Topic 1(b):
International Criminal Court: The Prosecutor v Germain Katanga and Mathieu Ngudjolo Chui

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# Topic 1(b): International Criminal Court: The Prosecutor v Germain Katanga and Mathieu Ngudjolo Chui

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Summary

For over a decade, war has raged across the Democratic Republic of the Congo ("DRC") giving rise to innumerable breaches of international humanitarian law. On 11 April 2002, the DRC ratified the Rome Statute of the International Criminal Court ("Rome Statute"), allowing the International Criminal Court ("ICC") to exercise jurisdiction over “the most serious crimes of concern to the international community as a whole”,¹ namely genocide, crimes against humanity, and war crimes. The DRC’s ratification of the Rome Statute heralds the end of the impunity of war criminals across the DRC.²

This paper examines the second case to come before the ICC: The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui, involving two alleged commanders of ethnically organised militias who led a joint attack on a DRC village in 2003. The events that occurred before and after the attack form the basis of three charges of crimes against humanity and seven war crimes, against each of the accused.

The case against Germain Katanga ("Katanga") and Mathieu Ngudjolo Chui ("Ngudjolo Chui") tests several procedural innovations of the ICC, including its approval of the participation of 345 victims in the proceedings. Further, the decision of the Pre-Trial Chamber of the ICC to join the proceedings against Katanga and Ngudjolo Chui has also raised debate over the jurisdiction of the Pre-Trial Chamber and has tested the powers conferred to it under the Rome Statute.

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² The DRC has been one of several African countries to refer the situation on its territory to the ICC, pursuant to Article 14 of the Statute, including Uganda and the Central African Republic. The United Nations Security Council has also referred the situation in Darfur in the Region of Sudan to the Office of the Prosecutor, under Chapter VII of the Charter of the United Nations and Article 13(c) and 15 of the Rome Statute.
1 The Democratic Republic of the Congo

1.1 Introduction

For over a decade, the International Criminal Court ("ICC") has monitored the situation in the Democratic Republic of the Congo ("DRC"). In 2003, the ICC's Chief Prosecutor Luis Moreno-Ocampo ("Ocampo") identified the DRC as one of the most urgent situations to be followed. Following a referral by the DRC government to the Office of the Prosecutor ("Prosecutor") in March 2004, Ocampo opened the ICC's first investigation since the Rome Statute of the International Criminal Court ("Rome Statute") entered into force.3

The conflict in the DRC is longstanding and is estimated to have resulted in more civilian casualties than any war since World War II.4 A second national DRC war began in 1998 and involved DRC government forces fighting against several rebel movements, backed by the neighbouring countries of Angola, Zimbabwe and Namibia as well as Rwanda and Uganda. Despite the signing of the Lusaka Peace Accords in 1999 and agreements for the withdrawal of Rwandan and Ugandan forces from the Congo in 2002, disagreements continued over natural resources in the district of Ituri. Fighting in the north-eastern region of Ituri intensified between August 2002 and May 2003, as local surrogates carried on the battles of national and international actors. Once such battle involved the alleged attack against the Ituri village of Bogoro on 24 February 2003.5

Studies of mortality rates in the DRC have found that 3.3 million people have died during the past decade as a result of war-related famine and disease, international crimes committed during the war.6 Human Rights Watch estimates, “at least 5,000 civilians died from direct violence in Ituri between July 2002 and March 2003. These victims are in addition to the 50,000 civilians that the United Nations estimates died there since 1999”.7 There are also extreme levels of civilian displacement, with 500,000 people being forced to flee from their homes in Ituri.8

Rich in a variety of natural resources,9 Ituri is home to some 20 different ethnic groups, the largest being the Hemas, the Lendus and their southern sub-group, the Ngitis. The broader war in the DRC and political and military support from Uganda and Rwanda fuelled the growth of ethnically organised militias in Ituri. Chief among these were the Hema-dominated Unions des patriotes Congolais10 ("UPC"), the Lendu-dominated Forces nationalistes et intégrationistes11 ("FNI"), and the Ngiti-dominated Force de résistance patriotique en Ituri ("FRPT").12

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6 Human Rights Watch, above n 4, 1.
7 Ibid.
8 Ibid.
9 Ituri is a district in the Orientale Province of the DRC. Bordered by Uganda to the east and Sudan to the north, its population is between 3.5 and 5.5 million people, of whom only about 100,000 live in Bunia, the district capital. Ituri is regarded as one of the richest regions of the DRC, with gold, diamond, cobalt, timber and oil reserves: United Nations General Assembly, Interim report of the Special Rapporteur on the situation of human rights in the Democratic Republic of the Congo, 24 October 2003, A/58/534, 8.
10 Union of the Congolese Patriots, also known as the Forces patriotiques pour la libération du Congo (Patriotic Forces for the Liberation of Congo).
11 The National Integrationist Front.
12 The Patriotic Resistance in Ituri.
To date, three trials have commenced in the ICC following the Prosecutor’s investigation into the DRC situation, against leaders of these Ituri-based militias. These include the joint trial of Germain Katanga ("Katanga"), the alleged former commander and president of the FRPI and Mathieu Ngudjolo Chui ("Ngudjolo Chui"), the alleged former leader of the FNI and the case against Thomas Lubanga Dyilo, the alleged founder and president of the UPC.

A fourth arrest warrant\(^\text{13}\) has been issued for the arrest of Basco Ntaganda, alleged former Deputy Chief of the General Staff of the Forces Patriotiques pour la Libération du Congo ("FPLC"),\(^\text{14}\) who remains at large.

1.2 How and why was the DRC situation referred to the ICC?

The DRC ratified the Rome Statute on 11 April 2002, allowing the ICC to exercise jurisdiction over that state for “the most serious crimes of concern to the international community as a whole”,\(^\text{15}\) namely genocide, crimes against humanity, and war crimes.

Non-State armed groups in the DRC, such as the FNI and the FRPI are bound by international humanitarian law,\(^\text{16}\) which regulates the methods and means of armed conflict. It requires the humane treatment of civilians, prohibits violence to life and person, including murder, torture, the taking of hostages, collective punishment, rape and other forms of sexual violence.\(^\text{17}\)

In July 2003, Ocampo announced that the Prosecutor would ‘closely follow’ the situation in Ituri. Reports estimate that between July 2002 and early 2003, more than 5,000 people died in Ituri as a result of crimes that could constitute genocide, war crimes or crimes against humanity.\(^\text{18}\) During this period, it is alleged that more than 30,000 child soldiers served on the ranks of the various belligerents across the country.\(^\text{19}\)

In September 2003, Ocampo informed the Assembly of State Parties to the Rome Statute that he was prepared to seek authorisation from a Pre-Trial Chamber to begin an investigation into the DRC under his proprio motu powers, but indicated that a referral from the DRC would be preferable.\(^\text{20}\)

The President of the DRC, Joseph Kabila ("Kabila") referred the DRC situation on 3 March 2004, thereby placing all events taking place in DRC territory since the entry into force of the Rome Statute on 1 July 2002, within the jurisdiction of the ICC.\(^\text{21}\) Kabila requested the

\(^\text{13}\) The Prosecutor v Bosco Ntaganda Warrant of Arrest issued 22 August 2006; ICC - 01/04 - 02/06 (International Criminal Court, Pre Trial Chamber I, Judge Jordà, Judge Kuenyehia, Judge Steiner) <http://www.icc-cpi.int/iccdocs/doc/doc305330.PDF> at 7 April 2010.

