

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

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

Date: 23 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 Document**

**Decision on Victims' Requests for Anonymity at the Pre-Trial Stage of the Case**

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**

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

**States Representatives**

**Amicus Curiae**

**REGISTRY**

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**Registrar**

Ms Silvana Arbia

**Defence Support Section**

**Victims and Witnesses Unit**

Mr Simo Väätäinen

**Detention Section**

**Victims Participation and Reparations  
Section**

Mr Didier Preira  
Ms Fiona McKay

**Other**

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

NOTING the “Decision on the Set of Procedural Rights Attached to Procedural Status of Victim at the Pre-Trial Stage of a Case”<sup>1</sup> (“Decision on Procedural Rights for Victims”) issued by the Single Judge on 13 May 2008;

NOTING the “Transmission de 99 demandes de participation”<sup>2</sup> (“the Information from the Registry”) filed by the Registry on 26 May 2008 in which the Registry informed the Single Judge that it was transmitting applications for participation in the proceedings of the case of *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui* (“the Applications for participation”);<sup>3</sup>

NOTING the “Report on Victims’ Applications under Regulation 86.5, Regulations of the Court”<sup>4</sup> filed by the Registrar on 2 June 2008;

NOTING the “Additional report to the ‘Report on Victims’ Applications under Regulation 86.5, Regulations of the Court’ dated 2 June 2008 (ICC-01/04-01/07-542) on the question of requests for non-disclosure of the identities of the applicants”<sup>5</sup> (“the Registrar’s additional report”) filed by the Registry as confidential and *ex parte* on 6 June 2008;

<sup>1</sup> ICC-01/04-01/07-474.

<sup>2</sup> ICC-01/04-01/07-510-Conf-Exp-Corr, ICC-01/04-01/07-534-Conf-Exp, “*Corrigendum à la demande de participation a/0090/08 enregistrée ICC-01/04-01/07-510-Conf-Exp-Anx75*”; and ICC-01/04-01/07-535-Conf-Exp, “*Corrigendum à la demande de participation a/0090/08 enregistrée ICC-01/04-01/07-518-Conf-Exp-Anx55*”

<sup>3</sup> Applications for Participation a/0009/08, a/0010/08, a/0011/08, a/0012/08, a/0013/08, a/0014/08, a/0015/08, a/0016/08, a/0022/08, a/0024/08, a/0025/08, a/0027/08, a/0028/08, a/0029/08, a/0030/08, a/0031/08, a/0032/08, a/0033/08, a/0034/08, a/0035/08, a/0036/08, a/0037/08, a/0038/08, a/0039/08, a/0040/08, a/0041/08, a/0042/08, a/0043/08, a/0044/08, a/0045/08, a/0046/08, a/0047/08, a/0048/08, a/0049/08, a/0050/08, a/0051/08, a/0052/08, a/0053/08, a/0054/08, a/0055/08, a/0056/08, a/0057/08, a/0058/08, a/0059/08, a/0060/08, a/0061/08, a/0062/08, a/0063/08, a/0064/08, a/0065/08, a/0066/08, a/0067/08, a/0068/08, a/0069/08, a/0070/08, a/0071/08, a/0072/08, a/0073/08, a/0074/08, a/0075/08, a/0076/08, a/0077/08, a/0078/08, a/0079/08, a/0080/08, a/0081/08, a/0082/08, a/0083/08, a/0084/08, a/0085/08, a/0086/08, a/0087/08, a/0088/08, a/0089/08, a/0090/08, a/0091/08, a/0092/08, a/0093/08, a/0094/08, a/0095/08, a/0096/06, a/0097/08, a/0098/08, a/0099/08, a/0100/08, a/0101/08, a/0102/08, a/0103/08, a/0104 /08, a/0106/08, a/0107/08, a/0108/08, a/0109/08, a/0110/08, a/0111/08, a/0112/08

<sup>4</sup> ICC-01/04-01/07-542-Conf-Exp and its confidential *ex parte* Annexes, and ICC-01/04-01/07-542-Conf-Exp-Anx1-Add

<sup>5</sup> ICC-01/04-01/07-558-Conf-Exp and its confidential *ex parte* Annexes

