

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

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

Date: 24 October 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**

**Decision on the Applications for Leave to Appeal the Decision on the  
Admission of the Evidence of Witnesses 132 and 287 and on the Leave to  
Appeal on the Decision on the Confirmation of Charges**

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 Buyangandu  
Mr Joseph Keta  
Mr J.L. Gilissen  
Mr Hervé Diakiese  
Mr Jean-Chrisostome Mulamba  
Nsokoloni

**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**

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**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 Evidentiary Scope of the Confirmation Hearing, Preventive Relocation and Disclosure under Article 67(2) of the Statute and Rule 77 of the Rules”<sup>1</sup> (“the Decision on the Scope of the Confirmation Hearing”) issued by the Single Judge on 18 April 2008;

**NOTING** the “Prosecution’s Submission of the Document Containing the Charges and List of Evidence” (“the Prosecution’s Charging Document”),<sup>2</sup> filed by the Prosecution on 21 April 2008;

**NOTING** the “Decision on Prosecution’s Urgent Application for the Admission of the Evidence of Witnesses 132 and 287”<sup>3</sup> (“the Decision on the Prosecution’s Urgent Application”) issued by the Single Judge on 28 May 2008;

**NOTING** the “*Demande d’interjeter appel sur la décision intitulée ‘Decision on Prosecution’s Urgent Application for the Admission of the Evidence of Witnesses 132 and 287’*”<sup>4</sup> filed by the Defence for Mathieu Ngudjolo Chui on 3 June 2008;

**NOTING** the “Defence Application for Leave to Appeal the Single Judge’s *Decision on Prosecution’s Urgent Application for the Admission of the Evidence of Witnesses 132 and 287*”<sup>5</sup> filed by the Defence for Germain Katanga on 3 June 2008;

<sup>1</sup> ICC-01/04-01/07-411-Conf-Exp; ICC-01/04-01/07-423-Conf and ICC-01/04-01/07-428.

<sup>2</sup> ICC-01/04-01/04-422; ICC-01/04-01/07-422-Anx1A and Anx2A; ICC-01/04-01/07-422-Conf-Exp-Anx1B and Anx2B; and ICC-01/04-01/07-422-Conf-Anx1D and Anx2D.

<sup>3</sup> ICC-01/04-01/07-459.

<sup>4</sup> ICC-01/04-01/07-544.

<sup>5</sup> ICC-01/04-01/07-545.

**NOTING** the “Prosecution’s Consolidated Response to Defence Applications for Leave to Appeal the Decision on the Admission of the Evidence of Witnesses 132 and 287”<sup>6</sup> (“the Prosecution Consolidated Response”) filed by the Prosecution on 9 June 2008;

**NOTING** the “Decision on the Procedure for Leave to Appeal pursuant to article 82 (l)(d) of the Statute, rule 155 of the Rules and regulation 65 of the Regulations and on the Pending Requests for Leave to Appeal Concerning Witnesses 132 and 287”<sup>7</sup> (“the Decision on the Procedure for Leave to Appeal”) issued by the Single Judge on 17 June 2008;

**NOTING** the “Decision on the confirmation of charges”<sup>8</sup> issued by the Chamber on 26 September 2008;

**NOTING** the “Defence Application for Leave to Appeal the Decision on the Confirmation of Charges”<sup>9</sup> filed by the Defence for Germain Katanga on 6 October 2008;

**NOTING** the “Prosecution’s Response to Application by the Defence of Katanga for Leave to Appeal the Decision on the Confirmation of Charges”<sup>10</sup> filed by the Prosecution on 10 October 2008;

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<sup>6</sup> ICC-01/04-01/07-569.

<sup>7</sup> ICC-01/04-01/07-601.

<sup>8</sup> ICC-01/04-01/07-716-Conf; ICC-01/04-01/07-717.

<sup>9</sup> ICC-01/04-01/07-721.

<sup>10</sup> ICC-01/04-01/07-723.

