Cour Pénale Internationale





Original: English No: ICC-01/04-02/07

Date: 7 February 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 v. MATHIEU NGUDJOLO CHUI

Public

URGENT

Decision on the Prosecution's Urgent Application pursuant to regulations 90, 99(2) and 101(2) of the Regulations of the Court

The Office of the Prosecutor

Mr Mathieu Ngudjolo Chui

Mr Luis Moreno-Ocampo, Prosecutor Ms Fatou Bensouda, Deputy Prosecutor Mr Éric MacDonald, Trial Lawyer Mrs Florence Darques-Lane, Legal Adviser

No: ICC-01/04-02/07 7 February 2008

ICC-01/04-02/07-15 07-02-2008 2/7 CB PT

ICC-01/04-01/07-274 11-03-2008 2/7 CB PT Pursuant to Decision ICC-01/04-01/07-259, this document is transferred to the case file ICC-01/04-01/07

I, Sylvia Steiner, Judge at the International Criminal Court ("the Court");

NOTING the "Urgent Request for the Scheduling of an Ex Parte Hearing to Discuss

Issues relevant to the Transfer of Mathieu NGUDJOLO" ("the Prosecution Request")

filed on 6 February 2008 by which the Prosecution requests the Single Judge to

convene an urgent ex parte hearing with the Prosecution and the Registry in order to

discuss:

(i) the modalities of unsealing the warrant of arrest for Mathieu

Ngudjolo Chui; and

(ii) a temporary segregation of Mathieu Ngudjolo Chui in order to

prohibit contacts between him and Germain Katanga;1

NOTING the "Decision convening a hearing on 6 February 2008" issued by the

Single Judge on 6 February 2008;²

NOTING the hearing held *ex parte* and in closed session on 6 February 2008 in which

the Prosecution and the Registry informed the Single Judge on the status of the

execution of the cooperation request for the arrest and surrender of Mathieu

Ngudjolo Chui and in which the Prosecution made an oral request for the prohibition

of any contact between Mathieu Ngudjolo Chui and Germain Katanga;

NOTING the Oral Decision taking by the Single Judge at the 6 February 2008

Hearing in which (i) the request of the Prosecution was granted and the prohibition

of any contact between Mathieu Ngudjolo Chui and Germain Katanga was going to

be provisionally maintained until otherwise decided by the Single Judge; (ii) the

Prosecution was ordered to file its application in writing at the latest by 7 February

¹ ICC-01/04-02/07-8-US-Exp.

² ICC-01/04-02/07-9-US-Exp.

ICC-01/04-02/07-15 07-02-2008 3/7 CB PT

ICC-01/04-01/07-274 11-03-2008 3/7 CB PT
Pursuant to Decision ICC-01/04-01/07-259, this document is transferred to the case file ICC-01/04-01/07

2008 at 10h00; and (iii) the Registry was ordered to file its observations by 7 February

2008 at 12h00;

NOTING the "Prosecution's Urgent Applications Pursuant to Regulations 90, 99(2)

and 101(2) of the Court"3 ("the Prosecution's Urgent Application") filed by the

Prosecution on 7 February 2008;

NOTING the "Observations on the implementation of an order of restriction to

communication and contact between Mr. Germain Katanga and Mr. Mathieu

Ngudjolo Chui until the initial appearance hearing of the latter"⁴ ("the Registry's

Observations") filed by the Registry on 7 February 2008;

NOTING the information provided by the Registrar confirming the transfer of

Mathieu Ngudjolo Chui to the Court's Detention Center in The Hague;

NOTING article 67 of the Rome Statute ("the Statute"), rule 22 of the Rules of

Procedure and Evidence ("the Rules"), regulations 90, 99(2) and 101(2) of the

Regulations of the Court ("the Regulations"); and regulations 201 to 204 of the

Regulations of the Registry ("the RoR")

CONSIDERING that the Prosecution, in its application, requests the Single Judge to

prohibit "any contact between Germain KATANGA and Mathieu NGUDJOLO

(together referred to as "Detainees"), upon the latter's arrival at the Detention Unit,

based on Regulation 101 (2) of the Regulations of the Court";5

 ³ ICC-01/04-02/07-11-US-Exp.
 ⁴ ICC-01/04-02/07-12-US-Exp.
 ⁵ The Prosecution Application, page 2.