\(^\text{14}\) Patriotic Forces for the Liberation of Congo.

\(^\text{15}\) Above n 3.

\(^\text{16}\) These include article 3 common to the four Geneva Conventions of 1949, the Second, Additional Protocol of 1977 (Protocol II) to the Geneva Conventions, and customary international humanitarian law.


\(^\text{20}\) Ibid.

\(^\text{21}\) International Criminal Court, Case Information Sheet: Situation in the Democratic Republic of Congo The Prosecutor v Germain Katanga and Mathieu Ngudjolo Chui Case No ICC-01/04-01/07 (2009) <http://www.icc-cpi.int/NR/rdonlyres/EB9A6468-C81F-403F-86A1-BB01A002199F/281311/Katanga_Chui_ENG1.pdf> at 11 March 2010. This is the second referral by an ICC State Party. In January 2004, Uganda referred the situation in the north of the country where atrocities had been reported, including the abduction of children and the killing and torture of civilians, during a 17-year conflict between the Lords Resistance Army and government forces.
Prosecutor to investigate allegations of crimes falling within ICC jurisdiction (namely, genocide, war crimes and crimes against humanity) in order to determine whether one or more persons should be charged with such crimes, and affirmed the readiness of the DRC to cooperate with the investigation of the ICC to the referral.  

On 23 June 2004, Ocampo announced his decision to investigate grave crimes allegedly committed in the DRC since 1 July 2002, concluding that such an investigation would be in the interests of justice and of the victims. The DRC situation was assigned to Pre-Trial Chamber I (“PTC-I”).

### 1.3 The alleged attack of 24 February 2003 on the Ituri village of Bogoro

The Prosecutor’s investigation into the alleged attack of 24 February 2003 on the Ituri village of Bogoro has so far resulted in the trial of two prominent militia leaders, Katanga and Ngudjolo Chui.

The Prosecution alleges that on 24 February 2003, Katanga and Ngudjolo Chui jointly orchestrated a widespread and systematic attack on Bogoro, during which approximately 200 civilians were killed, many more were displaced, and most of the village’s civilian homes were destroyed. Roads blocks placed by the attackers were used to wipe out all civilians attempting to flee, others were attacked or burned alive in their homes, imprisoned in rooms with corpses, raped or abducted and reduced to sexual slavery by force. Child soldiers under 15 years of age, trained in the FRPI and FNI camps, are alleged to have participated in this attack on Bogoro.

It is alleged that Katanga and Ngudjolo Chui targeted Bogoro due to its predominately Hema population, and its association with the UPC, a rival group of the allied FNI and FRPI dominated by that ethnic group. It is also alleged that the attack was launched in order to secure Lendu and Ngiti control of the route to Bunia which would, among other advantages, facilitate the transportation of goods and the region’s rich natural resources, namely gold, diamonds, and oil, along the Bunia-Lake Albert axis. The killing and/or displacement of the civilian population, together with the destruction of their property, is alleged to have been the selected strategy to secure village.

Following its investigation, the Prosecution made applications for the issue of warrants of arrest under Article 58 of the Statute, filed jointly in two parts against Katanga and Ngudjolo Chui on 22 and 25 June 2007 respectively.

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24 Pre-Trial Chamber I is comprised of Presiding Judge Akua Kuenyehia, Judge Sylvia Steiner and Judge Anita Usacka.

25 Above n 21.

26 Ibid.

1.4 Proceedings against Germain Katanga

Katanga (also known as “Simba”) is a DRC national of Ngiti ethnicity and the alleged commander and former president of the FRPI. Katanga allegedly had ultimate control over other FRPI commanders, who followed his orders to obtain and distribute weapons and ammunition. At the time of his arrest in March 2005, Katanga held the position of Brigadier-General of the Armed Forces of the Democratic Republic of Congo (“FARDC”), a position to which he was appointed by President Kabila. Katanga is alleged to have committed six war crimes and three crimes against humanity.

On 22 June 2007, the Prosecution filed an application for the issue of a warrant of arrest for Katanga. PTC-I issued a sealed warrant for Katanga’s arrest on 2 July 2007. Having been detained by DRC authorities since March 2005, Katanga was surrendered to the ICC on 17 October 2007 and transferred to the ICC detention centre the following day. He first appeared before PTC-I on 22 October 2007.

1.5 Proceedings against Ngudjolo Chui

Ngudjolo Chui is a DRC national of Lendu ethnicity and an alleged former leader of the FNL. It is alleged that Ngudjolo Chui had ultimate control over FNI commanders and controlled their obtaining and distribution of weapons and ammunition. It is also alleged that in October 2006, Ngudjolo Chui obtained his current grade of Colonel in the FARDC. Ngudjolo Chui is also alleged to have committed six war crimes and three crimes against humanity.


1.6 Warrants of arrest for Katanga and Ngudjolo Chui

In accordance with Article 58(1) of the Rome Statute, PTC-I found that there were reasonable grounds to believe that Katanga and Ngudjolo Chui, as the highest ranking FRPI and FNI commanders, played an essential role in the preparation and implementation of a common plan with other senior FRPI and FNI military commanders, to commit an indiscriminate attack against the village of Bogoro in the Ituri region on or about 24 February 2003.