**NOTING** the “*Réponses des victimes a/0333/07 et a/0110/08 sur la “Defence Application for Leave to Appeal the Decision on the Confirmation of Charges” déposée par la Défense de Germain Katanga*”<sup>11</sup> filed by the Legal Representatives of Victims a/0333/07 and a/0110/08 on 16 October 2008;

**NOTING** articles 61 and 82(1)(d) of the *Rome Statute* (“the Statute”), rules 64, 122(1), 129 and 155 of the *Rules of Procedure and Evidence* (“the Rules”), and regulation 65 of the *Regulations of the Court* (“the Regulations”);

### **I. Preliminary Remarks**

**CONSIDERING** at the outset that, pursuant to regulation 65(3) of the Regulations, the time limit to respond to a request for leave to appeal is within three days of notification of the application for leave to appeal under rule 155 of the Rules; that the response by the Legal Representatives of Victims a/0333/07 and a/0110/08 to the Defence for Germain Katanga’s request for leave to appeal the Decision on the confirmation of charges was filed outside the prescribed time limit; and that therefore, the Chamber will not consider their response;

**CONSIDERING** further that, in the Decision on the Procedure for Leave to Appeal the Single Judge stated that both Defence’ requests for leave to appeal the Decision on the Prosecution’s Urgent Application shall be dealt with along with

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<sup>11</sup> ICC-01/04-01/07-725.

any request for leave to appeal filed in relation to the Decision on the confirmation of charges;<sup>12</sup>

**CONSIDERING** that only one notice of request for leave to appeal has been filed pursuant to the Decision on the Procedure for Leave to Appeal;<sup>13</sup> and that such notice of request for leave to appeal was subsequently withdrawn by the party that initially filed it;<sup>14</sup>

**CONSIDERING**, therefore, that the only pending requests for leave to appeal are those filed by (i) both Defence in relation to the Decision on the Prosecution's Urgent Application; and (ii) the Defence for Germain Katanga against the Decision on the confirmation of charges; and that they are all addressed in the present decision;

**CONSIDERING** that the only issue for which leave to appeal the Decision on the Prosecution's Urgent Application is sought by the Defence for Mathieu Ngudjolo Chui is whether the Single Judge improperly reconsidered her earlier decision to exclude the evidence of Witnesses 132 and 287 on the basis of purported new circumstances that did not justify such reconsideration ("the First Issue");<sup>15</sup> and that the Defence for Germain Katanga is also seeking leave to appeal in relation to this very same issue;<sup>16</sup>

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<sup>12</sup> ICC-01/04-01/07-601 at p. 19.

<sup>13</sup> ICC-01/04-01/07-688.

<sup>14</sup> ICC-01/04-01/07-720.

<sup>15</sup> ICC-01/04-01/07-544-Conf, para. 15.

<sup>16</sup> ICC-01/04-01/07-545, para. 11.

**CONSIDERING** that the Defence for Germain Katanga also seeks leave to appeal the Decision on the Prosecution's Urgent Application in relation to a second issue, which is whether the fact that Single Judge issued the impugned Decision without hearing any submissions from the Defence caused "very prejudicial consequences for the Defence" ("the Second Issue");<sup>17</sup>

**CONSIDERING** that, in relation to the Decision on the confirmation of the charges, the Defence for Germain Katanga seeks leave to appeal on the following two issues:

(i) whether the majority of the Pre-Trial Chamber – with Judge Anita Ušacka dissenting- wrongfully confirmed the sexual violence charges under counts 6, 7, 8, and 9 despite the lack of sufficient evidence concerning the requisite subjective elements (*dolus directus* in the first or second degree) of the crimes ("the Third Issue"); and

(ii) whether the majority of the Pre-Trial Chamber –with Judge Anita Ušacka dissenting- applied *dolus eventualis* instead of *dolus directus* in respect of the sexual violence charges under counts 6, 7, 8, and 9 ("the Fourth Issue");

**CONSIDERING** that, as Pre-Trial Chambers I and II have repeatedly stated,<sup>18</sup> for the Chamber to grant leave to appeal under article 82(1)(d) of the Statute, the

<sup>17</sup> ICC-01/04-01/07-545, para. 11.

