

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No: ICC-01/04-02/07
Date: 27 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.* MATHIEU NGUDJOLO CHUI**

Public

Decision on the Defence Request concerning time limits

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

Counsel for the Defence

Mr Jean-Pierre Kilenda Kakenga Basila

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

NOTING the “Decision Convening a Hearing on 18 February 2008” (“the Decision of 14 February 2008”) issued by the Single Judge on 14 February 2008, in which the Single Judge ordered that the confidential redacted version of document ICC-01/04-02/07-19-Conf-Exp and its confidential annex be notified to the Prosecution and Duty Counsel for Mathieu Ngudjolo; and decided that the Prosecution had until Monday 18 February 2008 at 16h00 and Duty Counsel until Wednesday 20 February 2008 at 16h00 to submit their respective additional observations;¹

NOTING the Prosecution’s Observations on the Registrar’s “Observations on the implementation of the Decision of the Chamber on the Prosecution’s Urgent Application Pursuant to Regulations 90, 99 (2) and 101 (2) of the Court” filed by the Prosecution on 18 February 2008;²

NOTING the “*Requête*”³ (“the Request”) filed by the Duty Counsel for the Defence on 21 February 2008, in which Duty Counsel submitted that time limits should start running from the moment Duty Counsel receives: (i) notification of the relevant documents in his working language, that is to say in French (“First Defence Request”); and (ii) notification of the confidential documents via DHL services (“Second Defence Request”);

NOTING the “Order concerning notification of Decision of 14 February 2008”⁴ issued by the Single Judge on 22 February 2008, in which the Single Judge ordered the Registrar to provide the Chamber with information regarding the notification of the Single Judge’s Decision of 14 February 2008 to the Defence;

¹ ICC-01/04-02/07-25.

² ICC-01/04-02/07-30-Conf-Anx.

³ ICC-01/04-02/07-34.

⁴ ICC-01/05-02/07-36.

NOTING the “Information to the Chamber Concerning the Notification of Decision of 14 February 2008”⁵ filed on behalf of the Registrar on 22 February 2008, in which the Registrar informed the Single Judge that:

- i) the Decision of 14 February 2008 has been notified to the Duty Counsel of Mathieu Ngudjolo Chui by email on 14 February 2008;
- ii) the annex to document ICC-01/04-02/07-19-Conf-Exp has been reclassified as confidential on 15 February 2008; and
- iii) the confidential redacted version of document ICC-01/04-02/07-19-Conf-Exp and its confidential annex were notified to the Duty Counsel of Mathieu Ngudjolo Chui by means of courier service (DHL services) on 18 February 2008 and were delivered on 19 February 2008 at 10:54;

NOTING the “*Enregistrement de la désignation de maître Jean Pierre Kilenda Kakengi Basila par M. Mathieu Ngudjolo Chui comme conseil et de la déclaration d’acceptation du mandat par le conseil*” filed by the Registry on 25 February 2008;⁶

NOTING articles 21, 50, 54, 61 and 67 of the *Rome Statute* (“the Statute”), rules 22, 76, 77, and 121(3) of the *Rules of Procedure and Evidence* (“the Rules”), regulations 31, 35 and 40(3) of the *Regulations of the Court* (“the Regulations”) and regulation 34 of the *Regulations of the Registry*;

CONSIDERING that, in relation to the First Defence Request, the Single Judge has already dealt with a similar request in the case of *The Prosecutor v. Thomas Lubanga Dyilo*⁷; and that, in that case, the Single Judge denied (i) the Defence request “to

⁵ ICC-01/04-02/07-37 and ICC-01/04-02/07-37-Conf-Anx1-Anx3.

⁶ ICC-01/04-02/07-42 and ICC-01/04-02/07-42-Anx1-Anx2.

