

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 3 July 2008

PRE-TRIAL CHAMBER I

Before: Judge Akua Kuenyehia, Presiding Judge
Judge Anita Ušacka
Judge Sylvia Steiner

**SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO
IN THE CASE OF
THE PROSECUTOR**

v. Germain Katanga and Mathieu Ngudjolo Chui

Public Document

**Decision on the provisional separation of Legal Representative of Victims
a/0015/08, a/0022/08, a/0024/08, a/0025/08, a/0027/08, a/0028/08, a/0029/08, a/0032/08,
a/0033/08, a/0034/08 and a/0035/08**

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

**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-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**

States Representatives

Amicus Curiae

REGISTRY

Registrar

Ms Silvana Arbia

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

PRE-TRIAL CHAMBER I of the International Criminal Court (“the Chamber” and “the Court,” respectively);

NOTING the “Decision on the Defence Request for Postponement of the Confirmation Hearing”¹ issued by the Chamber on 25 April 2008 by which the Chamber postponed the confirmation hearing in the case of *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui* to Friday 27 June 2008;

NOTING the “Decision on the 97 Applications for Participation at the Pre-Trial Stage of the Case”² issued on 10 June 2008 by which the Single Judge, *inter alia*, granted the procedural status of victim to Applicants a/0015/08, a/0022/08, a/0024/08, a/0025/08, a/0027/08, a/0028/08, a/0029/08, a/0032/08, a/0033/08, a/0034/08 and a/0035/08³, represented by Mr Jean-Christostome Mulamba Nsokoloni;

NOTING the “*Enregistrement d’un mandat de représentation légale pour a/0022/08*”⁴ filed by the Registry on 17 June 2008 and by which it informed the Chamber that Victim a/0022/08 has designated Mr Jean-Christostome Mulamba Nsokoloni as her legal representative;

¹ ICC-01/04-01/07-446.

² ICC-01/04-01/07-578-Conf and ICC-01/04-01/07-579.

³ Victim a/0015/08 is conjointly represented by Mr Jean-Christostome Mulamba Nsokoloni and Mr Hervé Diakiese.

⁴ ICC-01/04-01/07-603-Conf and ICC-01/04-01/07-603-Conf-Exp-Anx.

NOTING the “Decision on Victims’ Requests for Anonymity at the Pre-Trial Stage of the Case”⁵ issued by the Single Judge on 23 June 2008 and by which the Single Judge granted, *inter alia*, the request of Victim a/0022/08 not to have her identity disclosed to the Defence for Germain Katanga, the Defence for Mathieu Ngudjolo Chui, any other participant in the proceedings, the public or the media during the pre-trial stage of the present case;

NOTING the “*Engagement solennel de Maître Jean Chrysostome Mulamba, Représentant Légal des victimes a/0015/08, a/0022/08, a/0024/08, a/0025/08, a/0027/08, a/0028/08, a/0029/08, a/0032/08, a/0033/08, a/0034/08, a/0035/08*”⁶ filed by the Victims Participation and Reparations Section (“the VPRS”) on 2 July 2008;

NOTING the second day of the confirmation hearing held, in public session, on Monday 30 June 2008 (“the 30 June 2008 Hearing”);⁷

NOTING the third day of the confirmation hearing held, in public session, on Wednesday 2 July 2008 (“the 2 July 2008 Hearing”) during which, *inter alia*, the Chamber (i) directed the Registry to evaluate the existence and consequences of the apparent conflict of interest concerning Mr Jean-Christostome Mulamba Nsokoloni and to inform the Chamber on the aforementioned issue no later than 7 July 2008, and (ii) decided that while the issue of an apparent conflict of interest is resolved, Mr Jean-Christostome Mulamba Nsokoloni would provisionally be separated from his functions as legal representative of the victims, and that the

⁵ ICC-01/04-01/07-628.

⁶ ICC-01/04-01/07-657 + Anxs 1 & 2.

⁷ ICC-01/04-01/07-T-39-ENG RT.

victims he represented would be exceptionally and provisionally represented by the Office of the Public Counsel for Victims (“the OPCV”) until the victims appoint a new legal representative or until the issue is resolved; and, (iii) directed Mr. Jean-Christostome Mulamba Nsokoloni to cooperate with the Registry in the clarification of the aforementioned apparent conflict of interest;⁸

NOTING rule 90(1) of the Rules of Procedure and Evidence (“the Rules”), articles 12, 15, and 16 of the Code of Professional Conduct for counsel;⁹