<sup>18</sup> See, *inter alia*, "Decision on the Prosecution Motion for Reconsideration and, in the alternative, Leave to Appeal", issued by Pre-Trial Chamber I on 23 June 2006 (ICC-01/04-01/06-165-Conf-Exp); "Decision on Defence Motion for Leave to Appeal", issued by Pre-Trial Chamber I on 18 August 2006 (ICC-01/04-01/06-338); "Decision on Second Defence Motion for Leave to Appeal", issued by Pre-Trial Chamber I on 28 September 2006 (ICC-01/04-01/06-489);

issue identified by the appellant must: (i) have been dealt with in the relevant decision; and (ii) meet the following two cumulative criteria:

- a. it must be an issue that would significantly affect (i) both the fair and expeditious conduct of the proceedings; or (ii) the outcome of the trial; and
- b. it must be an issue for which, in the opinion of the Pre-Trial or Trial Chamber, an immediate resolution by the Appeals Chamber may materially advance the proceedings;

**CONSIDERING** that, according to the “Judgment on the Prosecutor’s Application for Extraordinary Review of Pre-Trial Chamber I’s 31 March 2006 Decision Denying Leave to Appeal”,<sup>19</sup> issued by the Appeals Chamber on 13 July 2006 (“the Appeals Chamber Judgment”):

- (i) “[o]nly an issue may form the subject-matter of an appealable decision”;<sup>20</sup>
- (ii) “[a]n issue is constituted by a subject, the resolution of which is essential for the determination of matters arising in the judicial cause under examination”;<sup>21</sup>
- (iii) “[n]ot every issue may constitute the subject of an appeal”,<sup>22</sup> but “it must be one apt to ‘significantly affect’

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“Decision on the Prosecution Request for Leave to Appeal the First Decision on Redactions”, issued by Pre-Trial Chamber I on 14 December 2007 (ICC-01/04-01/07-108) and “Decision on the Prosecutor’s Application for Leave to Appeal in Part Pre-Trial Chamber II’s Decision on the Prosecutor’s Applications for Warrants of Arrest Under Article 58”, issued by Pre-Trial Chamber II on 19 August 2005 (ICC-02/04-01/05-20-US-Exp; unsealed pursuant to Decision ICC-02/04-01/05-52 issued on 13 October 2005), in particular para. 20.

<sup>19</sup> ICC-01/04-168.

<sup>20</sup> Appeals Chamber Judgment, para. 9.

<sup>21</sup> Appeals Chamber Judgment, para. 9.



i.e. in a material way, either a) 'the fair and expeditious conduct of the proceedings' or b) 'the outcome of the trial'';<sup>23</sup> and

- (iv) "[i]dentification of an issue having the attributes adumbrated above does not automatically qualify it as the subject of an appeal" insofar as "the issue must be one 'for which in the opinion of the Pre-Trial or Trial Chamber, an immediate resolution by the Appeals Chamber may materially advance the proceedings'";<sup>24</sup>

## II. First and Second Issues

**CONSIDERING** that, in the Decision on the Evidentiary Scope of the Confirmation Hearing, the Single Judge prevented the Prosecution from including in its List of Evidence the statements, interview notes and interview transcripts of Witnesses 132 and 287 ("the written evidence of Witnesses 132 and 287") because:

- (i) as a result of the Prosecution's unlawful preventive relocation of such witnesses, the witnesses had to be considered as being "unprotected" at such time; and, therefore, given their particular circumstances, the use of their written evidence for the purposes of

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<sup>22</sup> Appeals Chamber Judgment, para. 9.

<sup>23</sup> Appeals Chamber Judgment, para. 10.