**NOTING** the “*Requête du représentant légal des victimes a/0110/08, a/0111/08 et a/0112/08 sollicitant le maintien de l’anonymat*”<sup>6</sup> filed by the Registry on 6 June 2008;

**NOTING** the “*Enregistrement de procurations pour les demandeurs a/0010/08, a/0011/08, a/0012/08, a/0013/08, a/0015/08*”<sup>7</sup> filed on 10 June 2008 and by which the Registry *inter alia* informed the Chamber that Victim a/0015/08 is conjointly represented by Mr Hervé Diakese and Mr Jean-Christophe Mulamba Nsokoloni;

**NOTING** the “*Decision on the 97 Applications for Participation at the Pre-Trial Stage of a Case*”<sup>8</sup> (“the Decision”) issued by the Single Judge on 10 June 2008 and whereby the Single Judge *inter alia* decided to give the Prosecution and the Defences for Germain Katanga and Mathieu Ngudjolo Chui until Monday 16 June at 16h00 to submit, pursuant to rule 89(1) of the Rules, their observations on the requests for anonymity from Applicants a/0009/08, a/0022/08, a/0038/08, a/0039/08, a/0043/08, a/0044/08, a/0046/08, a/0049/08, a/0050/08, a/0051/08, a/0055/08, a/0056/08, a/0057/08, a/0060/08, a/0061/08, a/0066/08, a/0067/08, a/0070/08, a/0071/08, a/0073/08, a/0076/08, a/0077/08, a/0078/08, a/0079/08, a/0080/08, a/0083/08, a/0085/08, a/0088/08, a/0090/08, a/0092/08, a/0095/08, a/0096/08, a/0100/08, a/0101/08, a/0103/08, a/0104/08 and a/0110/08;

**NOTING** the “*Prosecution’s Observations on the Request for Anonymity of Applicants a/0009/08, a/0022/08, a/0038/08, a/0039/08, a/0043/08, a/0044/08, a/0046/08, a/0049/08, a/0051/08, a/0055/08, a/0057/08, a/0060/08, a/0061/08, a/0066/08, a/0067/08, a/0070/08, a/0071/08, a/0073/08, a/0076/08, a/0080/08, a/0083/08, a/0085/08, a/0088/08, a/0090/08, a/0092/08, a/0095/08, a/0096/08, a/0100/08, a/0101/08, a/0103/08, a/0104/08, a/0110/08*”<sup>9</sup> (the Prosecution’s Observations”) filed by the Prosecution on 16 June

<sup>6</sup> ICC-01/04-01/07-557.

<sup>7</sup> ICC-01/04-01/07-576 and ICC-01/04-01/07-576-Conf-Exp-Anx1-Anx5.

<sup>8</sup> ICC-01/04-01/07-578-Conf.

<sup>9</sup> ICC-01/04-01/07-595.

2008, in which the Prosecution stated that it does not oppose the victims' applications for anonymity;

**NOTING** the "*Enregistrement d'un mandat de représentation légale pour a/0022/08*"<sup>10</sup> filed by the Registry on 17 June 2008 and by which it informed the Chamber that Victim a/0022/08 has designated Mr Jean-Christophe Mulamba Nsokoloni as her legal representative;

**NOTING** the "*Informations relatives à la représentation légale de a/0333/07 et a/0110/08*"<sup>11</sup> and the "*Enregistrement d'un mandat de représentation légale pour la victime a/0110/08*"<sup>12</sup> filed by the Registry, respectively on 19 and 20 June 2008, and by which the Registry informed the Chamber that Victims a/0337/07 and a/0110/08 have designated Mr Jean Louis Gilissen as their principal legal representative and Mr Joseph Keta as a co-legal representative;

**NOTING** the "*Enregistrement d'un mandat de représentation légale pour a/0009/08*"<sup>13</sup> filed on 23 June 2008 and by which the Registry informed the Chamber that Victim a/0009/08 has designated Mr Hervé Diakiese as her legal representative;

**NOTING** articles 57(3)(c), 61 and 68 of the *Rome Statute* ("the Statute"), rules 86-89, 91, 121 and 122 of the *Rules of Procedure and Evidence* ("the Rules") and regulation 86 of the Regulations of the Court ("the Regulations");

**CONSIDERING** that Victims a/0051/08, a/0056/08 and a/0110/08 have requested that their identities remain confidential during the proceedings leading to and during the confirmation hearing in the present case;

<sup>10</sup> ICC-01/04-01/07-603-Conf and ICC-01/04-01/07-603-Conf-Exp-Anx.