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29 International Criminal Court, Background Information Sheet: Situation in the Democratic Republic of the Congo - Case of Germain Katanga (18 October 2007) <http://www.amicc.org/docs/KatangaBackgroundICC-OTP.pdf> at 7 April 2010. Katanga was arrested along with eight other militiamen from various Ituri armed groups, in relation to an attack against MONUC peacekeepers in Ituri on 25 February 2005 in which 9 peacekeepers were killed.
30 Above n 21.
31 Above n 27. The arrest warrant was unsealed on 7 February 2008: The Prosecutor v Ngudjolo Chui, Decision to Unseal the Warrant of Arrest Against Ngudjolo Chui, [2008] ICC-01/04-01/07-24 (International Criminal Court, Pre Trial Chamber I, Judge Steiner) 7 February 2008 <http://www.icc-cpi.int/iccdocs/doc/doc455949.PDF> at 11 March 2010.
32 Article 58 of the Rome Statute provides that “the Pre-Trial Chamber shall, on the application of the Prosecutor, issue a warrant of arrest of a person if, having examined the application and the evidence or other information submitted by the Prosecutor, it is satisfied that: (a) There are reasonable grounds to believe that the person has committed a crime within the jurisdiction of the Court; and (b) The arrest of the person appears necessary.”
PTC-I also found that there were reasonable grounds to believe that during and after the attack, numerous criminal acts were committed against civilians of primarily Hema ethnicity, including the murder of about 200 civilians, serious bodily harm, unlawful arrest and imprisonment, pillaging, the sexual enslavement of women and girls, and the use of children under the age of 15 years to participate actively in the attack. PTC-I found that there were reasonable grounds to believe that such crimes were part of the common plan or, alternatively, a probable and accepted consequence of its implementation.33

Accordingly, the warrants provided that there are reasonable grounds to believe that Katanga and Ngudjolo Chui are criminally responsible under either Article 25(3)(a) or Article 25(3)(b) of the Rome Statute for six counts of war crimes, including wilful killing,34 inhuman35 or cruel treatment,36 using children under the age of fifteen years to participate actively in hostilities,37 sexual slavery,38 intentionally directing attacks against the civilian population, or against individual civilians not taking direct part in hostilities,39 and pillaging a town or place.40

The warrant also states that there are reasonable grounds to believe that Katanga and Ngudjolo Chui are criminally responsible for three counts of crimes against humanity, namely murder,41 sexual slavery,42 and other inhumane acts (rape).43

2 Joinder of the Katanga and Ngudjolo Chui cases

2.1 Pre-Trial Chamber I order for the joinder of cases on 10 March 2008

Article 64 of the Rome Statute establishes that the Trial Chamber may direct that charges against more than one accused be joined or severed.44 Rule 136 of the ICC Rules of Procedure and Evidence (“Rules”) also provides that persons accused jointly shall be tried together, unless the Trial Chamber, on its own motion or at the request of the Prosecutor or Defence, orders that separate trials are necessary.45

Notably, Article 64 and Rule 136 refer to the Trial Chamber, as distinct from PTC-I. However, on 12 February 2008, PTC-I held a proprio motu hearing for the joinder of the two cases on its own motion (“joinder hearing”), having regard to the joint application for the issue of the

33 Prosecutor v Germain Katanga, Warrant of Arrest for Germain Katanga, Above n 27, 4-5.
34 Above n 3, Article 8(2)(a)(i) or 8(2)(c)(i).
36 Ibid Article 8(2)(c)(i).
37 Ibid Article 8(2)(b)(xvi) or 8(2)(e)(vii).
38 Ibid Article 8(2)(b)(xxvi) or 8(2)(e)(vi).
39 Ibid Article 8(2)(b)(i) or 8(2)(e)(ii).
40 Ibid Article 8(2)(b)(xvi) or 8(2)(e)(v).
41 Ibid Article 7(1)(a).
42 Ibid Article 7(1)(g).
43 Ibid Article 7(1)(k).
44 Ibid. Article 64 provides: “Upon notice to the parties, the Trial Chamber may, as appropriate, direct that there be joinder or severance in respect of charges against more than one accused”.

Rules of Procedure and Evidence, rule 136 Joint and separate trials provides that:

1. Persons accused jointly shall be tried together unless the Trial Chamber, on its own motion or at the request of the Prosecutor or the defence, orders that separate trials are necessary, in order to avoid serious prejudice to the accused, to protect the interests of justice or because a person jointly accused has made an admission of guilt and can be proceeded against in accordance with article 65, paragraph 2 [of the Statute]. 2. In joint trials, each accused shall be accorded the same rights as if such accused were being tried separately.
warrant of arrests for Katanga and Ngudjolo Chui, filed in two parts on 22 and 25 June 2007 respectively. The Prosecutor and Defence were then given the opportunity to file written observations.

On 10 March 2008, PTC-I issued a decision joining the cases against Katanga and Ngudjolo Chui. This decision has raised several issues, including the interpretation of the Rome Statute and Rules, the jurisdiction of the PTC-I over joinder proceedings, and the need to balance the rights of witnesses/victims against the right of the accused to a timely trial.

(a) Submissions of the Office of the Prosecutor

The Prosecutor sought initially to prosecute Katanga and Ngudjolo Chui jointly for their alleged co-responsibility for Bogoro attack. This was demonstrated by the Prosecutor’s joint application, supporting materials and evidence for the warrants of arrest, which related to both alleged co-perpetrators. Further, the Prosecutor’s written observations requested that the cases against Katanga and Ngudjolo Chui be joined as soon as practicable.

The Prosecutor argued that a joinder of the proceedings would minimise the potential impact on witnesses, and facilitate witness protection. Although some witnesses would be more relevant to the case against one accused, the evidence would nevertheless be common to the same attack.

The Prosecutor further submitted that a joinder would ensure consistency in the treatment of the same issues arising in both cases, requiring only one hearing and presentation of the case, and one final evaluation of the facts and decision by the court.

(b) Submissions of Counsel for the Defence

In written observations, Defence Counsel for Katanga noted that there was a “persuasive argument for the joinder of the cases” and “that it can raise no effective argument against such joinder in principle”. However, concerns were raised relating to the potential prejudice to Katanga from a delay in the proceedings which could prolong his detention by some three months until the date of the hearing to confirm the charges against Ngudjolo Chui.

Defence Counsel for Katanga also raised the issue of funding and resources. Joining the cases at pre-trial stage could mean that further facilities and funding would by required to adequately prepare the Defence case at the pre-trial stage. There was a concern that such funding might not be accessed until a later stage of the proceedings. Accordingly,
Defence Counsel for Katanga requested that PTC-I support its request to the ICC registry concerning the provision of additional support to the Defence team.\(^{52}\) Elevating the proceedings at an earlier stage than is technically provided for under the rules could also mean that other administrative procedures would, as a consequence, be out of sync.

Duty Counsel for Ngudjolo Chui\(^{53}\) argued that the PTC-I had no jurisdiction to join the cases at the pre-trial stage, prior to the confirmation of charges hearing and that submissions should be a matter for Ngudjolo Chui’s permanent Counsel, once appointed. As Duty Counsel was not in a position to know whether his client and Katanga has acted in a joint criminal enterprise, Duty Counsel was therefore disadvantaged in pleading a joinder.\(^{54}\) However, Ngudjolo Chui’s permanent Counsel did not file any written observations within the time limits afforded by the PTC-I,\(^{55}\) although an appeal against the joinder decision was subsequently filed, as discussed briefly below.

