

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 26 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 Mathieu Ngudjolo Chui***

Public Document

**Decision authorising the filing of observations on the applications for
participation in the proceedings**

Decision 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

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

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

Legal Representatives of the 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**
Mr Didier Preira
Ms Fiona McKay

Other

I, Judge Sylvia Steiner, judge at 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",¹ issued by the Single Judge on 13 May 2008, in which the Single Judge decided that any application for the recognition of the status of victim in the present case transmitted by the Registry to the Single Judge after Monday 26 May 2008 will not be considered for the purposes of the confirmation hearing;

NOTING the "Information of receipt of application forms, which appear, prima facie, to relate to the case of *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*"² ("the Information on Receipt of Applications") filed by the Registry on 26 May 2008, in which the Victims Participation and Reparations Section ("VPRS") requests guidance from the Single Judge in relation to the application for participation in the confirmation hearing, specifically regarding the preparation of redacted versions of the applications, as well as the transmission of the applications themselves, and any redacted versions, to the parties in accordance with rule 89(1) of the Rules;

NOTING articles 57(3)(c) and 68 of the *Rome Statute* ("the Statute"), rules 13, 15, 86 and 89 of the *Rules of Procedure and Evidence* ("the Rules"); regulations 8(c), 26 and 86 of the *Regulations of the Court* ("the Regulations"); and regulation 14 of the *Regulations of the Registry*;

CONSIDERING that the Registry filed the Information on Receipt of Applications as confidential *ex parte* only available to the Registry; and that, given the nature of the information referred to in the document, the Single Judge considers that the document should be made public;

¹ ICC-01/04-01/07-474

² ICC-01/04-01/07-507-Conf-Exp

CONSIDERING that, under rule 89 (1) of the Rules, the Prosecutor and the Defence are entitled to make observations concerning the Applications within a time limit set by the Pre-Trial Chamber and that in order to allow them to exercise this right effectively, the Registrar must provide them with a copy of any such applications;

CONSIDERING that the format in which the copy of an application for participation is transmitted to the Prosecutor and the Defence is regulated by the provisions of the Statute and in particular article 68(1) of the Statute, which states that the Pre-Trial Chamber and the other organs of the Court must take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims without being prejudicial to or inconsistent with the rights of the defence and a fair and impartial trial;

CONSIDERING also that under article 57(3)(c) of the Statute, one of the functions of the Pre-Trial Chamber is, where necessary, to provide for the protection and privacy of victims and witnesses; and that rule 86 of the Rules sets up a general principle according to which the Pre-Trial Chamber's responsibility in making any direction or order, and other organs of the Court in performing their functions under the Statute or the Rules, are to take into account the needs of all victims and witnesses in accordance with article 68 of the Statute;

CONSIDERING therefore that when the safety of an applicant so requires the Pre-Trial Chamber may order the Registrar to transmit to the Prosecutor and the Defence a redacted copy of the applications for participation expunged of any information which could lead to the applicants identification;³

CONSIDERING however that the redactions must be limited to what is strictly necessary in the light of the applicant's safety and that they must allow the

³ ICC-01/04-01/06-60, ICC-01/04-01/06-107, ICC-01/04-01/06-270-tEN, ICC-01/04-01/06-494-tEN and ICC-01/04-01/06-672-tEN

Prosecutor and the Defence to meaningfully exercise their right to reply to the applications for participation;

CONSIDERING that the Single Judge is convinced that, in light of the security situation in the Democratic Republic of the Congo (and in particular in the Ituri district) referred to in the First Decision on Redactions,⁴ the current situation of the applicants requires that both Defence Counsels be provided with a redacted copy of the applications expunged of any information which could lead to the applicants identification;

CONSIDERING further that, in the current situation, the Single Judge is convinced that a non-redacted version of applications for participation may be notified to the Prosecution;

CONSIDERING that, in order not to be exposed to further risks, the applicants must not be contacted directly by any of the organs of the Court, but only through their Legal Representatives or through the VPRS if they have no legal representation and, if need be, through the Victims and Witnesses Unit;

FOR THESE REASONS

ORDER the Registry to reclassify document ICC-01/04-01/07-507-Conf-Exp as public;

⁴ ICC-01/04-01/07-90, Section II

ORDER the Registry by Monday 26 May 2008:

- (i) to file in the record of the case of *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui* the non-redacted version of applications for participation referred to in the Information on Receipt of Applications; and
- (ii) to provide to the Prosecution, a non-redacted version of the applications for participation referred in (i);

ORDER the Registry by Tuesday 27 May 2008:

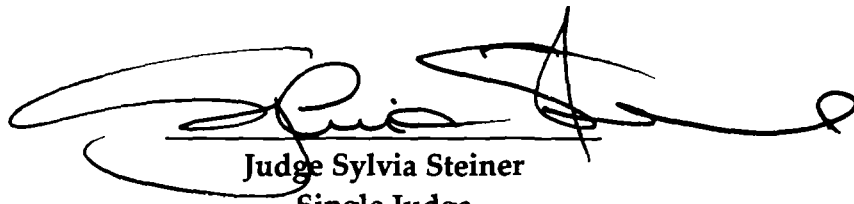
- (i) to file in the record of the case *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui* a redacted version of applications for participation referred to in the Information on Receipt of Applications in which any information which might lead to the applicants being identified has been redacted;
- (ii) to provide to both Defence Counsels, the redacted version of the applications for participation referred in (i);

ORDER all participants in the proceedings to only refer to the applicants by the numbers assigned to them by the Registry;

ORDER all the organs of the Court not to contact the applicants directly and, if necessary, to do so only through their Legal Representatives or through the VPRS for those applicants who have no legal representation, and if need be, via the Victims and Witnesses Unit;

DECIDE to give seven days from the notification of the applications for participation to the Prosecution and both Defence Counsels to present observations regarding the said applications for participation and on the possible granting to those applicants of the procedural status of victims authorised to participate in the proceedings before the Chamber in the case of *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*.

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



Judge Sylvia Steiner
Single Judge

Dated this Monday 26 May 2008

At The Hague, The Netherlands