

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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Date: 26 June 2008

PRE-TRIAL CHAMBER I

Before: Judge Sylvia Steiner, Single Judge

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

Public Document

**Additional report of the OPCV on the implementation of the 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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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 hearing 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. On 24 June 2008, the OPCV filed its “Report of the OPCV on the implementation of the oral decision dated 10 June 2008” (the “OPCV Report”)³.

4. On 25 June 2008, the Single Judge issued the “Order to Submit Additional Reports on the Implementation of the 10 June 2008 Decision”⁴ (the “Order”).

5. The Office hereby files its additional report on the implementation of the Decision.

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 See the “Report of the OPCV on the implementation of the oral decision dated 10 June 2008”, No. ICC-01/04-01/07-635, 24 June 2008.

⁴ See the “Order to the OPCV and the OPCD to Submit Additional Reports on the Implementation of the 10 June 2008 Decision”, No. ICC-01/04-01/06-647, 25 June 2008.

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

6. Following the Order, and as a preliminary matter, the Office would like to clarify what seems to be a misunderstanding in respect of the assistance the Office has been providing to two of the four Legal Representatives during the period which preceded the confirmation of the charges hearing scheduled to start on 27 June 2008.

7. On 29 April 2008, the Single Judge issued the “Decision Establishing a Calendar according to the date of the Confirmation hearing: 27 June 2008” in which she scheduled several status conferences and one hearing to be held on 14 May 2008, 3 June 2008 and on 19 June 2008 to discuss matters related to the preparation of the confirmation of the charges hearing⁵. The hearing to be held on 3 June 2008 was later postponed until 10 June 2008⁶.

8. Following the Decision of 2 April 2008 on victims’ participation⁷, the Single Judge established the modalities of this participation in the case *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui* in her decision dated 13 May 2008⁸.

9. At that point in time, the two legal representatives concerned by the above mentioned decisions⁹ requested the Office to be assisted for the purpose of the status conferences. This is the reason why, during the status conference held on 3 June 2008¹⁰, the Principal Counsel informed the Single Judge that two legal representatives

⁵ See the “Decision Establishing a Calendar according to the date of the Confirmation hearing: 27 June 2008”, No. ICC-01/04-01/07-459, 29 April 2008, p. 10.

⁶ See the “Decision postponing the hearing of 3 June 2008”, No. ICC-01/04-01/07-536, 30 May 2008.

⁷ See the “Decision on the Applications for Participation in the Proceedings of Applicants a/0327/07 to a/0337/07 and a/0001/08”, No. ICC-01/04-01/07-357, 2 April 2008.

⁸ See the “Decision on the Set of Procedural Rights Attached to Procedural Status of Victim at the Pre-Trial Stage of the Case”, No. ICC-01/04-01/07-474, 13 May 2008.

⁹ See *supra*, paragraph 8.

¹⁰ See the “Order to the OPCV and the OPCD to Submit Additional Reports on the Implementation of the 10 June 2008 Decision”, *supra* note 4, p. 6.

requested the assistance of the Office “*at this hearing and at future hearings*”¹¹. This statement clearly referred to the assistance the Office agreed to provide to the legal representatives concerned during the status conferences to be held before the confirmation of the charges hearing, and not during the confirmation of the charges hearing itself.

10. The *rationale* behind these requests was that, at that point in time, the final modalities of participation of victims were still pending before Pre-Trial Chamber I¹² and because the legal representatives needed time to organise their respective teams for the purpose of the confirmation of the charges hearing to be held on 27 June 2008.

11. In this context, the Principal Counsel assigned one staff member of the OPCV to Ms Carine Bapita Buyangandu and one staff member to Mr Joseph Keta and Mr Jean-Louis Gillissen, due to the different modalities of participation established by the Single Judge in her decision dated 13 May 2008¹³.

12. The Decision requested the Office to appoint one of its staff members to each of the four legal representatives concerned, at their request, “*for the purpose of the confirmation hearing*”¹⁴. It is therefore the understanding of the Office that the Decision is only triggered once the Legal Representatives request assistance from the Office for the purpose of the confirmation of the charges hearing.

¹¹ See the transcription of the hearing held on 3 June 2008, No. ICC-01/04-01/07-T-31-ENG, 3 June 2008, p. 3, lines 9 and 10.

¹² They became effective on 9 June 2008. In this sense, see the transcription of the hearing held on 3 June 2008, *supra* note 6, p. 20, lines 1 to 5. See also the transcription of the hearing held on 10 June 2008, *supra* note 1, p. 12, lines 14 to 22.

¹³ See the “Decision on the Set of Procedural Rights Attached to Procedural Status of Victim at the Pre-Trial Stage of the Case”, *supra* note 8.

¹⁴ See the transcription of the hearing held on 10 June 2008, *supra* note 1, p. 14.

