

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 23 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 Redacted Version
URGENT**

Decision on the Application for Participation of Witness 166

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

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of Germain Katanga**

Mr David Hooper
Ms Caroline Buisman

**Counsel for the Defence of Mathieu
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Mr Jean-Pierre Kilenda Kakengi Basila
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Legal Representatives of the Victims

Ms Carine Bapita Buyagandu
Mr Joseph Keta
Mr J.L. Gilissen
Mr Hervé Diakiese
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Nsokoloni

Unrepresented Victims

Legal Representatives of the Applicants

**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 Väättäinen

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;

NOTING the “Decision on Limitations of Set of Procedural Rights for Non-Anonymous Victims”² issued by the Single Judge on 30 May 2008;

NOTING the “*Transmission de 99 demandes de participation*”³ filed by the Registry on 26 May 2008 in which the Registry informed the Single Judge that it was transmitting applications for participation in the proceedings of the case of *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*;⁴

NOTING the “*Observations de la Défense relatives à la question de la recevabilité de demandes de participation de présumées victimes*”⁵ filed by the Defence for Mathieu Ngudjolo Chui on 4 June 2008;

NOTING the “Prosecution’s Observations on the Applications for Participation in the Proceedings of Applicants a/0009/08 to a/0016/08 and a/0022/08 to a/0112/08”⁶ filed by the Prosecution on 4 June 2008;

¹ ICC-01/04-01/07-474

² ICC-01/04-01/07-537.

³ ICC-01/04-01/07-510-Conf-Exp-Corr, ICC-01/04-01/07-534-Conf-Exp, “*Corrigendum à la demande de participation a/0090/08 enregistrée ICC-01/04-01/07-510-Conf-Exp-Anx75*”; and ICC-01/04-01/07-535-Conf-Exp, “*Corrigendum à la demande de participation a/0090/08 enregistrée ICC-01/04-01/07-518-Conf-Exp-Anx55*”

⁴ Applications for Participation: a/0009/08, a/0010/08, a/0011/08, a/0012/08, a/0013/08, a/0014/08, a/0015/08, a/0016/08, a/0022/08, a/0024/08, a/0025/08, a/0027/08, a/0028/08, a/0029/08, a/0030/08, a/0031/08, a/0032/08, a/0033/08, a/0034/08, a/0035/08, a/0036/08, a/0037/08, a/0038/08, a/0039/08, a/0040/08, a/0041/08, a/0042/08, a/0043/08, a/0044/08, a/0045/08, a/0046/08, a/0047/08, a/0048/08, a/0049/08, a/0050/08, a/0051/08, a/0052/08, a/0053/08, a/0054/08, a/0055/08, a/0056/08, a/0057/08, a/0058/08, a/0059/08, a/0060/08, a/0061/08, a/0062/08, a/0063/08, a/0064/08, a/0065/08, a/0066/08, a/0067/08, a/0068/08, a/0069/08, a/0070/08, a/0071/08, a/0072/08, a/0073/08, a/0074/08, a/0075/08, a/0076/08, a/0077/08, a/0078/08, a/0079/08, a/0080/08, a/0081/08, a/0082/08, a/0083/08, a/0084/08, a/0085/08, a/0086/08, a/0087/08, a/0088/08, a/0089/08, a/0090/08, a/0091/08, a/0092/08, a/0093/08, a/0094/08, a/0095/08, a/0096/06, a/0097/08, a/0098/08, a/0099/08, a/0100/08, a/0101/08, a/0102/08, a/0103/08, a/0104/08, a/0106/08, a/0107/08, a/0108/08, a/0109/08, a/0110/08, a/0111/08, a/0112/08; and the respective Registry’s Report (ICC-01/04-01/07-542-Conf-Exp) filed on 2 June 2008, and an Addendum thereto (ICC-01/04-01/07-542-Conf-Exp-Anx1-Add)

⁵ ICC-01/04-01/07-548-Conf

NOTING the “Defence Observations on 97 applications for participation as victims”⁷ filed by the Defence for Germain Katanga on 4 June 2008;

NOTING the “Decision on the 97 Applications for Participation at the Pre-Trial Stage of the Case”⁸ issued by the Single Judge on 10 June 2008;

