

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No: ICC-01/04-02/07
Date: 20 February 2008

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. MATHIEU NGUDJOLO CHUI***

**URGENT
PUBLIC DOCUMENT**

**Decision concerning the issue of joinder, ordering a report on protective measures
by the Registrar and convening a hearing**

The Office of the Prosecutor

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

Duty Counsel for the Defence

Mr Jean-Pierre Kilenda Kakengi
Basila

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

NOTING the “Prosecution’s application for warrants of arrest under article 58 of the Statute, part one and two”¹ (“the Prosecution Application”) filed by the Prosecution on 22 and 25 June 2007;

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

NOTING the “Decision on the evidence and information provided by the Prosecution for the issuance of a warrant of arrest for Germain Katanga”³ (“the First Decision on Evidence and Information”) issued by the Chamber on 6 July 2007;

NOTING the Warrant of Arrest against Mathieu Ngudjolo Chui issued by the Chamber on 6 July 2007;⁴

NOTING the “Decision on the evidence and information provided by the Prosecution for the issuance of a warrant of arrest for Mathieu Ngudjolo Chui” (“the Second Decision on Evidence and Information”) issued by the Chamber on 6 July 2007;⁵

¹ “Submission of the Redacted English and French Versions of Prosecution’s Application for Warrants of Arrest against Germain KATANGA and Mathieu NGUDJOLO CHUI” (ICC-01/04-01/07-196; ICC-01/04-01/07-196-Conf; ICC-01/04-01/07-196-Conf-AnxA; ICC-01/04-01/07-Conf-AnxA1-AnxA10 and ICC-01/04-01/07-196-AnxB) and “Submission of the Redacted English and French Versions of Prosecution’s Application for Warrants of Arrest against Germain KATANGA and Mathieu NGUDJOLO CHUI” (ICC-01/04-02/07-24; ICC-01/04-02/07-24-Conf; ICC-01/04-02/07-24-Conf-AnxA; ICC-01/04-02/07-24-Conf-AnxA1-A10 and ICC-01/04-02/07-24-Conf-AnxB).

² ICC-01/04-01/07-1.

³ ICC-01/04-01/07-4.

⁴ ICC-01/04-02/07-1.

⁵ ICC-01/04-02/07-3.

NOTING the initial appearance of Germain Katanga before the Chamber on 22 October 2007, during which the confirmation hearing in the case of *The Prosecutor v. Germain Katanga* was scheduled to start on 28 February 2008;⁶

NOTING the “Decision on the Suspension of the Time-Limits Leading to the Initiation of the Confirmation Hearing” issued by the Chamber on 30 January 2008 and by which the confirmation hearing has been postponed until a date to be determined by the Chamber;⁷

NOTING the initial appearance of Mathieu Ngudjolo Chui before the Chamber on 11 February 2008,⁸ during which the confirmation hearing in the case of *The Prosecutor v. Mathieu Ngudjolo Chui* has been scheduled to start on 21 May 2008;

NOTING the hearing held before the Chamber on 12 February 2008,⁹ in which the possibility of a joinder of the cases of *The Prosecutor v. Germain Katanga* and *The Prosecutor v. Mathieu Ngudjolo Chui* was discussed and the Prosecution and both Defences for Germain Katanga and Mathieu Ngudjolo Chui were given the opportunity to file additional observations in writing;

NOTING the “Prosecution's Observations on the Joinder of the Cases against Germain KATANGA and Mathieu NGUDJOLO CHUI”¹⁰ filed by the Prosecution on 14 February 2008, the “Defence Observations on the Joinder of the Cases against Germain KATANGA and Mathieu NGUDJOLO CHUI”¹¹ filed by Defence Counsel for Germain Katanga on 18 February 2008 and the “*Observations de la Défense concernant la question de la jonction de procédures entre l'affaire Mathieu Ngudjolo et*

⁶ ICC-01/04-01/07-T-5-ENG ET.

⁷ ICC-01/04-01/07-172.

⁸ ICC-01/04-02/07-T-3-ENG ET.

⁹ ICC-01/04-01/07-T-17-ENG ET; and ICC-01/04-02/07-T-4-ENG ET.

¹⁰ ICC-01/04-01/07-195, ICC-01/04-01/07-195-Anx, ICC-01/04-02/07-22, and ICC-01/04-02/07-22-Anx1

¹¹ ICC-01/04-01/07-203.