However, as PTC-I noted, neither Defence Counsel had shown that joining the cases would prejudice the accused or would be contrary to the interests of justice, and in any event the cases could be severed at a later date if necessary.\(^{56}\)

\(\text{(c) Functions of PTC-I}\)

PTC-I considered its own functions, which include taking appropriate measures to protect victims and witnesses,\(^{57}\) conducting the proceedings in a fair and efficient manner from a Defendant’s first appearance before the ICC until the end of the pre-trial phase,\(^{58}\) and protecting the rights of a Defendant (including the right to have adequate time and facilities for the preparation of a defence and the right to be tried without undue delay.)\(^{59}\)

Joint proceedings during the pre-trial phase was deemed by PTC-I to be consistent with the object and purpose of the Rome Statute and Rules, in so far as the joinder would enhance the fairness and judicial economy of the proceedings (by avoiding duplication of evidence, witnesses testifying twice, and avoiding inconsistency in the presentation of evidence), minimise the impact on witnesses and better protect witnesses, and as the concurrent presentation of evidence regarding different defendants would not per se constitute a conflict of interests.\(^{60}\) If a different interpretation was taken, the issue of joinder would have to be addressed at the trial stage, which would be more cumbersome.\(^{61}\)

Although the relevant provisions of the Rome Statute and Rules deal with “Trial Procedure”, the PTC-I considered that a contextual interpretation of such provisions did not preclude joint proceedings at the pre-trial stage, but rather supports the general rule

\(^{52}\) Above n 48, 4, 10.

\(^{53}\) Ngudjolo Chui made his first appearance before PTC-I on 11 February 2008. At the time of the joinder hearing on 12 February 2008, Ngudjolo was represented by Duty Counsel, as his permanent Defence Counsel had not yet been appointed.

\(^{54}\) Above n 46, 10

\(^{55}\) Above n 48, 4-5, 10. Duty Counsel for Ngudjolo Chui raised the observation that permanent Counsel for the accused should analyse the decision of joinder. On 20 February 2008, PTC-I made orders providing seven days for Defence Counsel to file written observations, once appointed. No observations were filed.

\(^{56}\) Ibid 10.

\(^{57}\) Ibid 6, in reference to Rome Statute articles 57(3) and 68.

\(^{58}\) Ibid 6, in reference to Rome Statute articles 57 to 61; and rules 118 to 128 of the ICC Rules of Procedure and Evidence.

\(^{59}\) Ibid 6, in reference to Rome Statute articles 61(3) and 67 of the Statue, and rule 121 of the ICC Rules of Procedure and Evidence.

\(^{60}\) Ibid 8.

\(^{61}\) Ibid 9.
that there is a presumption in favour of joint proceedings. According to PTC-1, determined that this general presumption of joint proceedings during “Trial Procedure” did not preclude such a joinder at the pre-trial stage.

(d) Statutory interpretation and jurisprudence on joiners

In considering Article 64(5) of the Rome Statute and Rule 136 of the Rules, PTC-1 stated that it must, in addition to applying the general principle of interpretation set out in Article 21(3) of the Rome Statute, look to the general principles of interpretation set out in the Vienna Convention on the Law of Treaties (“Vienna Convention”).

Article 31(1) of the Vienna Convention states that “a treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose”.

On this basis, PTC-1 took the view that the ordinary meaning of Article 64(5) and Rule 136 is that there “shall” be joint trials for persons accused jointly, which thereby establishes a presumption in favour of joint proceedings for persons prosecuted jointly. Article 64(5) and Rule 136 were therefore prescriptive, stating that persons accused jointly “shall be tried together”, rather than that they “may be tried” together, which would indicate a permissive interpretation. In this regard, the Prosecutor observed that the drafting of Rule 136 is in contrast with the equivalent rules of the International Criminal Tribunal for the former Yugoslavia, the International Criminal Tribunal for Rwanda and the Special Court of Sierra Leone, which provide that “persons accused of the same or different crimes committed in the course of the same transaction may be jointly charged and tried”.

Further, PTC-1 considered that the presumption in favour of joint proceedings for persons prosecuted jointly, is consistent with the jurisprudence of the ICTY and ICTR, citing the following from The Prosecutor v Bagosora.

the preference for joint trials of individuals accused of acting in concert in the commission of a crime is not based merely on administrative efficiency. A joint trial relieves the hardship that would otherwise be imposed on witnesses whose repeated attendance might not be secured; enhances fairness as between the accused by ensuring a uniform presentation of evidence and procedure against all; minimizes the possibility of inconsistencies in treatment of evidence, sentencing, or other matters, that could arise from separate trials [...]

Nevertheless, PTC-1 read into the Rules a permission for that court to join cases, which it does not specifically have. Its decision to exercise jurisdiction raises the question whether the PTC-1 may in other respects, also be imputed to have the same powers as the Trial Chamber. To a degree, the joinder of the cases raises uncertainty as to the proper practice and procedure of PTC-1. For future cases, if there is uncertainty as to

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64 Above n 48, 7.
65 Above n 47, [7] at fn 11, referring to Rule 48 of the International Criminal Tribunal for the former Yugoslavia (“ICTY”), International Criminal Tribunal for Rwanda (“ICTR”) and Special Court for Sierra Leone (“SCSL”).
67 Above n 48, 9 at fn 25, citing The Prosecutor v Bagosora et al, Decision on request for Severance of Three Accused, ibid, and reference to ICTY precedents in The Prosecutor v Brdanin and Talic, Delalic et al, Simic et al. NB this citation is as per the PTC-I decision. However, the correct reference may be at [22] and at footnote 17<http://www.ictr.org/ENGLISH/cases/Bagosora/decisions/090903.htm> 7 April 2010.
PTC-1’s powers, then there is the possibility that further costs may be incurred in resolving procedural issues before matters come to trial.

2.2 Appeal by Ngudjolo Chui on joinder

Ngudjolo Chui’s permanent counsel filed an appeal against the joinder decision on 9 April 2008. The Appellant challenged the decision on the basis that it was in defiance of or in breach of the principle of legality, and disputed the applicability of the Vienna Convention. On 18 March 2008, the appeal was dismissed by the Appeals Chamber of the ICC. The Appeals Chamber held that the Vienna Convention does provide a guide to the interpretation of the Rome Statute and the Rules, and that PTC-1’s interpretation accorded with Article 64(5) of the Rome Statute, Rule 136 of the Rules and the object of the Rome Statute, being the efficacy of the criminal process and the promotion of its expedition proceedings. Accordingly, it held that decision of PTC-1 to join the proceedings did not violate the principle of legality.

2.3 The confirmation of charges

The PTC-1 held the confirmation of charges hearing from 27 June to 16 July 2008. In a procedure unique to the ICC, 57 victims participated in the confirmation of charges hearing, through legal representatives.

