

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 25 April 2008

PRE-TRIAL CHAMBER I

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

**SITUATION IN THE DEMOCRATIC REPUBLIC OF CONGO
IN THE CASE OF
THE PROSECUTOR
*v. GERMAIN KATANGA AND MATHIEU NGUDJOLO CHUI***

Public Document

Decision on the Defence Request for Postponement of 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 for Germain

Katanga

Mr David Hooper

Ms Caroline Buisman

Counsel for the Defence for Mathieu

Ngudjolo Chui

Mr Jean-Pierre Kakengi Kilenda Basila

Ms Maryse Alié

Legal Representatives of the Victims

Ms Carine Bapita Buyagandu

Mr Joseph Keta

Mr J.L. Gilissen

Legal Representatives of the Applicants

Unrepresented Victims

**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

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 “Decision on the Joinder of the cases against Germain KATANGA and Mathieu NGUDJOLO CHUI”¹ issued by the Chamber on 10 March 2008 and by which the Chamber decided that the hearing on the confirmation of the charges in the case of *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui* shall commence on 21 May 2008;

NOTING the “Decision Establishing a Calendar in the Case against Germain KATANGA and Mathieu NGUDJOLO CHUI”² issued by the Single Judge on 10 March 2008;

NOTING the “*Requête de la Défense de Mathieu Ngudjolo en vue de solliciter le report de la date de l’audience de confirmation des charges actuellement fixée par la Chambre Préliminaire au 21 mai 2008*”³ (“Application for Postponement”) filed by the Defence for Mathieu Ngudjolo Chui on 18 April 2008, in which the Defence requested a postponement of the confirmation hearing;

NOTING the “Decision on Evidentiary Scope of the Confirmation Hearing, Preventive Relocation and Disclosure under Article 67(2) of the Statute and Rule 77 of the Rules”⁴ issued by the Single Judge on 18 April 2008;

¹ ICC-01/04-01/07-257

² ICC-01/04-01/07-259 and ICC-01/04-01/07-310

³ ICC-01/04-01/07-410

⁴ ICC-01/04-01/07-411-Conf-Exp, ICC-01/04-01/07-423-Conf, and ICC-01/04-01/07-428

NOTING the “Prosecution’s Submission of the Document Containing the Charges and List of Evidence”⁵ (“the Charging Document and List of Evidence”) filed by the Prosecution on 21 April 2008;

NOTING the public hearing⁶ held with the Prosecution, the Defence teams for Germain Katanga and Mathieu Ngudjolo Chui and the representatives of the Registry on 22 April 2008, during which (i) the Application for Postponement was addressed; and (ii) the Chamber gave for the Prosecution, the Defence teams for Germain Katanga and Mathieu Ngudjolo Chui until Wednesday 23 April 2008 to submit final written observations on the Application for Postponement as well as proposed new dates for the initiation of the confirmation hearing in the event that the Chamber granted the Application for Postponement;

NOTING that neither the Prosecution nor the Defences for Germain Katanga and Mathieu Ngudjolo Chui have filed written submissions on the Application for Postponement or on proposed new dates for the initiation of the confirmation hearing in the event Chamber granted the Application for Postponement;

NOTING the various decisions on leave to appeal that have been granted by the Single Judge or by the Chamber and for which judgments of the Appeals Chamber are still pending;⁷

NOTING the “Prosecution’s Submission of Information on Compliance with the E-Court Protocol”⁸ filed by the Prosecution on 25 April 2008;

⁵ ICC-01/04-01/07-422 with public annexes Anx1A and Anx2A

⁶ ICC-01/04-01/07-T-25-ENG-ET 22-04-2008

⁷ ICC-01/04-01/07-108, ICC-01/04-01/07-116, ICC-01/04-01/07-149; ICC-01/04-01/07-365; and ICC-01/04-01/07-384

⁸ ICC-01/04-01/07-439.

