

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 2 June 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 on the Defence for Mathieu Ngudjolo Chui's request for leave to appeal
the Decision concerning translation of documents**

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

Detention Section

**Victims Participation and Reparations
Section**

Other

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

NOTING the “*Requête*” (“the Defence First Request”)¹ filed by the Duty Counsel for the Defence on 21 February 2008;

NOTING the “Decision on the Defence Request concerning Time-Limits”,² issued by the Single Judge on 27 February 2008;

NOTING the “*Requête de la Défense en vue de solliciter la traduction écrite automatique en français de tous les actes de procédure et de toutes les décisions des Chambres qui sont notifiés ‘Mathieu Ngudjolo Chui dans une langue autre que le français’*” (“the New Defence Request”)³ filed by the Defence for Mathieu Ngudjolo Chui on 7 May 2008;

NOTING the “Decision on the Defence for Mathieu Ngudjolo Chui’s Request concerning translation of documents” (“the Decision”)⁴ issued by the Single Judge on 15 May 2008;

NOTING the “*Demande d’autorisation d’interjeter appel contre la ‘Decision on the Defence for Mathieu Ngudjolo Chui’s Request concerning translation of documents’*” (“the Defence’s Application”)⁵ filed by the Defence for Mathieu Ngudjolo Chui on 21 May 2008;

NOTING articles 50, 54, 67 and 82(1)(d) of the *Rome Statute* (“the Statute”); rules 22, 41, 155 and 156 of the *Rules of Procedure and Evidence* (“the Rules”); and regulations 8, 31, 96 of the *Regulations of the Registry* (“the RoR”);

¹ ICC-01/04-01/07-293 [ICC-01/04-02/07-34]

² ICC-01/04-01/07-304.

³ ICC-01/04-01/07-470

⁴ ICC-01/04-01/07-477

⁵ ICC-01/04-01/07-488

CONSIDERING that, as Pre-Trial Chambers I and II have repeatedly stated,⁶ for the Chamber to grant leave to appeal under article 82(1)(d) of the Statute, the issue identified by the appellant must: (i) have been dealt with in the relevant decision; and (ii) meet the following two cumulative criteria:

- a. it must be an issue that would significantly affect (i) both the fair and expeditious conduct of the proceedings; or (ii) the outcome of the trial; and
- b. it must be an issue for which, in the opinion of the Pre-Trial or Trial Chamber, an immediate resolution by the Appeals Chamber may materially advance the proceedings;

CONSIDERING that, according to the "Judgment on the Prosecutor's Application for Extraordinary Review of Pre-Trial Chamber I's 31 March 2006 Decision Denying Leave to Appeal",⁷ issued by the Appeals Chamber on 13 July 2006 ("the Appeals Chamber Judgment"):

- (i) "[o]nly an issue may form the subject-matter of an appealable decision";⁸
- (ii) "[a]n issue is constituted by a subject the resolution of which is essential for the determination of matters arising in the judicial cause under examination";⁹
- (iii) "[n]ot every issue may constitute the subject of an appeal",¹⁰ but "it must be one apt to 'significantly affect', i.e. in a material way, either a) 'the fair and expeditious conduct of the proceedings' or b) 'the outcome of the trial'";¹¹ and

⁶ See inter alia the "Decision on the Prosecution Motion for Reconsideration and, in the alternative, Leave to Appeal", issued by Pre-Trial Chamber I on 23 June 2006 (ICC-01/04-01/06-165-Conf-Exp), the "Decision on Defence Motion for Leave to Appeal", issued by Pre-Trial Chamber I on 18 August 2006 (ICC-01/04-01/06-338), the "Decision on Second Defence Motion for Leave to Appeal", issued by Pre-Trial Chamber I on 28 September 2006 (ICC-01/04-01/06-489), the "Decision on the Prosecution Request for Leave to Appeal the First Decision on Redactions", issued by Pre-Trial Chamber I on 14 December 2007 (ICC-01/04-01/07-108); and the "Decision on the Prosecutor's Application for Leave to Appeal in Part Pre-Trial Chamber I's Decision on the Prosecutor's Applications for Warrants of Arrest Under Article 58", issued by Pre-Trial Chamber II on 19 August 2005 (ICC-02/04-01/05-20-US-Exp, unsealed pursuant to Decision ICC-02/04-01/05-52 issued on 13 October 2005), in particular para 20

⁷ ICC-01/04-168

⁸ Appeals Chamber Judgment, para. 9

⁹ Appeals Chamber Judgment, para. 9

¹⁰ Appeals Chamber Judgment, para. 9

¹¹ Appeals Chamber Judgment, para. 10

- (iv) "identification of an issue having the attributes adumbrated above does not automatically qualify it as the subject of an appeal" insofar as "the issue must be one 'for which in the opinion of the Pre-Trial or Trial Chamber, an immediate resolution by the Appeals Chamber may materially advance the proceedings'";¹²

