

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

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

Date: 13 June 2008

**PRE-TRIAL CHAMBER I**

**Before: Judge Akua Kuenyehia, 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 Schedule for the Confirmation Hearing**

**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, Senior 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  
Mr Herve Diakiese  
Mr Jean-Christostome Mulamba  
Nsokoloni

**Unrepresented Victims**

**Legal Representatives of the Applicants**

**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**

**I, Judge Akua Kuenyehia**, judge at the International Criminal Court (“the Court”);

**NOTING** the “Decision on the Applications for Participation in the Proceedings of Applicants a/0327/07 to a/0337/07 and a/0001/08”<sup>1</sup> issued by the Single Judge on 2 April 2008, by which the Single Judge granted the procedural status of victim in the pre-trial stage of the case to 5 applicants represented by two different Legal Representatives;

**NOTING** the “Charging Document and List of Evidence”<sup>2</sup> filed by the Prosecution on 21 April 2008;

**NOTING** the “Decision on the Defence Request for Postponement of the Confirmation Hearing”<sup>3</sup> issued by the Chamber on 25 April 2008, in which the Chamber decided to re-schedule the confirmation hearing to 27 June 2008;

**NOTING** the “Decision Establishing a Calendar according to the date of the Confirmation Hearing: 27 June 2008”<sup>4</sup> issued by the Single Judge on 29 April 2008;

**NOTING** the “Decision on the set of Procedural Rights Attached to Procedural Status of Victim at the Pre-Trial Stage of the Case”<sup>5</sup> issued by the Single Judge on 13 May 2008;

**NOTING** the “Decision on the Limitations of Set of Procedural Rights for Non-Anonymous Victims”<sup>6</sup> issued by the Single Judge on 30 May 2008;

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<sup>1</sup> ICC-01/04-01/07-357

<sup>2</sup> ICC-01/04-01/07-422

<sup>3</sup> ICC-01/04-01/07-446

<sup>4</sup> ICC-01/04-01/07-459

<sup>5</sup> ICC-01/04-01/07-474

**NOTING** the hearing held before the Single Judge on 3 June 2008, in which the Prosecution informed the Single Judge that audio-visual material would be presented at the confirmation hearing;

**NOTING** the “Decision Distributing the Proposed Schedule for the Confirmation Hearing”<sup>7</sup> issued by the Single Judge on 4 June 2008;

**NOTING** the “Decision on the Temporary Replacement of the Single Judge”<sup>8</sup> issued by the Chamber on 5 June 2008;

**NOTING** the “Judgment on the Appeal Against the Decision on Joinder rendered on 10 March 2008 by the Pre-Trial Chamber in the Germain Katanga and Mathieu Ngudjolo Chui Cases”<sup>9</sup> issued by the Appeals Chamber on 9 June 2008;

**NOTING** the “Decision on the 97 Applications for Participation at the Pre-Trial Stage of the Case”<sup>10</sup> issued by the Single Judge on 10 June 2008, by which the Single Judge granted the procedural status of victim in the pre-trial stage of the case to 52 applicants represented by four different Legal Representatives;

**NOTING** the public hearing held before the Presiding Judge on 10 June 2008;<sup>11</sup>

**NOTING** articles 61, 67, 68 and 69 of the *Rome Statute* (“the Statute”), rules 63, 87, 121, 122 and 140 of the *Rules of Procedure and Evidence* (“the Rules”) and regulation 20

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<sup>6</sup> ICC-01/04-01/07-537

<sup>7</sup> ICC-01/04-01/07-547 and Anx1

<sup>8</sup> ICC-01/04-01/07-556

<sup>9</sup> ICC-01/04-01/07-573

<sup>10</sup> ICC-01/04-01/07-578-Conf, ICC-01/04-01/07-579

<sup>11</sup> ICC-01/04-01/07-T-35 ENG RT 10-06-2008 PT

of the *Regulations of the Court* (“the Regulations”) and regulation 61(1)(d) of the *Regulations of the Registry* (“RoR”);

**CONSIDERING** that, at the public hearing (“the Hearing”) held on 10 June 2008 with the Prosecution, the Defences for Germain Katanga and for Mathieu Ngudjolo Chui, the Legal Representatives of the Victims and the representatives of the Registry, the participants had the opportunity to present their views on the proposed schedule of the confirmation hearing;

**CONSIDERING** that during the Hearing, the Prosecution made no objection to the time allocated to it in the proposed schedule, although it requested that:

