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No: ICC-01/04-01/07

Date: 2 April 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. Germain Katanga and Mathieu Ngudjolo Chui***

Public

**Decision on the Applications for Participation in the Proceedings of Applicants
a/0327/07 to a/0337/07 and a/0001/08**

The Office of the Prosecutor

Mr Luis Moreno Ocampo, Prosecutor
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Mr Éric MacDonald, Trial Lawyer
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Legal Representatives for Applicants

Ms Carine Bapita Buyagandu
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Ms Caroline Buisman

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Mathieu Ngudjolo Chui

Mr Jean-Pierre Kilenda Kakengi

Basila

Ms Maryse Alié

Ms Aurélie G. Roche

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

NOTING the Warrant of Arrest against Germain Katanga issued by Pre-Trial Chamber I (“the Chamber”) on 2 July 2007;¹

NOTING the Warrant of Arrest against Mathieu Ngudjolo Chui issued by Pre-Trial Chamber I on 6 July 2007;²

NOTING the “Submission of the Document Containing the Charges and of the List of Evidence”³ (“the Prosecution’s Charging Document against Germain Katanga”) filed by the Prosecution on 29 January 2008;

NOTING the applications for participation in the proceedings a/0327/07 to a/0337/07 and a/0001/08 (“the Applications”)⁴ filed as confidential and *ex parte* on 30 January 2008 in the record of the case *The Prosecutor v. Germain Katanga* in which the Applicants request recognition of the procedural status of victim in the proceedings of the case;

NOTING the “Rapport à la Chambre préliminaire I sur les demandes de participation a/0327/07 à a/0337/07 et a/0001/08 Conformément à la règle 89 paragraphe 1 du Règlement de procédure et de preuve et à la norme 86 paragraphe 5 du Règlement de la Cour”⁵ filed by the Registrar as confidential and *ex parte* on 30 January 2008 in the record of the case *The Prosecutor v. Germain Katanga*;

NOTING the “Decision authorising the filing of observations on the applications for participation in the proceedings a/0327/07 to a/0337/07 and a/0001/08”⁶ issued by the

¹ ICC-01/04-01/07-1

² ICC-01/04-01/07-260

³ ICC-01/04-01/07-170, ICC-01/04-01/07-170-Conf and its confidential annexes and ICC-01/04-01/07-170-Conf-Exp and its confidential and *ex parte* Annexes

⁴ ICC-01/04-01/07-171-Conf-Exp-Anx1 to ICC-01/04-01/07-171-Conf-Exp-Anx12

⁵ ICC-01/04-01/07-171-Conf-Exp

⁶ ICC-01/04-01/07-182

Single Judge on 7 February 2008, in which the Single Judge (i) ordered the Registry to provide the Prosecutor with a non-redacted version of the Applications and the Defence with a redacted version of the Applications; and (ii) granted the Prosecution and the Defence fifteen days from the notification of the Applications to submit their observations thereon;

NOTING the "Defence Application for Leave to Appeal the "Decision authorising the filing of observations on the applications for participation in the proceedings a/0327/07 to a/0337/07 and a/0001/08""⁷ filed on 13 February 2008;

NOTING the "Request for extension of time limit for the transmission of redacted applications a/0327/07 to a/0337/07 and a/0001/08 for participation to the Defence",⁸ filed on 18 February 2008, by which the Registry requested authorisation to transmit the Applications to the Defence by Wednesday 20 February 2008;

NOTING the "Order to Provide the Defence with Redacted Version of Applications"⁹ issued by the Single Judge on 19 February 2008, in which the Single Judge ordered the Registry to provide the Defence, as soon as practicable but no later than 20 February 2008, 16h00, with a redacted version of the Applications in which any information which might lead to the Applicants being identified is redacted;

NOTING the "*Addendum à la demande de participation a/0327/07*"¹⁰ filed by the Registry on 19 February 2008;

NOTING the registration in the record of the case of *The Prosecutor v. Germain Katanga* of the redacted versions of the Applications¹¹ and the "*Transmission à la*