Under Article 61 of the Rome Statute, the Prosecutor was required to present evidence to establish substantial grounds to believe that Katanga and Ngudjolo Chui committed the crimes with which they were charged. On the basis of the hearing, PTC-1 then had to determine whether there was sufficient evidence to establish substantial grounds to believe that Katanga and Ngudjolo Chui committed each of the crimes alleged. If the PTC-1 was satisfied of these grounds, it could confirm the charges and commit the accused to a Trial Chamber for trial on the charges as confirmed.

On Friday 26 September 2008, PTC-1 confirmed the charges against Katanga and Ngudjolo Chui. In a judgment exceeding 200 pages, PTC-1 found sufficient evidence to confirm the charges that Katanga and Ngudjolo Chui jointly committed through other persons, within the meaning of Article 25(3)(a) of the Rome Statute, the following crimes:

War crimes:

(a) using children under the age of fifteen to take active part in the hostilities, under article 8(2)(b)(xxvi) of the Rome Statute;

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68 Judgment on the Appeal Against the Decision on the Joinder rendered on 10 March 2008 by the Pre-Trial Chamber in the Germain Katanga and Mathieu Ngudjolo Chui Cases, [2008] ICC-01/04-01/07-574 (No. ICC-01/04-01/07 OA 6) (International Criminal Court Appeals Chamber, Judge Pikis, Judge Kirsch, Judge Pillay, Judge Song and Judge Kourula), 9 June 2008, 2.
69 Ibid 3.
70 Ibid.
72 Ibid 8.
73 Ibid 9.
74 Above n 3, Article 61(5)
75 Ibid Article 61(7)
intentionally directing an attack against a civilian population as such or against individual civilians not taking direct part in hostilities under article 8(2)(b)(i) of the Rome Statute;

wilful killings under article 8(2)(a)(i) of the Rome Statute;

destruction of property under article 8(2)(b)(xiii) of the Rome Statute;

pillaging under article 8(2)(b)(xvi) of the Rome Statute;

sexual slavery under article 8(2)(b)(xxii) of the Rome Statute.

rape under article 8(2)(b)(xxii) of the Rome Statute

**Crimes against Humanity:**

*Crimes against Humanity:*  
(a) murder under article 7(1)(a) of the Rome Statute;
(b) rape under article 7(1)(g) of the Rome Statute.
(c) sexual slavery under article 7(1)(g) of the Rome Statute

*Please see Appendix A of this paper for details of the evidence relied on by PTC-1 in the confirmation of charges hearing which led to its discussion that Katanga and Ngudjolo Chui should be charged with the above crimes.*

Although listed in the original arrest warrant, the PTC-1 found insufficient evidence to try Katanga and Ngudjolo for inhumane treatment, outrages upon personal dignity (both war crimes), and the charge of inhumane acts (a crime against humanity).

However, the decision to prosecute ten crimes, including sexual slavery, which is defined for the first time under the Rome Statute as a war crime and a crime against humanity, is regarded as a significant step in the fight against impunity for the worst crimes committed in Ituri.

**2.4 Referral to Trial Chamber II and commencement of trial**

On 24 October 2008, the Presidency of the ICC constituted Trial Chamber II (“TC-2”) and referred the case to it for the subsequent trial. TC-2 is composed of Presiding Judge Bruno Cotte, and Judges Fatoumata Dembele Diarra and Christine Van den Wyngaert.

To establish the charges, under Article 66 of the Rome Statute, the onus is on the Prosecutor to prove the guilt of the accused. In order to convict the accused, the ICC must be convinced of the guilt of the accused beyond reasonable doubt.

On 24 November 2009, the Katanga and Ngudjolo trial commenced, however the hearings were postponed for reasons outside the case. The trial resumed on 26 January 2010 and is continuing.

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77 Above n 3, Article 66.
78 Coalition for the International Criminal Court, Timeline of developments summarised on the DRC situation related to the case of Germain Katanga (2008)  
2.5 Katanga motion seeking declaration for unlawful arrest

On 30 June 2009, Katanga filed a motion requesting a declaration for unlawful detention and a stay of the proceedings against him for his alleged unlawful arrest and detention in the Democratic Republic of the Congo prior to his surrender to the Court. On 20 November 2009, Trial Chamber II rejected the Defence motion without considering its merits, finding that it was submitted too late, *inter alia* because the motion was filed seven months after the Trial Chamber’s invitation to the parties to submit any relevant issues on which they sought a ruling of the Chamber.

On 12 July 2010, the Appeals Chamber decided by majority (two judges dissenting) to dismiss Katanga’s appeal. The Appeals Chamber agreed with the Trial Chamber’s determination that the parties must act “in a timely manner” or within a reasonable time, in keeping with considerations of efficiency and judicial economy. The Appeals Chamber found that the decision of the Trial Chamber did not infringe Mr Katanga’s right to a fair hearing and that he had been given adequate notice and opportunity to raise the issue of his alleged unlawful pre-surrender arrest and detention.\(^{79}\)

3 Part 3 - Victims

3.1 Victims in the International Criminal Court

The Rome Statute gives victims of the world’s most serious atrocities unprecedented rights to participate in proceedings. Victim participation is one of the most “novel and groundbreaking developments in international criminal proceedings"\(^{80}\) and is described as "*the major innovation*" of the ICC.\(^ {81}\) The ICC’s victim participation scheme to date has generated a substantial amount of attention from both within and outside the ICC.\(^ {82}\)

Under the Rome Statute, individuals or organisations are granted the opportunity to apply to be granted victim status, which enables them to participate in the proceedings with legal representation and the potential to be awarded reparations if an accused is found guilty.

There is a distinction however, between being a ‘party’ to the proceedings, and being a ‘participant’. Victims are not a part of the Prosecution, and their role is not to prove the case against the accused. Instead, the goal of the right of victim participation is to “give victims of gross violations of human rights and international humanitarian law a voice and to promote reconciliation”.\(^ {83}\)


3.2 Being a “victim” in the International Criminal Court

Article 68(3) of the Rome Statute constitutes the foundational provision for victim participation in the ICC, and reads:

“Where the personal interests of the victims are affected, the Court shall permit their views and concerns to be presented and considered at stages of the proceedings determined to be appropriate by the Court and in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.”

The definition of the term “victims” is set out in Rule 85 of the Rules:

(a) ‘Victims’ means natural persons who have suffered harm as a result of the commission of any crime within the jurisdiction of the ICC.

(b) Victims may include organisations or institutions that have sustained direct harm to any of their property which is dedicated to religion, education, art or science or charitable purposes, and to their historic monuments, hospitals and other places and objects for humanitarian purposes.

The concept of ‘harm’ being suffered by the victim is central to this definition, however it is not defined in the Rome Statute. The harm suffered must be “as a result of” a crime within the jurisdiction of the ICC and so far, “the Pre-Trial Chambers and the Trial Chamber have concluded that not only physical injury but also economic loss and emotional suffering constitute harm within the meaning of Rule 85”.

