

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 29 April 2008

PRE-TRIAL CHAMBER I

Before: Judge Sylvia Steiner, Single Judge

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

Public Document

**Decision Establishing a Calendar according to the date of the Confirmation
hearing: 27 June 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

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

Mr Simo Väättäin

Detention Section

**Victims Participation and Reparations
Section**

Other

I, Judge Sylvia Steiner, judge at the International Criminal Court ("the Court");

NOTING the "Decision on the Joinder of the cases against Germain KATANGA and Mathieu NGUDJOLO CHUI"¹ issued by Pre-Trial Chamber I ("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 "Prosecution's Submission of the Document Containing the Charges and List of Evidence"³ filed by the Prosecution on 21 April 2008;

NOTING the public hearing⁴ held with the Prosecution, the Defence teams for Germain Katanga and Mathieu Ngudjolo Chui and the representatives of the Registry on 22 April 2008;

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"⁵ ("the Decision on Evidentiary Scope of the Confirmation Hearing"), issued by the Single Judge on 21 April 2008;

¹ ICC-01/04-01/07-257

² ICC-01/04-01/07-259

³ ICC-01/04-01/07-422 with public annexes Anx1A and Anx2A

⁴ ICC-01/04-01/07-T-25-ENG-ET 22-04-2008

⁵ ICC-01/04-01/07-411-Conf-Exp, ICC-01/04-01/07-423-Conf, ICC-01/04-01/07-428-Corr

NOTING the “Prosecution's Submission of Information on Compliance with the E-Court Protocol”⁶ filed by the Prosecution on 25 April 2008;

NOTING the “Decision on the Defence Request for Postponement of the Confirmation Hearing”⁷ (“the Decision on the Postponement of the Confirmation Hearing”) issued by the Chamber on 25 April 2008, in which the Chamber decided to schedule the confirmation hearing on 27 June 2008;

NOTING the Order concerning the Prosecution’s List of Evidence⁸ issued by the Single Judge on 25 April 2008, in which the Single Judge ordered the Prosecution to re-file its List of Evidence;

NOTING the “Prosecution's Re-Submission of the French and English Redacted List of Evidence”⁹ filed by the Prosecution on 28 April 2008;

NOTING articles 54, 57(3)(c), 61, 67 and 68 of the *Rome Statute* (“the Statute”) and rules 58, 76 to 83, 89, 121 and 122 of the *Rules of Procedure and Evidence* (“the Rules”);

CONSIDERING that the Prosecution filed the Charging Document and List of Evidence in the present case on 21 April 2008; that the Prosecution complied with the requirements of the e-court protocol only on 25 April 2008; and that the Prosecution, following the Single Judge’s 25 April 2008 order, re-filed the Prosecution's French and English Redacted List of Evidence on 28 April 2008;

⁶ ICC-01/04-01/07-439

⁷ ICC-01/04-01/07-446

⁸ ICC-01/04-01/07-448-Conf

⁹ ICC-01/04-01/07-449

CONSIDERING that the Prosecution confirmed to the Single Judge at the 22 April 2008 Status Conference that the Prosecution shall include no more than ten documents in the Prosecution Additional List of Evidence;¹⁰

CONSIDERING that in the Decision on Evidentiary Scope of the Confirmation Hearing, the Single Judge has already decided on the use of summaries of statements, interview notes and transcripts of interviews of witnesses on which the Prosecution does not intend to rely at the confirmation hearing and which contain potentially exculpatory material or otherwise material for the Defences' preparation of the confirmation hearing:

For these reasons, in the present case, the Prosecution must make the utmost effort to disclose to the Defences of Germain Katanga and Mathieu Ngudjolo Chui by 21 April 2008, and no later than fifteen days prior to the commencement of the confirmation hearing, the summaries of the statements, interview notes and interview transcripts of the [REDACTED] potential witnesses referred to at the 1 April 2008 and 15 April 2008 hearings.

The Single Judge also considers that when the Prosecution complies with its disclosure obligations pursuant to article 67(2) of the Statute and rule 77 of the Rules through the use of summaries of statements, interview notes and interview transcripts of potential witnesses, the Defence can only rely at the confirmation hearing on the information contained therein if it decides to include the relevant summaries in the Defence List of Evidence provided for in rule 121(6) of the Rules.