⁷ ICC-01/04-01/07-193

⁸ ICC-01/04-01/07-207

⁹ ICC-01/04-01/07-209

¹⁰ ICC-01/04-01/07-210-Conf-Exp

¹¹ ICC-01/04-01/07-212-Conf-Anx1 to ICC-01/04-01/07-212-Conf-Anx12

*défense des demandes de participation a/0327/07 à a/0337/07 et a/0001/08 expurgées*¹² filed by the Registry on 20 February 2008;

NOTING the “Decision on the Defence Application for Leave to Appeal the “Decision authorising the filing of observations on the applications for participation in the proceedings a/0327/07 to a/0337/07 and a/0001/08”¹³ issued by the Single Judge on 27 February 2008 (“the Decision rejecting the Defence Application for Leave to Appeal)”, in which the Single Judge rejected the Defence Application for Leave to Appeal;

NOTING the “Prosecution’s Observations on the Applications for Participation in the Proceedings of Applicants a/0327/07 to a/0337/07 and a/0001/08”¹⁴ filed on 6 March 2008, whereby the Prosecution requested that the Chamber (i) grants Applicants a/0327/07 to a/0331/07, a/0334/07, a/0335/07 and a/0001/08 the procedural status of victim in the case of *The Prosecutor v. Germain Katanga*, (ii) requests Applicants a/0332/07 and a/0333/07 to provide further information, and (iii) rejects Applications a/0336/07 and a/0337/07 as the harm suffered by these Applicants has no causal link with the charges in the case at hand;

NOTING the “Defence’s observations on the 12 applications for participation as victims”¹⁵ filed by the Defence Counsel for Germain Katanga on 7 March 2008, whereby the Defence Counsel requested the Chamber to reject (i) Applications a/0332/07 to a/0337/07 and a/0001/08 as there is no sufficient link with the charges contained in the arrest warrant for Germain Katanga, and (ii) the remaining Applications because in none of them is it demonstrated that the Applicants’ personal interests are sufficiently affected to participate at this stage of the proceedings;

¹² ICC-01/04-01/07-212-Conf See also ICC-01/04-01/07-212-Conf-Anx10 filed on 22 February 2008 (confidential redacted version of Application a/0328/07)

¹³ ICC-01/04-01/07-241

¹⁴ ICC-01/04-01/07-250-Conf-Exp

¹⁵ ICC-01/04-01/07-253

NOTING the “Decision on the Joinder of the Cases against Germain KATANGA and Mathieu NGUDJOLO CHUI”¹⁶ issued by the Chamber on 10 March 2008;

NOTING the “Decision Establishing a Calendar in the Case against Germain KATANGA and Mathieu NGUDJOLO CHUI”¹⁷ issued by the Single Judge on 10 March 2008, in which the Single Judge, *inter alia*, decided (i) that the Defence for Mathieu Ngudjolo Chui shall have until 20 March 2008 to present observations concerning the possible granting to Applicants a/0327/07 to a/0337/07 and a/0001/08 the procedural status of victim in the case of *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, and (ii) that the Prosecution and the Defence for Germain Katanga shall have until 20 March 2008 to present observations concerning the possible granting to applicant a/0334/07 the procedural status of victim in the case of *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*;

NOTING the “*Observations de la Défense Relatives aux 12 Demandes de Participation a/0327/07 à a/0337/07 et a/0001/08*”¹⁸ filed by the Defence Counsel for Mathieu Ngudjolo Chui on 20 March 2008, whereby the Defence Counsel, in addition to alleging that the Defence should be provided with the Registry’s Reports on the applications for participation, requested that the Chamber rejects (i) Applications a/0332/07, a/0334/07 to a/0337/07 and a/0001/08 as the Applicants do not meet the requirement of either the territorial or the temporal jurisdiction of the Court, or the causal link requirement, (ii) Applications a/0327/07 to a/0331/07 and a/0333/07 on the basis that (a) they have not shown, in accordance with article 68(3) of the Statute, that their personal interests are affected at this stage of the proceedings and (b) the pre-trial stage is not the appropriate stage for their participation;

¹⁶ ICC-01/04-01/07-257; and ICC-01/04-01/07-307

¹⁷ ICC-01/04-01/07-259, and ICC-01/04-01/07-310 Decision rectifying errors in the “Decision Establishing a Calendar in the Case against Germain KATANGA and Mathieu NGUDJOLO CHUI

¹⁸ ICC-01/04-01/07-332.

