

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No: ICC-01/04-01/07
Date: 7 February 2008

PRE-TRIAL CHAMBER I

Before: Judge Sylvia Steiner, Single Judge

Registrar: Mr Bruno Cathala

**SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO
IN THE CASE OF
THE PROSECUTOR *v.* GERMAIN KATANGA**

**Public
URGENT**

**Decision on the Prosecution's Urgent Application pursuant to regulations 90, 99(2)
and 101(2) of the Regulations of the Court**

The Office of the Prosecutor

Mr Luis Moreno-Ocampo, Prosecutor
Ms Fatou Bensouda, Deputy Prosecutor
Mr Éric MacDonald, Trial Lawyer
Mrs Florence Darques-Lane, Legal Adviser

The Counsel for the Defence

Mr David Hooper
Mr Göran Sluiter
Ms Caroline Buisman

I, Sylvia Steiner, Judge at the International Criminal Court (“the Court”):

NOTING the “Urgent Request for the Scheduling of an *Ex Parte* Hearing to Discuss Issues relevant to the Transfer of Mathieu NGUDJOLO” (“the Prosecution Request”) filed on 6 February 2008 by which the Prosecution requests the Single Judge to convene an urgent *ex parte* hearing with the Prosecution and the Registry in order to discuss:

- (i) the modalities of unsealing the warrant of arrest for Mathieu Ngudjolo Chui; and
- (ii) a temporary segregation of Mathieu Ngudjolo Chui in order to prohibit contacts between him and Germain Katanga;¹

NOTING the “Decision convening a hearing on 6 February 2008” issued by the Single Judge on 6 February 2008;²

NOTING the hearing held *ex parte* and in closed session on 6 February 2008 in which the Prosecution and the Registry informed the Single Judge on the status of the execution of the cooperation request for the arrest and surrender of Mathieu Ngudjolo Chui and in which the Prosecution made an oral request for the prohibition of any contact between Mathieu Ngudjolo Chui and Germain Katanga;

NOTING the Oral Decision taking by the Single Judge at the 6 February 2008 Hearing in which (i) the request of the Prosecution was granted and the prohibition of any contact between Mathieu Ngudjolo Chui and Germain Katanga was going to be provisionally maintained until otherwise decided by the Single Judge; (ii) the Prosecution was ordered to file its application in writing at the latest by 7 February

¹ ICC-01/04-02/07-8-US-Exp.

² ICC-01/04-02/07-9-US-Exp.

2008 at 10h00; and (iii) the Registry was ordered to file its observations by 7 February 2008 at 12h00;

NOTING the “Prosecution’s Urgent Applications Pursuant to Regulations 90, 99(2) and 101(2) of the Court”³ (“the Prosecution’s Urgent Application”) filed by the Prosecution on 7 February 2008;

NOTING the “Observations on the implementation of an order of restriction to communication and contact between Mr. Germain Katanga and Mr. Mathieu Ngudjolo Chui until the initial appearance hearing of the latter”⁴ (“the Registry’s Observations”) filed by the Registry on 7 February 2008;

NOTING the information provided by the Registrar confirming the transfer of Mathieu Ngudjolo Chui to the Court’s Detention Center in The Hague;

NOTING article 67 of the Rome Statute (“the Statute”), rule 22 of the Rules of Procedure and Evidence (“the Rules”), regulations 90, 99(2) and 101(2) of the Regulations of the Court (“the Regulations”); and regulations 201 to 204 of the Regulations of the Registry (“the RoR”);

CONSIDERING that the Prosecution, in its application, requests the Single Judge to prohibit “any contact between Germain KATANGA and Mathieu NGUDJOLO (together referred to as “Detainees”), upon the latter’s arrival at the Detention Unit, based on Regulation 101 (2) of the Regulations of the Court”;⁵

³ ICC-01/04-01/07-181-US-Exp.

⁴ ICC-01/04-01/07-184-US-Exp.

⁵ The Prosecution Application, page 2.

CONSIDERING that, according to regulation 101 (3) of the Regulations, a detained person shall be informed of any request of the Prosecution under regulation 101 (2) of the Regulations "to prohibit, regulate or set conditions for contact between a detained person and any other person"; that the detained persons shall be given the opportunity to be heard or to submit his or her views unless "in exceptional circumstances such as in an emergency, an order may be made prior to the detained person being informed of the request";⁶ and that in such a case "the detained person shall, as soon as practicable, be informed and shall be given the opportunity to be heard or to submit his or her views";⁷

CONSIDERING that Mathieu Ngudjolo Chui has just been transferred to the Detention Center at the seat of the Court in The Hague; that, therefore, he has not yet appointed Defence Counsel; and that he will be given a number of curricula vitae of counsels who have been admitted in the list of the Defence Counsel provided for in rule 22 of the Rules for the purpose of the first appearance before Pre-Trial Chamber I scheduled for Monday 11 February 2008 at 14h00;⁸

CONSIDERING the potential implications of the Prosecution's Urgent Application for the detention regime of Mathieu Ngudjolo Chui and Germain Katanga; the need to ensure that Mathieu Ngudjolo Chui is in a position to make fully informed observations on the Prosecution's Urgent Application; and that, in the view of the Single Judge, this can only be achieved by addressing the Prosecution's Urgent Application in a hearing before the Single Judge after (i) Mathieu Ngudjolo Chui has had the opportunity to appoint Defence Counsel to represent him; and (ii) Mathieu Ngudjolo Chui and Germain Katanga have been given access to the Prosecution's Urgent Application and the Registry's Observations;

⁶ Regulation 101(3) of the Regulations.