NOTING articles 57, 61, 67 and 68 of the *Rome Statute* (“the Statute”) and rules 76 to 83, 91, 92, 121 and 122 of the *Rules of Procedure and Evidence* (“the Rules”);

I. Assessment of Application for Participation a/0108/08

1. At the outset, the Single Judge observes that in the Decision on the 97 Applications for Participation at the Pre-Trial Stage of the Case, Judge Akua Kuenyehia, as Single Judge, stated that “Applicant a/0108/08 is also Witness 166, a witness on whom the Prosecution intends to rely at the confirmation hearing” and that “[d]ue to his unique status, the Single Judge will examine his application for participation at the pre-trial stage of the case against Germain Katanga and Mathieu Ngudjolo Chui in a separate decision.”⁹ In the present decision, the Single Judge examines the application of Applicant a/0108/08 (referred to in the present decision as Witness 166).

2. The Single Judge notes that Witness 166 has not appended to his application for participation any proof of his identity, and such application would therefore ordinarily be deemed incomplete.

⁶ ICC-01/04-01/07-549-Conf-Exp

⁷ ICC-01/04-01/07-550-Conf-Exp

⁸ ICC-01/04-01/07-579

⁹ ICC-01/04-01/07-579, para.29.

3. Nevertheless, the Single Judge notes that proof of Witness 166's identity has been appended to numerous applications for participation¹⁰ and such proof is consistent with the information he provides in his own application for participation.¹¹ In addition, the Single Judge observes that Witness 166, while acting as [REDACTED], signed a number of documents, *inter alia*, [REDACTED].¹² In this regard, the Single Judge notes that the signature which appears on the aforementioned documents appears to be consistent with the one appearing at the bottom of each page and in Section J of the application for participation of Witness 166. Hence, the Single Judge is of the view that Witness 166's identity has been duly established and thus his application is deemed complete. The Single Judge shall now turn to the assessment of the application for participation.

4. As the Chamber has held on several occasions, under rule 85(a) of the Rules the following four criteria must be satisfied for an applicant to be granted the procedural status of victim in the proceedings concerning the pre-trial stage of a case:

- (i) the applicant must be a natural person;
- (ii) the applicant must have suffered harm;
- (iii) the crime from which the harm resulted must fall within the jurisdiction of the Court and must be the subject of "a warrant of arrest or summons to appear, and, subsequently, a charging document (crimes encompassed by the relevant case);" and

¹⁰ See for instance applications for participation a/0038/08, p 22; a/0039/08, p 21, a/0040/08, p.21, a/0041/08, p.22, a/0042/08, p 22; a/0070/08, p.22; a/0073/08, p 18; a/0074/08, p.22; a/0075/08, p 20, a/0076/08, p 21, a/0078/08, p.22, a/0079/08, p 22, a/0081/08, p 22; a/0082/08, p 21; a/0083/08, p 21, a/0084/08, p.18, a/0085/08, p.18, a/0086/08, p 18, a/0087/08, p.18; a/0088/08, p.18, a/0089/08, p 18, a/0090/08, p 18, a/0091/08, p.22; a/0092/08, p.22; a/0093/08, p 18, a/0094/08, p 18; a/0095/08, p.18; a/0096/08, p 21; a/0097/08, p 18, a/0098/08, p 18, a/0099/08, p 18, a/0100/08, p.18, a/0101/08, p 21, a/0102/08, p 18; a/0103/08, p 18; a/0104/08, p 21; a/0105/08, p 21; a/0106/08, p 22; a/0107/08, p 22; a/0109/08, p 21

¹¹ See Section A of application for participation a/0108/08

¹² See for instance applications for participation a/0038/08, pp.19-20; a/0040/08, pp.18-19, a/0041/08, pp 18-19; a/0042/08, pp 18-19, a/0074/08, pp 19-20, a/0078/08, pp 19-20; a/0081/08, pp 20-21, a/0082/08, pp 19-20; a/0086/08, p.22, a/0087/08, p 20, a/0089/08, pp.20-21; a/0091/08, pp 19-20, a/0093/08, pp 20-21, a/0094/08, pp.20-21; a/0097/08, pp 20-21; a/0098/08, pp 20-21; a/0099/08, pp 20-21, a/0102/08, pp.20-21; a/0105/08, p.20, a/0106/08, pp 20-21, a/0107/08, pp.20-21, a/0109/08, pp 19-20.