- (i) the schedule not be, in principle, modified as a result of the non-use by any given party or participant of the time allocated to it (“the Prosecution’s First Request”);
- (ii) the evidence need not be shown on a computer screen during its presentation because, according to the experience during the confirmation hearing in the case of *The Prosecutor v. Thomas Lubanga Dyilo*, this is a time-consuming process that prevents the maximization of the time by the relevant party or participant (“the Prosecution’s Second Request”);

**CONSIDERING** that the Single Judge agrees with the Prosecution that the seven and a half hours proposed for the Prosecution’s presentation of evidence at the confirmation hearing is sufficient, given the limited scope of the current case; that this time is sufficient even if a limited part of it may be lost in making the proper arrangements to show the evidence on the screens of the computers located in the courtroom, which will facilitate a better understanding of the submissions of the

parties and participants; and that, therefore, the Prosecution's Second Request must be rejected;

**CONSIDERING** that the Single Judge agrees with the Prosecution that the schedule should, in principle, not be modified in the event that any party or participant does not use the time allocated to it;

**CONSIDERING**, nevertheless, that if the Defence for Germain Katanga finally decides not to use the time allocated to it to comment on the evidence presented by the Prosecution, as stated at the Hearing, the parties and participants should be prepared to start with the closing statements on Monday 14 July 2008 at 9.00 hours.

**CONSIDERING** that the Defence for Germain Katanga stated during the hearing that he "will be taking no time up of the Court"; specifically that:

At this stage we have no intention of calling witnesses. I have no intention of making an opening address to the Court.<sup>12</sup>

It then goes to matters related to jurisdiction, admissibility, or other procedural issues, and there are no matters, that we at present envisage to raise in that respect [...]<sup>13</sup>

[T]hen there's a discussion or potential discussion by parties of the OTP evidence, and at the moment, unless there are any particular surprises, I don't see us engaging in comment.<sup>14</sup>

There's then the presentation by the Defence team, I'm talking in the singular, of their evidence. We're not proposing to call evidence.<sup>15</sup>

And then we have a non-discussion on our evidence, so we can step over that, and then we have a closing statement. Now, the only matter that I'd raise in respect to that really is the matter that was submitted yesterday in the motion you saw dated the 9<sup>th</sup> of June dealing with the charges [...]<sup>16</sup>

<sup>12</sup> ICC-01/04-01/07-T-35- ENG ET WT 10-06-2008, page 24, lines 20-22

<sup>13</sup> ICC-01/04-01/07-T-35- ENG ET WT 10-06-2008, page 27, lines 7-10

<sup>14</sup> ICC-01/04-01/07-T-35- ENG ET WT 10-06-2008, page 27, lines 14-16

<sup>15</sup> ICC-01/04-01/07-T-35- ENG ET WT 10-06-2008, page 27, lines 17-18

<sup>16</sup> ICC-01/04-01/07-T-35- ENG ET WT 10-06-2008, page 27, lines 21-25

**CONSIDERING** that the Defence for Mathieu Ngudjolo Chui for the most part agreed with the proposed schedule, although it did not envisage taking up the full time allocated to it; and that in relation to the specific steps of the proposed schedule:

We will have an opening statement. It will last less than an hour and a half, and then we will make a statement at the end of the confirmation hearing which will also last less than an hour and a half.<sup>17</sup>

I can reassure you that our team will not bring any evidence. We have no witnesses that we wish to appear, and this was already stated at a previous status conference hearing.<sup>18</sup>

Other than that, as I said, we will stick to the schedule, and if we believe that there is an issue about the law that needs to be addressed we will raise the issue at the time.<sup>19</sup>

[w]e have not any intention to work in closed session unless during the proceedings there are reasons that bring us to require such a session [...]<sup>20</sup>

**CONSIDERING** that the Defences for Germain Katanga and/or Mathieu Ngudjolo Chui have not filed within the 12 June 2008 deadline any Defence List of Evidence; and that the schedule set out in the present decision might need some adjustment if they finally file a Defence List of Additional Evidence within the 20 June 2008 deadline;

**CONSIDERING** further that one of the Legal Representatives of Victims<sup>21</sup> indicated that the time collectively allocated to the Legal Representatives of Victims to make opening and closing statements was insufficient<sup>22</sup>; that in this regard, "we consider that an average of five hours would be sufficient"<sup>23</sup>; and that in relation to the time allocated for the discussion of evidence, "the two and a half hours are sufficient for our purposes;"<sup>24</sup>

<sup>17</sup> ICC-01/04-01/07-T-35- ENG ET WT 10-06-2008, page 28, lines 19-21

<sup>18</sup> ICC-01/04-01/07-T-35- ENG ET WT 10-06-2008, page 25, lines 1-3

<sup>19</sup> ICC-01/04-01/07-T-35- ENG ET WT 10-06-2008, page 28, lines 21-24

<sup>20</sup> ICC-01/04-01/07-T-35- ENG ET WT 10-06-2008, page 28, line 25 to page 29, line 2