⁷ Regulation 101(3) of the Regulations.

⁸ ICC-01/04-02/07-14.

CONSIDERING that, if the allegations made by the Prosecution in the Prosecution's Urgent Application were to be founded, allowing communication between Mathieu Ngudjolo Chui and Germain Katanga in relation to any public or confidential aspects of their respective cases, particularly if they are allowed to exchange case-related materials, could make the Prosecution's Urgent Application meaningless; and that, therefore, in order to prevent this from happening, it is necessary to set up a provisional detention regime for Mathieu Ngudjolo Chui and Germain Katanga until the Prosecution's Urgent Application can be properly addressed by the Defences of Mathieu Ngudjolo Chui and Germain Katanga at the hearing scheduled in the present decision;

CONSIDERING therefore that, in the view of the Single Judge, the above-mentioned circumstances meet the "exceptional circumstances" test provided for in regulation 101 (3) of the Regulations;

CONSIDERING further that, upon careful consideration of the Prosecution's Urgent Application and the Registry's Observations, the Single Judge is of the view that the following two provisional measures will serve the purpose of decreasing at this stage and to a great extent the risk alleged by the Prosecution: (i) active enforcement of the prohibition to exchange case-related materials between Mathieu Ngudjolo Chui and Germain Katanga; and (ii) a general prohibition for both detainees to communicate in relation to any public or confidential aspects of their respective cases;

CONSIDERING that, given the current set up of the Detention Center, as described in the Registry's Observations, the implementation of any additional measures requested by the Prosecution, and in particular the temporary prohibition of any

contact between Mathieu Ngudjolo Chui and Germain Katanga, will require severe restrictions on the detention regime for both detainees; and that the provisional imposition of such restrictions before the hearing scheduled in the present decision is not justified because the above-mentioned less restrictive measures are, in the view of the Single Judge, sufficient to prevent the Prosecution's Urgent Application from becoming moot;

CONSIDERING, therefore, that for the above-mentioned reasons, and in light of the severe nature of the provisional measures adopted in her Oral Decision, the Single Judge is of the view that a revision of such a decision is justified at this stage;

FOR THESE REASONS

DECIDE to reclassify documents ICC-01/04-01/07-181-US-Exp and ICC-01/04-01/07-184-US-Exp as confidential;

ORDER the Registrar to notify immediately the above-mentioned documents to Germain Katanga and his Defence Counsel;

DECIDE to convene a hearing on 12 February 2008 at 14h00 to be held in closed session with the Prosecution, the head of the Victims and Witnesses Unit, the Chief Custody Officer, the representatives of the Registrar and the Defence in the cases of *The Prosecutor v. Mathieu Ngudjolo Chui* and *the Prosecutor v. Germain Katanga*;

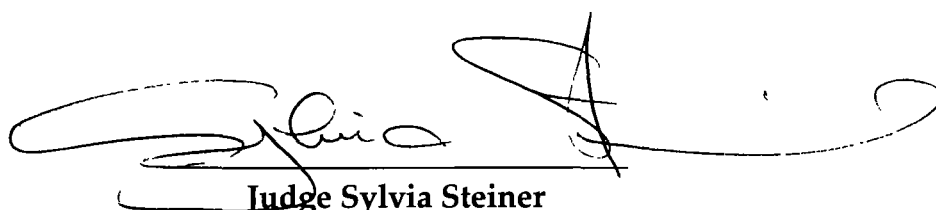
DECIDE to partially review the Oral Decision and that, until otherwise decided:

- (i) the measures requested at paragraphs 15, 16 and 17 of the Prosecution's Urgent Application shall be provisionally

implemented in order to avoid any exchange of case-related materials between Mathieu Ngudjolo Chui and Germain Katanga;

- (ii) any oral or written communication between Mathieu Ngudjolo Chui and Germain Katanga in relation to any public or confidential aspects of their respective cases against them shall be provisionally prohibited;
- (iii) that the enforcement of the prohibition under (ii) shall be carried out in the same manner as other confidentiality obligations are being currently enforced in relation to other detainees;

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



Judge Sylvia Steiner
Single judge

Dated this Thursday 7 February 2008

At The Hague, The Netherlands