

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No: ICC-01/04-01/07
Date: 29 August 2007

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 *v.* GERMAIN KATANGA**

Under seal

Ex parte, available only to the Prosecution

Decision on the Prosecution's Application pursuant to Rules 81(2) and 81(4)

The Office of the Prosecutor

Mr Luis Moreno Ocampo, Prosecutor
Ms Fatou Bensouda, Deputy Prosecutor
Mr Éric MacDonald, Trial Lawyer

I, Judge Sylvia Steiner, judge at the International Criminal Court (the “Court”);

NOTING the “*Decision Rejecting the Prosecution Urgent Request and Establishing a Calendar for the Disclosure of the Supporting Materials of the Prosecution Application for a Warrant of Arrest against Germain Katanga*”, filed by the Single Judge on 6 July 2007, whereby the Single Judge decided to establish a calendar for the disclosure of the materials submitted by the Prosecution in support of its application for the issuance of a warrant of arrest for Germain Katanga and that the Prosecution shall have until 7 August 2007 to either disclose unredacted versions of the witness statements to the Defence, or to request, using the example provided in Annex I to the *Decision on the confirmation of charges* in the case of *The Prosecutor v. Thomas Lubanga Dyilo*, the authorisation of the Single Judge for any redaction that the Prosecution might still consider necessary;¹

NOTING the “*Decision Altering the Calendar for the Submission of Formatted Version of the Arrest Warrant Application and Redacted Witness Statements*”, issued by the Single Judge on 10 July 2007,² by which the Single Judge decided, *inter alia*, to maintain the deadline for the Prosecution to request authorisation for redactions to the statements of Witnesses 7, 13 and 14;

NOTING the “*Prosecution’s Application pursuant to Rules 81(2) and 81(4)*”, filed by the Prosecution on 7 August 2007,³ (“*Prosecution Application*”) whereby the Prosecution requests redactions pursuant to rules 81(2) and 81(4) of the *Rules of Procedure and Evidence* (“*Rules*”) from the statements of Witnesses 7, 13 and 14 that

¹ ICC-01/04-01/07-5-US-Exp, p. 8.

² ICC-01/04-01/07-9-US-Exp, p. 3.

³ ICC-01/04-01/07-14-US-Exp.

were submitted in support of the Prosecution's application for the issuance of a warrant of arrest for Germain Katanga;

NOTING rules 81(2) and 81(4) and of the Rules;

CONSIDERING that the Prosecution Application refers to statements given by Witnesses 7, 13 and 14 who are already under the protection programme, and whose identities will be disclosed to the Defence as soon as disclosure starts, and that therefore the redactions requested by the Prosecution are not aimed at protecting their identities or any identifying features that could lead to the disclosure of their identities;

CONSIDERING, however, that the Chamber, in previous decisions issued in the case of *The Prosecutor v. Thomas Lubanga Dyilo*, has authorised redactions to be made in witness statements and in documents in order to protect third parties not involved in the investigations, including journalists, members of NGOs and persons that could erroneously be considered as collaborating with the Prosecution;

CONSIDERING that decisions of the Chamber authorising the non-disclosure to the Defence of the identity of third parties or authorising the non-disclosure of information on ongoing or further investigations must comply with the judgments of the Appeals Chamber, according to which such decisions must be supported by sufficient reasoning, that while the extent of the reasoning will depend on the circumstances of the case, it is essential that it indicate with sufficient clarity the basis for the decision and that such reasoning must identify which facts it found to be relevant in coming to its conclusion;⁴

⁴ ICC-01/04-01/06-773, ICC-01/04-01/06-774.

CONSIDERING that in compliance with the ruling of the Appeals Chamber, the Chamber stated in its *Decision on the Confirmation of Charges* that in deciding on a request for redactions under rules 81(2) and 81(4) of the Rules:

Firstly, the Chamber assessed whether the terms which were the subject of the Prosecutor's applications under rule 81(2) of the Rules could lead to the identification of his investigations. In this regard, the Chamber considered that merely mentioning in a testimony an event, place or person about which or whom the Prosecutor intends to conduct "further" investigations is not sufficient to consider its redaction necessary under rule 81(2) of the Rules. Accordingly, the Chamber considered whether based on the context as appears from each of the statements, the Defence could identify the Prosecutor's investigations.

Furthermore, the Chamber considered whether, under the circumstances, the Defence could be in a position to prejudice "further investigations" of the Office of the Prosecutor, *inter alia*, by discouraging informers from providing information by threatening potential victims and witnesses, destroying potential evidence, or by supplying other people with the means to obstruct the Prosecutor's investigations.

Secondly, the Chamber weighed the various interests at stake in order to determine whether the redaction of words or expressions could be authorised. As guarantor of the effective exercise of the rights of the Defence and of the interests of the Prosecutor in completing his investigations, the Chamber satisfied itself that a fair balance was established between the preparation of the Defence for the purpose of the confirmation hearing and the protection of the investigations of the Office of the Prosecutor.⁵

CONSIDERING further that in its "*Decision Rejecting the Prosecution Urgent Request and Establishing a Calendar for the Disclosure of the Supporting Materials of the Prosecution Application for a Warrant of Arrest against Germain Katanga*", the Chamber decided that the Prosecution request for redactions should follow the example provided in Annex I to the *Decision on the Confirmation of Charges* in the case of *The Prosecutor v. Thomas Lubanga Dyilo*;⁶

⁵ ICC-01/04-01/06-796-Conf-Anx I-tENG.

⁶ ICC-01/04-01/07-5-US-Exp, p. 8.

CONSIDERING that, in order to facilitate the Chamber's assessment of the requested redactions, the statements should be presented in their unredacted form, with the proposed redactions highlighted in different colours according to the legal basis on which the redactions are proposed;

CONSIDERING that the reasoning given in the Prosecution Application is of a general nature and does not particularise the reasons for each specific proposed redaction, and that this reasoning does not enable the Chamber to analyse and assess the relevance of the requested redactions;

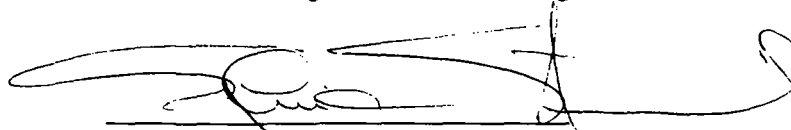
FOR THESE REASONS,

ORDER the Prosecution to provide the Chamber with a request supported by additional information on the relevance of, and factual basis for, the proposed redactions, using the example provided in Annex I to the *Decision on the Confirmation of Charges* in the case of *The Prosecutor v. Thomas Lubanga Dyilo*;

ORDER the Prosecution to re-file the statements in their unredacted form, highlighting the proposed redactions in different colours, according to their legal basis, or in any other manner that would enable the Chamber to identify each piece of information proposed to be redacted, and its related legal basis;

GIVE the Prosecution 10 days from the notification of this decision to comply with it.

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



Judge Sylvia Steiner
Single Judge

Dated this Wednesday 29 August 2007

At The Hague, The Netherlands