ICC-01/04-02/07-15 07-02-2008 4/7 CB PT

ICC-01/04-01/07-274 11-03-2008 4/7 CB PT to Decision ICC-01/04-01/07-259, this document is transferred to the case file ICC-01/04-01/07

CONSIDERING that, according to regulation 101 (3) of the Regulations, a detained

person shall be informed of any request of the Prosecution under regulation 101 (2) of

the Regulations "to prohibit, regulate or set conditions for contact between a

detained person and any other person"; that the detained persons shall be given the

opportunity to be heard or to submit his or her views unless "in exceptional

circumstances such as in an emergency, an order may be made prior to the detained

person being informed of the request", and that in such a case "the detained person

shall, as soon as practicable, be informed and shall be given the opportunity to be

heard or to submit his or her views";7

CONSIDERING that Mathieu Ngudjolo Chui has just been transferred to the

Detention Center at the seat of the Court in The Hague; that, therefore, he has not yet

appointed Defence Counsel; and that he will be given a number of curricula vitae of

counsels who have been admitted in the list of the Defence Counsel provided for in

rule 22 of the Rules for the purpose of the first apperance before Pre-Trial Chamber I

scheduled for Monday 11 February 2008 at 14h00;8

CONSIDERING the potential implications of the Prosecution's Urgent Application

for the detention regime of Mathieu Ngudjolo Chui and Germain Katanga; the need

to ensure that Mathieu Ngudjolo Chui is in a position to make fully informed

observations on the Prosecution's Urgent Application; and that, in the view of the

Single Judge, this can only be achieved by addressing the Prosecution's Urgent

Application in a hearing before the Single Judge after (i) Mathieu Ngudjolo Chui has

had the opportunity to appoint Defence Counsel to represent him; and (ii) Mathieu

Ngudjolo Chui and Germain Katanga have been given access to the Prosecution's

Urgent Application and the Registry's Observations;

⁶ Regulation 101(3) of the Regulations.
⁷ Regulation 101 (3) of the Regulations.

8 ICC-01/04-02/07-14.

ICC-01/04-01/07-274 11-03-2008 5/7 CB PT Pursuant to Decision ICC-01/04-01/07-259, this document is transferred to the case file ICC-01/04-01/07

CONSIDERING that, if the allegations made by the Prosecution in the Prosecution's

Urgent Application were to be founded, allowing communication between Mathieu

Ngudjolo Chui and Germain Katanga in relation to any public or confidential aspects

of their respective cases, particularly if they are allowed to exchange case-related

materials, could make the Prosecution's Urgent Application meaningless; and that,

therefore, in order to prevent this from happening, it is necessary to set up a

provisional detention regime for Mathieu Ngudjolo Chui and Germain Katanga until

the Prosecution's Urgent Application can be properly addressed by the Defences of

Mathieu Ngudjolo Chui and Germain Katanga at the hearing scheduled in the

present decision;

CONSIDERING therefore that, in the view of the Single Judge, the above-mentioned

circumstances meet the "exceptional circumstances" test provided for in regulation

101 (3) of the Regulations;

CONSIDERING further that, upon careful consideration of the Prosecution's Urgent

Application and the Registry's Observations, the Single Judge is of the view that the

following two provisional measures will serve the purpose of decreasing at this stage

and to a great extent the risk alleged by the Prosecution: (i) active enforcement of

the prohibition to exchange case-related materials between Mathieu Ngudjolo Chui

and Germain Katanga; and (ii) a general prohibition for both detainees to

communicate in relation to any public or confidential aspects of their respective

cases;

CONSIDERING that, given the current set up of the Detention Center, as described

in the Registry's Observations, the implementation of any additional measures

requested by the Prosecution, and in particular the temporary prohibition of any

contact between Mathieu Ngudjolo Chui and Germain Katanga, will require severe restrictions on the detention regime for both detainees; and that the provisional imposition of such restrictions before the hearing scheduled in the present decision is not justified because the above-mentioned less restrictive measures are, in the view of the Single Judge, sufficient to prevent the Prosecution's Urgent Application from becoming moot;

CONSIDERING, therefore, that for the above-mentioned reasons, and in light of the severe nature of the provisional measures adopted in her Oral Decision, the Single Judge is of the view that a revision of such a decision is justified at this stage;

FOR THESE REASONS

DECIDE to reclasify documents ICC-01/04-02/07-11-US-Exp and ICC-01/04-02/07-12-US-Exp as confidential;

ORDER the Registrar to notify inmediately the above-mentioned documents to Mathieu Ngudjolo Chui;

DECIDE to convene a hearing on 12 February 2008 at 14h00 to be held in closed session with the Prosecution, the head of the Victims and Witnesses Unit, the Chief Custody Officer, the representatives of the Registrar and the Defence in the cases of *The Prosecutor v. Mathieu Ngudjolo Chui* and *the Prosecutor v. Germain Katanga*;

DECIDE to partially review the Oral Decision and that, until otherwise decided:

(i) the measures requested at paragraphs 15, 16 and 17 of the Prosecution's Urgent Application shall be provisionally

No.: ICC 01/04-02/07 Technuary 2008

- implemented in order to avoid any exchange of case-related materials between Mathieu Ngudjolo Chui and Germain Katanga;
- (ii) any oral or written communication between Mathieu Ngudjolo Chui and Germain Katanga in relation to any public or confidential aspects of their respective cases against them shall be provisionally prohibited;
- (iii) that the enforcement of the prohibition under (ii) shall be carried out in the same manner as other confidentiality obligations are being currently enforced in relation to other detainees;

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

Judge Sylvia Steiner
Single judge

Dated this Thursday 7 February 2008 At The Hague, The Netherlands