NOTING that neither the Prosecution, nor the Defence Counsel for Germain Katanga have submitted additional observations on the re-filed Application of Applicant a/0334/07;

NOTING articles 57(3)(c), 61 and 68 of the *Rome Statute* ("the Statute"), rules 86, 87, 88, 89, 91, 121 and 122 of the *Rules of Procedure and Evidence* ("the Rules") and regulation 86 of the *Regulations of the Court* ("the Regulations");

CONSIDERING, at the outset, that the Defence Counsel for Mathieu Ngudjolo Chui requested the Chamber to provide him with the Registry's Report on the applications for participation; and that the Chamber has already stated that (i) the purpose of the Report is to assist the Chamber; (ii) there is no express provision in the Statute or the Rules requiring the Chamber to transmit the Report to the participants; and (iii) the only obligation of the Chamber under rule 89(1) of the Rules is to order the Registry to provide the Prosecution and the Defence with copies of the Applications;¹⁹

CONSIDERING that as held in the Decision rejecting the Defence Application for Leave to Appeal (i) the security situation of the particular applicants has been taken into consideration in reaching the conclusion that the ordered redactions are necessary; and (ii) sufficient reasoning has been provided as to the need for such redactions;²⁰

CONSIDERING further that, according to the case law of this Chamber (i) the analysis of whether victims' personal interests are affected under article 68(3) of the Statute is to be conducted in relation to "stages of the proceedings", and not in relation to each specific procedural activity or piece of evidence dealt with at a given stage of the proceedings; (ii) the investigation of a situation and the pre-trial phase of a case are stages of the proceedings in relation to which the analysis of whether victims' personal interests are affected under article 68(3) of the Statute is to be

¹⁹ ICC-01/04-374, paras 35 and 38

²⁰ ICC-01/04-01/07-241, p 7

conducted;²¹ and (iii) this interpretation is consistent with the Decision of the Appeals Chamber of 13 June 2007;²²

CONSIDERING further that this Chamber has also highlighted that:

“[A]ccording to the Single Judge's interpretation of article 68(3) of the Statute, the personal interests of victims are affected at the investigation stage of a situation and the pre-trial stage of a case; that these are appropriate stages of the proceedings for victims' participation; and that accordingly, victims have a procedural status in proceedings concerning the investigation of a situation and the pre-trial stage of a case”;²³

CONSIDERING that, in the view of the Single Judge, all of the Applicants are seeking the recognition of the procedural status of victim in the proceedings concerning the pre-trial stage of the case of *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*;²⁴

CONSIDERING that, in the view of the Single Judge the applications of Applicants a/0327/07, a/0329/07 to a/0337/07 and a/0001/08 are complete;

CONSIDERING that in relation to the application of Applicant a/0328/07, the place of birth appearing on the voting card provided by the applicant is not consistent with the one he indicated in Section A of the standard application form; that accordingly, in the absence of any justification as to the reasons of such an inconsistency, the identity of the applicant has not been duly established; and that therefore the Single Judge shall only consider the application of Applicant a/0328/07 if he submits additional information explaining the reasons for the above-mentioned inconsistency;

CONSIDERING that although Applicant a/0333/07 is still a minor; he is turning 18 years old in the very near future; he has legal representation; and that thus, the Single Judge will consider his Application for the purpose of this decision;

²¹ ICC-02/05-121, p. 6 See also ICC-01/04-444, pp. 8 and 10

²² ICC-02/05-121, p. 6 See also ICC-01/04-444, p. 8

²³ ICC-02/05-118, p. 5 See also ICC-02/05-121, pp. 7 and 8, and ICC-01/04-438, p. 5

²⁴ ICC-01/04-374, paras 2 and 4

CONSIDERING that, as the Chamber has held on several occasions, under rule 85(a) of the Rules the following four criteria must be satisfied for the granting to an applicant of the procedural status of victim in the proceedings concerning the pre-trial stage a case: (i) the applicant must be a natural person; (ii) the applicant must have suffered harm; (iii) the crime from which the harm resulted must fall within the jurisdiction of the Court and must be the subject of “a warrant of arrest or summons to appear, and, subsequently, a charging document (crimes encompassed by the relevant case);” and (iv) there must be a causal link between the crime and the harm;²⁵