<sup>11</sup> ICC-01/04-01/07-605-Conf and ICC-01/04-01/07-605-Conf-Exp-Anx1-Anx3.

<sup>12</sup> ICC-01/04-01/07-612-Conf and ICC-01/04-01/07-612-Conf-Exp.

<sup>13</sup> ICC-01/04-01/07-623-Conf and ICC-01/04-01/07-623-Conf-Exp-Anx.

**CONSIDERING** furthermore that Victims a/0038/08; a/0039/08; a/0043/08; a/0044/08; a/0046/08; a/0049/08; a/0050/08; a/0055/08; a/0057/08; a/0060/08; a/0061/08; a/0066/08; a/0070/08; a/0071/08; a/0073/08; a/0076/08; a/0077/08; a/0078/08; a/0079/08; a/0080/08; a/0083/08; a/0085/08; a/0088/08; a/0090/08; a/0092/08; a/0095/08; a/0100/08; a/0101/08; a/0103/08; and a/0104/08 have requested, through their legal representative, that their identities not to be disclosed to the suspects<sup>14</sup> but do not request anonymity *vis-à-vis* the Defence Counsels;

**CONSIDERING** in this respect that in the Decision, the Single Judge decided that if “applicants maintain their request for anonymity *vis-à-vis* both suspects, their requests amount to requests for anonymity *vis-à-vis* the Defences for Germain Katanga and Mathieu Ngudjolo Chui, and shall be treated as such;”<sup>15</sup>

**CONSIDERING** that in relation to victims a/0009/08 and a/0022/08, the Single Judge ordered the Registry to “immediately contact Applicants a/0009/08 and a/0022/08 so as to facilitate their appointment of a legal representative by 20 June 2007”;<sup>16</sup>

**CONSIDERING** that in relation to Victim a/0009/08, she requested anonymity *vis-à-vis* the Defence in Section H of her application; that by a letter addressed to the Victims Participation and Reparation Section (“the VPRS”), Mr Hervé Diakiese informed the VPRS that he would soon file a power of attorney signed by Victim a/0009/08; and that Mr Hervé Diakiese informed the VPRS that Victim a/0009/08 had changed her original position, and that she was no longer requesting anonymity *vis-à-vis* the Defences for Germain Katanga and Mathieu Ngudjolo Chui;

**CONSIDERING** that the Single Judge has previously decided that:

<sup>14</sup> ICC-01/04-01/07-558-Conf-Exp, para 8

<sup>15</sup> ICC-01/04-01/07-578-Conf, para. 150 and its public redacted version, ICC-01/04-01/07-579, para.150.

<sup>16</sup> ICC-01/04-01/07-578-Conf, p. 53 and its public redacted version, ICC-01/04-01/07-579, p.53.

only after a power of attorney for Mr Hervé Diakiese signed by Applicant a/0009/08 is transmitted to the VPRS, will Mr Hervé Diakiese become her Legal Representative. Moreover, the Single Judge considers that until otherwise stated by Applicant a/0009/08, or by her Legal Representative, she maintains her initial request for anonymity, particularly in light of the fact that she lives in the Ituri District amongst the Lendu.<sup>17</sup>

**CONSIDERING** that on 23 June 2008, Victim a/0009/08 designated Mr Hervé Diakiese as her legal representative and has not indicated any change in relation to her request for anonymity;<sup>18</sup>

**CONSIDERING** that Victim a/0022/08 has been advised to maintain her request for anonymity until a Legal Representative is able to assess her legal position;<sup>19</sup>

**CONSIDERING** that on 18 June 2008, Victim a/0022/08 designated Mr Jean-Christostome Mulamba Nsokoloni as her legal representative and has not indicated any change in relation to her request for anonymity;<sup>20</sup>