<sup>24</sup> Appeals Chamber Judgment, para. 14.

the confirmation hearing in a non-redacted, redacted or summary form would have placed them at a considerable risk;<sup>25</sup>

- (ii) as previous case law of this Chamber has pointed out, overriding security concerns in relation to a witness is a legitimate reason to order the Prosecution not to include the evidence of such witness in the Prosecution List of Evidence;<sup>26</sup>
- (iii) the confirmation hearing was, at that time, scheduled to start on 21 May 2008, and therefore the Prosecution List of Evidence was due to be filed no later than 21 April 2008, that is to say three days after the issuance of the Decision on the Evidentiary Scope of the Confirmation Hearing;
- (iv) in light of the above-mentioned schedule, there was no time for the Registrar to adopt and implement the necessary protective measures that would have allowed for the use of the written evidence of Witnesses 132 and 287 at the confirmation hearing;

**CONSIDERING** therefore that, as the Prosecution explains in the Prosecution Consolidated Response, the Single Judge, in the Decision on the Evidentiary Scope of the Confirmation Hearing, issued a protective order in relation to Witnesses 132 and 287 which consisted of a prohibition for the Prosecution to include the written evidence of Witnesses 132 and 287 in the Prosecution List of Evidence;

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<sup>25</sup> ICC-01/04-01/07-523, pp. 5-6.

<sup>26</sup> ICC-01/04-01/06-517.

**CONSIDERING** that, after the issuance of the above-mentioned protective order, the initiation of the confirmation hearing was postponed for more than a month and the relevant witnesses were relocated by the Registrar;

**CONSIDERING** that, as a result of these new circumstances:

- (i) the security concerns related to Witnesses 132 and 287, that had motivated the protective order issued by the Single Judge in the Decision on the Evidentiary Scope of the Confirmation Hearing, disappeared; and therefore
- (ii) there was no reason to prevent the Prosecution from including the written evidence of Witnesses 132 and 287 in the Prosecution List of Additional Evidence insofar as the new date of the confirmation hearing allowed for the time-limits provided for in rule 121 of the Rules to be scrupulously observed;

**CONSIDERING** that, in light of the above, in the Decision on the Prosecution's Urgent Application, the Single Judge decided that "the security concerns that led to the finding of inadmissibility of the evidence of Witnesses 132 and 287 no longer exist, and that therefore there is currently no impediment based on such security concerns for the inclusion in the Prosecution List of Additional Evidence of the statements, interview notes and interview transcripts of Witnesses 132 and 287";<sup>27</sup>

**CONSIDERING** therefore, that in the Decision on the Prosecution's Urgent Application, the Single Judge did not reconsider any previous decision taken in

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<sup>27</sup> ICC-01/04-01/07-523, p. 8.

the Decision on the Evidentiary Scope of the Confirmation Hearing; that the Single Judge merely declared (i) that the security concerns that had justified the issuance of the protective order prohibiting the Prosecution from including the written evidence of Witnesses 132 and 287 in the Prosecution List of Evidence no longer existed; and (ii) that therefore there was no reason to maintain such protective order;

**CONSIDERING** that, for the above-mentioned reasons, the Chamber is of the view that the First Issue raised by both Defence does not arise out of the Decision on the Prosecution's Urgent Application;

**CONSIDERING** that, in relation to the Second Issue, the Chamber observes that the Single Judge issued the Decision on the Prosecution's Urgent Application without hearing any submissions from the Defence; and that, therefore, this is an issue arising out of the impugned Decision;

**CONSIDERING** that, in the Chamber's view, the fact that a party is not heard in relation to a given issue does not automatically mean that the fair conduct of the proceedings may have been significantly affected; and that the assessment of whether the issuance of a decision without hearing a party has the potential to cause such a significant impact on the fairness of the proceedings must be carried out in light of the nature of the underlying issue, the interest of the affected party and the actual prejudice caused to such a party;

**CONSIDERING** that the Decision on the Prosecution's Urgent Application only stated that:

- (i) the security concerns in relation to Witnesses 132 and 287 no longer existed due to their subsequent relocation; and that therefore
- (ii) there was no reason to prevent the Prosecution from including the written evidence of these two witnesses in the Prosecution List of Additional Evidence given the fact that the time-limits provided for in rule 121 of the Rules could be complied with as a result of:
  - a. the postponement to 27 June 2008 of the starting date of the confirmation hearing; and
  - b. the indication by the Prosecution in the Prosecution's Charging Document filed on 21 April 2008 that it would reintroduce the charges related to sexual violence when the reasons for preventing the inclusion of the written evidence of Witnesses 132 and 287 no longer existed;<sup>28</sup>