Therefore, in the present case, the Defences of Germain Katanga and Mathieu Ngudjolo Chui will then have until 15 days prior to the initiation of the confirmation hearing to decide whether they intend to rely at the hearing on any of the summaries disclosed by the Prosecution by 21 April 2008. Furthermore, in relation to those summaries disclosed by the Prosecution after 21 April 2008, the Defence will have until seven days prior to the commencement of the confirmation hearing to make such a decision.¹¹

CONSIDERING further that in the Decision on Evidentiary Scope of the Confirmation Hearing, the Single Judge has also decided on the use of documents on which the Prosecution does not intend to rely at the confirmation hearing and which

¹⁰ ICC-01/04-01/07-T-ENG ET 22-04-2008, page 25 lines 8-10.

¹¹ ICC-01/04-01/07-411-Conf-Exp, ICC-01/04-01/07-423-Conf, ICC-01/04-01/07-428-Corr, paras 121-123

contain potentially exculpatory material or otherwise material for the Defence's preparation of the confirmation hearing:

Consequently, the Prosecution shall directly disclose to the Defences of Germain Katanga and Mathieu Ngudjolo Chui the above-mentioned documents with the redactions that the Prosecution considers necessary as soon as practicable but no later than 21 April 2008 at 16h00. Immediately after their disclosure, the Prosecution shall file in the record of the present case the necessary disclosure notes, pre-inspection reports and/or inspection reports listing the documents that have been made available to the Defence.

Moreover, the Defence shall have 15 days upon the receipt of these documents to request from the Single Judge the lifting of those redactions made by the Prosecution that the Defence considers necessary for the purpose of their preparation for the confirmation hearing.¹²

CONSIDERING that at the 22 April 2008 Status Conference, the Single Judge expressed her concern in relation to the documents for which the Prosecution must obtain the consent of the provider pursuant to article 54(3)(e) of the Statute for their disclosure in that:

Third, the Single Judge is seriously concerned with the fact that after more than five months after the transfer of Germain Katanga to the seat of the court the Prosecution has only been able to obtain the consent of providers in relation to four documents out of the 158 documents identified until now, and that for 42 documents requests have not even been made. So hence first the Single Judge highlights that the Prosecution must make its utmost effort to correct this situation within the coming days, but I also would like for the Prosecution in this hearing to explain in detail -- or that is saying to explain in detail in writing this new practice of only requesting the lifting of Article 54(3)(e) confidentiality obligations in relation to -- only to some documents identified as containing information which is potentially exculpatory or otherwise material for the preparation for the Defence.¹³

CONSIDERING that according to the Decision on the Postponement of the Confirmation Hearing, the confirmation hearing in the present case is now scheduled to start on 27 June 2008; and that the calendar concerning the proceedings leading to the confirmation hearing must be revised accordingly in light of rules 76 to 83 and 121 of the Rules;¹⁴

¹² ICC-01/04-01/07-411-Conf-Exp, ICC-01/04-01/07-423-Conf, ICC-01/04-01/07-428-Corr , paras 145-146

¹³ ICC-01/04-01/07-T-26-ENG ET WT 22-04-2008, page 30, lines 13-25

¹⁴ ICC-01/04-01/06-102.

FOR THESE REASONS

DECIDE that by no later than 6 May 2008, the Prosecution shall disclose to the Defences for Germain Katanga and Mathieu Ngudjolo Chui the summaries of statements, interview notes and interview transcripts of potential witnesses on which the Prosecution does not intend to rely at the confirmation hearing, and which contain information which is potentially exculpatory or otherwise material for the Defences' preparation of the Confirmation hearing;

DECIDE that the Prosecution shall:

- (i) disclose as soon as the documents are identified or can be disclosed subsequent to obtaining the consent of the providers, but no later than 21 May 2008, the documents on which the Prosecution does not intend to rely at the confirmation hearing, and which contain information which is potentially exculpatory or otherwise material for the Defences' preparation for the Confirmation hearing; and
- (ii) the Prosecution must make its utmost effort to correct by 21 May 2008 the current situation in relation to the numerous documents already identified by the Prosecution as falling under (i) above, for which it has not yet secured the consent of the provider to disclose them to the Defence;

DECIDE that the Prosecution shall:

- (i) no later than 2 June 2008, request authorisation for redactions, pursuant to rule 81 of the Rules, concerning the documents to be included in the Prosecution Additional List of Evidence;
- (ii) no later than 12 June 2008 (a) shall disclose to the Defences the document contained in the Prosecution Additional List of Evidence with the redactions authorised by the Single Judge; and (b) shall file with the

Registry the originals of such documents, as well as electronic copies with the redactions authorised by the Single Judge and with the details required by the e-Court Protocol used in the present case;

