



**CONFIRMATION OF CHARGES HEARING:  
THE PROSECUTOR VS. GERMAIN KATANGA AND MATTHIEU NGUDJOLO CHUI  
27 June 2008**

**What is a “confirmation of charges hearing”?**

The purpose of the Court’s second ‘confirmation of charges hearing’ is for the Pre-Trial Chamber I (‘the Chamber’) to assess whether or not the charges on which the ICC Prosecutor intends to seek trial of Germain Katanga and Matthieu Ngudjolo Chui will be confirmed. The legal basis for the confirmation of charges hearing is contained in Article 61 of the Rome Statute.

Before the hearing, the Presiding Judge of the Chamber is to determine how the hearing will be conducted, establishing the order and the conditions under which the evidence is to be presented.

Germain Katanga is the alleged commander of the Force de résistance patriotique en Ituri (FRPI). Matthieu Ngudjolo Chui is the alleged former leader of the National Integrationist Front (FNI) and a Colonel in the National Army of the Government of the Democratic Republic of the Congo [Forces armées de la RDC/ Armed Forces of the DRC] (FARDC). The prosecutor has charged them with crimes against humanity and war crimes. At the confirmation hearing, the prosecutor will be required to support each charge with sufficient evidence in order to establish substantial grounds to believe that both suspects committed the crimes with which they are charged. The trial phase can only begin once the charges are confirmed.

**When will the confirmation of charges hearing take place?**

The hearing will take place on 27 June 2008. Initially scheduled on 28 February 2008 and then on 21 May 2008, the hearing was postponed twice by the Chamber to afford more preparation time to the parties involved. The Chamber, among other things, considered five appeals before the Appeals Chamber as well as the necessity for the prosecution to disclose further evidence on which it intended to rely on at the hearing.

**Who will be involved in the hearing?**

The full bench of the Chamber (composed of Presiding Judge Akua Kuenyehia, Judge Sylvia Steiner and Judge Anita Ušacka) will be involved. So too will the Office of the Prosecutor (OTP), the Defense (both suspects and their respective counsels) and the Legal Representative of Victims whom the Chamber has granted the right of participation. These representatives include Carine Bapita Buyagandu, Joseph Keta, Jean Louis Gilissen, Franck Mulenda and Hervé Diakiese. Germain Katanga is represented by David Hooper and Matthieu Ngudjolo Chui by Jean Pierre Kilenda Kakengi Basila. The ICC Registry is responsible for courtroom services.

**What are the charges to be confirmed?**

Katanga and Ngudjolo are alleged to have committed three counts of crimes against humanity and six counts of war crimes in Ituri, a territory in eastern DRC, from January to March 2003. The arrest warrants for the two suspects focus in particular on the attack of the village of Bogoro on 24 February 2003. The alleged acts include murder, inhumane acts, inhuman or cruel treatment, the use of child soldiers, sexual slavery, willful killing, intentional attacks against the civilian population and pillage.

**Will victims be participating?**

As of the time of the hearing, fifty-six applicants have been granted the procedural status of victim at the Pre-Trial stage, which includes the right to participate in the public sessions of the confirmation hearing. Of those granted the right to participate, eighteen victims have not requested anonymity before the prosecution and defense, although their identities may not be disclosed to the general public. One victim has been granted the right to participate anonymously, which means that his or her identity cannot be

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disclosed to the defense or the public. Thirty-seven additional victims have also requested anonymity, but the Pre-Trial Chamber has still to make a decision on the matter.

Non-anonymous victims will participate through their legal representatives, who may make opening and closing statements, and oral and written motions, responses, replies and submissions. They will also have the right to examine any prosecution and defense witnesses. The legal representatives of anonymous victims have the right to make opening and closing statements at the confirmation hearing in which they can address points of law, and may also have the right to intervene granted by the Chamber on a case-by-case basis.

### **How will the hearing proceed?**

At the outset of the hearing, the presiding judge will ask the parties involved whether they have any objections or observations concerning the proper conduct of the proceedings. After this is done, no objections or observations on the proper conduct of the trial can be made.

If objections or observations are stated at the hearing, that party will be invited to present its arguments. The other party will then have the right to reply. Should the objections raised or observations made relate to the proper conduct of the proceedings prior to the confirmation hearing, the Chamber can decide whether to join the issue(s) raised with the examination of the charges and the evidence, or to separate them. If the Chamber separates the issue(s) regarding the conduct of the trial from those relating to the examination of the charges, the Chamber shall adjourn the confirmation hearing and render a decision on the specific issue(s) raised.

If there are no objections or observations, or if they do not require separation from the examination of charges, the Prosecutor will submit evidence in support of the crimes in documentary, summary or oral form. The Defense will also have the opportunity to submit their contrary evidence disputing these charges or casting doubt on Katanga and Ngudjolo's responsibility and involvement in the perpetration of the alleged crimes. The parties will then be permitted to make final observations. Finally, the Chamber will render a decision as to whether or not there are substantial grounds to argue that Katanga and Ngudjolo committed the crimes with which they are charged.

### **What will the outcome of the hearing be?**

The outcome of the hearing will be based on the merits of the above submissions of evidence and the parties' final observations. Based on the determination of substantial grounds, the Chamber then has three options:

- 1) Confirm the charges based on sufficient evidence and assign Germain Katanga and Matthieu Ngudjolo Chui to a trial chamber for trial on the charges as confirmed;
- 2) Decline to confirm those charges if it has been determined that there is not enough evidence;
- 3) Adjourn the hearing and request the prosecutor to (i) consider providing further evidence or conducting further investigation with respect to a particular charge, or (ii) amend a charge to conform with the submitted supporting evidence.

If the chamber declines to confirm a charge, the prosecutor can subsequently resubmit the charge for confirmation based on additional supporting evidence. If, however, the charges have been confirmed by the chamber and the case is committed to trial, the prosecution may – after having notified the accused – still ask the chamber for more time to amend the charges. An additional confirmation of charges hearing must be held if the prosecution seeks to add charges or substitute confirmed charges for more serious charges.

If the chamber confirms some of the charges but adjourns the hearing on other charges, the chamber can decide whether to postpone the assignment of Katanga and Ngudjolo to a trial chamber on the confirmed charges until the continuation of the hearing. Once the chamber has made a decision on the confirmation of charges and on whether to assign the suspects to a trial chamber, the prosecutor, and both suspects and their counsels shall be notified of this decision, which will also be transmitted to the ICC Presidency. The presidency will then assemble a trial chamber to be responsible for the conduct of trial proceedings against Katanga and Ngudjolo.

### **Can NGOs observe the hearing?**

Yes, the hearing held at the ICC in The Hague is open to the general public.

### **What is the relationship between this and the Lubanga case?**

The confirmation of charges proceeding in the Katanga/Ngudjolo case is completely separate from other proceedings before the court, including those in the case of Thomas Lubanga Dyilo. Therefore this hearing and this case is not affected by the proceedings in the Lubanga case.

In addition, the purpose of the confirmation hearing is not the same as the purpose of the trial. The confirmation hearing is intended to determine whether there is sufficient evidence to confirm the charges brought by the Office of the Prosecutor. At this stage of the proceeding, the parties have different disclosure obligations than they will eventually have at trial, as was confirmed by a recent ruling from Pre-Trial Chamber I in the Katanga/Ngudjolo case. Once and if the charges are confirmed, a trial chamber will be constituted, and then disclosure in preparation for trial would commence under the authority of that trial chamber.

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