**CONSIDERING** that the existence and scope of the risks for the security of Witnesses 132 and 287 as a result of the use of their written evidence at the confirmation hearing had been the proper subject of *ex parte* proceedings held only with the Prosecution and the Victims and Witnesses Unit;<sup>29</sup> and that, therefore, in the view of the Chamber, the rights of Germain Katanga and Mathieu Ngudjolo Chui could not be affected by the fact that the Single Judge issued, without hearing the Defence, a decision declaring that (i) previous security concerns relating to the said potential Prosecution witnesses no longer existed; and that (ii) there was no reason to maintain the protective order issued by the Single Judge in relation to these two witnesses;

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<sup>28</sup> ICC-01/04-01/07-422, p. 3.

<sup>29</sup> ICC-01/04-01/07-T-15-Conf-Exp; ICC-01/04-01/07-T-20-Conf-Exp; ICC-01/04-01/07-T-22-Conf-Exp.

**CONSIDERING** further that the purpose of the Prosecution List of Evidence and the Prosecution List of Additional Evidence is to give the Defence advance notice of, and access to the items of evidence on which the Prosecution intends to rely at the confirmation hearing;

**CONSIDERING** that the items of evidence included in the Prosecution List of Evidence and in the Prosecution List of Additional Evidence are only tendered into evidence by the Prosecution, and given an evidence number by the Registry, at the confirmation hearing;

**CONSIDERING** that it is only when a given item of evidence included in the Prosecution List of Evidence, or in the Prosecution List of Additional Evidence is tendered into evidence at the confirmation hearing that such item of evidence becomes the Court's evidence, which, according to the previous case law of this Chamber, cannot be withdrawn;<sup>30</sup>

**CONSIDERING** that, according to rule 64 of the Rules, the Defence has the opportunity to challenge the relevance or admissibility of any item of evidence included in the Prosecution List of Evidence, or in the Prosecution List of Additional Evidence from the moment the Defence is notified of such lists until the time allocated to the Defence at the confirmation hearing following the tendering of the relevant item by the Prosecution into evidence at the confirmation hearing;<sup>31</sup>

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<sup>30</sup> ICC-01/04-01/06-803-tEN, paras 140-142.

<sup>31</sup> Furthermore, as provided for in rule 64 of the Rules, "[e]xceptionally, when those issues were not known at the time when the evidence was submitted, it may be raised immediately after the issue has become known".

**CONSIDERING** therefore that, in light of the above-mentioned circumstances, even if the Defence for Germain Katanga would have shown that its rights were infringed upon by the fact that the Decision on the Prosecution's Urgent Application was issued without hearing submissions from it, no prejudice could have been suffered by the Defence for Germain Katanga;

**CONSIDERING**, therefore, that in the view of the Chamber, the Second Issue would not "significantly affect the fair [...] conduct of the proceedings" within the meaning of article 82 (1)(d) of the Statute;

### **III. Third and Fourth Issues**

**CONSIDERING** that the Third Issue and the Fourth Issue for which leave to appeal has been requested relate to the Decision on the confirmation of charges;

**CONSIDERING** that, in relation to the Third Issue, the Defence for Germain Katanga raises no concern in relation to:

- (i) the Chamber's distinction between (i) the notion of *dolus directus* of the second degree (the suspect carries out his action or omission despite being aware that the commission of the crime is its necessary outcome); and (ii) the notion of *dolus eventualis* (the suspect carries out his action or omission in the awareness that the commission of the crime is its likely outcome and accepting such an outcome);

- (ii) the Chamber's approach not to entertain the question of whether or not the notion of *dolus eventualis* is part of the general subjective element provided for in article 30 of the Statute;

**CONSIDERING** that the request made by the Defence for Germain Katanga challenges only the application, by the majority of the Chamber, of article 61(7) of the Statute evidentiary standard in relation to whether the suspects acted with *dolus directus* of the second degree;

