

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 30 May 2008

PRE-TRIAL CHAMBER I

Before: Judge Sylvia Steiner, Single Judge

SITUATION IN THE DEMOCRATIC REPUBLIC OF CONGO

IN THE CASE OF

THE PROSECUTOR

v. Germain Katanga and Mathieu Ngudjolo Chui

Public

**Decision on the Defences' Urgent Request for the reclassification of document
ICC-01/04-01/07-482-Conf-Exp**

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

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

**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

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

NOTING the "Prosecution's Submission of Information on the Preventive Relocation of Witnesses 132, 163, 238 and 287"¹ filed by the Prosecution on 7 April 2008;

NOTING the "Decision on the Evidentiary Scope of the Confirmation Hearing, Preventive Relocation and Disclosure under Article 67(2) of the Statute and rule 77 of the Rules"² ("Decision on the Evidentiary Scope of the Confirmation Hearing") issued by the Single Judge on 18 April 2008;

NOTING the "Prosecution's Application for Leave to Appeal the Decision on the Evidentiary Scope of the Confirmation Hearing and Preventive Relocation"³ filed by the Prosecution on 28 April 2008;

NOTING the "Registrar's Report on the Protective Measures Afforded to Witnesses 132, 238 and 287"⁴ ("the Registry's Report") filed by the Registry on 19 May 2008;

NOTING the "Decision on the Requests for leave to appeal the Decision on Evidentiary Scope of the Confirmation Hearing, Preventive Relocation and Disclosure under Article 67(2) of the Statute and Rule 77 of the Rules"⁵ ("Decision on the Requests for leave to appeal") issued by the Single Judge on 20 May 2008;

¹ ICC-01/04-01/07-374-Conf-Exp, ICC-01/04-01/07-398 (public redacted version filed on 16 April 2008)

² ICC-01/04-01/07-423-Conf, ICC-01/04-01/07-428-Corr

³ ICC-01/04-01/07-453+anx

⁴ ICC-01/04-01/07-482-Conf-Exp

⁵ ICC-01/04-01/07-483-Conf

NOTING the “Prosecution’s Urgent Application for the Admission of the Evidence of Witnesses 132 and 287”⁶ (“the Prosecution’s Urgent Application”) filed by the Prosecution on 27 May 2008;

NOTING the “Decision on Prosecution’s Urgent Application for the Admission of the Evidence of Witnesses 132 and 287”⁷ (“the Decision on Prosecution’s Urgent Application”) issued by the Single Judge on 28 May 2008;

NOTING the “*Requête urgente sollicitant la reclassification du document ex parte émanant du Greffe et portant le N° ICC-01/04-01/07-482-Conf-Exp en document confidentiel*”⁸ (“the Defence’s Urgent Request”) filed by the Defence for Mathieu Ngudjolo Chui on 29 May 2008, in which the Defence for Mathieu Ngudjolo Chui supported its request on the basis of the following arguments: (a) to the alleged lack of information regarding the circumstances that led to the inclusion of Witnesses 132 and 287 into the Court’s Witness Protection Programme; and (b) to the alleged necessity for the Defence to have access to this document in order to examine the credibility and admissibility of Witnesses 132 and 287 for the purpose of the confirmation hearing, and not prejudice the rights of the suspect and the interest of justice;

NOTING the “Defence Motion to join Mr. Ngudjolo’s *Requête urgente sollicitant la reclassification du document ex parte émanant du Greffe et portant le N° ICC-01/04-01/07-482-Conf-Exp en document confidentiel*”⁹ (“the Defence’s Motion in Support of the Defence’s Urgent Request”) filed by the Defence for Germain Katanga on 30 May 2008;

⁶ ICC-01/04-01/07-516-Conf.

⁷ ICC-01/04-01/07-523

⁸ ICC-01/04-01/07-529-Conf

⁹ ICC-01/04-01/07-530-Conf

NOTING article 57(3)(c) of the *Rome Statute* ("the Statute") and regulation 23bis of the *Regulations of the Court* ("the Regulations");

CONSIDERING that regulation 23bis(3) of the Regulations states that "[w]here the basis for classification no longer exist [...] A Chamber may also re-classify a document upon request by any other participant or on its own motion";

CONSIDERING that, pursuant to regulation 23bis of the Regulations, the Defence does not have an automatic right that a document be reclassified; that, nevertheless, in the view of the Single Judge the information included in the Registry's Report is similar to the information available in the confidential version of the Decision on the Evidentiary Scope of the Confirmation Hearing, the Decision on the Requests for Leave to Appeal and the Decision on Prosecution's Urgent Application; and that therefore, there is no reason to maintain this document classified as confidential *ex parte* only available to the Prosecution;

FOR THESE REASONS,

ORDER the Registry to reclassify document ICC-01/04-01/07-482-Conf-Exp as confidential;

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



Judge Sylvia Steiner
Single Judge

Dated this Friday 30 May 2008

At The Hague, the Netherlands