

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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

Date: 24 June 2008

PRE-TRIAL CHAMBER I

Before: Judge Akua Kuenyehia, Presiding Judge
Judge Sylvia Steiner
Judge Anita Ušacka

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

Public Document

Report of the OPCV on the implementation of the oral decision dated 10 June 2008

Source: Office of Public Counsel for Victims

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

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Unrepresented Victims

**Unrepresented Applicants for
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Registrar

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Section**

Other

I. PROCEDURAL BACKGROUND

1. During the status conference held on 10 June 2008, the Presiding Judge of Pre-Trial Chamber I issued an oral decision on the assistance to be provided by the Office of Public Counsel for Victims (the "Office" or the "OPCV") to the legal representatives of the victims (the "Legal Representatives") during the confirmation of the charges in the case *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui* (the "Decision")¹.
2. During the status conference held on 19 June 2008, the Single Judge of Pre-Trial Chamber I ordered the OPCV to file a Report on the implementation of the Decision by Tuesday 24 June 2008 at 16.00².
3. The Office hereby files a report on the implementation of the Decision.

II. ON THE IMPLEMENTATION OF THE ORAL DECISION OF 10 JUNE 2008

4. Pursuant to the Decision, "*the Office of Public Counsel for [...] Victims shall commit [...] a different member of the [O]ffice to assisting each legal representatives for the purpose of the confirmation hearing if the assistance of the [O]ffice is requested by the respective legal representative*"³.
5. To date, none of the Legal Representatives representing victims who are participating in the case *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*

¹ See the transcription of the hearing held on 10 June 2008, No. ICC-01/04-01/07-T-35-ENG, 10 June 2008, pp. 14 and 15.

² See the transcription of the hearing held on 19 June 2008, No. ICC-01/04-01/07-T-36-ENG, p. 5. Please note that the date of 24 May in the transcript is understood as 24 June for the purpose of this report.

³ *Ibid.*, p. 14, line 22 to p. 15, line 1 (we underline).

has requested the assistance of the Office. Therefore, no implementation of the Decision was and is needed.

6. Regarding the observation made by the Single Judge during the hearing held on 19 June 2008, according to which “*the OPCV apparently did not comply with [the Decision] when it assigned four staff members of the Office of Public Counsel for Victims to assist Ms Bapita*”⁴, the Principal Counsel of the Office (the “Principal Counsel”) notes that such assertion is incorrect.

7. The Principal Counsel allocates staff members of the Office to each situation and case taking into account, *inter alia*, the resources available, the language(s) spoken by the staff members and by the legal representatives who might request the assistance of the Office, the workload of the Office and the need to avoid conflicts of interests. Such determination is the responsibility of the Principal Counsel and falls under the independence of the Office as established by regulation 81(2) of the Regulations of the Court.

8. As a result, four staff members of the Office are, at present, assigned to the case *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui* in order to follow the proceedings and to be able to provide assistance to the legal representatives and/or assistance to and/or representation of victims, if so requested, in a timely and efficient manner.

9. The access of the staff members of the Office to documents and material of a situation and/or case record is set according to the determination made by the Principal Counsel and in accordance with the tasks they are asked to perform. Staff members of the Office assigned to the case *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui* only have access to the public documents and material filed in the record of the case, as well as to the realtime transcripts of the public hearings. On

⁴ See the transcription of the hearing held on 19 June 2008, page 5, lines 1-3.

the issue, the Principal Counsel notes that two out of the four Legal Representatives have informed the Office that they would like its staff members allocated to the case to have access to all public documents filed in the record of the said case. As a consequence, the Principal Counsel has informed the Court Management Section (the "CMS") accordingly.

III. PRACTICAL IMPLICATIONS OF THE IMPLEMENTATION OF THE ORAL DECISION DATED 10 JUNE 2008

10. Should the Decision need to be implemented, triggered by the Legal Representatives' request for assistance, the Office informs the Chamber of the following practical implications which will derive from the said implementation.

11. The allocation of only one member of the Office to each legal representative will not guarantee the highest quality standard of assistance to which the Office is committed.

12. Indeed, junior staff members of the Office will need to be allocated to each legal representative. In this regard, it is important to note that the junior staff members assigned to the present case need supervision since it cannot be asked from them to perform tasks which do not fall under their normal duties without a minimum of guidance. Such supervision and guidance is provided by a senior staff member and it is always performed in accordance with the instructions provided by the Principal Counsel. In fact, the participation of victims being a new matter in international criminal proceedings, there is a need for consistency in the practice of the Office as far as substantive and procedural matters, which may arise in the course of the proceedings, are concerned. Consequently, decisions on strategies to be implemented in the course of the proceedings – which includes strategies to be suggested to the legal representatives, should they ask for advice – are ultimately decided upon only by the Principal Counsel.