(iv) there must be a causal link between the crime and the harm.¹³

5. In relation to the third requirement, the Prosecution's Charging Document against Germain Katanga and Mathieu Ngudjolo Chui is confined to crimes falling within the jurisdiction of the Court that were allegedly committed during the alleged joint FRPI/FNI attack on the village of Bogoro on or about 24 February 2003.¹⁴

6. In relation to the fourth requirement, the Single Judge recalls that the applicant and, as the case may be, the immediate family or the dependents of the direct applicant, must show that they suffered harm (i) as a result of the crimes which were allegedly committed during the alleged joint FRPI/FNI attack on the village of Bogoro on or about 24 February 2003 (direct link between the harm and the alleged crimes); or (ii) in intervening to assist or to prevent the victimisation of direct victims as a result of the alleged commission of the said crimes.¹⁵

7. Furthermore, the Single Judge underlines that the applicants are only required to demonstrate that the four requirements established by rule 85(a) of the Rules are met *prima facie*¹⁶ and that therefore the Single Judge's analysis of the Applications "will not consist in assessing the credibility of the [applicants'] statement[s] or engaging in a process of corroboration *stricto sensu*",¹⁷ but will assess the applicants' statements first and foremost on the merits of their intrinsic coherence, as well as on the basis of the information otherwise available to the Single Judge.¹⁸

8. The Single Judge observes that the Defence for Mathieu Ngudjolo Chui advances that Witness 166 must be denied the status of victim in the present case because, having returned to Bogoro almost a year after the alleged events, he does

¹³ See ICC-02/05-121, p. 8. See also ICC-01/04-101, para. 94, and ICC-01/04-01/06-601, p. 9

¹⁴ ICC-01/04-01/07-55, paras. 9 to 16; and ICC-01/04-01/07-262, paras. 9 to 16

¹⁵ ICC-01/04-01/06-172, p. 7 and 8.

¹⁶ ICC-01/04-101-Corr, para. 66. See also, ICC-01/04-417, para. 8

¹⁷ ICC-01/04-101-Corr, para. 101

¹⁸ ICC-01/04-417, para. 8.

not sufficiently establish the link between the harm he allegedly suffered and the charges brought against Mathieu Ngudjolo Chui.

9. Nevertheless, after a careful analysis of his application, the Single Judge is of the view that Witness 166, who is a natural person, has provided evidence establishing *prima facie* that he suffered economic loss as a result of the crimes allegedly committed in the alleged joint FRPI/FNI attack on Bogoro on or about 24 February 2003, during which, *inter alia*, his house and property were pillaged and destroyed.

10. Therefore, the application of Witness 166 for the procedural status of victim at the pre-trial stage of the present case must be granted.

II. Set of Procedural Rights granted to Witness 166 in light of his Dual Status as Victim and Witness in the Present Case

A. Observations of the Parties

11. The Single Judge observes that the Prosecution submits that Witness 166 should be granted the status of victim in the present case¹⁹ but does not touch upon the issue of his dual procedural status as victim and witness in the present case.

12. Contrary to the Prosecution, the Defence for Germain Katanga underlines that Witness 166 is a witness on whom the Prosecution intends to rely at the confirmation hearing in the present case. Nevertheless, the Defence for Germain Katanga has no objection to his dual status for the purpose of the confirmation hearing because he gave his statement before his application for participation was filed, and therefore,

¹⁹ ICC-01/04-01/07-549-Conf-Exp, para.13

the statement could not be affected by the evidence he will be privy to as a result of the Chamber's recognition of his procedural status of victim.²⁰

13. The Defence for Germain Katanga submits, however, that in the event that the charges against Germain Katanga are confirmed and the Prosecution decides to rely on his statement at trial, it will raise an objection to his dual status insofar as it would affect the fairness of the proceedings since:

- (i) witness 166 will give evidence after gaining access to the confidential part of the case file, thus enabling him to adjust his statement in accordance with the other available evidence, and in particular with the statements of the other witnesses on whom the Prosecution intends to rely for the purpose of the confirmation hearing; and
- (ii) his credibility will be undermined by his financial interest in the result of the proceedings, which could also lead him to modify his statement.²¹