**CONSIDERING** that the Third Issue consists of a mere disagreement with the assessment made by the majority of the Chamber of the evidence submitted by the Prosecution to support those charges related to sexual violence;

**CONSIDERING** that, as set out above, the first and foremost requirement for a request for leave to appeal to be granted is that the relevant party identifies an issue within the meaning of article 82(1)(d) of the Statute; and that, as this Chamber has already stated and based on the Appeals Chamber Judgment of 13 July 2006, this is not the case when the matter raised by the Defence consists of "nothing more than a disagreement" with a finding of the Chamber;<sup>32</sup>

**CONSIDERING** further that, even if the concerns raised by the Defence for Germain Katanga in relation to the assessment of the evidence by the majority of the Chamber were an issue within the meaning of article 82(1)(d), such an issue would not significantly affect the fair conduct of the proceedings or the outcome of the trial insofar as, according to article 64(9) of the Statute, the Trial Chamber is empowered with the ruling on the admissibility and relevance of the evidence

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<sup>32</sup> ICC-01/04-01/06-168, para. 9; ICC-01/04-01/06-915, para 71.



for the purposes of the Trial; and therefore, the Defence would still have the opportunity to make submissions before the Trial Chamber on the relevance and admissibility of the relevant evidence;

**CONSIDERING** that, in relation to the Fourth Issue, the Chamber agrees with the Prosecution in that the Defence for Germain Katanga has not pointed out to any single instance of the Decision on the Confirmation of Charges in which the majority of the Chamber applied the *dolus eventualis* standard under the label of *dolus directus* of the second degree; and that the Defence only refers to the disagreement shown by the dissenting opinion of Judge Anita Ušacka in relation to the assessment made by the majority of the Chamber of the sufficiency of evidence tendered by the Prosecution for the purposes of the confirmation of the charges of sexual violence;

**CONSIDERING** that, in the view of the Chamber, the Fourth Issue is a mere extension of the Third Issue since it challenges only the assessment of the evidence made by the majority of the Chamber, in which it concluded that there was sufficient evidence to establish substantial grounds to believe that crimes were committed with *dolus directus* of the second degree; and that, as said above, the mere disagreement with a finding of the Chamber does not, *per se*, fulfill the requirements of article 82(1)(d) of the Statute;

#### **IV. Final Remarks**

**CONSIDERING** that, apart from both Defences' requests for leave to appeal addressed in the present decision, the only pending matter in the case of *The*

*Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui* is the Application by the Defence for Germain Katanga concerning family visits;<sup>33</sup> and that, in relation to this application, the Chamber has ordered the Registry to file a report in the record of the case by no later than 3 November 2008;<sup>34</sup>

**CONSIDERING** therefore that, with the filing of the present decision, the Chamber has fulfilled all its functions in relation to the case of *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*;

#### **FOR THESE REASONS**

**REJECTS** the requests for leave to appeal the Decision on the Prosecution's Urgent Motion filed by the Defence for Germain Katanga and the Defence for Mathieu Ngudjolo Chui;

**REJECTS** the request for leave to appeal the Decision on the confirmation of charges filed by the Defence for Germain Katanga;

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<sup>33</sup> ICC-01/04-01/07-724.

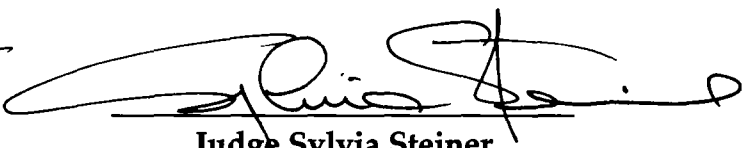
<sup>34</sup> ICC-01/04-01/07-726.

**DECIDES** that, as provided for in rule 129 of the Rules, the present decision and the record of the proceedings in the case of *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui* shall be transmitted to the Presidency.

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

  
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**Judge Akua Kuenyehia**  
**Presiding Judge**

  
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**Judge Anita Ušacka**  
**Judge**

  
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**Judge Sylvia Steiner**  
**Judge**

Dated this Friday 24 October 2008

At The Hague, The Netherlands