

**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  
URGENT**

**Order to the OPCV and the OPCD to Submit Additional Reports on the  
Implementation of the 10 June 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. Gillissen  
Mr Hervé Diakiese  
Mr Jean-Christostome Mulamba  
Nsokoloni

**Legal Representatives of the Applicants**

**Unrepresented Victims**

**Unrepresented Applicants for  
Participation/Reparation**

**The Office of Public Counsel for  
Victims**

Ms Paolina Massidda

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

Mr Xavier-Jean Keïta

**States Representatives**

**Amicus Curiae**

**REGISTRY**

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**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 public hearing held on 3 June 2008<sup>1</sup> (“the 3 June 2008 Hearing”) with the Prosecution, the Defences for Germain Katanga and Mathieu Ngudjolo Chui, the Legal Representatives of Victims<sup>2</sup> as well as the representatives of the Registry;

**NOTING** the public hearing held on 10 June 2008<sup>3</sup> (“the 10 June 2008 Hearing”) with the Prosecution, the Defences for Germain Katanga and Mathieu Ngudjolo Chui, the Legal Representatives of Victims<sup>4</sup> as well as the representatives of the Registry, in which Judge Akua Kuenyehia, acting as Single Judge, issued an oral decision on the assistance of Office for Public Counsel for the Defence (“the OPCD”) and the Office for Public Counsel for Victims (“the OPCV”) to the Defence Teams and the Legal Representatives of Victims for the purpose of the confirmation hearing (“the 10 June 2008 Decision”);

**NOTING** the public hearing held on 19 June 2008<sup>5</sup> (“the 19 June 2008 Hearing”) with the Prosecution, the Defences for Germain Katanga and Mathieu Ngudjolo Chui the Legal Representatives of Victims<sup>6</sup> as well as the representatives of the Registry;

**NOTING** the “Report of the OPCV on the implementation of the oral decision dated 10 June 2008”<sup>7</sup> (“the OPCV Report”), filed by the OPCV on 24 June 2008;

**NOTING** the “OPCD report on the implementation of the oral decision dated 10 June 2008”<sup>8</sup> (“the OPCD Report”) filed by the OPCD on 24 June 2008;

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<sup>1</sup> ICC-01/04-01/07-T-31-ENG ET

<sup>2</sup> Ms Carine Bapita Byuagandu and Mr Joseph Keta and Mr J L Gillissen, the latter represented by the Principal Counsel of the Office of Public Counsel for Victims (“the OPCV”)

<sup>3</sup> ICC-01/04-01/07- T-35-ENG ET

<sup>4</sup> Ms Carine Bapita Byuagandu and Mr J L Gillissen

<sup>5</sup> ICC-01/04-01/07- T-36-ENG ET

<sup>6</sup> Ms Carine Bapita Byuagandu and Mr Diakiese and Mr Mulamba, represented by the OPCV

<sup>7</sup> ICC-01/04-01/07-635

**NOTING** article 71 of the *Rome Statute* ("the Statute"), rule 171 of the *Rules of Procedure and Evidence* ("the Rules"); regulations 77 and 81 of the *Regulations of the Court* ("the Regulations");

**CONSIDERING** that according to the 10 June 2008 Decision:

[...]in relation to the manner in which the Office of Public Counsel for Victims and the Office of Public Counsel for the Defence shall assist the two Defence teams and the four Legal Representatives of Victims during these hearings, the Single Judge, on the basis of the oral submissions made at the last status conference, decides that, one, the Office of Public Counsel for Defence shall commit a different member of the office to assisting each Defence team for the purpose of the confirmation hearing if the assistance of the office is requested by the respective Defence teams.

Two, the Office of Public Counsel for the Victims shall commit different -- a different member of the office to assisting each legal representatives for the purpose of the confirmation hearing if the assistance of the office is requested by the respective legal representative.

The members of the Office of Public Counsel for Defence and the members of the Office of Public Counsel for Victims assisting the Defence teams and the Legal Representatives of Victims shall be given the same level of access to the record of the case and the transcripts of the hearing, including realtime transcripts as the Defence teams or the legal representatives that they represent -- they are assisting.