14. The Defence for Germain Katanga also submits that, in the event that Witness 166 is allowed to simultaneously have the procedural status of victim and witness he should not be (i) given access to any confidential information; and (ii) allowed to attend any hearing of a witness in the present case, even if such hearing is public. Moreover, the Chamber should bear in mind his dual procedural status when assessing his credibility.²²

²⁰ ICC-01/04-01/07-550-Conf-Exp. para 20

²¹ ICC-01/04-01/07-550-Conf Exp. para 20

²² ICC-01/04-01/07-550-Conf-Exp. para 21

15. Finally, the Defence for Germain Katanga requests that, because they are notified of redacted versions of applications for participation, it be systematically informed of the fact that an application has been filed by a witness.²³

16. The Defence for Mathieu Ngudjolo Chui also raises some concerns about granting the procedural status of victim to Witness 166 in the present case, especially in light of the fact that the legal representatives of non-anonymous victims have been granted access to confidential documents.²⁴ Furthermore, according to the Defence of Mathieu Ngudjolo Chui, granting Witness 166 the status of victim would prejudice the fairness of the proceedings since it would inevitably pose a conflict of interest between the different roles played by Witness 166.²⁵ Finally, the Defence for Mathieu Ngudjolo Chui underlines that, due to the lack of provisions in respect of the dual procedural status of a given individual as a victim and a witness, the application of Witness 166 should be dealt with cautiously by the Chamber.

B. Analysis and Conclusions

17. As Witness 166, on whom the Prosecution intends to rely for the purpose of the confirmation hearing scheduled for 27 June 2008, is granted the procedural status of victim in the present decision, the question arises as to whether the procedural status of victim is compatible with that of witness. Moreover, if this question is answered in the affirmative, the question then arises as to which specific set of procedural rights should be granted to Witness 166 for the purposes of the confirmation hearing.

18. At the outset, the Single Judge notes that neither the Statute nor the Rules expressly prohibit the recognition of the procedural status of victim to an individual who is also a witness in the case. Indeed, the Single Judge observes that among the criteria provided for in rule 85 of the Rules for the granting of the procedural status

²³ ICC-01/04-01/07-550-Conf-Exp, para 21.

²⁴ ICC-01/04-01/07-548-Conf-Exp, para 30

²⁵ ICC-01/04-01/07-548-Conf-Exp, para 30

of victim in any given case, there is no clause excluding those who are also witnesses in the same case.

19. Moreover, the Single Judge also notes that neither the Statute nor the Rules contain any specific prohibition against the admissibility of the evidence of individuals who have been granted the procedural status of victim in the same case. In this regard, the controlling provision is article 69 (4) of the Statute, which provides that:

“The Court may rule on the relevance or admissibility of any evidence, taking into account, *inter alia*, the probative value of the evidence and any prejudice that such evidence may cause to a fair trial or to a fair evaluation of the testimony of a witness, in accordance with the Rules of Procedure and Evidence.”

20. The Single Judge also notes that the Court’s only case law on this matter to date, the 18 January 2008 Decision of the Trial Chamber in the case of *The Prosecutor v. Thomas Lubanga Dyilo*, has accepted the dual procedural status of victim and witness in the same case. In reaching this conclusion, the Trial Chamber ruled as follows:

The Trial Chamber rejects the submission of the defence that victims appearing before the Court in person should be treated automatically as witnesses. Whether or not victims appearing before the Court have the status of witnesses will depend on whether they are called as witnesses during the proceedings.²⁶

Furthermore, the Chamber is satisfied that the victims of crimes are often able to give direct evidence about the alleged offences, and as a result a general ban on their participation in the proceedings if they may be called as witnesses would be contrary to the aim and purpose of Article 68(3) of the Statute and the Chamber’s obligation to establish the truth.²⁷

However, when the Trial Chamber considers an application by victims who have this dual status, it will establish whether the participation by a victim who is also a witness may adversely affect the rights of the defence at a particular stage in the case. The Trial Chamber will take into consideration the modalities of participation by victims with dual status, the need for their participation and the rights of the accused to a fair and expeditious trial.²⁸

21. The Single Judge also observes that in those national systems providing for a procedural status of victim, such as Brazil, France, Germany or Spain, there is no

²⁶ ICC-01/04-01/07-1119, para 132

²⁷ ICC-01/04-01/07-1119, para 133.

