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N° : ICC-01/04-01/07
Date : 18 February 2008

PRE-TRIAL CHAMBER I

Before : Judge Sylvia Steiner, Single Judge

Registrar : Mr Bruno Cathala

**SITUATION IN THE DEMOCRATIC REPUBLIC OF CONGO
IN THE CASE OF
THE PROSECUTOR *v.* GERMAIN KATANGA**

Public

**Defence observations on the joinder of the cases against Germain KATANGA and
Mathieu NGUDJOLO CHUI**

The Office of the Prosecutor

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

Defence Counsel

Mr David Hooper
Ms Caroline Buisman
Mr Göran Sluiter
Ms Sophie Menegon

1. Following the hearing held on 12 February 2008, during which the Pre-Trial Chamber requested the Defence for Germain KATANGA (“Defence”) to submit written observations on a possible joinder of the cases of Germain KATANGA and Mathieu NGUDJOLO CHUI,¹ the Defence presents the following observations.
2. The Defence concedes that, given the nature of the allegations against each man, there exists a persuasive argument for joinder of the two cases. The Defence concedes that it can raise no effective argument against such joinder in principle.
3. However, in making that concession the Defence seeks to draw the attention of the Chamber to the following matters.
 - (i) Firstly, the Statute, Rules and Regulations make no reference to a power of joinder by the Pre-Trial Chamber. It is therefore uncertain whether the Pre-Trial Chamber possesses the power to order joinder, or whether that it is a power reserved exclusively for the Trial Chamber.
 - (ii) Secondly, given that Mr Katanga has been detained since March 2005, the Defence is obviously concerned by the delay joinder will entail. We assume that a joinder will necessarily delay the commencement of Mr KATANGA’s confirmation process to the date provided for Mr NGUDJOLO, namely, May 21st. If that assumption be correct then we ask the Chamber to ensure that there be no further delay beyond the 21st May.
 - (iii) Finally, one effect of joinder, and the consequent delay, is that there will be a delay in our receiving the further facilities and funding available to the Defence only when we enter the pre-trial stage. This will have a significant effect on our ability to research, investigate and generally manage an effective and efficient defence. This will constitute an effective prejudice to Mr KATANGA. The Defence plan had not foreseen this three month delay.
4. Such prejudice can be mitigated by the Registry permitting the Defence further support at this stage. At present the team consists of myself, one legal assistant and a case manager. (Professor Sluiter has assisted us on a *pro bono* basis, but the demands made on his time make that an unfair imposition on him.). In anticipation of joinder and further delay we are now applying to the Registry for additional means under Court Regulation 83, justified by the delay and further complexity to the case that joinder will inevitably bring. We will be requesting that a second legal assistant be

¹ ICC-01/04-01/07-T-17 ENG ET WT 12-02-2008, page 13, l. 19-21.

appointed at this stage rather than after confirmation. We would be greatly assisted were the Chamber to indicate its support for this application. It will enable us to retain Professor Sluiter on a proper and reasonable basis.



Mr David Hooper, Lead Counsel

The 18th February 2008

At The Hague, The Netherlands