

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 25 June 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
with Confidential Redacted Annex**

**Decision on Notification to the Defences of Confidential Redacted Version of
3 April 2008 Decision**

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 for Germain

Katanga

Mr David Hooper

Ms Caroline Buisman

Mr Göran Sluiter

Counsel for the Defence for Mathieu

Ngudjolo Chui

Mr Jean-Pierre Kilenda Kakengi

Ms Maryse Alié

Legal Representatives of the Victims

Ms Carine Bapita Buyagandu

Mr Joseph Keta

Mr J.L. Gilissen

Mr Hervé Diakiese

Mr Jean-Christophe Mulamba

Nsokoloni

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

States Representatives

**The Office of Public Counsel for the
Defence**

Amicus Curiae

REGISTRY

Registrar

Ms Silvana Arbia

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

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

NOTING the *ex parte* only available to the Prosecution “Decision on the Use of Summaries of the Statements of Witnesses 267 and 243”¹ issued by the Single Judge on 3 April 2008;

NOTING the confidential redacted version of the “Fifth Decision on the Prosecution Request for Authorisation to Redact Statements, Investigators’ Notes, Written Consents and documents relating to Witnesses 157, 161, 268, 279, 280 and 311 and Other Documents”² issued by the Single Judge on 21 April 2008;

NOTING the confidential redacted version of the “Eight Decision on Redactions”³ issued by the Single Judge on 9 June 2008;

NOTING the “Decision on the Procedure for Leave to Appeal pursuant to article 82 (l)(d) of the Statute, rule 155 of the Rules and regulation 65 of the Regulations and on the Pending Requests for Leave to Appeal Concerning Witnesses 132 and 287”⁴ issued by the Single Judge on 17 June 2008;

NOTING the “Defence Written Submissions on Fact and Law pursuant to Rule 121 (9)”⁵ filed by the Defence for Germain Katanga on 24 June 2008;

NOTING articles 67 and 82 of the Rome Statute (“the Statute”) and rule 155 of the Rules of Procedure and Evidence (“the Rules”);

¹ ICC-01/04-01/07-362-Conf-Exp.

² ICC-01/04-01/07-424-Conf.

³ ICC-01/04-01/07-567-Conf.

⁴ ICC-01/04-01/07-601, with Anx I and Anx II.

⁵ ICC-01/04-01/07-641-Conf.

CONSIDERING that, at paragraph 67 of the Written Submission of the Defence for Germain Katanga, the Defence makes the following submissions:

On 9 June 2008, the Single Judge rendered the Confidential Redacted Version of the *Eighth Decision on Redactions*. Paragraph 3 of this Decision refers to the *ex parte Decision on the Use of Summaries of the Statements of Witnesses 267 and 243* dated 3 April 2008 which granted the anonymity of the summaries of the statements, interview notes and interview transcripts of Witnesses 243 and 267 for the purpose of the Confirmation Hearing. This *ex parte* Decision has not been disclosed to the Defence. On 21 April 2008, the Single Judge issued the *Fifth Decision on the Prosecution Request for Authorisation to Redact Statements, Investigators' Notes, Written Consents and documents relating to Witnesses 157, 161, 268, 279, 280 and 311 and Other Document*. According to paragraph 7 of this Decision, "the Single Judge recalls that she has granted the anonymity of the summary of Witness 267's statement for the purpose of the confirmation hearing" [...]; the footnote refers to an *ex parte* Decision which has never been disclosed to the Defence. The Defence was made aware that witnesses 243 and 267 had been granted anonymity only through references to *ex parte* Decisions in other non-*ex parte* Decisions. Thus, the Defence has not been notified of the decision granting anonymity to witnesses 243 and 267 and was, therefore, deprived of a right to appeal this decision. The Defence submits that this deprivation should lead to the exclusion of the evidence of anonymous witnesses 243 and 267.⁶

CONSIDERING that the Defence for Germain Katanga acknowledges that it was aware of the existence of the 3 April 2008 Decision since 21 April 2008; and that therefore, it has since had ample opportunity to raise this issue with the Single Judge;

CONSIDERING further that the Single Judge fully agrees with the Defence for Germain Katanga that:

It is a fundamental principle of criminal justice and a basic element of a fair trial that reasoned decisions are disclosed to the Defence in order that it is informed of the findings applicable to the proceedings and has the opportunity to lodge a timely appeal.⁷

CONSIDERING therefore that the Defences for Germain Katanga and Mathieu Ngudjolo Chui must immediately be notified of a confidential redacted version of the 3 April 2008 Decision;

⁶ ICC-01/04-01/07-641-Conf, para. 67.

⁷ ICC-01/04-01/07-641-Conf, para. 68.

CONSIDERING that according to rule 155 of the Rules:

When a party wishes to appeal a decision under article 82, paragraph 1, or article 82, paragraph 2, that party shall, within five days of being notified of that decision, make an application to the Chamber that gave the decision, setting out the reasons for the request for leave to appeal.

CONSIDERING therefore that the above-mentioned five-day deadline for the filing of a request for leave to appeal against the 3 April 2008 Decision shall only start running from the moment the Defences for Germain Katanga and Mathieu Ngudjolo Chui are notified of the confidential redacted version of the 3 April 2008 Decision; and that, therefore, they can file a request for leave to appeal before the expiration of such deadline according to the procedure provided for in the 17 June 2008 Decision on the Procedure for Leave to Appeal;

CONSIDERING that the Single Judge does not intend to address in the present decision the questions as to (i) whether the present decision is sufficient to remedy any prejudice that either Defence may have suffered as a result of the late notification of a confidential redacted version of the 3 April 2008 Decision; and (ii) if not, whether the proper remedy is to declare the summary evidence of witnesses 243 and 267 inadmissible; and that these questions may be addressed orally by the Prosecution, the Defences for Germain Katanga and Mathieu Ngudjolo Chui and the Legal Representatives of non-anonymous victims during the session of the confirmation hearing on procedural matters currently scheduled for 2 July 2008;

FOR THESE REASONS

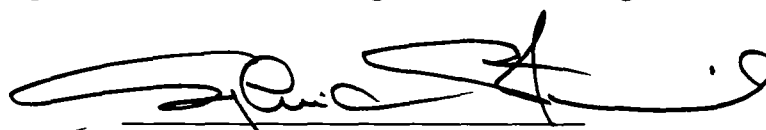
DECIDE that the Defences for Germain Katanga and Mathieu Ngudjolo Chui shall be notified immediately of a confidential redacted version of the 3 April 2008 Decision, which is annexed to the present decision;

DECIDE that, according to rule 155 of the Rules, the five-day deadline provided therein for filing a request for leave to appeal the 3 April 2008 Decision, in accordance with the 17 June 2008 Decision on the Procedure for Leave to Appeal, shall only start running upon notification of a confidential redacted version of the 3 April 2008 Decision to the Defences for Germain Katanga and Mathieu Ngudjolo Chui.

DECIDE that the following two questions may be addressed orally by the Prosecution, the Defences for Germain Katanga and Mathieu Ngudjolo Chui and the Legal Representatives of non-anonymous victims during the session of the confirmation hearing on procedural matters currently scheduled for 2 July 2008:

- (i) whether the present decision is sufficient to remedy any prejudice that either Defence may have suffered as a result of the late notification of a confidential redacted version of the 3 April 2008 Decision; and
- (ii) if not, whether the proper remedy is to declare the summary evidence of witnesses 243 and 267 inadmissible.

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



Judge Sylvia Steiner
Single judge

Dated this Wednesday 25 June 2008

At The Hague, The Netherlands