

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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No.: ICC-01/04-01/07 OA7

Date: 16 June 2008

THE APPEALS CHAMBER

Before: Judge Georghios M. Pikis, Presiding Judge
Judge Philippe Kirsch
Judge Navi Pillay
Judge Sang-Hyun Song
Judge Erkki Kourula

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

Public Document

Prosecution's request for leave to file a response to "Victims and Witnesses Unit's considerations on the system of witness protection and the practice of 'preventive relocation'"

Source: Office of the Prosecutor

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

The Office of the Prosecutor

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Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
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REGISTRY

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Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

Background

1. On 18 April 2008, the Single Judge issued the "Decision on Evidentiary Scope of the Confirmation Hearing, Preventive Relocation and Disclosure under Article 67(2) of the Statute and Rule 77 of the Rules".¹
2. On 28 April 2008, the Prosecution applied for leave to appeal against the Decision in respect of two issues.² On 20 May 2008, the Single Judge certified two issues for which the Prosecution had sought leave to appeal.³
3. On 2 June 2008, the Prosecution filed the "Prosecution's Document in Support of Appeal against the Decision on the Evidentiary Scope of the Confirmation Hearing and Preventive Relocation" ("Prosecution Appeal").⁴
4. On 12 June 2008, the Victims and Witnesses Unit ("VWU") filed a document entitled the "Victims and Witnesses Unit's considerations on the system of witness protection and the practice of 'preventive relocation'" ("VWU's Considerations").⁵
5. The Prosecution hereby seeks leave to file a response to VWU's Considerations and/or to be given a time limit to file its response.

Submissions

6. The Prosecution notes that the VWU has not sought leave from the Appeals Chamber to file VWU's Considerations. Rather, it has relied on its advisory functions under Article 68(4) as a basis for the filing. The Prosecution firstly notes that the Appeals Chamber had not sought VWU's advice on the matters before it.

¹ ICC-01/04-01/07-411-Conf-Exp. Confidential redacted and public redacted versions of the Decision were issued on 21 April 2008 (ICC-01/04-01/07-423-Conf; ICC-01/04-01/07-428-Corr), (the "Decision").

² ICC-01/04-01/07-453 ("Prosecution Application"). On 2 May 2008, the Defence filed a response to the Prosecution Application (ICC-01/04-01/07-462). The Defence also applied for leave to appeal against the Decision (ICC-01/04-01/07-456), to which the Prosecution responded on 2 May 2008 (ICC-01/04-01/07-464)

³ ICC-01/04-01/07-483 ("Decision Granting Leave").

⁴ ICC-01/04-01/07-541 OA7. In its document in support of appeal, the Prosecution discontinued its appeal in respect of the Second Issue for which leave had been granted (paras. 8-9).

⁵ ICC-01/04-01/07-585.

Furthermore, that VWU's Considerations go beyond the provision of advice on "appropriate protective measures, security arrangements, counselling and assistance" for victims and witnesses, within the terms of Articles 43(6) and 68(4), but rather includes submissions on the merits of the legal and factual arguments presented by the Prosecution in its appeal. Thus, the procedural basis for the filing is questionable, as is the scope of the arguments presented.

7. If the Appeals Chamber concludes that VWU's Considerations are nevertheless properly placed before it, then the Prosecution respectfully submits that it should be granted an opportunity to respond to those considerations within a time-limit prescribed by the Appeals Chamber.
8. Pursuant to Regulation 24(1) of the Regulations of the Court, "[t]he Prosecutor and the defence may file a response to any document filed by any participant in the case in accordance with the Statute, Rules, these Regulations or any order of the Chamber." The Prosecution submits that if the Appeals Chamber accepts that the VWU's Considerations are properly filed, then VWU has effectively become a participant in the present proceedings before the Appeals Chamber. In that case, the Prosecution would have a right to file a response to VWU's Considerations pursuant to Regulation 24(1).⁶ However, due to the residual ambiguity of the situation at hand, the Prosecution seeks leave to file a response.
9. The Prosecution submits that, as a general principle, it is in the interests of fairness and of a proper determination of the issues on appeal that the parties be given an opportunity to react to filings made by a third party in the context of appellate proceedings.⁷ In addition, it is submitted that VWU's Considerations contain a number of factual assertions pertaining to the matters on appeal that warrant a specific response by the Prosecution. It would be unfair if the

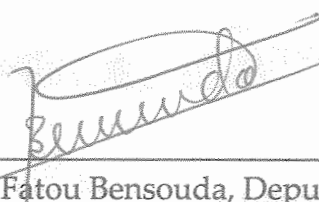
⁶ VWU is recognizing that VWU's Considerations are not a response to the Prosecution Appeal (see VWU's Consideration, para. 2). Hence the Prosecution is not seeking leave to reply to a response to the Prosecution Appeal.

⁷ In the context of the victims participation in the proceedings, the Appeals Chamber has previously granted the Prosecutor and the Defence the right to file a response to the submissions of the views and concerns expressed by victims who were allowed to participate in appeals proceedings (see ICC-01/04-01/06-1335, 16 May 2008, para. 1). The rationale for granting the Prosecution a right to respond to those submissions also applies, *mutatis mutandis*, to any response to be filed by the Prosecution to VWU's considerations.

Prosecution, as an appellant, is deprived of an opportunity to address issues raised *ex improviso* by a third party to the appellate proceedings that may have an impact on the outcome of those proceedings.

Conclusion

10. For the above reasons, the Prosecution respectfully requests that, should it be concluded that VWU'S submissions are to be considered, the Appeals Chamber, grant it leave to file a response to VWU's Considerations within a time-limit prescribed by the Appeals Chamber.
11. If the Appeals Chamber considers that there is no need for the Prosecution to be granted leave to file a response to VWU's Considerations, then the Prosecution respectfully requests the Appeals Chamber to set a time-limit within which the Prosecution may file a response.



Fatou Bensouda, Deputy Prosecutor
on behalf of
Luis Moreno-Ocampo, Prosecutor

Dated this 16th day of June, 2008

At The Hague, The Netherlands