⁷ ICC-01/04-01/06-268.

order the Prosecution to provide in French all documents that the Prosecution [...] is obliged to disclose to the Defence for the purpose of the confirmation hearing”; and (ii) the Defence request “to have all future deadlines in the proceedings to run from the date of receipt of the French version of the procedural documents by the Defence”;⁸

CONSIDERING further that in the case of the *Prosecution v. Thomas Lubanga Dyilo* the Single Judge rejected the two above-mentioned requests by the Defence after underlying (i) that rule 76 (3) of the Rules is the only provision which expressly imposes on the Prosecution a statutory obligation to provide the Defence with evidentiary materials in a language which the suspect fully understand and speaks; and (ii) that:

“using the words “as are necessary to meet the requirements of fairness”, article 67 (1) (f) of the Statute does not grant Thomas Lubanga Dyilo the right to have all procedural documents and all evidentiary materials disclosed by the Prosecution translated into a language that Thomas Lubanga Dyilo fully understands and speaks; and that this interpretation is fully consistent with the case law of the ECHR on this matter”⁹

CONSIDERING nevertheless that, the Single Judge ordered the Registrar to have permanently available and free of any cost, a French interpreter to assist Thomas Lubanga Dyilo¹⁰ for the purpose of the confirmation hearing with documents of the case which are only available in English; that the Single Judge ordered the same arrangement for Germain Katanga;¹¹ and that in the view of the Single Judge, this measure should also be available to Mathieu Ngudjolo Chui insofar as French is a language that he fully understands and speaks;¹²

⁸ ICC-01/04-01/06-268, page 7.

⁹ ICC-01/04-01/06-268, p.6 and ICC-01/04-01/07-127, para.41.

¹⁰ ICC-01/04-01/06-268.

¹¹ ICC-01/04-01/07-127.

¹² ICC-01/04-02/07-T-3-ENG ET, p.3, lines 3-10.

CONSIDERING further that Mr Jean-Pierre Kilenda Kakengi Basila has been appointed as the permanent Counsel for the Defence of Mathieu Ngudjolo Chui; and that, having regard to the languages used in the proceedings of the case of *The Prosecution v. Mathieu Ngudjolo Chui*, it is the responsibility of permanent Counsel to compose the Defence team in a manner which will allow him to (i) properly be assisted in the presentation of the case before the Chamber; and (ii) effectively protect the rights of Mathieu Ngudjolo Chui;

CONSIDERING that, in relation to the Second Defence Request, the Single Judge recalls that, pursuant to regulation 35(2) of the Regulations, the Chamber may extend or reduce a time limit if “after the lapse of a time limit, an extension of time may only be granted if the participant seeking the extension can demonstrate that he or she was unable to file the application within the time limit for reasons outside his or her control”;

CONSIDERING that, at the time of the Notification, Mr Jean Pierre Kilenda Kakengi Basila was Duty Counsel for Mathieu Ngudjolo Chui; that, at the time, the Court had not provided him with a secure email account; and that therefore any confidential documents were notified to him by means of courier service;

CONSIDERING that the Single Judge decided that the Duty Counsel for Mathieu Ngudjolo Chui had until Wednesday 20 February 2008 at 16h00 to submit his additional observations in the belief that he would be immediately notified of the relevant documents; and that nevertheless, Mr Jean-Pierre Kilenda Kakengi Basila was only notified of the relevant documents on 19 February 2008;

CONSIDERING therefore that the period of time available to Duty Counsel for Mathieu Ngudjolo to file additional observations was only one day from the

notification of the relevant documents; and that this time was less than the period foreseen by the Single Judge when issuing the Decision of 14 February 2008;

FOR THESE REASONS

DENY the request of the Defence to have the present and all future deadlines in the proceedings to run from the date of receipt of the French version of the procedural documents by the Defence;

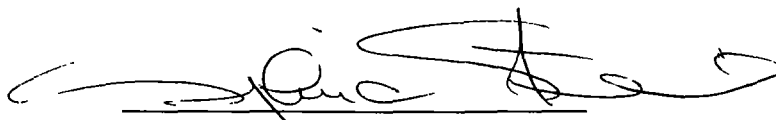
GRANT the request of the Defence for an extension of time;

DECIDE to give the Defence until Friday 29 February 2008 at 14h00 to submit any additional observations on:

- (i) the Prosecution request for prohibition of any contact between Germain Katanga and Mathieu Ngudjolo Chui;
- (ii) on the basis of the confidential redacted version of document ICC-01/04-02/07-19-Conf-Exp and its confidential annex; and
- (iii) the Prosecution's Additional Observations;

ORDER the Registrar to make permanently available to Mathieu Ngudjolo Chui, and free of any cost, a French interpreter to assist him for the purpose of the confirmation hearing with documents of the case which are only available in English.

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



Judge Sylvia Steiner
Single judge

Dated this Wednesday 27 February 2008

At The Hague,

The Netherlands