



Original: English

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

Date: 06 July 2009

TRIAL CHAMBER II

Before: Judge Bruno Cotte, Presiding Judge
Judge Fatoumata Dembele Diarra
Judge Hans-Peter Kaul

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

*IN THE CASE OF
THE PROSECUTOR
v. Germain KATANGA and Mathieu NGUDJOLO CHUI*

Public Redacted Version

**Prosecution's Observations on the Review of the Pre-Trial Detention of Germain
KATANGA**

Source: Office of the Prosecutor

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

The Office of the Prosecutor

**Counsel for the Defence of Germain
Katanga**

Mr David Hooper

Mr Andreas O'Shea

**Counsel for the Defence of Mathieu
Ngudjolo Chui**

Mr Jean-Pierre Kilenda Kakengi Basila

Mr Jean-Pierre Fofé Djofia Malewa

Legal Representatives of Applicants

Legal Representatives of Victims

Ms Carine Bapita Buyangandu

Mr Hervé Diakiese

Mr Vincent Lurquin

Mr Jean Chrysostome Mulamba Nsokoloni

Ms Flora Mbuyu Anjelani

Mr Fidel Nsita Luvengika

Mr Jean-Louis Gilissen

Mr Joseph Keta

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

Registrar

Ms Silvana Arbia

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section Other**

Procedural Background

1. On 18 October 2007, Germain KATANGA was transferred to the seat of the Court,¹ pursuant to a warrant of arrest issued on 2 July 2007.²
2. On 21 April 2008, Single Judge Steiner held that Germain KATANGA shall "...remain in pre-trial detention because the condition set forth in article 58(l)(b)(ii) of the Rome 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".³
3. From 27 June to 16 July 2008, Pre-Trial Chamber 1 conducted the Confirmation Hearing.⁴ On 18 August 2008, Pre-Trial Chamber 1 maintained the detention of Germain KATANGA, finding that "... there had not been any material change of circumstance to justify the release of Germain Katanga...".⁵ On 26 September 2008, Pre-Trial Chamber I issued the decision confirming charges.⁶
4. Trial Chamber II issued decisions maintaining the detention of Germain KATANGA on 12 December 2008⁷ ("12 December 2008 Decision") and on 6 April 2009⁸ ("6 April 2009 Decision").

¹ ICC-01/04-01/07-40.

² ICC-01/04-01/07-1

³ ICC-01/04-01/07-426, at p. 8.

⁴ ICC-01/04-01/07-T-50-ENG ET, at p. 8.

⁵ ICC-01/04-01/07-702, at p. 10.

⁶ ICC-01/07-01/07-717. The Decision confirmed that there was sufficient evidence to establish substantial grounds to believe that: a. Germain KATANGA was the de jure supreme commander of the Force de Résistance Patriotique en Ituri "the FRPI" and had de facto ultimate control over the FRPI commanders at the relevant period; and b. Germain KATANGA, was responsible under Article 25 (3) (a) for the following crimes: The crimes against humanity of murder, sexual slavery and rape; and the war crimes of wilful killing, sexual slavery and rape, using children to participate actively in hostilities, intentionally directing attacks against the civilian population of Bogoro village, pillaging and destruction of property (pp. 211-213).

⁷ ICC-01/04-01/07-794

⁸ ICC-01/04-01/07-1043

5. On 29 June 2009, Trial Chamber II requested the Prosecution to submit its observations concerning the continued detention of Germain KATANGA.⁹

Prosecution's Observations

6. As the Appeals Chamber has reiterated, where the conditions under Article 58(1) of the Statute continue to be met, Article 60(2) requires that the detained person must continue to be detained.¹⁰

Article 58(1)

7. The Prosecution submits that there has been no substantial change with respect to any of the conditions set out in Article 58(1) or any related factors since the 6 April 2009 Decision. The condition set forth in Article 58(1)(a) of the Statute continues to be fulfilled.¹¹ Thus, variation of the current detention regime is unwarranted.
8. The Prosecution submits that Germain KATANGA's detention remains necessary in order to ensure his appearance at trial.¹² In its 12 December 2008 Decision, the Chamber found that the seriousness of the pending charges might prompt the Accused, if released, to flee.¹³ Furthermore, the Prosecution asserts that Germain KATANGA's former senior positions and his status in the Democratic Republic of the Congo ("DRC") as the most senior commander of the *Force de Résistance Patriotique en Ituri* ("FRPI") and as a Brigadier-General of the national army, the *Forces Armées de la République Démocratique du Congo* ("FARDC"),¹⁴ implies the

⁹ ICC-01/04-01/07-1252.

¹⁰ ICC-01/04-01/06-824, at para. 134.

¹¹ ICC-01/04-01/07-794-tENG, para. 9.

¹² Article 58(1)(b)(i).

¹³ ICC-01/04-01/07-794-tENG, para. 10.