3.3 Procedural hurdles to being granted victim status

The threshold for being granted victim status in the ICC is quite high. A victim can make an application to participate in a proceeding at the pre-trial, trial or appeal stage. Under Rule 89 of the Rules, this application is to be made in writing to the Registrar, who passes the application on to the relevant Chamber.

A copy of the application is also provided to the Prosecution and Defence by the Registrar, in order to allow them to consider the application, and object to it if necessary. The relevant Chamber must then issue a written decision on the applications.

Under Article 68(3) of the Rome Statute, a victim must address three requirements in order to participate as a victim in the proceedings:

(a) sufficient personal interest for participation;

(b) whether participation is appropriate at the procedural stage in question; and

(c) whether participation is prejudicial or inconsistent with the rights of the accused to a fair or impartial trial.

These criteria are assessed at each of the different procedural stages (pre-trial, trial or appeal) of the proceedings. In order for a victim to satisfy this criteria, they must be able to establish that there is a “real evidential link between the victim and the evidence which the Court will be

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84 Above n 3.
85 Above n 45, (Part.II-A), rule 85.
86 Baumgartner, above n 83, 421.
87 Above n 45 (Part.II-A), rule 89.
88 Ibid (Part.II-A), rule 89(1).
89 See for example, Prosecutor v Germain Katanga and Mathieu Ngudjolo Chui, [2008] ICC-01/04-01/07-1328 (International Criminal Court, Pre Trial Chamber I) 10 June 2008.
90 Baumgartner, above n 83, 423.
considering during [the] trial”.91 Whether it is appropriate for the individual to participate is a question that may be answered at the ICC’s discretion.

3.4 Victim participation in The Prosecutor v Katanga and Chui

The innovative step of granting the victim the right to participate in the trial at the ICC has led to many extra challenges. The ICC has granted 345 people victim status in the joint proceedings against Katanga and Chui. This is the greatest number of victims to have been granted this status before the ICC in any one proceeding. Although this number arguably suggests that the role of victim participation is increasing before the ICC, it also raises a number of challenges. Some of these challenges relate to the concept of victim participation in general, and others to the specific circumstances of the trial.

Two separate legal counsel have been engaged to represent the victims, who have been split into two groups - those that were child soldiers, and those that were not. There are also some unrepresented victims before the ICC.

3.5 Striking the balance between the rights of the victims and accused

The most prominent issue raised by the participation of victims in the ICC is the need to balance participation with the right of the accused to a fair trial. The Rome Statute recognises this need, with Article 68(3) itself stating that the participation of victims must “not [be] prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial”.

It has been argued that the participation of victims “impedes the equilibrium between prosecution and defence, and… it interferes with the suspected or accused person’s right to a fair and expeditious trial and the interest of the Prosecutor in preserving evidence and bringing victims into play as witnesses”.92 In order to try and achieve a balance between the rights of victims and the accused, the ICC has taken the approach that “it [is] more the mode of participation that could be prejudicial than the actual participation as such”.93 In taking this approach, the judges have used the flexibility provided in the broad drafting of the approach to victim participation in the Rome Statute, and have allowed victims to participate in differing ways.

The decision of the ICC in relation to the mode of participation granted to victims in the proceedings against Katanga and Ngudjolo Chui is a matter of controversy. On 22 January 2010, the TC-2 issued a ruling, setting out the modes in which victims could participate during the trial. One of these modes was to allow the legal representatives of victims to question witnesses during the trial.94

On 1 February 2010, Defence Counsel for Katanga filed an appeal against this decision. The first ground of appeal related to the fact that the legal representatives of victims would be permitted to question witnesses. Counsel argued that the decision of the ICC to allow questions that can “clarify or complete the elements of proof already provided by the witness”95 was a facility which “effectively turns the victims’ legal representatives into a supplementary arm of the Prosecutor”.96

91 Ibid 424.
92 Ibid 432.
93 Ibid 425.
95 Above n 80, [1].
96 Above n 80, [2].
On 19 April 2010, the TC-2 refused leave to appeal on the first ground. TC-2 noted that the ability of the victims’ legal representatives to question witnesses was qualified by two points: first, that the questions “must essentially relate to points to clarify or complement previous evidence”, and secondly that “all questioning by Victims’ Legal Representatives is subject to prior authorization by the Chamber”. This meant that the victims did not have the right to ask questions that would affect the fairness of the proceedings or the outcome of the trial.

However, TC-2 allowed the appeal against the decision of 22 January 2010 on three other grounds, namely:

(a) (Ground 2): The Trial Chamber erred in deciding that the Legal Representatives of Victims may present evidence and call victims to testify on the crimes against the accused, in a manner which includes incriminating evidence and testimony (not having provided a witness statement to facilitate cross examination; 

(b) (Ground 3): The Trial Chamber erred in suggesting that the Legal Representatives of Victims might call witnesses on matters including the role of the accused in crimes charged against them; and

(c) (Ground 4): The Trial Chamber erred in its finding that nothing justifies a general obligation to communicate to the parties every element in the Legal Representatives of Victims’s possession, whether incriminating or exculpatory.

On 16 July 2010, TC-2 delivered judgment on the remaining grounds, confirming the “Decision on the Modalities of Victim Participation at Trial” and dismissing the appeal. TC-2 held that it is not incompatible with the Court's legal framework or the accused’s right to a fair trial if, during the course of the trial, and after being satisfied that the requirements of article 68 (3) of the Statute are met, the Trial Chamber requests victims to submit evidence that was not previously disclosed to the accused. In such a case, the court will allow measures to ensure that the accused maintain the right to "have adequate time and facilities for the preparation of the defence”.

Further, TC-2 found that PTC-1 did not err in not imposing a general obligation on victims to disclose to the accused all evidence in their possession, regardless of whether incriminating or exculpatory.

Finally, TC-2 held that “the possibility for victims to testify on matters including the role of the accused in crimes charged against them, is grounded in the Trial Chamber’s authority to request evidence necessary for the determination of the truth and is not per se inconsistent with the rights of the accused and the concept of a fair trial. Whether a victim will be requested to testify on
matters relating to the conduct of the accused will depend on the Trial Chamber's assessment of whether such testimony: (i) affects victim's personal interests, (ii) is relevant to the issues of the case, (iii) is necessary for the determination of the truth, and (iv) whether the testimony would be consistent with the rights of the accused and a fair and impartial trial.\textsuperscript{102}

As is noted by commentators and the above decision shows, issues concerning the ability of the victim to be both a witness and a victim continue to be raised: “if victims can be heard as witnesses, their testimony could be somewhat flawed because of a certain appearance of partiality and the clear interests they have in the outcome of the procedure, that is, with regard to reparations”.\textsuperscript{103}

3.6 Protection of Victims

The protection of victims is also a crucial part of victim participation in the ICC, as recognised in Article 68(1) of the Rome Statute. “Protection” in this sense extends further than the physical protection of witnesses. This is arguably more important in this trial, given the numbers of child soldiers that were involved in the DRC conflict: “protection issues do not only imply physical security. Children’s psychosocial well-being also requires protection, as the involvement in the process could cause secondary victimisation”.\textsuperscript{104}

The Rome Statute establishes a “Victims and Witnesses Unit” (“VWU”), which is entrusted with providing measures such as security, protection and counselling for both victims and witnesses.