**CONSIDERING** that the Prosecution, taking into consideration the security situation in Ituri District and its surrounding areas and in Kinshasa, does not oppose the request for anonymity of Victims a/0009/08; a/0022/08 a/0038/08; a/0039/08; a/0043/08; a/0044/08; a/0046/08; a/0049/08; a/0050/08; a/0051/08; a/0055/08; a/0056/08; a/0057/08; a/0060/08; a/0061/08; a/0066/08; a/0070/08; a/0071/08; a/0073/08; a/0076/08; a/0077/08; a/0078/08; a/0079/08; a/0080/08; a/0083/08; a/0085/08; a/0088/08; a/0090/08; a/0092/08; a/0095/08; a/0100/08; a/0101/08; a/0103/08; a/0104/08; a/0105/08 and a/0110/08;<sup>21</sup>

<sup>17</sup> ICC-01/04-01/07-578-Conf, footnote. 82 and its public redacted version, ICC-01/04-01/07-579, footnote 82.

<sup>18</sup> ICC-01/04-01/07-603-Conf and ICC-01/04-01/07-603-Conf-Anx.

<sup>19</sup> ICC-01/04-01/07-560-Conf-Exp-Anx1-The head of Office of Public Counsel for Victims states in the Second Additional Registry Report in relation to Applicant a/0022/08 that due to the fact that she did not receive any information on the person, or her application form, she is not in a position to fully secure the rights and interests of the Applicant, and therefore advised Applicant a/0022/08 to maintain anonymity until a Legal Representative is able to assess her legal position

<sup>20</sup> ICC-01/04-01/07-603-Conf and ICC-01/04-01/07-603-Conf-Anx

<sup>21</sup> ICC-01/04-01/07-595, para 7

**CONSIDERING** that the Defence for Germain Katanga - in an e-mail sent by the case manager of the Defence Team to the Legal Officer of the Presiding Judge which is attached as Annex I to the present Decision - stated the following:

*L'équipe de défense de M Katanga remercie la Juge de nous avoir donné l'opportunité de présenter nos vues sur les demandes d'anonymat des requérants a/0009/08, a/0022/08, a/0038/08, a/0039/08, a/0043/08, a/0044/08, a/0046/08, a/0049/08, a/0050/08, a/0051/08, a/0055/08, a/0056/08, a/0057/08, a/0060/08, a/0061/08, a/0066/08, a/0067/08, a/0070/08, a/0071/08, a/0073/08, a/0076/08, a/0077/08, a/0078/08, a/0079/08, a/0080/08, a/0083/08, a/0085/08, a/0088/08, a/0090/08, a/0092/08, a/0095/08, a/0096/08, a/0100/08, a/0101/08, a/0103/08, a/0104/08 et a/0110/08, mais nous n'avons pas d'observations à soumettre sur ce point*

**CONSIDERING** that the Defence for Mathieu Ngudjolo Chui has not made any observation on the pending requests for anonymity;

**CONSIDERING** therefore that neither the Prosecution nor the Defences oppose the request for anonymity of the above-mentioned Victims;

**CONSIDERING** that all the Victims requesting anonymity currently live in the Ituri District or its surrounding areas;

**CONSIDERING** that as the Single Judge has recently affirmed in the Eighth Decision on Redactions, the security situation in the DRC and particularly in the Ituri District and Kinshasa areas, remains as volatile as the one described in the First Decision on Redactions;<sup>22</sup>

**CONSIDERING** that the security situation has repercussions on the range of protective measures currently available and which can be implemented to protect Victims a/0009/08; a/0022/08 a/0038/08; a/0039/08; a/0043/08; a/0044/08; a/0046/08; a/0049/08; a/0050/08; a/0051/08; a/0055/08; a/0056/08; a/0057/08; a/0060/08; a/0061/08; a/0066/08; a/0070/08; a/0071/08; a/0073/08; a/0076/08; a/0077/08; a/0078/08; a/0079/08;

<sup>22</sup> ICC-01/04-01/07-224, paras 13-22 The security situation was subsequently confirmed by the Single judge in the Second to Eighth Decisions on Redactions- See ICC-01/04-01/07-160, para 10, ICC-01/07-01/07-249, para 9, ICC-01/04-01/07-361, para 8, ICC-01/04-01/07-427, para 10, ICC-01/04-01/07-425, para 7, ICC-01/4-01/07-526, para 9, and ICC-01/04-01/07-568), para 12.