¹⁴ ICC-01/04-01/07-196-Conf-AnxA, at paras. 24 and 26. See also ICC-01/04-01/07-170-Conf-Anx1D, at p. 4. Refers to DRC-OTP-0086-0036 (Décret No. 04/094 du 11 décembre 2004 portant nomination dans la catégorie des officiers généraux des Forces armées de la République Démocratique du Congo) at 0037; and DRC-OTP-0107-0701 (Décret No. 04/095 du 11 décembre 2004 portant nomination dans la catégorie des officiers supérieurs des Forces armées de la République Démocratique du Congo).

existence of networks and former loyalties that could facilitate his flight from the Court's jurisdiction.¹⁵

9. In addition, continuation in custody is required to ensure that the Accused does not cause "grave endangerment [to] the safety of the victims and witnesses and would obstruct the court proceedings".¹⁶ This is particularly so given the volatile situation in the DRC¹⁷ and the disclosure of Prosecution witnesses' identity to the Defence.
10. Trial Chamber II confirmed that there existed an objectively justifiable risk to the safety of the witnesses, the victims and the members of their families.¹⁸
11. The Prosecution recalls that in September and October 2008, members of the *Force de Résistance Patriotique en Ituri* ("FRPI") and other forces now in the *Front Populaire pour la Justice au Congo* ("FPJC"), tried to re-take Bogoro and neighbouring villages, leading to mass displacement of civilians.¹⁹
12. The Prosecution reiterates that supporters of Germain KATANGA have the capability to interfere with Prosecution witnesses and their families.²⁰ FNI and/or FRPI members have already interfered with Prosecution witnesses, allegedly

¹⁵ See *Prosecutor v. Thomas Lubanga Dyilo*, ICC-01/04-01/06-824, at para. 137. In this matter the Appeals Chamber recognized that the appellant's international contacts were relevant even absent evidence that he would actually make use of these to abscond. As it explained, "...any determination by a Pre-Trial Chamber of whether or not a suspect is likely to abscond necessarily involves an element of prediction". Thus, this Court can and should consider that witnesses describe Germain KATANGA's various international contacts with the Ugandan authorities directly and through designated intermediaries. See witness statement of W-12, DRC-OTP-0105-0085, at paragraphs 336-339, 390-391; witness statement of W-160, DRC-OTP-0153-0006, at paras 23-58 and at paras 64-65. See also ICC-01/04-01/07-196-Conf-AnxA, at para. 224.

¹⁶ ICC-01/04-01/07-794-tENG, para. 13.

¹⁷ ICC-01/04-01/07-794-tENG, para. 13. See also ICC-01/04-01/07-889-Conf, par. 9.

¹⁸ ICC-01/04-01/07-889-Conf, para. 9 (Prosecution's translation). See further ICC-01/04-01/07-1046-Conf-Exp.

¹⁹ See "Ituri: reprise des combats entre FARDC et la milice FRPI à Bogoro", *Radio Okapi*, 30 September 2008 (available at <http://www.radiookapi.net/index.php?i=53&a=20494> (last accessed 3 July 2009)).

²⁰ PTC I found that Germain KATANGA still wields influence as a powerful figure within Ituri province and in particular among current members of the *Forces de résistance patriotiques en Ituri* (FRPI) and that there were reasonable grounds to believe that he was the highest-ranking commander of the FRPI; indeed, he signed a document as Brigadier-General of the *Forces Armées de la République Démocratique de Congo* (FARDC) at the time of his transfer to the seat of the Court. See ICC-01/04-01/07-426, p. 8. See also ICC-01/04-01/07-224-Anx, para. 16: A number of former FNI and FRPI commanders have joined the FARDC and are currently in Kinshasa, Kisangani or Bunia, or their whereabouts remain unknown.

directly under the Germain KATANGA's instructions.²¹ . If Germain KATANGA were to be released, he would be in a position to exert more direct pressure on these witnesses.

13. [REDACTED].²²

Article 60(4)

14. The Prosecution further submits that the duration of Germain KATANGA's detention is not unreasonable.

15. Germain KATANGA has been in detention at the seat of the Court for approximately 20 months. Within this period, the Confirmation Hearing was held in an expeditious manner,²³ the Confirmation decision was issued by Pre-Trial Chamber I,²⁴ Trial Chamber II was constituted²⁵ and the trial is scheduled to commence on 24 September 2009.

16. Trial Chamber II observed in early April of this year that the proximity of the trial date « ...rend plus nécessaire encore le maintien en détention de Germain Katanga...»²⁶. The Prosecution submits that this finding of Trial Chamber II is now of even greater relevance, since the Trial is scheduled to commence in less than 3 months from the date of this filing.

²¹ FRPI members under Germain KATANGA's control have threatened witnesses in the past, see ICC-01/04-01/07-88-Conf, at para. 18. See also list of evidence ICC-01/04-01/07-170-Conf-Anx1D, Document DRC-OTP-0155-0106, at 0109, at para. 18; ICC-01/04-01/07-224-Anx, at para. 17. The FRPI members under Germain KATANGA's control have also obstructed investigations into the attack at Bogoro, See ICC-01/04-01/07-4, para. 63; see also list of evidence ICC-01/04-01/07-170-Conf-Anx1D, Document DRC-OTP-0129-0267, at para. 66. See also ICC-01/04-01/07-224-Anx, para. 17: An OTP witness has explained that individuals were trying to identify persons close to the FNI and/or FRPI, who may have cooperated or might cooperate with the OTP in relation to investigation of crimes allegedly committed by members of FNI and/or FRPI.

²² [REDACTED]

²³ ICC-01/04-01/07-T-50-ENG ET.

²⁴ ICC-01/04-01/07-702.

²⁵ ICC-01/04-01/07-729.

²⁶ ICC-01/04-01/07-1043, para. 13

Conclusion

In light of the above mentioned submissions, the Prosecution submits that there are no grounds justifying the interim release of Germain KATANGA.

A handwritten signature in blue ink, appearing to read 'Luis Moreno-Ocampo', is centered on the page. The signature is fluid and cursive, with a long horizontal stroke extending to the left.

Luis Moreno-Ocampo, Prosecutor

Dated this 6th day of July 2009

At The Hague, The Netherlands