

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 13 June 2008

PRE-TRIAL CHAMBER I

Before: Judge Akua Kuenyehia, Single Judge

**SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO
IN THE CASE OF
THE PROSECUTOR
*v. Germain Katanga and Mathieu Ngudjolo Chui***

Public Document

Decision on the Schedule for 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
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
Mr Herve Diakiese
Mr Jean-Christostome Mulamba
Nsokoloni

Unrepresented Victims

Legal Representatives of the Applicants

**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

I, Judge Akua Kuenyehia, judge at the International Criminal Court (“the Court”);

NOTING the “Decision on the Applications for Participation in the Proceedings of Applicants a/0327/07 to a/0337/07 and a/0001/08”¹ issued by the Single Judge on 2 April 2008, by which the Single Judge granted the procedural status of victim in the pre-trial stage of the case to 5 applicants represented by two different Legal Representatives;

NOTING the “Charging Document and List of Evidence”² filed by the Prosecution on 21 April 2008;

NOTING the “Decision on the Defence Request for Postponement of the Confirmation Hearing”³ issued by the Chamber on 25 April 2008, in which the Chamber decided to re-schedule the confirmation hearing to 27 June 2008;

NOTING the “Decision Establishing a Calendar according to the date of the Confirmation Hearing: 27 June 2008”⁴ issued by the Single Judge on 29 April 2008;

NOTING the “Decision on the set of Procedural Rights Attached to Procedural Status of Victim at the Pre-Trial Stage of the Case”⁵ issued by the Single Judge on 13 May 2008;

NOTING the “Decision on the Limitations of Set of Procedural Rights for Non-Anonymous Victims”⁶ issued by the Single Judge on 30 May 2008;

¹ ICC-01/04-01/07-357

² ICC-01/04-01/07-422

³ ICC-01/04-01/07-446

⁴ ICC-01/04-01/07-459

⁵ ICC-01/04-01/07-474

NOTING the hearing held before the Single Judge on 3 June 2008, in which the Prosecution informed the Single Judge that audio-visual material would be presented at the confirmation hearing;

NOTING the “Decision Distributing the Proposed Schedule for the Confirmation Hearing”⁷ issued by the Single Judge on 4 June 2008;

NOTING the “Decision on the Temporary Replacement of the Single Judge”⁸ issued by the Chamber on 5 June 2008;

NOTING the “Judgment on the Appeal Against the Decision on Joinder rendered on 10 March 2008 by the Pre-Trial Chamber in the Germain Katanga and Mathieu Ngudjolo Chui Cases”⁹ issued by the Appeals Chamber on 9 June 2008;

NOTING the “Decision on the 97 Applications for Participation at the Pre-Trial Stage of the Case”¹⁰ issued by the Single Judge on 10 June 2008, by which the Single Judge granted the procedural status of victim in the pre-trial stage of the case to 52 applicants represented by four different Legal Representatives;

NOTING the public hearing held before the Presiding Judge on 10 June 2008;¹¹

NOTING articles 61, 67, 68 and 69 of the *Rome Statute* (“the Statute”), rules 63, 87, 121, 122 and 140 of the *Rules of Procedure and Evidence* (“the Rules”) and regulation 20

⁶ ICC-01/04-01/07-537

⁷ ICC-01/04-01/07-547 and Anx1

⁸ ICC-01/04-01/07-556

⁹ ICC-01/04-01/07-573

¹⁰ ICC-01/04-01/07-578-Conf, ICC-01/04-01/07-579

¹¹ ICC-01/04-01/07-T-35 ENG RT 10-06-2008 PT

of the *Regulations of the Court* ("the Regulations") and regulation 61(1)(d) of the *Regulations of the Registry* ("RoR");

CONSIDERING that, at the public hearing ("the Hearing") held on 10 June 2008 with the Prosecution, the Defences for Germain Katanga and for Mathieu Ngudjolo Chui, the Legal Representatives of the Victims and the representatives of the Registry, the participants had the opportunity to present their views on the proposed schedule of the confirmation hearing;

CONSIDERING that during the Hearing, the Prosecution made no objection to the time allocated to it in the proposed schedule, although it requested that:

- (i) the schedule not be, in principle, modified as a result of the non-use by any given party or participant of the time allocated to it ("the Prosecution's First Request");
- (ii) the evidence need not be shown on a computer screen during its presentation because, according to the experience during the confirmation hearing in the case of *The Prosecutor v. Thomas Lubanga Dyilo*, this is a time-consuming process that prevents the maximization of the time by the relevant party or participant ("the Prosecution's Second Request");

CONSIDERING that the Single Judge agrees with the Prosecution that the seven and a half hours proposed for the Prosecution's presentation of evidence at the confirmation hearing is sufficient, given the limited scope of the current case; that this time is sufficient even if a limited part of it may be lost in making the proper arrangements to show the evidence on the screens of the computers located in the courtroom, which will facilitate a better understanding of the submissions of the

parties and participants; and that, therefore, the Prosecution's Second Request must be rejected;

CONSIDERING that the Single Judge agrees with the Prosecution that the schedule should, in principle, not be modified in the event that any party or participant does not use the time allocated to it;

CONSIDERING, nevertheless, that if the Defence for Germain Katanga finally decides not to use the time allocated to it to comment on the evidence presented by the Prosecution, as stated at the Hearing, the parties and participants should be prepared to start with the closing statements on Monday 14 July 2008 at 9.00 hours.