²⁸ ICC-01/04-01/07-1119, para 134

prohibition against the dual procedural status of victim and witness in the same case.²⁹

22. As a result, the Single Judge considers that the procedural status of victim in any given case must be granted whenever the four conditions provided for in rule 85 of the Rules are met, regardless of whether the applicant, as in the present case, is also a witness of the case.

23. In relation to the set of procedural rights to be granted to Witness 166 as a result of the Single Judge's recognition of his procedural status of victim at the pre-trial stage of the present case, the Single Judge observes that neither the Statute nor the rules establish any specific limitation on the set of procedural rights to be granted to an applicant who is also a witness in the same case. Nevertheless, the Single Judge notes that article 68 (3) of the Statute makes clear that any such set of procedural rights must be defined "in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial."

24. Moreover, the Single Judge also notes that neither the Statute nor the rules contain any specific limitation on the probative value to be given to the evidence of a witness who also has the procedural status of victim in the same case.

25. In this regard, the Single Judge observes that, in its 18 January 2008 Decision, the Trial Chamber did not specify (i) the set of procedural rights granted to individuals who have the dual procedural status of victim and witness; and (ii) the

²⁹ For Brazil, articles 268 – 271 of the *Código de Processo Penal*. See also Chapter VIII, Evidence. Procedure relating to trial by jury, Title III of Book IV of the *Código de Processo Penal e Sua Interpretacao Jurisprudencial*, Volume II, pp 2593-2594. For France, articles 335 and 336 of the Code de procedure pénale (although article 335 of the *Code de procédure pénale* prohibits the testimony under oath of a civil party, article 336 states that the civil party can nevertheless be heard, as a source of information in accordance with the discretionary power of the president). For Germany, article 397 of the *Strafprozessordnung*. See also G Pfeiffer, „*Strafprozessordnung Kommentar*“, Beck Publishing, 2005, pp. 76-77 and 935. See also C Roxin, „*Strafverfahrensrecht ein Studienbuch*“, C.H. Beck Publishing, 1998, pp 209 and 499, and W. Beulke, „*Strafprozessrecht*“, C F Müller, 2006, p 114. For Austria, article 172 of the *Strafprozessordnung*. See also E. E. Fabrizy, „*Die österreichische Strafprozessordnung (Strafprozessordnung 1975) samt den wichtigsten Nebengesetzen Kurzkomentar mit einer Einführung und Erläuterungen unter Berücksichtigung der Rechtsprechung des Obersten Gerichtshofes und des Schrifttums*“, Manz Publishing, 2004, p 293. See also S Seiler, „*Strafprozessreform 2004 Ergänzungsband zum Lehrbuch Strafprozessrecht*“, WUV Uversitätsverlag, 2006, p 126. For Italy, articles 196-207 of the *Codice di procedura penale*. For Spain, article 109 of the *Ley de Enjuiciamiento Criminal*.

consequences, if any, for the probative value of the evidence given by an individual with such a dual status.

26. The Single Judge also observes that, as a general rule, those national systems providing for a procedural status for victims - in addition to accepting the dual status of victim and witness in the same case - do not have any rule automatically reducing the probative value of the evidence given by those individuals holding such a dual status. Contrary to the submissions of the Defence for Germain Katanga, this is the case even if such individuals have been given access to the evidence contained in the record of the case, including the statements of the other witnesses.

27. Indeed, although these national systems differ in that in some of them, such as in France or Brazil, victim-witnesses make oral statements at trial without being under oath, while in others, such as Spain, they give testimony at trial under oath.³⁰ The crucial factor in assessing the reliability of their oral statements or testimonies at trial (and consequently their probative value) is whether there are unjustified substantial differences between:

- (i) their statements at the investigation stage before they have access to the other evidence contained in the record of the case; and
- (ii) their oral statements or testimonies at trial after they have had access to the other evidence contained in the record of the case.