*l'affaire Germain Katanga, en application de la requête orale présentée par la Chambre préliminaire I lors de l'audience du 12 février 2008*¹² filed by Duty Counsel for Mathieu Ngudjolo Chui on 18 February 2008;

NOTING articles 61, 67 and 68 of the Rome Statute ("the Statute") and rules 76 to 83, 121 and 136 of the Rules of Procedure and Evidence ("the Rules");

CONSIDERING that, as the Chamber has stated on a number of occasions,¹³ 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 in the case of *The Prosecutor v. Germain Katanga* has been postponed until a date to be determined by the Chamber in light of *inter alia*:

- (i) the pending requests before the Registrar, in relation to more than half of the witnesses on which the Prosecution intends to rely at the confirmation hearing, 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, if any;¹⁴ and
- (ii) the pending requests for redactions to the statements, investigators' notes and transcripts of interviews of witnesses and documents on which the Prosecution intends to rely at the confirmation hearing and for which, to

¹² ICC-01/04-02/07-29.

¹³ ICC-01/04-01/06-126; ICC-01/04-01/06-454 and ICC-01/04-01/07-172.

¹⁴ ICC-01/04-01/07-172, p.6.

an important extent, the ruling of the Single Judge depends on the decision by the Registrar on the above-mentioned pending requests;¹⁵

CONSIDERING, that at the hearing held on 28 January 2008,¹⁶ the Victims and Witnesses Unit (“the VWU”) and the representatives of the Registrar have assured the Single Judge that the Registrar will make his utmost efforts to decide upon all pending requests and to implement the protective measures that are granted, if any, by 25 February 2008; and 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 request for protective measures if the Registrar declines to include any of the relevant witnesses in the witness protection program;

CONSIDERING therefore that an update on the Registrar’s action concerning the above-mentioned pending requests before the Registrar will enable the Single Judge to proceed with the several pending Prosecution’s requests for redactions; and that this will also enable the Chamber to reschedule the confirmation hearing in the case of *The Prosecutor v. Germain Katanga*;

CONSIDERING further that, in its observations, the Prosecution requests the joinder of the cases of *The Prosecutor v. Germain Katanga* and *The Prosecutor v. Mathieu Ngudjolo Chui*;¹⁷ and that Defence Counsel for Germain Katanga has not opposed such a joinder;¹⁸

¹⁵ ICC-01/04-01/07-172, pp. 5 and 6.

¹⁶ ICC-01/04-01/07-T-15-Conf-Exp-ENG ET, p.49, lines 8-12. See also ICC-01/04-01/07-T-14-Conf-Exp-ENG, p.12, line 18. See also ICC-01/04-01/07-172, p. 7.

¹⁷ ICC-01/04-01/07-195 and ICC-01/04-02/07-22

¹⁸ ICC-01/04-01/07-203, para 2

CONSIDERING, nevertheless, that Duty Counsel for Mathieu Ngudjolo Chui opposes the joinder of the cases because: (i) Duty Counsel has not been communicated the unredacted version of the Prosecution's charging documents against Germain Katanga and Mathieu Ngudjolo Chui; and (ii) Mathieu Ngudjolo Chui has not appointed yet permanent Defence Counsel and, according to Duty Counsel, given the implications of the joinder, the latter, once appointed, must be given the opportunity to make observations on the issue of joinder;¹⁹

CONSIDERING that the Prosecution has not yet filed any charging document against Mathieu Ngudjolo Chui as it must only file such document 30 days before the initiation of the confirmation hearing currently scheduled for 21 May 2008; and that, due to the above-mentioned requests currently pending before the Registrar, the unredacted version of the Prosecution's charging document against Germain Katanga is only accessible to Prosecution and the Chamber;

CONSIDERING, nevertheless, that the factual basis of charges alleged by the Prosecution against Germain Katanga in the Prosecution's charging document are the same as those contained in the Prosecution Application, in the Warrant of Arrest for Germain Katanga and in the First Decision on Evidence and Information; and that the Prosecution's charging document against Germain Katanga only added:

- (i) one count of destruction of property that took place during the alleged joint FNI/FRPI attack on the village of Bogoro on or about 24 February 2003; and
- (ii) one additional mode of liability – that is to say, co-perpetration based on joint control of the crime pursuant to article 25 (3) (a) of the Statute –, which has already been relied upon by the Chamber in issuing the warrants of arrest for Germain Katanga and Mathieu Ngudjolo Chui;

¹⁹ ICC-01/04-02/07-29, para 37

CONSIDERING further that Duty Counsel for Mathieu Ngudjolo Chui, as Defence Counsel for Germain Katanga, has already been given access to: (i) a redacted version of the Prosecution Application; (ii) unredacted versions of the warrants of arrest issued by the Chamber for Germain Katanga and Mathieu Ngudjolo Chui; and (iii) unredacted versions of the First and Second Decisions on Evidence and Information;