CONSIDERING that the Defence for Germain Katanga stated during the hearing that he "will be taking no time up of the Court"; specifically that:

At this stage we have no intention of calling witnesses. I have no intention of making an opening address to the Court.¹²

It then goes to matters related to jurisdiction, admissibility, or other procedural issues, and there are no matters, that we at present envisage to raise in that respect [...]¹³

[T]hen there's a discussion or potential discussion by parties of the OTP evidence, and at the moment, unless there are any particular surprises, I don't see us engaging in comment.¹⁴

There's then the presentation by the Defence team, I'm talking in the singular, of their evidence. We're not proposing to call evidence.¹⁵

And then we have a non-discussion on our evidence, so we can step over that, and then we have a closing statement. Now, the only matter that I'd raise in respect to that really is the matter that was submitted yesterday in the motion you saw dated the 9th of June dealing with the charges [...]¹⁶

¹² ICC-01/04-01/07-T-35- ENG ET WT 10-06-2008, page 24, lines 20-22

¹³ ICC-01/04-01/07-T-35- ENG ET WT 10-06-2008, page 27, lines 7-10

¹⁴ ICC-01/04-01/07-T-35- ENG ET WT 10-06-2008, page 27, lines 14-16

¹⁵ ICC-01/04-01/07-T-35- ENG ET WT 10-06-2008, page 27, lines 17-18

¹⁶ ICC-01/04-01/07-T-35- ENG ET WT 10-06-2008, page 27, lines 21-25

CONSIDERING that the Defence for Mathieu Ngudjolo Chui for the most part agreed with the proposed schedule, although it did not envisage taking up the full time allocated to it; and that in relation to the specific steps of the proposed schedule:

We will have an opening statement. It will last less than an hour and a half, and then we will make a statement at the end of the confirmation hearing which will also last less than an hour and a half.¹⁷

I can reassure you that our team will not bring any evidence. We have no witnesses that we wish to appear, and this was already stated at a previous status conference hearing.¹⁸

Other than that, as I said, we will stick to the schedule, and if we believe that there is an issue about the law that needs to be addressed we will raise the issue at the time.¹⁹

[w]e have not any intention to work in closed session unless during the proceedings there are reasons that bring us to require such a session [...]²⁰

CONSIDERING that the Defences for Germain Katanga and/or Mathieu Ngudjolo Chui have not filed within the 12 June 2008 deadline any Defence List of Evidence; and that the schedule set out in the present decision might need some adjustment if they finally file a Defence List of Additional Evidence within the 20 June 2008 deadline;

CONSIDERING further that one of the Legal Representatives of Victims²¹ indicated that the time collectively allocated to the Legal Representatives of Victims to make opening and closing statements was insufficient²²; that in this regard, "we consider that an average of five hours would be sufficient"²³; and that in relation to the time allocated for the discussion of evidence, "the two and a half hours are sufficient for our purposes;"²⁴

¹⁷ ICC-01/04-01/07-T-35- ENG ET WT 10-06-2008, page 28, lines 19-21

¹⁸ ICC-01/04-01/07-T-35- ENG ET WT 10-06-2008, page 25, lines 1-3

¹⁹ ICC-01/04-01/07-T-35- ENG ET WT 10-06-2008, page 28, lines 21-24

²⁰ ICC-01/04-01/07-T-35- ENG ET WT 10-06-2008, page 28, line 25 to page 29, line 2

²¹ Ms Carine Bapita Buyagandu

²² ICC-01/04-01/07-T-35- ENG ET WT 10-06-2008, page 30, lines 20-22 and page 31, lines 12-14

²³ ICC-01/04-01/07-T-35- ENG ET WT 10-06-2008, page 31, lines 20-21

²⁴ ICC-01/04-01/07-T-35- ENG ET WT 10-06-2008, page 31, line 6

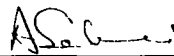
CONSIDERING that there are currently three different teams of Legal Representatives for non-anonymous victims (one of them also representing Victims for whom requests for anonymity are pending before the Single Judge), plus a fourth team of Legal Representatives representing anonymous Victim a/0333/07 (as well as anonymous victim a/0110/08 whose request for anonymity is pending before the Single Judge); that the time allocated for the opening and closing statements shall be equally divided among all four teams of Legal Representatives; and that neither the Prosecution nor the Defences for Germain Katanga and Mathieu Ngudjolo Chui objected to the request for the allocation of more time for the opening and closing statements of the Legal Representatives of Victims;²⁵

CONSIDERING that any decision amending the schedule annexed to this decision shall be made in consultation with the parties and participants;

FOR THESE REASONS,

DECIDES that the schedule for the confirmation hearing in the case of *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui* shall be as provided in Annex I attached to the present decision

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



Judge Akua Kuenyehia
Single Judge

Dated this Friday 13 June 2008

At The Hague, the Netherlands

²⁵ ICC-01/04-01/07-T-35- ENG ET WT 10-06-2008.