28. Moreover, the Single Judge notes that to date, this approach has not been held by the Human Rights Committee, the European Court of Human Rights or the Inter-American Court of Human Rights to be prejudicial to the fairness of the proceedings,

³⁰ See, for instance, for France, articles 335 and 336 of the *Code de procédure pénale*, and for Spain, articles 714 and 715 of the *Ley de Enjuiciamiento Criminal*. See also for Germany, article 59 of the *Strafprozessordnung*, and L. Meyer-Gossner, „*Strafprozessordnung Gerichtsverfassungsgesetz, Nebengesetze und ergänzende Bestimmungen*“, C H Beck Publishing, 2005, p. 208. For Austria, see S. Seiler, *Strafprozessreform 2004 Ergänzungsband zum Lehrbuch Strafprozessrecht*, pp. 134-136.

the fair evaluation of the testimony of relevant witnesses or the accused's rights pursuant to articles 14 ICCPR, 6 ECHR or 8 IACHR.

29. Nevertheless, the Single Judge is aware that there is no case law of the Trial Chamber or the Appeals Chamber of this Court on the matter, and that therefore they may not necessarily follow the approach taken in those national systems in which the dual status of victim and witness is provided for.

30. Under these circumstances, and considering that the Prosecution considers Witness 166 to be a core witness of the present case, the Single Judge agrees with the Defence for Mathieu Ngudjolo Chui in that she must act cautiously in deciding on the dual status of victims and witnesses. In doing so, the Single Judge, in line with the confirmation hearing's stated goal of facilitating the preparation of the trial in the event that the charges are confirmed, aims at preserving the admissibility and probative value of the evidence of Witness 166 at trial.

31. As a result, the Single Judge considers that the safeguards proposed by the Defence for Germain Katanga - that is to say (i) preventing Witness 166 from having access to the confidential part of the case record, which includes the bulk of the evidence on which the parties intend to rely at the confirmation hearing, including the statements of the other witnesses; and (ii) preventing Witness 166 from attending any hearing of a witness in the present case, even if such hearing is public - are adequate precautionary measures in the present circumstances.

32. Furthermore, as neither the Prosecution nor the Defences intend to rely on any live witnesses during the confirmation hearing scheduled to start on 27 June 2008, the Single Judge considers that the procedural safeguards proposed by the Defence for Germain Katanga will be provided for as long as Witness 166 is granted those procedural rights given to anonymous victims in Section VII of Decision on the Set of Procedural Rights Attached to Procedural Status of Victim at the Pre-Trial

Stage of a Case (including the rights to access the public part of the case record, as well as attending the part of the confirmation hearing to be held in public session).

33. Finally, the Single Judge also observes that this approach is also compatible with the initial request of Witness 166 since, in his application, he requested anonymity *vis-à-vis* the two suspects,³¹ which, as the Single Judge has already underlined, amounts to a request of the status of anonymous victim.³²

FOR THESE REASONS

GRANT the procedural status of victim at the pre-trial stage of the case of *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui* and at the stage of the investigation into the DRC situation to Witness 166 (Applicant a/0108/08).

ORDER that Witness 166 (Applicant a/0108/08) shall only be:

- a. referred to by the number assigned to him by the Registry, unless otherwise ordered by the Chamber; and
- b. contacted through his Legal Representative;

³¹ See Section H of application for participation a/0108/08. See also, ICC-001/04-01/07-558-Conf-Exp, para 8 and ICC-01/04-01/07-558-Conf-Exp-Anx1

³² ICC-01/04-01/07-579, para.150. Witness 166's request for anonymity became moot because (i) he agreed to the Prosecution's use of his statement as evidence in the present case, as well as to the Disclosure for those purposes of his identity to both Defence teams as well as to the suspects; (ii) he declined the protective measures offered to him as a witness, and (iii) his statement and his identity has been disclosed to both Defence Teams, as well as to both suspects

DECIDE that Witness 166 (Applicant a/0108/08) shall have the set of procedural rights of an anonymous victim as provided for in Section VII of Decision on the Set of Procedural Rights Attached to Procedural Status of Victim at the Pre-Trial Stage of a Case.

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



Judge Sylvia Steiner
Single Judge

Dated this Monday 23 June 2008

At The Hague, the Netherlands