CONSIDERING that the Defence for Mathieu Ngudjolo Chui is seeking leave to appeal in relation to the issue of whether the Single Judge violated rule 22 (1) of the Rules by rejecting the Defence request to be furnished automatically and without delay with French translations of all submissions and decisions in the present case and to have the time limits running from the moment in which the Defence receives the official French translations;

CONSIDERING that, in the Decision, the Single Judge rejected the New Defence Request *in limine* because:

- (i) in the view of the Single Judge, it had the same object as the Defence First Request which the Single Judge had already rejected in her 27 February 2008 Decision on the Defence Request concerning Time-Limits;¹³
- (ii) accordingly, the Defence New Request amounted to "a motion for reconsideration" of the 27 February 2008 Decision on Defence Request concerning Time-Limits;¹⁴ and
- (iii) "the statutory framework set out by the Statute and the Rules does not provide for a motion for reconsideration as a procedural remedy against any decision taken by the Chamber or the single Judge."¹⁵

¹² Appeals Chamber Judgment, para 14

¹³ ICC-01/04-01/07-377, p 5

¹⁴ ICC-01/04-01/07-377, p. 5

¹⁵ ICC-01/04-01/07-377, p 5

CONSIDERING therefore that, due to its rejection *in limine*, the Single Judge did not analyse in the Decision the merits of the arguments raised by the Defence;

CONSIDERING therefore that the issue raised by the Defence:

- (i) is not an issue arising out of the Decision;
- (ii) might have been, at best, an issue arising out of the 27 February 2008 Decision on Defence Request concerning Time-Limits, for which leave to appeal was not requested by the Defence within the five-day time limit provided for in rule 155 of the Rules;

RECALLING that this Chamber has consistently held through the proceedings of the case of *The Prosecution v. Thomas Lubanga Dyilo* and in the present proceedings¹⁶ that:

- (i) article 67(1)(a) and (f) of the Statute:
 - i. does not grant Mathieu Ngudjolo Chui the right to have all procedural documents and all evidentiary materials disclosed by the Prosecution translated into a language that he fully understands and speaks;
 - ii. rule 76(3) of the Rules is the only provision which expressly imposes on the Prosecution a statutory obligation to provide Mathieu Ngudjolo Chui with evidentiary materials in a language that he fully understands and speaks; and therefore,
 - iii. the deadlines in the present proceedings cannot start running from the date of receipt of the French version of the procedural documents by the Defence of Mathieu Ngudjolo Chui;
- (ii) it is the responsibility of the permanent Counsel for Mathieu Ngudjolo Chui to compose the Defence team in a manner which

¹⁶ ICC-01-04-01/06-268, ICC-01/04-01/07-304, ICC-01/04-01/07-477

will allow him to (a) properly be assisted in the presentation of the case before the Chamber; and (b) effectively protect the rights of Mathieu Ngudjolo Chui;

RECALLING, further, that in order to adequately safeguard Mathieu Ngudjolo Chui's right to a fair trial, the Single Judge, in previous decisions:

- (i) has ensured that the core procedural documents of the pre-trial proceedings before the Chamber - that is to say the Prosecution request for the issuance of a warrant of arrest, the Chamber's decision on such request, the warrant of arrest itself and the Prosecution's Charging Document and List of Evidence - are notified to Mathieu Ngudjolo Chui in French, a language that he fully understands and speaks;¹⁷
- (ii) has ensured that, in addition to most documentary evidence, all interview notes, interview transcripts and statements included in the Prosecution's List of Evidence have been provided to Mathieu Ngudjolo Chui in French, a language that he fully understand and speaks;¹⁸
- (iii) has ordered 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;¹⁹ and
- (iv) has instructed the Registrar to put in place the necessary mechanisms to allow Mathieu Ngudjolo Chui to have the assistance of the interpreter assigned to him at a much shorter

¹⁷ ICC-01/04-01/-07-477, p. 5.

¹⁸ ICC-01/04-01/-07-477, p. 5.

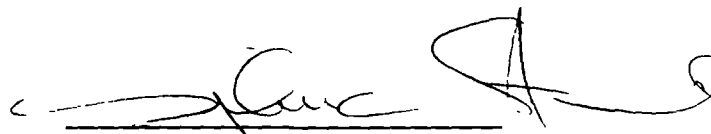
¹⁹ ICC-01/04-01/07-304 [ICC-01/04-02-07-45], p. 7.

notice than the 24 hours referred to in the status conference of 14
May 2008.²⁰

FOR THESE REASONS

REJECT the Defence's Application.

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



Judge Sylvia Steiner
Single Judge

Dated this Monday 2 June 2008

At The Hague, The Netherlands

²⁰ ICC-01/04-01/-07-477, pp 5 and 6