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

Date: **22 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

Written Submissions of Victims a/0333/07 and a/0110/08

Source: Mr Jean-Louis GILISSEN, Lawyer,
Legal Representative of Victims a/0333/07 and a/0110/08

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

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INTRODUCTION

1. Victims A/0333/07 and A/0110/08 were authorised to participate in the proceedings related to the pre-trial stage of the case of Germain Katanga and Mathieu Ngudjolo Chui and the investigation stage of the situation in the DRC, by decisions of 02/04/2008 and 10/06/2008.
2. The Legal Representative of Victims A/0333/07 and A/0110/08 participated in the status conferences of 10 and 19/06/2008.
3. Following a Registry report, it was decided that the legal representation of Victims A/0333/07 and A/0110/08 would be carried out jointly by Mr Jean-Louis Gilissen and Mr Joseph Keta.
4. The cases concerning each of the two suspects were joined by a decision of the Chamber issued on 10/03/2008 (ICC-01/04-01/07-257).
5. In order to enable the confirmation hearing to be held, prior to the decision on joinder issued on 10/03/2008, the Prosecutor had begun the process of disclosure of evidence (as of October 2007 in the Katanga case and as of February 2008 in the Ngudjolo Chui case).
6. Disclosure of evidence continued throughout the proceedings, and was conducted in accordance with the Statute and the Rules of Procedure and Evidence.
7. Considering that the evidence disclosure process and communication of evidence between the Prosecutor and the Defence of each of the suspects was conducted under the supervision of the Pre-Trial Chamber which, by issuing several decisions, applied article 61(3) of the Statute and rule 121 of the Rules of Procedure and Evidence.

8. Considering that following the status conference on 10/06/2008, the Pre-Trial Chamber issued a decision on 13/06/2008 setting out the schedule of the confirmation hearing (ICC-01/04-01/07-587).
9. Considering that in the execution of and in accordance with that schedule, the first session of the confirmation hearing was held on 27/06/2008.
10. Considering that at that session, the parties to the proceedings and the representatives of the victims authorised to participate in the confirmation of charges proceedings (whether as legal representatives of anonymous and/or non-anonymous victims) presented their opening statements.
11. Considering that in accordance with the texts of the Statute and the Rules of Procedure and Evidence the Parties and the Legal Representatives of the victims authorised to participate in the proceedings had the opportunity to present orally all of their grounds –both factual and legal – and their observations, up to and including the hearing on Wednesday, 16/07/2008.
12. Considering that during that hearing, after having been satisfied that the procedure had been followed and that the Defence for the suspects had been given the floor last, the judges of the Chamber closed the confirmation hearing by recalling that the Legal Representatives of the anonymous and non-anonymous victims and the Prosecution had until 22 July 2008 to file their written submissions on the issues arising during the confirmation, while the respective Counsel for the Defence of the two suspects had until 28 July 2008 to do so.
13. Considering that this document is the written submission by which the Legal Representative of Victims A/0333/07 and A/0110/08 submits his observations on the issues arising during the confirmation hearing.

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14. Considering that, as he did throughout the confirmation hearing, the Legal Representative of Victims A/0333/07 and A/0110/08 intends to comply with the rules by which the Pre-Trial Chamber set and delimited the rights, modalities and mode of participation of Victims A/0333/07 and A/0110/08 as anonymous victims.

15. Hence, the Legal Representative of Victims A/0333/07 and A/0110/08 intends to limit his written observations according to two criteria, respectively: to discuss only subjects which were discussed during public hearings and to discuss only subjects for which he considers that he has access to sufficient evidence.

1. The inherent context of the acts which are the subject of the prosecution

The representative of Victims A/0333/07 and A/0110/08 submits that the evidence presented by the Prosecutor was supported by all of the legal representatives of the victims authorised to participate in the proceedings, that is, respectively:

- The fact that, during the period when the crimes were committed, Ituri Province was the scene of an armed conflict displaying characteristics both of an international and domestic nature, in the course of which widespread and systematic crimes were committed against the civilian population.
- The fact that the two suspects were informed of the existence of that conflict and were aware of its characteristics.
- The fact that the two suspects were involved in that conflict and played a significant active part therein as part of their respective functions – one within the F.R.P.I. and the other within the F.N.I.

At this stage, it must be observed that neither the suspects nor their respective Defence Counsel challenged these three facts or the evidence presented by the Prosecutor and supported by the Legal Representatives of the Victims, in that the latter sought to establish *prima facie* these three significant facts.

With the support of the Legal Representatives of the Victims on this matter, the Prosecutor further substantiated the claim that the attack on the village of Bogoro on 24/02/2003 took place as part of a global strategy and an overall plan.

More specifically, the evidence presented in the context of the confirmation of charges appears to have established *prima facie* the existence of charges against the two suspects in relation to their participation and active role in the planning and organisation of the village of Bogoro, in particular, on the basis of their participation in a large meeting of the commanders of the various groups who participated in the attack on Bogoro village, the role they played in the logistical organisation (and, in particular, the supply of sufficient ammunition) prior to the Bogoro attack, and the acts of senior commanders which the two suspects carried out during both the preparation and execution of the attack on Bogoro village.

At this stage, the Legal Representative of Victims A/0333/07 and A/0110/08 would point out that neither the suspects nor their respective Defence raised doubts as to the use of children under the age of fifteen years as soldiers during the attack carried out on 24/02/2003 on the village of Bogoro – child soldiers in respect of whom the Prosecutor presented a specific number of pieces of evidence establishing both their incorporation (whether voluntary or forced) into the F.N.I. and F.R.P.I. units and the preparation and training in camps belonging to the two groups.