Rules 87 (“Protective Measures”) and 88 (“Special Measures”) of the Rules, also seek to implement some mechanisms in order to protect victims and witnesses. These measures include allowing hearings to be held \textit{in camera} in order to determine whether the identity of witnesses should be protected, and ordering special mechanisms, such as the ability to give testimonies via video link or behind screens, for victims or witnesses that include children or victims of sexual assault.

The practicalities of protecting victims before, during, and after, a trial, are still being developed. Protective measures implemented by the ICC include safe-houses for those testifying or participating in the trial, and the permanent relocation for victims and their families.\textsuperscript{105} The VWU also provides practical assistance including the ICC Protection Programme.\textsuperscript{106} It is likely, however, that the ability to provide these sorts of protections will be challenged by the increasing number of victims granted the right to participate.

The ICC has attempted to meet the need for an expeditious trial by ensuring that victims can be represented by sole legal counsel, in order to decrease the amount of time it will take for victims’ issues to be raised before the ICC.\textsuperscript{107}

\textsuperscript{102} Ibid, [3].
\textsuperscript{103} Baumgartner, above n 83, 433.
\textsuperscript{105} Ibid, 2.
4 Conclusion

The proceedings against Katanga and Ngudjolo Chui will test the ICC’s ability to seek justice for the most abhorrent war crimes on behalf of its referral state, the DRC, as well as the DRC’s civilian population.

The case provides important jurisprudence on the powers of the ICC, including those of the Pre-Trial Chambers, and tests the ICC’s ability to meaningfully incorporate victim participation in the trial, whilst maintaining procedural fairness to both accused. The main challenge currently faced by the ICC is how to protect witnesses, communities and children, especially in Ituri, where the situation remains volatile, with the possibility of reprisals, intimidation and other threats.  

The protection of victims, balanced with the right of the accused to receive an expeditious trial and the secondary right of public interest for the “full scrutiny of the administration of justice” will be closely examined and critiqued by the international community as the case proceeds.

It is difficult to ascertain whether the proceedings serve as a deterrent to further international crimes. As the ICC President rightly notes, “the Court will never be able to end impunity alone. Its success will depend upon the support and commitment of States, international organisations and civil society”.

5 Appendix A

5.1 Nature of the Charges:

Below is an outline of the key evidential findings made by PTC-1 relied upon in the ‘confirmation of charges’ hearing, which lead to the finding that there was sufficient evidence to establish substantial grounds to believe that Ngudjolo Chui and Katanga should be charged with the aforementioned war crimes under international law.

(a) Article 8(2)(b)(xxvi) of the Rome Statute: using children under the age of fifteen years to participate actively in the hostilities:

The evidence before PTC-1 demonstrated that the training of child soldiers took place in FRPI and FNI camps. Evidence tendered by the Prosecutor showed that some of the children learned to handle weapons, and received "armes blanches", or guns at the end of their training. In particular, the evidence showed that some combatants were identified by the inhabitants of Bogoro during the attack on the village of Bogoro on 24 February 2003, as children who were clearly under the age of fifteen years. In reaching this conclusion, the PTC-1 took into account the statements of Witnesses 28, 157, 279, 280; all child soldiers who actively participated in the atrocities at Bogoro on 24 February 2003.

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109 Baumgartner, above n 83, 433.
112 Ibid, [255].
113 Ibid.
114 Ibid, [257].
115 Ibid, [260].
(b) Article 8(2)(b)(i) of the Rome Statute: Directing an attack against the civilian population:

It was the view of the PTC-1 that witness statements tendered by the Prosecutor provided substantial grounds to believe that the intention of the FNI/FRPI combatants was that the civilian population not engaged in the hostilities on 24 February 2003 attack would be the first target; and therefore that the object of the attack was the entire village and not just the military camp.\(^\text{116}\)

(c) Article 8(2)(a)(i) of the Rome Statute: Wilful killing:

Drawing on information gathered from remaining family members in Bunia, from Non-Government Organisations, and from their own investigations after returning to Bogoro in 2005, some survivors of the attack compiled lists with the names of the victims which were tendered as evidence by the Prosecutor.\(^\text{117}\) PTC-1 found the evidence to be sufficient to establish substantial grounds to believe that about 200 people were killed by the FNI/FRPI during the attack on the village of Bogoro.\(^\text{118}\)

(d) Article 8(2)(b)(xiii) of the Rome Statute: Destruction of property:

Evidence tendered by the Prosecutor demonstrated to PTC-1\(^\text{119}\) that FNI/FRNP combatants destroyed and set alight a large number of houses of "the enemy".\(^\text{120}\) The evidence further stated that many buildings, including the trade centre in Bogoro, were completely destroyed by FNI/FRPI combatants. In reaching this finding, PTC-1 took into account the information provided in the statements of Witnesses 268 and 233. In their statements, the witnesses indicated that the main buildings of Bogoro, such as the commercial centre, the school and others, were destroyed. From their hiding places, Witnesses 268 and 233 also saw houses burned.\(^\text{121}\)

(e) Article 8(2)(b)(xvi) of the Rome Statute: Pillaging

PTC-1 reached the conclusion that the evidence tendered by the Prosecutor was sufficient to establish the belief on substantial grounds that, during and in the aftermath of the 24 February 2003 attack on Bogoro, the FNI/FRPI combatants intentionally pillaged property belonging mainly to the Hema population.\(^\text{122}\) Statements from witness numbers 132, 159, 161 233, 268, 287 were taken into account by PTC-1 in reaching this decision. The evidence tendered by the Prosecutor demonstrates that the FNI/FRPI combatants pillaged a large number of Hema buildings. Common features of the pillaging included the removal of the roofing sheets, the breaking of the doors, and the removal of furniture and tables.\(^\text{123}\) Roofs of shops and businesses in the centre of Bogoro were also removed and looted, in addition to the pillaging of one school and the Bogoro church.

