Cour Pénale Internationale



International Criminal Court

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

Date: 26 May 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 Document

Decision authorising the filing of observations on the applications for participation in the proceedings

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 Counsel for the Defence of Germain Katanga Mr David Hooper Ms Caroline Buisman

Counsel for the Defence of Mathieu

Ngudjolo Chui

Mr Jean-Pierre Kilenda Kakengi Basila

Ms Maryse Alié

Legal Representatives of the Victims

Ms Carine Bapita Buyagandu Mr Joseph Keta

Mr J.L. Gilissen

Legal Representatives of the Applicants

Unrepresented Victims

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 Väätäinen

Detention Section

Victims Participation and Reparations

Section

Mr Didier Preira Ms Fiona McKay Other

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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, in which the Single Judge decided that any application for the

recognition of the status of victim in the present case transmitted by the Registry to

the Single Judge after Monday 26 May 2008 will not be considered for the purposes

of the confirmation hearing;

NOTING the "Information of receipt of application forms, which appear, prima

facie, to relate to the case of The Prosecutor v. Germain Katanga and Mathieu Ngudjolo

Chui"2 ("the Information on Receipt of Applications") filed by the Registry on 26

May 2008, in which the Victims Participation and Reparations Section ("VPRS")

requests guidance from the Single Judge in relation to the application for

participation in the confirmation hearing, specifically regarding the preparation of

redacted versions of the applications, as well as the transmission of the applications

themselves, and any redacted versions, to the parties in accordance with rule 89(1) of

the Rules;

NOTING articles 57(3)(c) and 68 of the Rome Statute ("the Statute"), rules 13, 15, 86

and 89 of the Rules of Procedure and Evidence ("the Rules"); regulations 8(c), 26 and 86

of the Regulations of the Court ("the Regulations"); and regulation 14 of the

Regulations of the Registry;

CONSIDERING that the Registry filed the Information on Receipt of Applications

as confidential ex parte only available to the Registry; and that, given the nature of

the information referred to in the document, the Single Judge considers that the

document should be made public;

¹ ICC-01/04-01/07-474

² ICC-01/04-01/07-507-Conf-Exp

CONSIDERING that, under rule 89 (1) of the Rules, the Prosecutor and the Defence are entitled to make observations concerning the Applications within a time limit set by the Pre-Trial Chamber and that in order to allow them to exercise this right

effectively, the Registrar must provide them with a copy of any such applications;

CONSIDERING that the format in which the copy of an application for participation is transmitted to the Prosecutor and the Defence is regulated by the provisions of the Statute and in particular article 68(1) of the Statute, which states that the Pre-Trial Chamber and the other organs of the Court must take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims without being prejudicial to or inconsistent with the rights of the

defence and a fair and impartial trial;

CONSIDERING also that under article 57(3)(c) of the Statute, one of the functions of the Pre-Trial Chamber is, where necessary, to provide for the protection and privacy of victims and witnesses; and that rule 86 of the Rules sets up a general principle according to which the Pre-Trial Chamber's responsibility in making any direction or order, and other organs of the Court in performing their functions under the Statute or the Rules, are to take into account the needs of all victims and witnesses in accordance with article 68 of the Statute;

CONSIDERING therefore that when the safety of an applicant so requires the Pre-Trial Chamber may order the Registrar to transmit to the Prosecutor and the Defence a redacted copy of the applications for participation expunged of any information

which could lead to the applicants identification;3

CONSIDERING however that the redactions must be limited to what is strictly necessary in the light of the applicant's safety and that they must allow the

 3 1CC-01/04-01/06-60, ICC-01/04-01/06-107, ICC-01/04-01/06-270-tEN, ICC-01/04-01/06-494-tEN and ICC-01/04-01/06-672-tEN

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Prosecutor and the Defence to meaningfully exercise their right to reply to the

applications for participation;

CONSIDERING that the Single Judge is convinced that, in light of the security

situation in the Democratic Republic of the Congo (and in particular in the Ituri

district) referred to in the First Decision on Redactions,4 the current situation of the

applicants requires that both Defence Counsels be provided with a redacted copy of

the applications expunged of any information which could lead to the applicants

identification;

CONSIDERING further that, in the current situation, the Single Judge is convinced

that a non-redacted version of applications for participation may be notified to the

Prosecution;

CONSIDERING that, in order not to be exposed to further risks, the applicants

must not be contacted directly by any of the organs of the Court, but only through

their Legal Representatives or through the VPRS if they have no legal representation

and, if need be, through the Victims and Witnesses Unit;

FOR THESE REASONS

ORDER the Registry to reclassify document ICC-01/04-01/07-507-Conf-Exp as

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public;

⁴ ICC-01/04-01/07-90, Section II

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PURL: https://www.legal-tools.org/doc/6f588b/

ORDER the Registry by Monday 26 May 2008:

(i) to file in the record of the case of The Prosecutor v. Germain Katanga and

Mathieu Ngudjolo Chui the non-redacted version of applications for

participation referred to in the Information on Receipt of Applications;

and

(ii) to provide to the Prosecution, a non-redacted version of the applications

for participation referred in (i);

ORDER the Registry by Tuesday 27 May 2008:

(i) to file in the record of the case The Prosecutor v. Germain Katanga and

Mathieu Ngudjolo Chui a redacted version of applications for participation

referred to in the Information on Receipt of Applications in which any

information which might lead to the applicants being identified has been

redacted;

(ii) to provide to both Defence Counsels, the redacted version of the

applications for participation referred in (i);

ORDER all participants in the proceedings to only refer to the applicants by the

numbers assigned to them by the Registry;

ORDER all the organs of the Court not to contact the applicants directly and, if

necessary, to do so only through their Legal Representatives or through the VPRS for

those applicants who have no legal representation, and if need be, via the Victims

and Witnesses Unit;

DECIDE to give seven days from the notification of the applications for participation to the Prosecution and both Defence Counsels to present observations regarding the said applications for participation and on the possible granting to those applicants of the procedural status of victims authorised to participate in the proceedings before the Chamber in the case of *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*.

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

Judge Sylvia Steiner Single Judge

Dated this Monday 26 May 2008

At The Hague, The Netherlands