

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original : English

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

Date: 31 March 2008

PRE-TRIAL CHAMBER I

Before: Judge Sylvia Steiner, Single Judge

Registrar: Mr Bruno Cathala

**SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO
IN THE CASE OF
*THE PROSECUTOR vs. GERMAIN KATANGA and MATHIEU NGUJOLO CHUI***

PUBLIC

**Prosecution's Response to Ngujolo's Application for Leave to Appeal the Decision
on the Prosecution Request for Authorisation to Redact Statements of Witnesses 4
and 9**

The Office of the Prosecutor

Mr Luis Moreno-Ocampo, Prosecutor
Ms Fatou Bensouda, Deputy Prosecutor
Mr Fabricio Guariglia, Senior Appeals Counsel
Mr Eric MacDonald, Trial Lawyer
Ms Florence Darques-Lane, Legal Adviser

Defence of Germain Katanga

Mr David Hooper
Mr Göran Sluiter
Ms Caroline Buisman
Ms Sophie Menegon

Defence of Mathieu Mgudjolo Chui

Mr Jean-Pierre Kilenda Kakengi Basila
Mr Maryse Alié
Ms Aurélie Roche

Introduction

1. On 21 December 2007, the Single Judge of Pre-Trial Chamber I issued the "Decision on the Prosecution Request for Authorisation to Redact Statements of Witnesses 4 and 9" in the case *The Prosecutor v. Germain Katanga* ("Decision").¹ In her Decision, the Single Judge found that "on an exceptional basis and only for the purpose of their protection by means of the redaction of their names and identifying information, the notion of 'victim' under rule 81(4) of the Rules would also cover alleged victims of sexual offences which are unrelated to the charges in the case at hand" and on this basis authorised redactions of the names and identifying information of three victims of sexual offences referred to in the statement of Witness 9, which are unrelated to the Bogoro attack.²
2. On 10 March 2008, the Pre-Trial Chamber issued the decision joining the cases of *The Prosecutor v. Germain Katanga* and *The Prosecutor v. Mathieu Ngudjolo Chui*.³ On the same day, the Single Judge issued another decision in which she ruled that "in relation to those decisions issued by the Chamber in the case of *The Prosecutor v. Germain Katanga* that may have an impact on the Defence of Mathieu Ngudjolo Chui, in particular the First, Second and Third Decisions on Redactions, the Defence of Mathieu Ngudjolo Chui will have until 28 March 2008 at 16h00 to file any requests for reconsideration or, alternatively, for leave to appeal".⁴
3. On 26 March 2008, the Defence of Mathieu NGUDJOLO CHUI ("Defence") filed the "*Demande d'Autorisation d'Interjeter Appel de la Décision Relative à la*

¹ *Prosecutor v. Katanga*, ICC-01/05-01/07-123-Conf-Exp (Prosecution only), 21 December 2007. On the same day, a confidential redacted version of the Decision was issued (*Prosecutor v. Katanga*, ICC-01/05-01/07-124-Conf, 21 December 2007). Eventually, on 23 January 2008, a public redacted version of the Decision was issued (*Prosecutor v. Katanga*, ICC-01/05-01/07-160, 23 January 2008).

² Decision, paras. 19-20.

³ *Prosecutor v. Katanga*, ICC-01/04-01/07-257, Decision on the Joinder of the Cases against Germain KATANGA and Mathieu NGUDJOLO CHUI, 10 March 2008.

⁴ *Prosecutor v. Katanga and Ngudjolo*, ICC-01/04-01/07-259, Decision Establishing a Calendar in the Case against Germain KATANGA and Mathieu NGUDJOLO CHUI, 10 March 2008, pp. 9-10.

Requête de l'Accusation Sollicitant l'Autorisation d'Expurger les Déclarations des Témoins 4 et 9 ("Ngudjolo's Application"),⁵ in which the Defence seeks leave to appeal the Decision on the following issue:

- the Pre-Trial Single Judge incorrectly found that a systematic and teleological interpretation of rule 81(4) of the Rules leads to the conclusion that the notion of "victim" under rule 81(4) of the Rules also covers alleged victims of sexual offences which are unrelated to the charges in the case at hand ("the Issue").⁶
4. Pursuant to Regulation 65(3), the Prosecution hereby responds to the Application.

Submissions

5. The Prosecution does not oppose the Application.
6. The Prosecution takes this position on the basis of its independent examination of the issues raised in the Application in light of the requirements of Article 82(1)(d). These requirements do not involve consideration of, or in any way reflect the Prosecution's position on, the merits of the Decision. If and when leave to appeal is granted, the Prosecution will advance its position on the merits of the Decision before the Appeals Chamber.⁷
7. The Prosecution submits that the Issue arises from the Decision.⁸ Although the Prosecution disagrees with many of the arguments set out by the Defence in

⁵ *Prosecutor v. Katanga and Ngudjolo*, ICC-01/04-01/07-340, 26 March 2008.

⁶ Ngudjolo's Application para. 15.

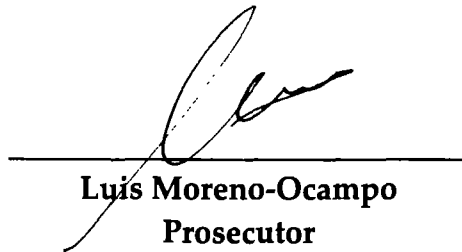
⁷ The Prosecution notes that Germaine Katanga previously sought leave to appeal an identical issue, which the Prosecution did not oppose. See *Prosecutor v. Katanga*, ICC-01/05-01/07-169, Defence Application for Leave to Appeal the Request for leave to appeal the 'Decision on the Prosecution Request for Authorisation to Redact Statements of Witnesses 4 and 9', 29 January 2008. See also *Prosecutor v. Katanga*, ICC-01/05-01/07-177, Prosecution's Response to Defence Application for Leave to Appeal the 'Decision on the Prosecution Request for Authorisation to Redact Statements of Witnesses 4 and 9', 4 February 2008. See in particular paras. 4-7.

⁸ In the view of the Prosecution, this issue arises from paras. 19-20 of the Decision.

Ngudjolo's Application,⁹ and is of the view that some pertain to the merits of the issue,¹⁰ the Prosecution submits the Issue nonetheless appears to satisfy the requirements of Article 82(1)(d).

Conclusion

8. For the reasons referred to above, the Prosecution does not oppose leave to appeal being granted.



Luis Moreno-Ocampo
Prosecutor

Dated this 31st day of March 2008
At The Hague, The Netherlands

⁹ The Prosecution disagrees with the Defence's submissions that the redactions at hand affect the ability of the Defence to challenge the Prosecution evidence (Ngudjolo's Application, para. 34). The Defence concedes that the victims in question have not made any allegations against Mr. Ngudjolo, which necessarily affects Mr. Ngudjolo's interests in relation to these victims (Ngudjolo's Application, para. 26).

The Prosecution further disagrees that the Single Judge's interpretation of Rule 81(4) opens the door for any victim or traumatized witness from the DRC. (Ngudjolo's Application, para. 35). The Decision is clear in that it grants redactions under Rule 81(4) for "victims of sexual offences" and "on an exceptional basis" (Decision, para. 19).

¹⁰ See for instance paras. 18-19 and 21-26.