CONSIDERING, at the outset, that Legal Representatives of Victims are bound by the Code of Professional Conduct for counsel and that article 12(1)(a) states that:

a counsel shall not represent a client in a case if the case is the same as or substantially related to another case in which counsel or his or her associates represents or formerly represented another client and the interests of the client are incompatible with the interests of the former client, unless the client and the former client consent after consultation;

CONSIDERING that during the 30 June 2008 Hearing, the Defence for Mathieu Ngudjolo Chui raised the issue of an apparent conflict of interest in relation to Mr Jean-Christostome Mulamba Nsokoloni and submitted that:

We have a concern related to the fact... that when [my client] went before the Tribunal Grande Instance in Bunia his file was in Kisangani and that at the time he would have consulted Mr. Jean Chrysostome Mulamba, who up until today is a representative of victims, for him to be his counsel.... I thought it was important to flag this because I believe it's a very important procedural matter, and if my colleague is believed to have actually acted as my client's counsel, that I believe that for the fairness of the trial we will

⁸ ICC-01/04-01/07-T-40-ENG RT, p.8, lines 15-25 and page 9, lines 1-3.

⁹ ICC-ASP/4/Res.1.

have to take measures, and that's why I wanted to flag this. We are currently verifying this, because apparently a payment was made By Western Union for the fees, and we just wanted to flag this issue, because we do not want to be accused of not having said anything later on as counsel. Now, I don't know what measures your Chamber could take, but perhaps something could be done to shed light on this matter. ¹⁰

I would just like to clarify something. Initially Mr. Ngudjolo's file was in Kisangani. That's why he called a colleague who might be able to ensure his defence in Kisangani. Then the file was transferred to Bunia, and that's when Mr. Ngudjolo called counsel in Bunia. So a telephone conversation took place, and as we told your assistants, we haven't been able to cross-check this information. However, a fee would apparently have been paid, and Mr. Ngudjolo explained his case by phone, and if my colleague did carry out the work in Kisangani, well, he would have had access to the files that were Mr. Kisangani. But as Mr. Kilenda underlined, we're not saying that our learned colleague defended him in the Tribunal de Grande Instance in Bunia but just that he might have had access to the file in Kisangani following the fee, the fact that the fee was paid by Mr. Ngudjolo's wife.¹¹

CONSIDERING that during the 30 June 2008 Hearing Mr Jean-Christostome Mulamba Nsokoloni, stated that:

I worked in Kisangani for 20 years. I have defended a number of cases in the area and received a lot of phone calls and I even told my colleagues that it's the first time I meet Mr. Mathieu Ngudjolo here. I have had telephone conversations, but I have never assisted Mr. Ngudjolo in the case he is mentioning today to his counsel. I have never helped Mr. Ngudjolo or defended him before the Tribunal de Grande Instance in Bunia.

[...] I never assured any defence [for] Mr. Ngudjolo, unless there was a judgement for which I did provide assistance and pleaded for him. I have never, however, taken the floor for him or assure his defence before any tribunal de grand instance either in Kisangani or in Bunia. There's -- the only way to settle this question is through a judgement for reasons of -- or through a ruling for reasons of professional conduct.¹²

¹⁰ ICC-01/04-01/07-T-39-ENG CT WT, p.19, line 16 to p.20, line 22.

¹¹ ICC-01/04-01/07-T-39-ENG CT WT , p.22, lines 12-22.

¹² ICC-01/04-01/07-T-39-ENG CT WT, p.21, lines 5-20.

CONSIDERING that during the 30 June 2008 Hearing, the Presiding Judge gave the parties and the participants until the hearing scheduled for Wednesday, 2 July 2008 to add anything to this issue;¹³

CONSIDERING that during the 2 July 2008 Hearing, the Defence for Mathieu Ngudjolo Chui informed the Chamber that:

I was able to place a telephone call to Bunia, and I had... the clerk at the regional clerk of Bunia on the phone. I explained the situation to him, and he [told] me that he was totally aware of the matter. He said that indeed Mr. Mathieu Ngudjolo had consulted my colleague, Mr. Mulamba. [...] He added that in Kisangani there is only one Mr. Mulamba who appears before the Court of Appeal in Kisangani. He said that he is a large gentleman, and his name is Mr. Mulamba.... My client has -- we do not yet have a firm, tangible evidence that a payment was made.... I must want to say that I am not alleging anything about my learned colleague but simply this is information which has become available to us and we would not like to remain silent of it. [...] I think this would be preferable that your Chamber were to take steps in this connection.¹⁴

CONSIDERING that when asked to clarify whether it requests the Chamber to take a specific action for the purposes of the confirmation hearing, the Defence for Mathieu Ngudjolo Chui clarified that:

