trial in the DRC.<sup>45</sup> He notes that he does not have access to legal aid, without which he lacks the means to ensure that he has access to defence counsel.<sup>46</sup> He also expresses concern that there is no possibility of appeal from a judgment of the *Haute Cour Militaire*.<sup>47</sup>
31. The Presidency reiterates, as indicated at paragraph 20 above, that under article 108 (1) of the Rome Statute, the approval of the prosecution, punishment or extradition of a sentenced person should only be denied when it undermines fundamental principles or procedures of the Rome Statute or otherwise affects the integrity of the Court. In this regard, the Presidency notes that the Appeals Chamber has emphasised that “the Court was not established to be an international court of human rights, sitting in judgment over domestic legal systems to ensure that they are compliant with

<sup>40</sup> See, *inter alia*, “Annex 2 to the Observations from the Democratic Republic of the Congo on the criteria set out in rule 223 of the Rules of Procedure and Evidence”, 1 October 2015, ICC-01/04-01/07-3602-Anx2-tENG, p. 5.

<sup>41</sup> Decision designating a State of enforcement, 8 December 2015, ICC-01/04-01/07-3626, p. 4.

<sup>42</sup> Further Observations, para. 7; Declaration.

<sup>43</sup> Registry Report, para. 8.

<sup>44</sup> Further Observations, para. 30.

<sup>45</sup> Declaration; Preliminary Observations, paras 20-21, 50-59, 71; Further Observations, paras 36-38, 45; Final Observations, paras 13, 34.

<sup>46</sup> Preliminary Observations, para. 48; Declaration; Final Observations, paras 8-14.

<sup>47</sup> Further Observations, para. 7; Declaration; Final Observations, para. 39.

international standards of human rights”.<sup>48</sup> Nonetheless, the Presidency notes that the DRC has emphasised in this regard that the prosecution of Mr. Katanga will occur consistently with the rights of the defence recognised in the Constitution of the DRC.<sup>49</sup> The Presidency further notes that the DRC is party to relevant international instruments recognising minimum guarantees in relation to the right to a fair trial, including the International Covenant on Civil and Political Rights and the African Charter on Human and Peoples Rights. The former guarantees both the right to have legal assistance assigned without payment in the event of a lack of sufficient means and the right to review of a conviction and sentence by a higher tribunal according to law.<sup>50</sup> In addition, article 153 of the Constitution of the DRC provides, *inter alia*, that “[l]es cours et Tribunaux, civils et militaires, appliquent les traités internationaux dûment ratifiés” and article 215 thereof provides, *inter alia*, that “[l]es traités et accords internationaux régulièrement conclus ont, dès leur publication, une autorité supérieure à celle des lois”.

### III. CONCLUSION

32. For the reasons given above and taking into account the information available, the Presidency is of the view that the proposed prosecution of Mr. Katanga, as set out in the “*Décision de renvoi*”, does not undermine fundamental principles or procedures of the Rome Statute or otherwise affect the integrity of the Court.

Therefore, the Presidency *hereby* approves, pursuant to article 108(1) of the Statute, the prosecution of Mr. Katanga as set out in the “*Décision de renvoi*”.

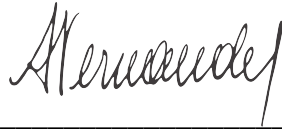
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<sup>48</sup> Appeals Chamber, *The Prosecutor v. Saif Al-Islam Gaddafi and Abdullah Al-Senussi*, “Judgment on the appeal of Mr Abdullah Al-Senussi against the decision of Pre-Trial Chamber I of 11 October 2013 entitled ‘Decision on the admissibility of the case against Abdullah Al-Senussi’”, 24 July 2014, ICC-01/11-01/11-565, para. 219.

<sup>49</sup> ICC-01/04-01/07-3666-AnxI; Articles 17-21 of the Constitution of the DRC, see ICC-01/04-01/07-3666-AnxIII, pp. 43-44.

<sup>50</sup> International Covenant on Civil and Political Rights, article 14.

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



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**Judge Silvia Fernández de Gurmendi**  
**President**

Dated this 7 April 2016

At The Hague, The Netherlands