

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

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

Date: 9 July 2008

**PRE-TRIAL CHAMBER I**

**Before:** Judge Akua Kuenyehia, Presiding Judge  
Judge Anita Ušacka  
Judge Sylvia Steiner

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

**Public Document  
With Confidential Annexes**

**URGENT**

**Decision on the consultations under rule 124(1) of the Rules**

No. ICC-01/04-01/07

1/7

9 July 2008

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 Hervé Diakiese

**Legal Representatives of the Applicants**

**Unrepresented Victims**

**Unrepresented Applicants for  
Participation/Reparation**

**The Office of Public Counsel for  
Victims**

Ms Paolina Massida

**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**

**PRE-TRIAL CHAMBER I** of the International Criminal Court (“the Chamber” and “the Court,” respectively),

**NOTING** the confirmation hearing, held in public session on Thursday 3 July 2008<sup>1</sup> (“the 3 July 2008 Hearing”) in which the Chamber granted the request of the lead counsel of Germain Katanga to be absent from the Confirmation Hearing for Monday, 7 July 2008 and Tuesday, 8 July 2008;

**NOTING** the confirmation hearing, held in public session on Monday 7 July 2008<sup>2</sup> (“the 7 July 2008 Hearing”) in which the Chamber granted the request of the lead counsel of Germain Katanga to be absent from the Confirmation Hearing for Wednesday 9 July 2008;

**NOTING** the confirmation hearing, held in two public sessions on Wednesday 9 July 2008<sup>3</sup> (“the 9 July 2008 Hearing”) in which the Defence for Germain Katanga informed the Chamber that Germain Katanga had chosen not to attend the confirmation hearing because he has not seen his family since 2005;

**NOTING** “Mr Katanga’s waiver of his right to be present at the Confirmation Hearing pursuant to rule 124 of the Rules of Procedure and Evidence”<sup>4</sup> filed by the Defence for Germain Katanga on 9 July 2008;

**NOTING** articles 61, 67 and 71 of the *Rome Statute* (“the Statute”) and rules 121, 124 and 171 of the *Rules of Procedure and Evidence* (“the Rules”);

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<sup>1</sup> ICC-01/04-01/07-T-42-ENG ET WT 03-07-2008.

<sup>2</sup> ICC-01/04-01/07-T-44-ENG ET WT 07-07-2008.

<sup>3</sup> ICC-01/04-01/07-T-45-ENG ET 09-07-2008 and ICC-01/04-01/07-T-46-ENG RT 09-07-2008.

<sup>4</sup> ICC-01/04-01/07-670 and ICC-01/04-01/07-670-AnxA.

**CONSIDERING** that in a letter sent via email on 3 July 2008 to the Chamber, which is attached hereto to the present decision as Annex 1 and classified as confidential, Mr Hooper - lead counsel for the Defence for Germain Katanga - requested to be absent from Court proceedings on Monday and Tuesday, 7 and 8 July 2008, and that during such days the Defence for Germain Katanga be conducted by the other members of the Defence Team, including Professor Göran Sluiter and assistant defence counsel Caroline Buisman:

**CONSIDERING** that, as Mr Hooper explained in his 3 July 2008 letter, his request was made in light of the following circumstances:

At present the Confirmation schedule has the next 'active' slot for us on Friday of next week/and following Monday – for discussion of the Prosecution case. We do not propose to raise any matter. Should that change for some reason as a result of anything said today or tomorrow we will obviously know by tomorrow latest. But I cannot see why we would change our present position. So effectively there is no further oral contribution that we intend to make. Nor will we be making a closing speech. I will, as I have said, be back for Wednesday. The Chamber will be aware that I have made this case a priority so as to be present at nearly all pre-confirmation hearings.