CONSIDERING that, in relation to the third requirement, the Prosecution’s Charging Document against Germain Katanga and the Warrant of Arrest for Mathieu Ngudjolo Chui are confined to crimes falling within the jurisdiction of the Court which were allegedly committed during the alleged joint FRPI/FNI attack on the village of Bogoro on or about 24 February 2003;²⁶

CONSIDERING that, in relation to the fourth requirement, the applicant and, as the case may be, the immediate family or the dependents of the direct applicant, must show that they suffered harm (i) as a result of the crimes which were allegedly committed during the alleged joint FRPI/FNI attack on the village of Bogoro on or about 24 February 2003 (direct link between the harm and the alleged crimes); or (ii) in intervening to assist direct victims in the case at hand, or to prevent their victimisation as a result of the commission of the said crimes;²⁷

CONSIDERING further that the applicants are only required to demonstrate that the four requirements established by rule 85 of the Rules are met *prima facie*²⁸ and that therefore the Single Judge’s analysis of the Applications “will not consist in assessing the credibility of the [applicants’] statement[s] or engaging in a process of

²⁵ See ICC-02/05-121, p 8 See also ICC-01/04-101, para 94, and ICC-01/04-01/06-601, p 9

²⁶ ICC-01/04-01/07-55, paras 9 to 16, and ICC-01/04-01/07-262, paras 9 to 16

²⁷ ICC-01/04-01/06-172, p 7 and 8

²⁸ ICC-01/04-101-Corr, para 66 See also, ICC-01/04-417, para 8

corroboration *stricto sensu*”,²⁹ but will assess the applicants’ statements first and foremost on the merits of their intrinsic coherence, as well as on the basis of the information otherwise available to the Single Judge;³⁰

CONSIDERING that Applicants a/0327/07, a/0329/07 to a/0337/07 and a/0001/08 are natural persons;³¹

CONSIDERING nevertheless that Applicants a/0332/07, a/0334/07, a/0335/07, a/0336/07, a/0337/07 and a/0001/08 indicate that the harm that they allegedly suffered occurred either in January 2003 or in May 2003; that therefore their Applications for the granting of the procedural status of victim at the pre-trial stage of the present case must be rejected because the harm that they allege did not take place during the alleged joint FRPI/FNI attack on the village of Bogoro on or about 24 February 2003; and that their Applications shall be examined by the Chamber, in due course, for the purpose of granting them the procedural status of victims at the stage of the investigation into the situation in the Democratic Republic of the Congo (“the DRC”);

CONSIDERING that Applicants a/0327/07, a/0329/07, a/0330/07, a/0331/07 and a/0333/07 claim to have suffered harm as a result of the crimes allegedly committed during the alleged joint FRPI/FNI attack on the village of Bogoro on or about 24 February 2003;

CONSIDERING that, in relation to Applicant a/0327/07, the Single Judge is of the view that she has provided evidence establishing *prima facie* that she suffered emotional harm and economic loss as a result of the crimes allegedly committed in the alleged joint FRPI/FNI attack on Bogoro on or about 24 February 2003, during which, *inter alia*, members of her family, including her son and her brother, were killed and her house was pillaged and destroyed;

²⁹ ICC-01/04-101-Corr, para 101

³⁰ ICC-01/04-417, para 8.

³¹ ICC-01/04-101, para 80.