The members of the Office of Public Counsel for the Defence and the members of the office of the public counsel for victims shall assist the Defence teams and legal representatives of the victims during hearings from outside the courtroom via access to realtime transcripts and e-mail communication with the relevant groups.<sup>9</sup>

**CONSIDERING** that during the 19 June 2008 Hearing, the Single Judge ordered the following:

The Single Judge observes that OPCV apparently did not comply with this decision when it assigned four staff members of the Office of Public Counsel for Victims to assist Maitre Bapita. Moreover, the Single Judge would like to have a report from the OPCV and the OPCD on the implement of the decision issued by Judge Akua Kuenyehia at the 10th June 2008 hearing, and the Single Judge wants this report and the observations on the matter referred above, the assigning of four representatives to one Legal Representatives of Victims by Tuesday, 24 May [sic], 2008, at 4.00. So the Single Judge wants the OPCV to file its observations on this issue by 24 May [sic] at 4.00.<sup>10</sup>

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<sup>8</sup> ICC-01/04-01/07-639

<sup>9</sup> ICC-01/04-01/07-T-35-ENG ET WT 10-06-2008, page 14, line 13 to page 15, line 12

<sup>10</sup> ICC-01/04-01/07-T-36-ENG ET WT 19-06-2008, page 5, lines 1 to 10

**CONSIDERING** that according to the 10 June 2008 Decision, the assistance of the OPCV and the OPCD is subject to a prior request by the respective Legal Representative or Defence teams; and that, upon such request, the head of the OPCV or the OPCD, as the case may be, shall “commit a different member of the office to assisting each Defence team for the purpose of the confirmation hearing.”

**CONSIDERING** that the reference to “assistance” by the OPCD and OPCV in the 10 June 2008 Decision also included the provision of legal advice and research, even if it is only based on real-time transcripts of public hearings and public documents;

**CONSIDERING** that, the rationale of the 10 June 2008 Decision was to prevent a conflict of interest as a result of the fact that the same members of the OPCV and the OPCD give assistance to different Legal Representatives or Defence Teams in the same case; and that, despite the managerial functions of the heads of the OPCV and the OPCD, the Single Judge is competent to decide on this matter;

**CONSIDERING** that, to the knowledge of the Single Judge, the Defence for Mathieu Ngudjolo Chui has already requested assistance in relation to one public hearing and is now requesting the following type of assistance from the OPCD for the purpose of the confirmation hearing:

MR. KILENDA (interpretation): Yes. This is about the assistance that we hope to expect from the OPCD. We have talked at length with the head of this office in the past days, and we have reached agreement on the follow points: During the confirmation hearing, we will not need the presence of the OPCD or a staff member of that office at the hearing.

*However, our cooperation will focus solely on legal researches that we may ask the OPCD to conduct on our behalf through a formal request beforehand.*<sup>11</sup> [emphasis added]

<sup>11</sup> ICC-01/04-01/07-T-36-ENG ET 19 June 2008, p 24, lines 1-8 Also see ICC-01/04-01/07-429, ICC-01/04-01/07-353 and Anx, ICC-01/04-01/07-382,

**CONSIDERING** that, as explained by the head of the OPCV during the 19 June 2008 status conference, Ms Carine Bapita Buyagandu and Mr Joseph Keta have already requested continuous assistance from the OPCV for the purposes of public hearings:

MS. MASSIDDA (interpretation): Good afternoon, your Honour. The OPCV has been asked to assist the two teams at this hearing and *at future hearings*. The OPCV has set up two teams at the office because the arrangements for participation as agreed by the Single Judge are different for the two teams. Thus Ms. Caroline Walter shall be assigned to Ms. Bapita and Orchlou Narantsetseg shall be assigned to Mr. Keita and Mr. Gillissen.<sup>12</sup> [emphasis added]

**CONSIDERING** nevertheless, that at the 19 June 2008 Hearing, the head of the OPCV stated that:

The teams have to date only asked us to assist in obtaining access to documents, these documents only being public documents, and this has already been flagged up to the legal assistants or the DSS Section. The decision has not yet been put into effect because it is the position of the office that the assistance has not yet been requested.

I would also like to state that today it is only the principal counsel in the office who may enter into discussions with the teams of legal representatives. Up until today the legal representatives have not all been present in The Hague, and it is difficult to communicate at a distance when they are based in the Democratic Republic of the Congo.