**CONSIDERING** that during the 3 July 2008 Hearing, Mr Hooper, after consulting with Germain Katanga in the courtroom, explicitly confirmed to the Chamber that his client had no objection to his absence from Court proceedings on Monday and Tuesday, 7 and 8 July 2008;

**CONSIDERING** that, based on these above-mentioned circumstances, the Presiding Judge then granted the request made by Mr Hooper in his letter of 3 July 2008;

**CONSIDERING** that in a letter sent via email on 6 July 2008 to the Chamber, which is attached hereto to the present decision as Annex 2 and classified as confidential, Mr Hooper, in requesting to be absent for an additional day stated that:

The Katanga observations for the confirmation are listed for Friday and Monday, but it is probable that the other parties will not use their full allocation. As I stated in my earlier letter, we have no further submissions of note, other than our observations on Article 25 which Caroline Buisman will do in any event. I hope this proves satisfactory and I can assure the Chamber that, should you indulge this further allowance of time, and I had not foreseen the need for it, I will be there first thing Thursday.

**CONSIDERING** that during the 7 July 2008 Hearing, Professor Göran Sluiter confirmed to the Chamber that Germain Katanga had no objection to the further absence of Mr Hooper from Court proceedings on Wednesday 9 July 2008;

**CONSIDERING** that, based on these above-mentioned circumstances, the Presiding Judge then granted Mr. Hooper's request to be absent from Court proceedings for an additional day;

**CONSIDERING** nevertheless that on 9 July 2008, in the absence of Mr Hooper, Germain Katanga submitted a written request, pursuant to rule 124(1) of the Rules, expressing his wish to waive his right to be present for the remainder of the confirmation hearing;

**CONSIDERING** that as provided for in rule 124(1) of the Rules, the Chamber decided at the hearing held on 9 July 2008 to hold consultations on Germain Katanga's request on Thursday 10 July 2008 in the presence of the parties and participants to the confirmation hearing and specifically in the presence of Mr Hooper;<sup>5</sup>

**CONSIDERING**, however, that following the Chamber's oral decision, the Defence for Germain Katanga informed the Chamber that, due to unforeseen circumstances, Mr Hooper is "held up" in Arusha and may not be able to attend the consultations,

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<sup>5</sup> ICC-01/04-01/07-T-46-ENG RT 09-07-2008, p. 9, lines 6-14.

scheduled for Thursday morning, pursuant to Germain Katanga's request under rule 124 (1) of the Rules:

MR. SLUITER: Yes, your Honour. In respect to the hearing of tomorrow, there may be a problem with the presence of Mr. Hooper. He's apparently held up in -- in Arusha. So I hope you can give us some time to confer this. Can we have a minute to confer on this?<sup>6</sup>

MR. SLUITER: Yes. Thank you, your Honour. I apologise for this moment.

At this stage we simply do not know if Mr. Hooper can be here tomorrow. That's situation right now.<sup>7</sup>

**CONSIDERING** that given the above-mentioned circumstances, and in order to allow Germain Katanga to be represented by his Lead Counsel during the consultations under rule 124(1) of the Rules, such consultations shall be re-scheduled to Friday morning; that the presence of Mr Hooper at this hearing is expected as he was only authorised to be absent from the Court from 7 to 9 July 2008; and that therefore, the confirmation hearing shall only resume following a decision of the Chamber on the request of Germain Katanga under rule 124(1) of the Rules;

## **FOR THESE REASONS**

**DECIDES** that the consultations on Germain Katanga's request under rule 124(1) of the Rules shall be re-scheduled for Friday 11 July 2008 at 9h00;

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<sup>6</sup> ICC-01/04-01/07-T-46-ENG RT 09-07-2008, p. 10, lines 5 to 8.

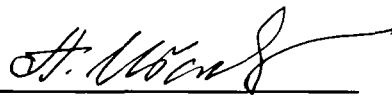
<sup>7</sup> ICC-01/04-01/07-T-46-ENG RT 09-07-2008, p. 11, lines 17-20.

**DECIDES** that the confirmation hearing shall only resume after the Chamber decides on Germain Katanga's request pursuant to rule 124(1) of the Rules.

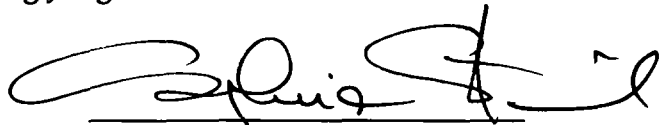
Done in both English and French, the English version being authoritative.



**Judge Akua Kuenyehia**  
**Presiding Judge**



**Judge Anita Ušacka**  
**Judge**



**Judge Sylvia Steiner**  
**Judge**

Dated this 9 July 2008

At The Hague, the Netherlands