

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No: ICC-01/04-01/07
Date: 8 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. GERMAIN KATANGA***

Public Document

Decision on the Defence 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 Éric MacDonald, Trial Lawyer
Ms Florence Darques-Lane, Legal Adviser

Counsel for the Defence

Mr David Hooper
Mr Göran Sluiter
Ms Caroline Buisman

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

NOTING the “Decision on the Prosecution Request for Authorisation to Redact Statements of Witnesses 4 and 9” issued by the Single Judge on 21 December 2007 (“the Second Decision on Redactions”), for which two versions were filed on that day: a confidential *ex parte* version only available to the Prosecution¹ and a confidential redacted version available to the Defence;²

NOTING the Single Judge’s “Decision on the Starting date of the Timelimit provided for in Rule 155 of the Rules in relation to the Decisions Issued on 21 December 2007”³ (“Decision on the Time-Limit”);

NOTING the Public Redacted Version of the “Decision on the Prosecution Request for Authorisation to Redact Statements of Witnesses 4 and 9”⁴ filed by the Single Judge on 23 January 2008 (“the 23 January 2008 Public Redacted Version”);

NOTING the Defence Application for Leave to Appeal the “Decision on the Prosecution Request for Authorisation to Redact Statements of Witness 4 and 9”⁵ (“Defence’s Application for Leave to Appeal”) filed on 29 January 2008;

NOTING the “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’”⁶ filed on 4 February 2008;

NOTING the “Order Concerning Notification of Second Decision on Redactions”⁷ issued by the Single Judge on 5 February 2008;

¹ ICC-01/04-01-07-123-Conf-Exp.

² ICC-01/04-01-07-124-Conf.

³ ICC 01/04-01/07-128.

⁴ ICC-01/04-01-07-160.

⁵ ICC-01/04-01-07-169.

⁶ ICC 01/04-01-07-177.

⁷ ICC 01/04-01-07-178.

NOTING the “Information to the Chamber Concerning Notification of Second Decision on Redactions”⁸ filed by the Registry on 7 February 2008 (“the Registry’s information”);

NOTING articles 54, 61, 67 and 82(1)(d) of the *Rome Statute* (“the Statute”), rules 76 to 83, 87, 88, 121 and 155 of the *Rules of Procedure and Evidence* (“the Rules”) and regulations 31(2) and 33 of the Regulations of the Court (“the Regulations”);

CONSIDERING that the 21 December 2007 Confidential Redacted Version and the 23 January 2008 Public Redacted Version cannot be considered as decisions different from the Second Decision on Redactions because the use of redactions (i) is conditioned to not altering the content of the original decision; and (ii) solely aims at limiting the access of the Defence and the general public to the content of the original decision;

CONSIDERING that in the present case, the time-limit provided for in rule 155 of the Rules for the filing by the Defence of a motion for leave to appeal against the Second Decision on Disclosure started running from the notification to the Defence of the relevant confidential redacted version of such a decision;

CONSIDERING that, according to the records annexed to the Registry’s information: (i) the Defence was notified by the Registry of the confidential redacted version of the Second Decision on Redactions on 21 December 2007 per email to both Mr David Hooper and Ms Caroline Buisman; and (ii) “Ms Caroline Buisman, on behalf of Mr David Hooper, Defence Counsel of Mr. Katanga, signed the copy

⁸ ICC 01/04-01-07-185 and ICC 01/04-01-07-185-Anx1 to Anx3.

control list dated the 21st December 2007 [...] hereby attesting that she received the Decision”;⁹

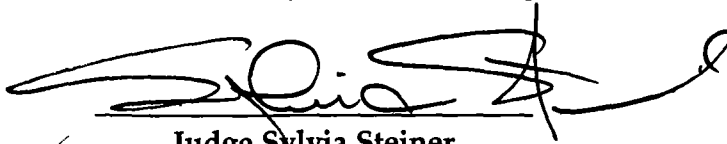
CONSIDERING nevertheless that the Single Judge decided in the 21 December 2007 Decision that due to, *inter alia*, the Court recess, the five day time-limit provided for in rule 155 of the Rules would start running on 31 December 2007; and that as such, the Defence should have filed its request for leave to appeal the Second Decision on Redactions by 7 January 2008;

CONSIDERING therefore that according to the Statute, Rules and Regulations, as well as the Single Judge’s 21 December 2007 Decision, the Defence’s Application for Leave to Appeal pursuant to article 82 (1) (d) of the Statute has been made after the expiration of the time-limit provided for in rule 155 of the Rules; and that consequently, the Single Judge need not address the merits of the two grounds of appeal raised in the Defence’s Application for Leave to Appeal;

FOR THESE REASONS,

REJECT the Defence’s Application for Leave to Appeal *in limine*.

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



Judge Sylvia Steiner
Single Judge

Dated this Friday 8 February 2008

At The Hague, The Netherlands

⁹ ICC 01/04-01-07-185, page 3 and ICC 01/04-01-07-185- Anx3.