The Office of Public Counsel for Victims will specify the way in which assistance will be provided if requested, needless to say pursuant to the decision of the 10th of June, 2008, but for the time being I cannot go any further. It may well be that in the wake of our discussions the legal representatives or the office might request modification of the decision of the 10th of June in light of the desiderate of the Legal Representatives in terms of assistance from the office.<sup>13</sup>

**CONSIDERING** that in the OPCV Report to the Single Judge, the OPCV further stated that:

Finally, the Principal Counsel informs the Chamber that the OPCV, functioning as a wholly independent office, is merely providing support and assistance to the Legal Representatives as envisaged by regulation 81(4)(a) of the Regulations of the Court, namely providing them with legal research and advice upon specific formal written requests and that the OPCV will only have access to the public documents and material of the case record.<sup>14</sup>

**CONSIDERING** that despite the above-mentioned requests from the Defence for Mathieu Ngudjolo Chui and some of the Legal Representatives of Victims, both the

<sup>12</sup> ICC-01/04-01/07-T-31-ENG ET 3 June 2008, p 3, lines 8-12

<sup>13</sup> ICC-01/04-01/07-T-36-ENG ET 10-06-2008, p 32 line 2 to p 33 line 4

<sup>14</sup> ICC-01/04-01/07-635, para 18

OPCV and the OPCD merely stated in their respective reports filed on 24 June 2008 that their respective offices "shall function as a wholly independent office"; and that therefore, in the view of the Single Judge, they have not complied with the oral order issued by the Single Judge at the 19 June 2008 Hearing;

**CONSIDERING** further that the Single Judge notes that the OPCV, in paragraphs 16 and 17 of the OPCV Report, continues to insist that the impossibility of providing assistance from inside the courtroom necessarily prevents them from providing effective assistance; and that such a reiteration is made despite the fact that at the 19 June 2008 status conference, the Single Judge issued the following oral decision:

SINGLE JUDGE STEINER: [...] I notice that there are some requests that are related to the oral decision issued by the Presiding Judge exercising the functions of the Single Judge at the hearing held on 10th June 2008, requests made for reconsideration of some of the topics decided in such oral decision and according to precedents of this Chamber, Pre-Trial Chamber II, and also Pre-Trial Chamber II [sic], unless there are exceptional circumstances a Chamber is not entitled to review its own decision, and in this case none of the requests shown exceptional circumstances that would justify reconsideration of any of the issues raised during the public session the status conference. Therefore, the requests for reviewing the decision of the 10th of June are rejected.

Now I would like to give the floor to the Prosecution.

MR. MacDONALD: Just for clarity, your Honour, you're referring to which request to reconsideration of this -- the 10th of June decisions of the Single Judge?

SINGLE JUDGE STEINER: As related to participation in the confirmation hearing, in the room, requests made by the OPCV and by Maitre Kilenda.<sup>15</sup>

## **FOR THESE REASONS**

**ORDER** the OPCV and OPCD to file an additional report, at the latest by Thursday 26 June 2008 at 16h00, which shall fully comply with the order issued by the Single Judge at the 19 June 2008 status conference, and shall therefore include:

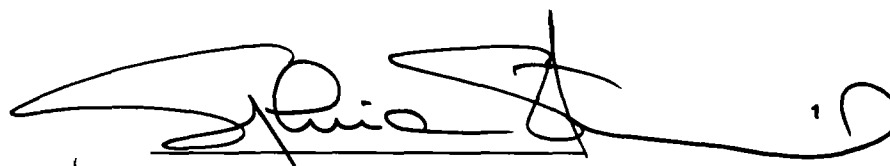
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<sup>15</sup> ICC-01/04-01/07-T-37-ENG CT, p 2, lines 16-25 and p 3, lines 1-8 The Single Judge further notes that the request for reconsideration at the hearing had been made by Ms Carine Bapita Buyagandu at the previous hearing, ICC-01/04-01/07-T-36-ENG ET, page 2, line 2 to page 13, line 1

- (i) the names of the specific staff members of the OPCV who have been assigned to provide assistance (regardless of whether it is limited to legal research and advice) to each specific Legal Representative of Victims;
- (ii) the name of the specific member of the OPCD who has been assigned to provided assistance (regardless of whether it is limited to legal research and advice) to the Defence for Mathieu Ngudjolo Chui.

**ORDER** the OPCV and the OPCD to file an additional report on the implementation of the 10 June 2008 Decision as soon as practicable after receiving a request for assistance (regardless of whether it is limited to legal research and advice) from Legal Representatives of Victims or Defence Teams who have not yet requested such an assistance.

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