13. Furthermore, the allocation of only one OPCV staff member to each legal representative will prevent the assistance required from being carried out in case the staff member concerned is absent from the Office, *e.g.* for urgent reasons or on sick leave. In such event, the legal representative concerned will be deprived of any assistance. Moreover, the realtime transcripts are in English, while the Legal Representatives speak and use French. Not all the OPCV staff members are bilingual and the Office does not comprise enough French speakers to allocate one to each legal representative concerned. As a consequence, if the person allocated to the legal representative does not understand – let aside speak and write – French, it will be impossible for the person alone to provide the assistance required.

14. The Office also notes that staff members of the Office do not, in the least, form part of, and cannot in any way be assimilated to, the Legal Representatives' respective teams. In this respect, the Principal Counsel notes that all the Legal Representatives representing victims who are participating in the case *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui* have been provisionally granted legal assistance paid by the Court and, therefore, are entitled to request the Registry any form of assistance they consider necessary for the fulfillment of their mandate *vis-à-vis* their clients, including requesting assistants and case managers for their respective teams. The Office, in fact, does not provide the legal representatives with administrative and logistical assistance, but merely with substantive assistance on matters related to the proceedings.

15. It would be impracticable and contrary to the wording of regulation 81 of the Regulations of the Court to ask the Office to integrate its staff into the Legal Representatives' teams. First, because the Office has not enough resources. Secondly, because this would jeopardise the independence of the Office and increase the risk of potential conflicts of interests, which in turn would prevent the OPCV from providing support and assistance to other legal representatives and/or to victims. In this respect, it is important to note that the Office is composed of only seven staff members with legal background who, at present, provide support and assistance to

13 legal representatives in the situation in the Democratic Republic of the Congo and cases related to it, as well as to two legal representatives in the Darfur, Sudan situation and in the case related to it. Moreover, the Office is currently providing directly legal assistance and representation to victims in the Democratic Republic of the Congo situation/cases and in the Uganda situation/case.

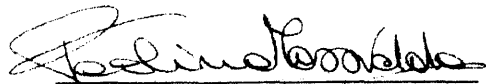
16. The impossibility for the staff members of the Office to follow the proceedings in courtroom will in any case prevent them from providing the assistance in the most effective way. Indeed, staff members of the OPCV are located in the Hoftoren building. The Office encounters daily problems with the connection to Outlook; as a consequence, when the connection is not working, it will be impossible for the staff allocated to the Legal Representative to communicate with him/her through e-mail as established in the Decision⁵. Furthermore, there is no way for the OPCV staff to know whether a hearing has actually started or not. During the status conference held on 10 June 2008 – during which a technical problem with LiveNote lead to the postponement of the hearing for an hour – the OPCV staff members following the hearing from the remote location were unaware of this problem and it took half an hour of “investigation” before they were able to understand the reason of this postponement.

17. Moreover, the staff members of the OPCV will not be able to see what is happening in the courtroom. On a practical point of view, this means that the person concerned will not be able to see the evidence which will be tendered, which video will be shown during the confirmation of the charges hearing, etc., therefore making practically impossible to provide any assistance on the evidence concerned, if so requested by the Legal Representatives. On this issue, the Office informs the Chamber that the Principal Counsel inquired with the IT Section and with the CMS,

⁵ Please note that during the status conference held on 19 June 2008, the Case Manager of the OPCV informed the Principal Counsel that, once the connexion to Outlook was re-established, there has been an interruption in the connexion to the e-mails system.

immediately after the issuance of the Decision and prior to any discussion with the Legal Representatives, on whether any possibility exists to follow the proceedings live by video communication. The Office was informed that a program called "TFR" exists and it is available to CMS. However, access to such system cannot be provided for the time being because it is not possible to restrict such access only to public proceedings. Incidentally, this attempt shows that the Office never intended not to comply with the Decision, if so requested by the Legal Representatives.

18. Finally, the Principal Counsel informs the Chamber that the OPCV, functioning as a wholly independent office, is merely providing support and assistance to the Legal Representatives as envisaged by regulation 81(4)(a) of the Regulations of the Court, namely providing them with legal research and advice upon specific formal written requests and that the OPCV will only have access to the public documents and material of the case record.



Paolina Massidda
Conseil Principal

Bureau du conseil public pour les victimes

Dated this 24th day of June 2008

At Genoa, Italy