CONSIDERING that, in relation to Applicant a/0329/07, the Single Judge is of the view that he has provided evidence establishing *prima facie* that he suffered emotional harm and economic loss as a result of the crimes allegedly committed in the alleged joint FRPI/FNI attack on Bogoro on or about 24 February 2003, during which, *inter alia*, members of his family, including his wife and children, were killed and his house was pillaged and destroyed;

CONSIDERING that, in relation to Applicant a/0330/07, the Single Judge is of the view that he has provided evidence establishing *prima facie* that he suffered emotional harm and economic loss as a result of the crimes allegedly committed in the alleged joint FRPI/FNI attack on Bogoro on or about 24 February 2003, during which, *inter alia*, members of his family, including his father and mother, were killed, his house and property were pillaged and destroyed;

CONSIDERING that, in relation to Applicant a/0331/07, the Single Judge is of the view that he has provided evidence establishing *prima facie* that he suffered emotional harm and economic loss as a result of the crimes allegedly committed in the alleged joint FRPI/FNI attack on Bogoro on or about 24 February 2003, during which, *inter alia*, members of his family, including his two sons, were killed and his house and property were pillaged and destroyed;

CONSIDERING that Applicant a/0333/07 alleges that he (i) was conscripted into the FRPI in January 2003; (ii) consequently underwent military training; (iii) took part in hostilities in February and March 2003; and (iv) was demobilised in May 2003; and that the Chamber has previously stated in the Decisions on the evidence and information provided by the Prosecution for the Issuance of a Warrant of Arrest for Germain Katanga and Mathieu Ngudjolo Chui in relation to the crime of using children under the age of fifteen years to participate actively in hostilities:

"[...] each individual instance of [...] use to participate actively in hostilities of children under the age of fifteen gives rise to a crime within the jurisdiction of the Court. However, the Chamber considers that it is advisable to treat [...] all instances of use to participate actively in hostilities of children under the age of fifteen by members of the UPC/FPLC as a continuous crime to use to participate actively in hostilities of children under the age of fifteen."³²

CONSIDERING therefore that, in relation to Applicant a/0333/07, the Single Judge is of the view that he has provided evidence establishing *prima facie* that he suffered emotional harm as a result of the crimes allegedly committed in the alleged joint FRPI/FNI attack on Bogoro on or about 24 February 2003, *inter alia*, his forced recruitment into the FRPI and participation in hostilities resulting in continuous psychological problems;

CONSIDERING that, after having carefully considered each application, the Single Judge is of the view that Applicants a/0327/07, a/0329/07, a/0330/07, a/0331/07 and a/0333/07 fulfil all the criteria as set out in rule 85(a) of the Rules and should therefore be granted the procedural status of victim at the pre-trial stage of the case of *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*;

CONSIDERING that, as the Chamber has already held in a previous case, "the victims in the case of *The Prosecutor v. Thomas Lubanga Dyilo* are also recognised as victims in the investigation into the situation in the DRC with regard to the crimes associated with this case";³³ and that therefore those granted the procedural status of victim in the present case must also be granted the procedural status of victim at the stage of the investigation into the situation in the DRC;

CONSIDERING further that in previous decisions the Chamber has held that:

"[T]he granting of the procedural status of victim in situation or case proceedings automatically gives the applicants the right to participate in such proceedings";³⁴

³² ICC-01/04-01/07-55, para 50, and ICC-01/04-01/07-262, para 51, ICC-01/04-01/06-803-tEN, para. 248, and ICC-01/04-01/06-1-US-Exp-Corr, para 105

³³ ICC-01/04-01/06-228-tEN, pp 13 and 14

³⁴ ICC-02/05-118, p 5, and ICC-02/05-121, p 8 See also ICC-01/04-438, p 5, and ICC-01/04-444, p 11

"[T]he extent of their participation must be subsequently determined by the Chamber because article 68(3) of the Statute does not pre-establish a set of procedural rights (i.e. modalities of participation) that those granted the procedural status of victim may exercise, but rather leaves their determination to the discretion of the Chamber;³⁵

[W]hen determining the set of procedural rights attached to the procedural status of victim, the Single Judge: (i) need not make a second assessment of the victims' personal interests; and (ii) must ensure that such procedural rights are determined "in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial";³⁶

CONSIDERING that, in order to determine the set of procedural rights attached to the status of victim at the pre-trial stage of the present case, the Single Judge considers necessary to obtain the observations of the Prosecution, the Defences for Germain Katanga and Mathieu Ngudjolo Chui and of those granted the procedural status of victim in the present decision; and that the previous case law of the Chamber on this matter in the case of the *The Prosecutor v. Thomas Lubanga Dyilo*³⁷ should be taken into consideration in making such observations;