DECIDE that the Defences for Germain Katanga and Mathieu Ngudjolo Chui shall:

- (i) request the lifting of the redactions made by the Prosecution, pursuant to the Decision on Evidentiary Scope of the Confirmation Hearing, to those documents disclosed to the Defences under article 67(2) of the Statute or rule 77 of the Rules, on which the Prosecution does not intend to rely at the confirmation hearing and that the Defences consider necessary for the purpose of their preparation for the confirmation hearing (a) fifteen days after the receipt of the relevant documents; or (b) by no later than 6 June 2008 for those documents received the last day of the Prosecution's deadline on 21 May 2008;
- (ii) request, by no later than 2 June 2008, authorisation from the Single Judge for redactions, pursuant to rule 81 of the Rules, to the evidence to be included in the Defence's List of Evidence;
- (iii) disclose to the Prosecution by no later than 12 June 2008, pursuant to rule 78 of the Rules, any books, documents, photographs, and other tangible objects included in their respective Lists of Evidence with the redactions authorised by the Single Judge, and file pre-inspection and inspection reports in the record of the case of *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*
- (iv) file, pursuant to rule 121 (6) of the Rules, their respective Lists of Evidence and the originals of the evidence therein contained, and an electronic version of such evidence with the redactions authorised by the Single Judge by 12 June 2008 at 16h00;

- (v) provide the information required by the e-Court Protocol used in the present case in relation to the evidence contained in their respective Lists of Evidence by no later than 23 June 2008 at 16h00.

DECIDE that the Defences for Germain Katanga and Mathieu Ngudjolo Chui shall:

- (i) request, by no later than 16 June 2008, authorisation from the Single Judge for redactions, pursuant to rule 81 of the Rules, concerning documents to be included in their respective Additional Lists of Evidence;
- (ii) disclose to the Prosecution by no later than 20 June 2008, pursuant to rule 78 of the Rules, any books, documents, photographs, and other tangible objects included in their respective Additional Lists of Evidence with the redactions authorised by the Single Judge, and file pre-inspection and inspection reports in the record of the case of *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*;
- (iii) file, pursuant to rule 121(6) of the Rules, their respective Additional Lists of Evidence and the originals of the evidence therein contained, and an electronic version of such evidence with the redactions authorised by the Single Judge by 20 June 2008 at 16h00,
- (iv) provide the information required by the e-Court Protocol used in the present case in relation to the evidence contained in their respective Additional Lists of Evidence by no later than 23 June 2008 at 16h00.

DECIDE that the Prosecution and the Defences of Germain Katanga and Mathieu Ngudjolo Chui shall file by 23 June 2008 at the latest the list and summaries of those issues of jurisdiction, admissibility or concerning the proper conduct of the proceedings prior to the confirmation hearing that they intend to raise pursuant to rules 122 (2) and (3) of the Rules;

DECIDE that the deadline to lodge written submissions with the Pre-Trial Chamber on points of fact and on law, as provided for in rule 121 (9) of the Rules, shall be 24 June 2008 at 16h00;

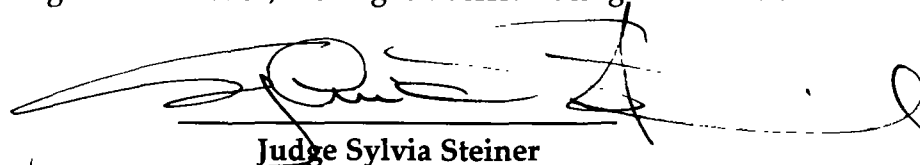
DECIDE that the next Status Conferences shall be held on Wednesday 14 May 2008 at 14h00, Tuesday 3 June 2008 at 14h00, and Thursday 19 June 2008 at 14h00;

DECIDE that the agenda for the Status Conference scheduled for Wednesday 14 May 2008 is as follows:

- (i) Intention of the parties to rely on live witnesses at the confirmation hearing, and if so, how many;
- (ii) Status of the compliance by the Prosecution with its disclosure obligations for the purpose of the confirmation hearing;
- (iii) Potential problems, if any, of French interpretation for Mathieu Ngudjolo Chui; and
- (iv) Any other issues raised by the parties and participants;

DECIDE to convene, pursuant to rule 122(1) of the Rules, a hearing for 3 June 2008 at 16h30 to be held before the Presiding Judge of the Chamber to discuss the order and the conditions under which the evidence shall be presented at the confirmation hearing;

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



Judge Sylvia Steiner
Single Judge

Dated this Tuesday 29 April 2008

At The Hague, The Netherlands