

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

PUBLIC

Decision authorising the filing of observations on the applications for participation in the proceedings a/0327/07 to a/0337/07 and a/0001/08

The Office of the Prosecutor

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

Counsel for the Defence

Mr David Hooper
Mr Göran Sluiter
Ms Caroline Buisman

Legal Representatives for applicants

Ms Carine Bapita Buyagandu
Mr Joseph Keta
Mr J.L. Gilissen

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

NOTING the “First Decision on the Prosecution Request for Authorization to Redact Witnesses Statements” (“the First Decision on Redactions”)¹ by which the Single Judge partially granted the Prosecution’s request for authorisation to redact information in the interview notes and statements of witnesses 1, 3, 7, 8, 12, 13 and 14;

NOTING the applications for participation in the proceedings a/0327/07 to a/0337/07 and a/0001/08 (“the Applications”) filed as confidential and *ex parte* on 30 January 2008 in the record of the case *The Prosecutor v. Germain Katanga* in which the applicants request recognition of the right to participate as victims in the proceedings of the case;²

NOTING articles 57 (3) (c) and 68 (1) of the *Rome Statute* (“the Statute”), rules 86 and 89 of the *Rules of Procedure and Evidence* (“the Rules”) and regulation 86 of the Regulations of the Court;

CONSIDERING that none of the Applications is incomplete; and that therefore there is no need for the OPCV to be appointed at this stage to assist any of the applicants in providing additional information in relation to their applications;

CONSIDERING that, under rule 89 (1) of the Rules, the Prosecutor and the Defence are entitled to make observations concerning the Applications within a time limit set by the Pre-Trial Chamber and that in order to allow them to exercise this right effectively, the Registrar must provide them with a copy of any such request;

¹ ICC-01/04-01/07-84-US-Exp, filed on 3 December 2007, and its “confidential, ex parte only available to Office of Prosecution and the Defence” version (ICC-01/04-01/07-88-Conf.Exp) issued on 6 December 2007, and its “public redacted version” (ICC-01/04-01/07-90) filed on 7 December 2007.

² ICC-01/04-01/07-171-Conf-Exp-Anx1 to ICC-01/04-01/07-171-Conf-Exp-Anx12.

CONSIDERING that the format in which the copy of any application for participation is transmitted to the Prosecutor and the Defence is regulated by the provisions of the Statute and in particular of article 68(1) of the Statute, which states that the Pre-Trial Chamber and the other organs of the Court must take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims without being prejudicial to or inconsistent with the rights of the defence and a fair and impartial trial;

CONSIDERING also that under article 57(3)(c) of the Statute, one of the functions of the Pre-Trial Chamber is, where necessary, to provide for the protection and privacy of victims and witnesses; and that rule 86 of the Rules sets up a general principle according to which the Pre-Trial Chamber's responsibility in making any direction or order, and other organs of the Court in performing their functions under the Statute or the Rules, are to take into account the needs of all victims and witnesses in accordance with article 68 of the Statute;

CONSIDERING, therefore, that when the safety of an applicant so requires the Pre-Trial Chamber may order the Registrar to transmit to the Prosecutor and the Defence a redacted copy of the applications for participation expunged of any information which could lead to the applicants identification;³

CONSIDERING, however, that the redactions must be limited to what is strictly necessary in the light of the applicant's safety and that they must allow the Prosecutor and the Defence meaningfully exercise their right to reply to the applications for participation;

CONSIDERING that the Single Judge is convinced that, in light of the security situation in the DRC (and in particular in the Ituri district) referred to in the First

³ ICC-01/04-01/06-60; ICC-01/04-01/06-107; ICC-01/04-01/06-270-tEN; ICC-01/04-01/06-494-tEN and ICC-01/04-01/06-672-tEN.

Decision on Redactions,⁴ the current situation of the applicants requires that the Defence Counsel be provided with a redacted copy of the applications expunged of any information which could lead to the applicants identification;

CONSIDERING that, in order not to be exposed to further risks, the applicants must not be contacted directly by any of the organs of the Court, but only through their Legal Representatives or through the Victims Participation and Reparations Section if they have no legal representation and, if need be, through the Victims and Witnesses Unit;

FOR THESE REASONS

ORDER the Registry to provide:

- (i) as soon as possible, to the Prosecutor, a non-redacted version of applications for participation a/0327/07 to a/0337/07 and a/0001/08 filed in the records of the case *The Prosecutor v. Germain Katanga*;
- (ii) by Monday 18 February 2008, to the Defence Counsel, a redacted version of applications for participation a/0327/07 to a/0337/07 and a/0001/08 filed in the records of the case *The Prosecutor v. Germain Katanga* in which any information which might lead to the applicants being identified has been redacted;

ORDER all participants in the proceedings to only refer to the applicants by the numbers assigned to them by the Registry;

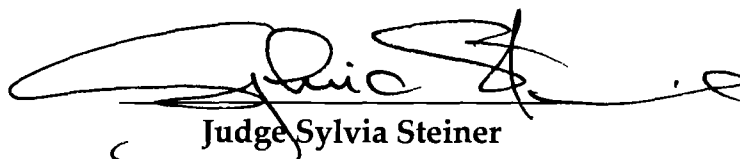
ORDER all the organs of the Court not to contact the applicants directly and to do so if necessary, only through their Legal Representatives or through the Victims

⁴ ICC-01/04-01/07-90, Section II.

Participation and Reparations Section for those applicants who have no legal representation, and if need be, via the Victims and Witnesses Unit;

DECIDE to give fifteen days from the notification of the applications for participation to the Prosecution and Defence Counsel to present observations regarding applications for participation a/0327/07 to a/0337/07 and a/0001/08 and on the possible granting to those applicants the status of victims authorised to participate in the proceedings before the Chamber in the case *The Prosecutor v. Germain Katanga*.

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



Judge Sylvia Steiner
Single judge

Dated this Thursday 7 February 2008

At The Hague (the Netherlands)