CONSIDERING further that those Applicants who are granted the procedural status of victim in the present decision must specify in their observations whether they request that their identities not be revealed to the Defence during the pre-trial stage of the case of *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*;

FOR THESE REASONS

REJECT the request of the Defence Counsel for Mathieu Ngudjolo Chui to have access to the Registry's Report on the applications of Applicants a/0327/07 to a/0337/07 and a/0001/08;

ORDER the Registry to inform Applicant a/0328/07 or his Legal Representative that the Chamber will not consider his Application unless he completes it by providing additional information on the reasons why the place of birth appearing on the voting

³⁵ ICC-02/05-118, p. 5, and ICC-02/05-121, p. 9. See also ICC-01/04-423, para 5, ICC-01/04-438, p. 5; and ICC-01/04-444, p. 11.

³⁶ ICC-02/05-121, p. 9. See also ICC-01/04-423, para 5, and ICC-01/04-444, p. 11.

³⁷ ICC-01/04-01/06-462.

card provided by the Applicant is not consistent with the place of birth indicated in Section A of the standard application form;

DENY the procedural status of victim at the pre-trial stage of the case of *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui* to Applicants a/0332/07, a/0334/07, a/0335/07, a/0336/07, a/0337/07 and a/0001/08;

DECIDE that the Applications of Applicants a/0332/07, a/0334/07, a/0335/07, a/0336/07, a/0337/07 and a/0001/08 for being granted the procedural status of victim at the stage of the investigation into the situation in the DRC shall be examined by the Chamber in due course;

GRANT the procedural status of victim at the pre-trial stage of the case of *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui* and at the stage of the investigation into the DRC situation to Applicants a/0327/07, a/0329/07, a/0330/07 a/0331/07 and a/0333/07;

DECIDE that, for the time being, Applicants a/0327/07, a/0329/07, a/0330/07, a/0331/07 and a/0333/07 or their Legal Representatives shall not be given access to any non-public documents contained in the record of the case of *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*;

ORDER that Applicants a/0327/07, a/0329/07, a/0330/07, a/0331/07 and a/0333/07 may only be contacted through their Legal Representatives and must only be referred to by the numbers assigned to them by the Registry, until otherwise ordered by the Chamber;

ORDER the Registrar to notify to the Prosecution, the Defences for Germain Katanga and Mathieu Ngudjolo Chui and Applicants a/0327/07, a/0329/07, a/0330/07,

a/0331/07 and a/0333/07 the Decision on the modalities of participation in the case *Prosecution v. Thomas Lubanga Dyilo* – ICC-01/04-01/06-462;

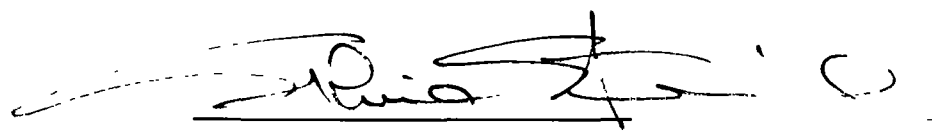
DECIDE that Applicants a/0327/07, a/0329/07, a/0330/07, a/0331/07 and a/0333/07 shall have until Wednesday 9 April 2008 at 16h00:

- (i) to make a request, if they so wish, for the non-disclosure of their identities to the Defences for Germain Katanga and Mathieu Ngudjolo Chui during the pre-trial stage of the present case; and
- (ii) to make their observations on the set of procedural rights that should be attached to the procedural status of victim at the pre-trial stage of the present case;

DECIDE that the Prosecution shall have until Monday 14 April 2008, and the Defences for Germain Katanga and Mathieu Ngudjolo Chui until Friday 18 April 2008 to make their respective observations on:

- (i) any request for non-disclosure of identity made by Applicants a/0327/07, a/0329/07, a/0330/07, a/0331/07 and a/0333/07;
- (ii) the set of procedural rights that should be attached to the procedural status of victim at the pre-trial stage of the present case.

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



Judge Sylvia Steiner
Single judge

Dated this Wednesday, 2 April 2008

At The Hague

The Netherlands