

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 20 May 2008

PRE-TRIAL CHAMBER I

Before: Judge Sylvia Steiner, Single Judge

**SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO
IN THE CASE OF
THE PROSECUTOR
*v. GERMAIN KATANGA AND MATTHIEU NGUDJOLO CHUI***

Public Document

**Registry's considerations on victims' rights to access the record of the case and to
attend closed session hearings**

Source: Registrar

Document 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
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Counsel for the Defence of Mathieu Ngudjolo Chui
Mr Jean-Pierre Kilenda Kakengi Basila
Ms Maryse Alié

Legal Representatives of Victims
Ms Carine Bapita Buyagandu
Mr Joseph Keita
Mr J. L. Gilissen

Legal Representatives of Applicants
-

Unrepresented Victims
-

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
Mr Simo Väätäinen

Detention Section
-

Victims Participation and Reparations Section
Ms Fiona McKay

Other
-

The Registrar of the International Criminal Court (the Court);

NOTING the “Decision on the set of Procedural Rights Attached to Procedural Status of Victim at the Pre-Trial Stage of the Case”, issued by the Single Judge on 13 May 2008 (“the Decision of 13 May 2008”)¹;

NOTING Articles 43 and 68 of the Rome Statute (“the Statute”), Rules 17, 87 and 88 of the Rules of Procedure and Evidence (“the Rules”), Regulation 86 of the Regulations of the Court (“the Regulations”) and Regulation 14 of the Regulations of the Registry;

CONSIDERING that in the Decision of 13 May 2008 the Single Judge held that the specific procedural rights of victims comprise “the right to have access, prior to and during the confirmation hearing, to the record of the case kept by the Registry [...]”², that this right “includes the right to have access to all filings and decisions contained in the record of the case regardless of whether they are classified as public or as confidential”³ and that it does not “include the right to access those filings and decisions classified as “*ex parte*” and only available to the Prosecution, the Defence, a different participant, the Registry or a combination thereof”⁴;

CONSIDERING that the Single Judge held that the specific procedural rights of victims also comprise the “right to attend all public and closed session hearings convened in the proceedings leading to the confirmation hearing, as well as in all public and closed sessions of the confirmation hearing”⁵ and that it “does not include

¹ ICC-01/04-01/07-474.

² ICC-01/04-01/07-474, para. 127.

³ ICC-01/04-01/07-474, para. 128.

⁴ ICC-01/04-01/07-474, para. 128.

⁵ ICC-01/04-01/07-474, para. 140.

the right to attend those hearings held on an *ex parte* basis with the Prosecution, the Defence, a different participant, the Registry or a combination thereof”⁶;

CONSIDERING that the Single Judge further held that before “Victims a/0327/07, a/0329/07, a/0330/07 and a/0331/07 can effectively exercise the set of procedural rights attached to their procedural status of victim in the present decision (in particular those relating to their access to the record of the case and to attend closed session hearings) [...], the Prosecution, the Defence for Germain Katanga and Mathieu Ngudjolo Chui, and the Registry [were given] until 20 May 2008 at 16h00 to request any limitation that they might consider necessary”⁷;

SUBMITS the following observations.

1. The Registry has not been provided with any information indicating that the four above mentioned victims would cause a threat to other victims and witnesses.
2. However, confidentiality and the secure handling of sensitive information is a key ingredient of any meaningful protection measure. The risk of information being compromised increases with the number of individuals having access to it, irrespective of their motivation.
3. Consequently, the Registry is reluctant to disclose any sensitive information without ensuring that necessary safeguards are in place. The documents contained in the confidential record of the case contain sensitive information, in particular in relation to identifying information of witnesses, details of protective measure in place and the execution of the warrants of arrest.

⁶ ICC-01/04-01/07-474, para. 140.

⁷ ICC-01/04-01/07-474, para. 170 and page 61.

4. While the Registry does not wish to interfere with the judicial process of granting procedural rights to recognised victims, it would still like to note that there are no safeguards in place on how such confidential information could be secured in the field.⁸ This relates in particular to the individual circumstances of the victims and their means of maintaining the confidentiality of the information, such as secure communication and storage. Moreover, the victims are neither specifically trained in handling such sensitive information nor are they under a specific professional obligation to adhere to a code of conduct.
5. It is for these reasons that the Registry proposes to consider limiting the right to access the confidential record of the case and to attend closed session hearings to the legal representative of the victims only and respectfully requests to limit the rights in this respect.



Marc Dubuisson
Director of the Division of Court Services
on behalf of
Silvana Arbia
Registrar

Dated this 20th day of May 2008
at The Hague, the Netherlands

⁸ Contrary hereto, there are possibilities to monitor the non-privileged communications of a detained person, see Regulations 174 of the Regulations of the Registry *et seq.*.