NOTING the Decision on the “Defence Application pursuant to Article 57(3)(b) of the Statute to Seek the Cooperation of the Democratic Republic of Congo (DRC)”⁹ issued by the Chamber on 25 April 2008;

NOTING articles 57, 60, 61 and 67 of the *Rome Statute* (“the Statute”) and rules 121 and 122 of the *Rules of Procedure and Evidence* (“the Rules”) and regulation 20 of the *Regulations of the Court* (“the Regulations”);

CONSIDERING that, in its Application for Postponement, the Defence for Mathieu Ngudjolo Chui requested the postponement of the date of the confirmation hearing for at least 60 days after the last judgment issued by the Appeals Chamber because, *inter alia*, (i) material and organisational obstacles prevent the Defence from properly preparing for the confirmation hearing; (ii) in light of the accumulation of procedural steps as well as procedural constraints related to elements disclosed by the Prosecution, the Defence does not have sufficient time or the necessary resources to properly prepare for the confirmation hearing; and (iii) most of the documents filed by the Prosecution and issued by the Court are in English and the Defence for Mathieu Ngudjolo Chui does not have the resource to translate them;

CONSIDERING that, in a recent decision, the Single Judge has acknowledged “the considerable amount of submissions”¹⁰ that the Defence for Mathieu Ngudjolo Chui is faced with, as well as the problems arising from “the organization of the Defence Team in terms of personnel and access and training to relevant software of the Court”;¹¹

⁹ ICC-01/04-01/07-443-Conf-Exp and ICC-01/04-01/07-444

¹⁰ ICC-01/04-01/07-399, page 5

¹¹ ICC-01/04-01/07-399, page 5

CONSIDERING nevertheless that, the translation problems alleged by the Defence for Mathieu Ngudjolo Chui are not factors that should be considered for the purpose of deciding on the postponement of the initiation of the confirmation hearing, and must be addressed in the same manner as provided for in previous jurisprudence of this Chamber;¹²

CONSIDERING that on 21 April 2008, the Prosecution filed the Charging Document and List of Evidence in relation to both suspects; that nevertheless, as had been ordered by the Single Judge on 22 April 2008, the Prosecution still had to comply with its obligations in respect of the e-court protocol;¹³ and that therefore, in accordance with the guidance given by the Single Judge at the hearings of 14 December 2007, 1 April 2008 and 22 April 2008, the 30-day deadline provided for in rule 121(3) of the Rules shall not start running until the Prosecution complies with its obligations concerning the filing of electronic copies of the evidence contained in the Charging Document and List of Evidence with the data required by the e-court protocol;

CONSIDERING further that the Chamber has partially granted the request of the Defence for Germain Katanga to seek the cooperation from the Democratic Republic of the Congo ("the DRC") for the prompt transmission of certain documents;¹⁴ that the likelihood of the DRC's compliance prior to the start of the confirmation hearing may be greater if the confirmation hearing is postponed due to the circumstances referred to in the present decision; and that this will be beneficial to the Defence for Germain Katanga;

¹² ICC-01/04-01/07-304, pages 3-5, See also, ICC-01/04-01/06-268, and ICC-01/04-01/07-127

¹³ ICC-01/04-01/07-T-26-ENG ET WT 22-04-2008, page 23, lines 8 to 10 On 25 April 2008, the Prosecution informed the Single Judge that, in compliance with the Order of 22 April 2008, all the documents identified on the List of Evidence have been linked, according to the e-court protocol, to the relevant paragraphs of the Document Containing the Charges, ICC-01/04-01/07-439

¹⁴ Decision on the "Defence Application pursuant to Article 57(3)(b) of the Statute to Seek the Cooperation of the Democratic Republic of Congo (DRC)", ICC-01/04-01/07-443-Conf-Exp and ICC-01/04-01/07-444.

CONSIDERING that the Chamber has repeatedly emphasised that the confirmation hearing (i) has a limited scope and purpose, and it is therefore not a “mini-trial” or “a trial before a trial”;¹⁵ and (ii) must be held within a *reasonable* time after the person's surrender or voluntary appearance before the Court; and that, in the view of the Chamber, postponing the commencement date of the confirmation hearing to 27 June 2008 is consistent with these elements;

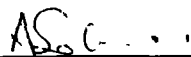
CONSIDERING that there are five interlocutory appeals in the case of *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui* which are currently pending before the Appeals Chamber; that in relation to some of them, the Appeals Chamber has to decide on the suspensive effects requested by the appellants; and that, therefore, the confirmation hearing will commence on 27 June 2008 unless the Appeals Chamber otherwise decides;

¹⁵ ICC-01/04-01/07-428, para 6, ICC-01/04-01/07-412, page 4, ICC-01/04-01/07-T-25-ENG-ET 22-04-2008, page 14, lines 4 to 11

FOR THESE REASONS

DECIDES to postpone the commencement date of the confirmation hearing in the present case to Friday 27 June 2008.

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



Judge Akua Kuenyehia
Presiding Judge

Judge Anita Ušacka **Judge Sylvia Steiner**

Dated this Friday 25 April 2008

At The Hague, The Netherlands