(f) Article 8(2)(b)(xxii) of the Rome Statute: Sexual slavery and rape

In the view of the PTC-1, the evidence was sufficient to establish substantial grounds to believe that, following the 24 February 2003 attack on the village of Bogoro, FNI/FRPI

\(^{\text{116}}\) Ibid, [281].
\(^{\text{117}}\) Ibid, [304].
\(^{\text{118}}\) Ibid.
\(^{\text{119}}\) Ibid.
\(^{\text{120}}\) Ibid, [320].
\(^{\text{121}}\) Ibid, [321].
\(^{\text{122}}\) Ibid, [334].
\(^{\text{123}}\) Ibid, [335].
combatants committed rape and sexual enslavement of civilian women. The evidence admitted for the purposes of the confirmation hearing also gave substantial grounds to believe that these invasions were committed by force, threat or fear of violence or death, and/or detention. The PTC-1 took into account, in reaching this finding, the evidence of Witnesses 249 and 132.

(g) Article 25(3) of the Rome State: Individual criminal responsibility

PTC-1 made a number of evidential findings in order to attribute individual criminal responsibility to Katanga and Ngudjolo Chui for the relevant crimes.

PTC-1 found that prior to their integration into the FARDC, Katanga and Ngudjolo Chui served as the commanders of the FRPI and FNI respectively. They had de facto control over other FRPI/FNI commanders, who sought their orders for obtaining or distributing weapons and were the leaders to whom other commanders reported. Sufficient evidence existed to establish substantial grounds to believe that the organisations were hierarchically organised, the organisations were large and provided Ngudjolo Chui and Katanga with an extensive supply of soldiers, whose compliance with their orders was “ensured”. Further, sufficient evidence existed to establish substantial grounds to believe that Ngudjolo Chui and Katanga agreed on a common plan to “wipe out” Bogoro by directing the attack against the civilian population, killing and murdering the predominantly Hema population and destroying their properties.

PTC-1 found in early 2003, Katanga and Ngudjolo Chui, through his subordinates, met in Aveba and planned the attack, including the formulation of a written plan which was later handed over to Ngudjolo Chui and distributed to subordinate commanders by both leaders. The co-defendants also met on the eve of the attack before moving to implement the common plan, for which they both had direct responsibility and a coordinating role, such that only they had the power to frustrate the implementation of the plan. There was sufficient evidence to believe that FRPI soldiers and FNI soldiers would obey only orders issued by their respective commanders, and therefore, the fact that Katanga and Ngudjolo Chui were the highest commanders of their respective combatants, corroborated the finding that without their agreement on the common plan and their participation in its implementation, the crimes would have not have been committed or planned.

PTC-1 held that sufficient evidence existed to establish on substantial grounds to believe that Katanga and Ngudjolo Chui were aware of the factual circumstances enabling them to exercise joint control over the crimes, or over the crimes through another person, and that Katanga and Ngudjolo Chui were mutually aware and mutually accepted that the implementation of the common plans would result in the realisation of the crimes.

PTC-1 found sufficient evidence to establish substantial grounds to believe that the co-defendants used children under the age of 15 to participate in military operations; that the co-defendants intended to carry out the attack, the killings or murder of civilians and destruction of properties; and knew that as a consequence of the common plan, pillaging, rape and sexual slavery would occur in the ordinary course of events.

In conclusion, PTC-1 considered that there was sufficient evidence to establish substantial grounds to believe that Ngudjolo Chui and Katanga were criminally responsible as individuals for all but one of the crimes with which they were charged, on the basis of number of witness statements. PTC-1 found that there was not sufficient evidence to establish grounds to believe that Ngudjolo Chui and Katanga jointly

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\[124\] Ibid, [347].
\[125\] Ibid, [353].
committed through another person the crimes of inhuman treatment, and outrages upon personal dignity, with the requisite mental element.\textsuperscript{135}

6 \textbf{Reference List}

6.1 \textbf{Primary Sources}

(a) Treaties, statues and conventions


(b) Cases, Transcripts and Filings

\textit{The Prosecutor v Bosco Ntaganda} Warrant of Arrest issued 22 August 2006; ICC - 01/04 - 02/06 (International Criminal Court, Pre Trial Chamber I, Judge Jorda, Judge Kuenyehia, Judge Steiner) 18 October 2007 <http://www.icc-cpi.int/iccdocs/doc/doc305330.PDF> at 7 April 2010


\textit{The Prosecutor v Mathieu Ngudjolo Chui, Decision to Unseal the Warrant of Arrest Against Ngudjolo Chui}, [2008] ICC-01/04-01/07-24 (International Criminal Court, Pre Trial Chamber I, Judge Steiner) 7 February 2008 <http://www.icc-cpi.int/iccdocs/doc/doc455949.PDF> at 7 February 2010


\textit{Transcript of Proceedings, Situation Democratic Republic of Congo} ICC-01/04-01/07 and ICC-01/04-02/07 Tuesday 12 February 2008, (International Criminal Court Pre-Trial

\textsuperscript{126} Ibid, [540] - [582].
\textsuperscript{127} Ibid, [540]-[542].
\textsuperscript{128} Ibid [543] - [547].
\textsuperscript{129} Ibid [548] - [549].
\textsuperscript{130} Ibid [548], [555].
\textsuperscript{131} Ibid [560].
\textsuperscript{132} Ibid [562] - [572].
\textsuperscript{133} Ibid [566] - [567].
\textsuperscript{134} Ibid [540] - [582].
\textsuperscript{135} Ibid [577], see also Article 8(a)(ii), Article 8(b)(xxi), Article 30, Rome Statute.
The Prosecutor v Germain Katanga: Decision on the Joinder of the Cases against Germain Katanga and Mathieu Ngudjolo Chui, [2008] ICC-01/04-01/07-257 (International Criminal Court Pre-Trial Chamber I, Judge Kuenyehia, Judge Usacka and Judge Steiner) 10 March 2008

Judgment on the Appeal Against the Decision on the Joiner rendered on 10 March 2008 by the Pre-Trial Chamber in the Germain Katanga and Mathieu Ngudjolo Chui Cases, [2008] ICC-01/04-01/07-574 (No. ICC-01/04-01/07 OA 6) (International Criminal Court Appeals Chamber, Judge Pikis, Judge Kirsch, Judge Pillay, Judge Song and Judge Kourula) 9 June 2008

The Prosecutor v Germain Katanga and Mathieu Ngudjolo Chui, [2008] ICC-01/04-01/07-1328, (International Criminal Court, Pre-Trial Chamber I) 10 June 2008


(c) Rules and Legislation


(d) Submissions


Defence Observations on the Joinder of the Cases against German Katanga and Mathieu Ngudjolo Chui, 18 February 2008, ICC-01/04-01/07-203 (International Criminal Court, Pre-Trial Chamber I)

6.2 Secondary Materials

(a) Articles


(b) Reports


(c) Other sources


International Criminal Court, Background Information Sheet: Situation in the Democratic Republic of the Congo - Case of Germain Katanga (18 October 2007) <http://www.amicc.org/docs/KatangaBackgroundICC-OTP.pdf> at 7 April 2010