There are specific measures which could be taken. For instance, an inquiry as I am suggesting, and also to make a contact with the clerk.... He's the Registrar at the regional court of Bunia. And also interviewing the spouse of my client by services in the field. I'm certainly not asking you to take a sanction *vis-a-vis* a learned colleague, not at all. We have no proof either that he was paid the sum of \$100. However, this is the which I have received, including from my client. I would say my client is not lying. What he says has been confirmed by other persons, including this Registrar in Bunia. I'm not suggesting at all that Mr. Mulamba be suspended or that any other action be taken against him. I think that that would be unreasonable and not at all fair of me. Rather, I submit this information to the Chamber. This is a -- these proceedings are sensitive. The crimes which are alleged against my client are indeed very serious ones, and he must defend

¹³ ICC-01/04-01/07-T-39-ENG CT WT, p.23, lines 4-9.

¹⁴ ICC-01/04-01/07-T-40-ENG RT, p.4, lines 1-24.

himself. If he has consulted a lawyer in connection with related charges, then I think that this should be taken note of by the Chamber and action taken.¹⁵

CONSIDERING that during the 2 July 2008 Hearing, Mr Jean-Christostome Mulamba Nsokoloni stated:

I was just saying that I have listened to the concerns raised by the Defence in connection with this matter and the information which has been received from Bunia, from [the] Registrar.... But as you know, Madam President, even if he does not say it directly, I feel that he wants to -- he is saying that I have -- I am guilty of misconduct. Article 34 and 37 allow me to respond, respond to all of these allegations. Last time it was said that I received fees or requested fees, but no sum was stated. Today reference is being made to [the Registrar]. I feel that all of this information should be set out in writing and provided to us so that we can respond. [...] Now, if this matter is to be taken any further, I would suggest that it is dealt with under Articles 31, 34, and 37 of the Code of Conduct in order that I might respond efficiently, that is to say if they have evidence of what they allege.¹⁶

CONSIDERING that the Chamber has the authority and duty to ensure that the proceedings are dealt with in a fair and expeditious manner, including the responsibility to ensure that the proceedings during the confirmation hearing are not disrupted;

CONSIDERING, further, that the Defence for Mathieu Ngudjolo Chui has indicated its concerns with respect to Mr Jean-Christostome Mulamba Nsokoloni's continued participation in the evidentiary debate, and that the

¹⁵ ICC-01/04-01/07-T-40-ENG RT., p.5, lines 3-20.

¹⁶ ICC-01/04-01/07-T-40-ENG RT., p.6, lines 1-25.

Defence for Mathieu Ngudjolo Chui had raised an issue of an apparent conflict of interest;¹⁷

CONSIDERING therefore that in order to ensure the rights of the Defence, protect the interests of the victims and preserve the integrity of the proceedings, the Chamber is of the view the provisional separation of Mr Jean-Christophe Mulamba Nsokoloni from his functions as legal representative of victims a/0015/08, a/0022/08, a/0024/08, a/0025/08, a/0027/08, a/0028/08, a/0029/08, a/0032/08, a/0033/08, a/0034/08 and a/0035/08 is necessary as a precautionary measure until the issue of an apparent conflict of interest is resolved;

FOR THESE REASONS

ORDERS the Registry to take all necessary measures to evaluate the existence of an apparent conflict of interest, and to file by Monday 7 July 2008 at 16h00 a report on such matter;

DECIDES to provisionally separate Mr Christophe Mulamba Nsokoloni from his functions as legal representative of the victims a/0015/08, a/0022/08, a/0024/08, a/0025/08, a/0027/08, a/0028/08, a/0029/08, a/0032/08, a/0033/08, a/0034/08 and a/0035/08, as a precautionary measure until the issue of an apparent conflict of interest is resolved;

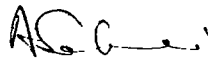
¹⁷ ICC-01/04-01/07-T-40-ENG RT., p. 8, lines 11-14.

DECIDES that Victim a/0015/08 be represented by Mr Hervé Diakiese;

DECIDES that Victims a/0022/08, a/0024/08, a/0025/08, a/0027/08, a/0028/08, a/0029/08, a/0032/08, a/0033/08, a/0034/08 and a/0035/08 will be exceptionally and provisionally represented by the OPCV until the issue of an apparent conflict of interest is resolved or the aforementioned victims appoint a new legal representative;

INVITES Mr. Jean-Christostome Mulamba Nsokoloni to cooperate with the Registry clarifying the aforementioned apparent conflict of interest.

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



Judge Akua Kuenyehia
Presiding Judge



Judge Anita Ušacka
Judge



Judge Sylvia Steiner
Judge

Dated this Thursday 3 July 2008

At The Hague, the Netherlands