CONSIDERING that, in the view of the Single Judge, the documents currently accessible to the Defence for Mathieu Ngudjolo Chui provide the necessary information to effectively address the issue of joinder of the cases of *The Prosecutor v. Germain Katanga* and *The Prosecutor v. Mathieu Ngudjolo Chui*, as shown by the comprehensive observations on the issue of joinder filed by Duty Counsel for Mathieu Ngudjolo Chui;

CONSIDERING further that, despite the comprehensive observations on the issue of joinder filed by Duty Counsel for Mathieu Ngudjolo Chui, the Single Judge is of the view that, given the implications of joining the cases of *The Prosecutor v. Germain Katanga* and *The Prosecutor v. Mathieu Ngudjolo Chui*, she would benefit from having the observations of permanent Defence Counsel for Mathieu Ngudjolo Chui if appointed within a reasonable period of time;

FOR THESE REASONS

ORDER the Registrar to file as “confidential *ex parte* Prosecution only” by Tuesday 26 February 2008, in the record of the case of *The Prosecutor v. Germain Katanga*, a detailed report on:

- i) the decisions taken since 30 January 2008 by the Registrar on requests for the inclusion in the Court’s Witness Protection Program of witnesses on

which the Prosecution intends to rely at the confirmation hearing of the case of *The Prosecutor v. Germain Katanga*;

- ii) the status of the implementation of such decisions and of previous decisions of the same nature which had not been fully implemented by 30 January 2008; and
- iii) the status of the pending requests for the inclusion in the Court's Witness Protection Program of witnesses on which the Prosecution intends to rely at the confirmation hearing of the case of *The Prosecutor v. Germain Katanga*;

DECIDE to convene in the case of *The Prosecutor v. Germain Katanga* an *ex parte* hearing, in closed session, with the Prosecution and the Victims and Witnesses Unit, on Monday 3 March 2008 at 14h00 to discuss the implications concerning the pending Prosecution's requests for redactions of the report made by the Registrar pursuant to this decision;

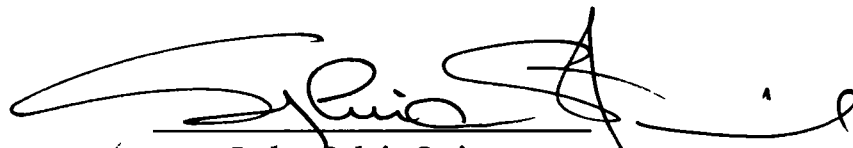
DECIDE that, as long as permanent Defence Counsel for Mathieu Ngudjolo Chui, is appointed within twenty-five days following the date of arrival of Mathieu Ngudjolo to the Detention Center at the seat of the Court in The Hague:

- (i) the Registrar shall immediately notify permanent Defence Counsel for Mathieu Ngudjolo Chui of all relevant documents concerning the issue of joinder of the cases of *The Prosecutor v. Germain Katanga* and *The Prosecutor v. Mathieu Ngudjolo Chui*;²⁰ and
- (ii) permanent Defence Counsel for Mathieu Ngudjolo Chui shall have seven days from the date of appointment to file written observations on the issue of joinder;

²⁰ In addition to the present decision, these documents are the following ICC-01/04-01/07-196; ICC-01/04-01/07-196-Conf; ICC-01/04-01/07-196-Conf-AnxA; ICC-01/04-01/07-Conf-AnxA1-AnxA10 and ICC-01/04-01/07-196-AnxB; ICC-01/04-01/07-T-17-ENG ET, ICC-01/04-01/07-195, ICC-01/04-01/07-195-Anx, ICC-01/04-01/07-203, ICC-01/04-02/07-24; ICC-01/04-02/07-24-Conf; ICC-01/04-02/07-24-Conf-AnxA; ICC-01/04-02/07-24-Conf-AnxA1-A10 and ICC-01/04-02/07-24-Conf-AnxB; ICC-01/04-02/07-22, ICC-01/04-02/07-22-Anx, ICC-01/04-02/07-T-3-ENG ET, ICC-01/04-02/07-T-4-ENG ET, and ICC-01/04-02/07-29

DECIDE to reject the request of Duty Counsel for Mathieu Ngudjolo Chui to have access, at this stage, to an unredacted version of: (i) the Prosecution's charging document against Germain Katanga filed in the record of the case of *The Prosecutor v. Germain Katanga* on 29 January 2008; and (ii) the Prosecution's charging document against Mathieu Ngudjolo Chui, which has not yet been filed in the record of the case of *The Prosecutor v. Mathieu Ngudjolo Chui*.

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



Judge Sylvia Steiner
Single judge

Dated this Wednesday 20 February 2008

At The Hague,

The Netherlands