In this respect, the Legal Representative of Victims A/0333/07 and A/0110/08 must recall that the cessation of hostilities agreement signed *inter alia* by the two suspects on 18/03/2003 demonstrated each suspect's acknowledgement not only of the existence, training and use of child soldiers in the military groups and formations he led but also the acknowledgment of their knowledge that the situation contravened international law.

The Legal Representative of Victims A/0333/07 and A/0110/08 must once again point out that neither the suspects nor their respective Defence Counsel challenged the

facts of the deployment or use of child soldiers among the troops they led and/or the evidence presented in support of Count 5.

The Prosecutor and the Legal Representatives of the victims, on the basis of the evidence presented by the Prosecutor, have made a point of expressing their opinion about the indiscriminate nature of the attack launched in the early hours of 24/02/2003 against the village of Bogoro and against its civilian inhabitants and civilian property located on the territory of the village.

Although the Defence of the suspects has, at this stage, issued a certain number of observations, it appears that the Legal Representative of Victims A/0333/07 and A/0110/08 is not in a position to discuss most of them because of the very limitations characterizing his access to the evidence and documents discussed during the public hearings.

Nevertheless, it should be observed that the observations and grounds raised by the suspects' Defence may be grouped into two categories or two types of arguments, that is, respectively:

- Problems inherent to the admissibility or quality of the evidence or even the purpose of the evidence presented by the Prosecutor.

and:

- Problems inherent to ascribing the acts to each of the suspects, the nature of the acts ascribed to them and the mode of participation which each of the suspects may somehow have had in relation to the facts produced as evidence by the Prosecutor and the Legal Representatives of the victims.

Regarding the first type of observations, while the Legal Representative of Victims A/0333/07 and A/0110/08 intends to be extremely cautious (since he did not have access to the said documents and evidence which were discussed during the public

hearing), it appears that he must nevertheless point out that the observations advanced by the suspects' Defence seemed to him to reach conclusions which – erroneously and, on occasion, indiscriminately – broached problems as distinct as jurisdiction, admissibility, relevance, reliability, credibility and probative value.

Currently, it appears to the Legal Representative of Victims A/0333/07 and A/0110/08 that, in view of the attitude adopted by the Prosecutor, strictly speaking, there are no longer any problems inherent to the evidence which have not already been resolved in the decisions of the Pre-Trial Chamber to date.

Currently, the only observations which can be accepted in the Defence argument on the matter appear to have to be reserved for subsequent analysis in the proceedings, at a stage when evidentiary problems may be the subject of more extensive and better-informed discussion.

In no way does it appear that, in so doing, the Chamber may infringe the suspects' right to a fair trial since, on the contrary, the Chamber will allow the suspects and their respective Defence Counsel access to more comprehensive information which will, if required, enable them to back up the arguments they wish to present or continue to support.

Considering lastly, in respect of the discussions about ascribing the acts to the suspects, their mode of participation in certain acts and the form in which the crimes ascribed to the suspects were committed, that the Legal Representative of Victims A/0333/07 and A/0110/08 must support the evidence and explanations provided by the Prosecutor in respect of the role and responsibilities of the suspects who, as co-perpetrators, jointly conceived and controlled the common plan for the attack on the village of Bogoro on 24/02/2003 and its implementation.

Considering that the Legal Representative of Victims A/0333/07 and A/0110/08 submits that the responsibility of the two suspects in the participation in the crimes

with which they are charged appears, *prima facie*, sufficiently substantiated – in particular, in light of the joint criminal enterprise theory and the rules inherent to command responsibility.

Considering that this holds even more since the Legal Representative of Victims A/0333/07 and A/0110/08 submits that recourse to and use of child soldiers by the planners and organizers of the attack on the village of Bogoro on 24/02/2003 was an integral part of the plan and the joint criminal enterprise of the planners and organizers of the attack.

Sufficient evidence has, *prima facie*, substantiated the following facts:

- With a view to attacking Bogoro on 24/02/2003, an unprecedented, particularly large number of child soldiers had been assembled (including and in particular by force and with recourse to abduction).
- The children assembled in the paramilitary groups' training camps who attacked the village of Bogoro on 24/02/2003 underwent more extensive training there than the training usually given to children who would be used as child soldiers.
- Particularly young child soldiers – younger than usual – were used in the Bogoro attack, in particular, in order to pillage civilian property and track down the civilian population hiding in the village or the surrounding area.

The Legal Representative of Victims A/0333/07 and A/0110/08 therefore submits that, during the confirmation hearing, evidence was presented which, *prima facie*, is sufficient to substantiate the idea that the suspects were able to commit the crime of using child soldiers under the age of 15 years (the crime charged in Count 5) and that that crime has been shown to be part of the broader planning of the widespread and systematic nature of the attack on the civilian population and civilian property located in the village of Bogoro or in its immediate surroundings.

It accordingly follows that the use of child soldiers under such conditions appears, *prima facie*, to be one of the factors which conveys the very nature of the joint criminal enterprise with which the two suspects are charged.

[signed]

Mr Jean-Louis GILISSEN, Lawyer,
Legal Representative of Victims a/0333/07 and a/0110/08

Dated this 22 July 2008

At Seraing, Belgium