13. After the issuance of the Decision of 10 June 2008, and until today, the Legal Representatives have not requested any assistance, not even regarding “legal researches and advice”, to the OPCV for the purpose of the confirmation of the charges hearing. This explains the assertion made by the Principal Counsel during the status conference held on 19 June 2008¹⁵ and reiterated in the OPCV Report dated 24 June 2008¹⁶.

14. Should the Single Judge consider the interpretation of the Decision by the Office incorrect, and hence that the Decision was also applicable with regards to the requests of assistance of two of the Legal Representatives in relation to the status conferences held in preparation of the confirmation of the charges hearing, the Principal Counsel notes that during the status conference held on 3 June 2008, she already informed the Single Judge that Ms Caroline Walter was assigned to Ms Carine Bapita Buyangandu and that Mr Orchlon Narantsetseg was assigned to Mr Joseph Keta and Mr Jean-Louis Gillissen¹⁷.

15. Finally, the Office reiterates that it has never had intention to request for the reconsideration of the Decision, as clearly stated during the status conference held on 19 June 2008:

“The Office of Public Counsel for Victims has not requested during the open session reconsideration of the decision of the 10th of June. If I'm not mistaken, maybe we can review the transcript, my expression used was simply "it could be that after consultation with the Legal Representative the Legal Representative and/or the office will consider to ask for a review." This was what I stated during the open session. So at this point in time the OPCV has not put forward before the Single Judge or the Pre-Trial Chamber any request for reconsideration of the decision of the 10th of June”¹⁸.

¹⁵ See the transcription of the hearing held on 19 June 2008, *supra* note 2, pp. 32-33.

¹⁶ See the OPCV Report, *supra* note 3, par. 18.

¹⁷ See the transcription of the hearing held on 3 June 2008, *supra* note 11, p. 3, lines 10-12.

¹⁸ See the transcription of the hearing held on 19 June 2008, No. ICC-01/04-01/07-T-37-ENG, 19 June 2008, p. 3, lines 11 to 19.

16. Moreover, the fact that the Office has drawn the attention of the Chamber on the practical implications of the implementation of the Decision cannot be understood as a request for reconsideration of the said decision. The purpose of Part III of the OPCV Report was simply to underline certain difficulties which may have an impact on the possibility for staff members of the Office to assist the Legal Representatives. Indeed, the Office considers it is its duty to inform the Chamber of any matter which may prevent the Office from fulfilling its mandate, particularly when the fulfillment of its tasks derives from a decision of a Chamber.

FOR THESE REASONS,

1) In the event the interpretation by the Office of the Decision is to prevail, and therefore that the Decision applies solely for the purpose of the confirmation of the charges hearing itself, the Principal Counsel will inform the Chamber of the commitment of members of the Office, as soon as practicable, as ordered by the Single Judge in her Order¹⁹, should the Legal Representatives formally request the assistance of the Office during the confirmation of the charges hearing.

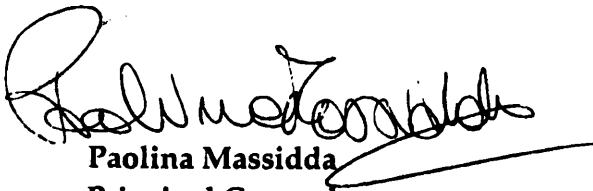
2) In the event the Decision is to be understood as also covering the period which precedes the confirmation of the charges hearing, the Principal Counsel confirms that, as stated on the status conference held on 3 June 2008, Ms Caroline Walter is assigned to Ms Carine Bapita Buyangandu and Mr Orchlon Narantsetseg is assigned to Mr Joseph Keta and Mr Jean-Louis Gillissen²⁰; the only two Legal Representatives to whom the Office have been provided legal advice to date.

¹⁹ See the "Order to the OPCV and the OPCD to Submit Additional Reports on the Implementation of the 10 June 2008 Decision", *supra* note 4, p. 8.

²⁰ See the transcription of the hearing held on 3 June 2008, *supra* note 11, p. 3, lines 10-12.

3) In the event that the Single Judge considers that the requests of two of the Legal Representatives to be assisted for the purpose of the status conferences prior to the confirmation of the charges hearing has to be interpreted as being a request for assistance at the confirmation hearing itself, the Principal Counsel confirms that, as stated on the status conference held on 3 June 2008, Ms Caroline Walter is assigned to Ms Carine Bapita Buyangandu and Mr Orchlon Narantsetseg is assigned to Mr Joseph Keta and Mr Jean-Louis Gillissen²¹.

4) Pending any further instructions by the Single Judge on the interpretation of the Decision, and considering that the confirmation of the charges hearing is to start on 27 June 2008, Ms Caroline Walter and Mr Orchlon Narantsetseg will follow the proceedings on LiveNote, being therefore ready to answer any request for assistance.


Paolina Massidda
Principal Counsel
Office of Public Counsel for Victims

Dated this 26th day of June 2008

At Isola Rossa, Italy

²¹ *Ibid.*