<sup>21</sup> Ms Carine Bapita Buyagandu

<sup>22</sup> ICC-01/04-01/07-T-35- ENG ET WT 10-06-2008, page 30, lines 20-22 and page 31, lines 12-14

<sup>23</sup> ICC-01/04-01/07-T-35- ENG ET WT 10-06-2008, page 31, lines 20-21

<sup>24</sup> ICC-01/04-01/07-T-35- ENG ET WT 10-06-2008, page 31, line 6

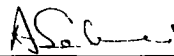
**CONSIDERING** that there are currently three different teams of Legal Representatives for non-anonymous victims (one of them also representing Victims for whom requests for anonymity are pending before the Single Judge), plus a fourth team of Legal Representatives representing anonymous Victim a/0333/07 (as well as anonymous victim a/0110/08 whose request for anonymity is pending before the Single Judge); that the time allocated for the opening and closing statements shall be equally divided among all four teams of Legal Representatives; and that neither the Prosecution nor the Defences for Germain Katanga and Mathieu Ngudjolo Chui objected to the request for the allocation of more time for the opening and closing statements of the Legal Representatives of Victims;<sup>25</sup>

**CONSIDERING** that any decision amending the schedule annexed to this decision shall be made in consultation with the parties and participants;

**FOR THESE REASONS,**

**DECIDES** that the schedule for the confirmation hearing in the case of *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui* shall be as provided in Annex I attached to the present decision

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



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**Judge Akua Kuenyehia**  
**Single Judge**

Dated this Friday 13 June 2008

At The Hague, the Netherlands

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<sup>25</sup> ICC-01/04-01/07-T-35- ENG ET WT 10-06-2008.



## **ANNEX I**

## Schedule of the Confirmation Hearing

### SCHEDULE OF THE CONFIRMATION HEARING IN THE CASE OF *THE PROSECUTOR*

#### V. *GERMAIN KATANGA AND MATHIEU NGUDJOLO CHUI*

This schedule is based on the following considerations:

1. Maximum 4 hours of Lingala interpretation can be provided per day;
2. No live witness;
3. 1 audio recording (19m29s) and 2 videos (15m36s and 50s) proposed by the Prosecution; and no video or audio evidence to be presented by the Defences;
4. In principle, no presentation of evidence in closed session hearing;
5. In principle, the Defences for Germain Katanga and Mathieu Ngudjolo Chui have said that they will not present evidence at the confirmation hearing.
6. The Defence for Mathieu Ngudjolo Chui will speak first and then the Defence for Germain Katanga, as the Defence for Germain Katanga has stated that it will be using very little time during the confirmation hearing.
7. The evidence proposed during the confirmation hearing shall be available on the screen of the computers located in the courtroom while being presented.

#### 1- Opening of the hearing

- a. Friday 27 June 2008, Public Session: from 9:00 to 9:30
  - i. After the opening of the hearing by the Presiding Judge, the charges shall be read out pursuant to rule 122(1) of the Rules of Evidence and Procedure; (30 minutes altogether)
- b. Friday 27 June 2008, Public Session: from 9:30 to 11:00
  - i. The Prosecution shall then have an hour and 30 minutes to make its opening statement.
- c. Friday 27 June 2008, Public Session: from 11:30 to 13:30
  - i. Two hours to be shared equally shared among the four teams of Legal Representatives of anonymous and non-anonymous Victims for their opening statements.

## **Schedule of the Confirmation Hearing**

- d. Monday 30 June 2008, Public Session: from 9:00 to 10:30
  - i. The Defence for Mathieu Ngudjolo Chui shall have an hour and 30 minutes to make its opening statement.
- e. Monday 30 June 2008, Public Session: from 11:00 to 12:30
  - i. The Defence for Germain Katanga shall have an hour and 30 minutes to make its opening statement.

### **2- Consideration of any matters related to jurisdiction, admissibility or other procedural issues**

- f. Wednesday 2 July 2008, Morning Public Session: from 09:00 to 11:00 and 11h30 to 13h30: Consideration of any matters related to jurisdiction, admissibility or other procedural issues raised by the Prosecution and/or the Defence and/or the Legal Representatives of non-anonymous Victims in their list that is due to be filed on 23 June 2008 pursuant to the Decision ICC-01/04-01/07-459 issued on 29 April 2008.
  - i. The Prosecution shall have one hour.
  - ii. The three teams of Legal Representatives of non-anonymous Victims shall have one hour total to be equally shared amongst them.
  - iii. The Defence for Mathieu Ngudjolo Chui shall have one hour.
  - iv. The Defence for Germain Katanga shall then have one hour.
- g. Thursday 3 July 2008, Public Session: from 14:00 to 14:30: Public Session will start with the Oral Decision on any matters related to jurisdiction, admissibility or other procedural issues raised on 23 June 2008 and discussed on 2 July 2008.

### **3- Presentation by the Prosecution of the evidence included in the Prosecution List of Evidence and Prosecution Additional List of Evidence (Total of 7 hours and 30 minutes)**

NOTE to the Prosecution: Prior notice needs to be given to the Lingala interpreters regarding the videos the Prosecution will rely upon at the Confirmation Hearing. The Prosecution will have to indicate to the Chamber sufficiently in advance when it intends to present it.

## **Schedule of the Confirmation Hearing**

- h. Thursday 3 July 2008: from 14:30 to 16:00, 16:30 to 18:30; and  
Friday 4 July 2008: from 9:00 to 11:00, 11:30 to 13:30.

At the sessions of 3 and 4 July 2008, the Prosecution shall address:

- (i) the evidence relating to the Prosecution contextual general and/or background allegations underpinning the charges against Germain Katanga and Mathieu Ngudjolo Chui, including the existence and character of the alleged armed conflict and background information on Germain Katanga and Mathieu Ngudjolo Chui;
- (ii) the evidence relating to the FRPI;
- (iii) the evidence relating to the FNI;
- (iv) the evidence relating to the crime base charged; and
- (v) the evidence relating to the alleged role of Germain Katanga and Mathieu Ngudjolo Chui, including the modes of liability under which they are charged;

4- Discussion by the Legal Representatives of Victims of Non-Anonymous Victims of the evidence included in the Prosecution List of Evidence and Prosecution Additional List of Evidence (Total of 7 hours and 30 minutes to be equally shared among the three teams of Legal Representatives of non-anonymous Victims.)

- i. Monday 7 July 2008: from 9:00 to 11:00, 11:30 to 13:30; and  
Tuesday 8 July 2008: from 9:00 to 11:00, 11:30 to 13:00.

5- Discussion by the Defence of Mathieu Ngudjolo Chui of the evidence included in the Prosecution List of Evidence and Prosecution Additional List of Evidence (Total of 7 hours and 30 minutes)

- j. Wednesday 9 July 2008, from 9:00 to 11:00, 11:30 to 13:30; and  
Thursday 10 July 2008, from 9:00 to 11:00, 11:30 to 13:00.

6- Discussion by the Defence of Germain Katanga of the evidence included in the Prosecution List of Evidence and Prosecution Additional List of Evidence (Total of 7 hours and 30 minutes)

- k. Friday 11 July 2008, from 9:00 to 11:00, 11:30 to 13:30; and

## **Schedule of the Confirmation Hearing**

Monday 14 July 2008, from 9:00 to 11:00, 11:30 to 13:00.

### **7- Closing statements<sup>1</sup>**

1. Tuesday 15 July 2008, Public Session, from 9:00 to 13:00; and  
Wednesday 16 July 2008, Public Session, from 9:00 to 12:30.
  - i. Tuesday 15 July 2008, 9:00 to 10:30: Prosecution Closing Statement;
  - ii. Tuesday 15 July 2008, 11:00 to 13:00: Two hours to be equally shared among the four teams of Legal Representatives of anonymous and non-anonymous Victims for their closing statements.
  - iii. Wednesday 16 July 2008, 9:00 to 10:30 and 11:00 to 12:30
    1. Closing Statement Defence for Mathieu Ngudjolo Chui; (one hour and 30 minutes); and
    2. Closing Statement Defence for Germain Katanga; (one hour and 30 minutes).
  - m. The Prosecution, the Legal Representatives of non-anonymous Victims and the Legal Representatives of anonymous Victims shall have until Tuesday 22 July 2008 at 16h00 to file a document in which they may address in writing any matters that they discussed at the confirmation hearing. The documents filed pursuant to this sub-paragraph shall be transmitted immediately to the Defences for Germain Katanga and Mathieu Ngudjolo Chui.
  - n. The Defences for Germain Katanga and Mathieu Ngudjolo Chui shall have until Monday 28 July 2008 at 16h00 to file a document in which they may address in writing any matters that they discussed at the confirmation hearing.

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<sup>1</sup> If the Defence for Germain Katanga does not use up its time as allocated in the schedule for the confirmation hearing, as was suggested during the Hearing, then the schedule may be moved forward in order to shorten the overall duration of the proceedings. Therefore, the closing statements may take place on Monday 14 July 2008 and Tuesday 15 July 2008