a/0080/08; a/0083/08; a/0085/08; a/0088/08; a/0090/08; a/0092/08; a/0095/08; a/0100/08; a/0101/08; a/0103/08; a/0104/08; a/0105/08 and a/0110/08, who are particularly vulnerable and live in a risk area in the DRC;

**CONSIDERING** that under these circumstances, the Single Judge considers that Victims a/0009/08; a/0022/08; a/0038/08; a/0039/08; a/0043/08; a/0044/08; a/0046/08; a/0049/08; a/0050/08; a/0051/08; a/0055/08; a/0056/08; a/0057/08; a/0060/08; a/0061/08; a/0066/08; a/0070/08; a/0071/08; a/0073/08; a/0076/08; a/0077/08; a/0078/08; a/0079/08; a/0080/08; a/0083/08; a/0085/08; a/0088/08; a/0090/08; a/0092/08; a/0095/08; a/0100/08; a/0101/08; a/0103/08; a/0104/08 and a/0110/08 can participate in the proceedings effectively only if their anonymity is preserved;

**CONSIDERING** that, in relation to the set of procedural rights attached to the status of anonymous victim, this Chamber has previously stated that:

[...] victims granted anonymity could not add any point of fact or any evidence, nor could they “question the witnesses according to the procedure set out in rule 91(3) of the Rules”.<sup>23</sup>

The Chamber held, however, that the following procedural rights were compatible with the anonymity of those granted the procedural status of victim at the pre-trial stage of a case:

- (i) notification of the public documents contained in the record of the relevant case;
- (ii) attendance at those status conferences, or the parts of those status conferences, which are to be held in public;
- (iii) making opening and closing statements at the confirmation hearing, in which they can, *inter alia*, address points of law, including the legal characterisation of the modes of liability included in the Prosecution Charging Document; and
- (iv) requesting during the said status conferences and during the public sessions of the confirmation hearing, leave to intervene, in which case the Chamber would rule on a case by case basis.<sup>24</sup>

**CONSIDERING** that this Chamber has also held that this set of procedural rights could be extended “in light of exceptional circumstances;”<sup>25</sup>

<sup>23</sup> ICC-01/04-01/06-462-tEN, p 8

<sup>24</sup> ICC-01/04-01/06-462-tEN, p 8 See also ICC-01/04-01/06-678, p 7

<sup>25</sup> ICC-01/04-01/06-462-tEN, p 7

**FOR THESE REASONS**

**DECIDE** to grant the request of Victims a/0009/08; a/0022/08; a/0038/08; a/0039/08; a/0043/08; a/0044/08; a/0046/08; a/0049/08; a/0050/08; a/0051/08; a/0055/08; a/0056/08; a/0057/08; a/0060/08; a/0061/08; a/0066/08; a/0070/08; a/0071/08; a/0073/08; a/0076/08; a/0077/08; a/0078/08; a/0079/08; a/0080/08; a/0083/08; a/0085/08; a/0088/08; a/0090/08; a/0092/08; a/0095/08; a/0100/08; a/0101/08; a/0103/08; a/0104/08 and a/0110/08 not to have their identities 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.

**DECIDE** that the said Victims shall only be referred to by the parties and participants in the present case by the number assigned to each of them by the Registry.

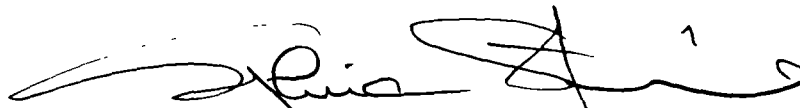
**DECIDE** that Victims a/0009/08; a/0022/08 a/0038/08; a/0039/08; a/0043/08; a/0044/08; a/0046/08; a/0049/08; a/0050/08; a/0051/08; a/0055/08; a/0056/08; a/0057/08; a/0060/08; a/0061/08; a/0066/08; a/0070/08; a/0071/08; a/0073/08; a/0076/08; a/0077/08; a/0078/08; a/0079/08; a/0080/08; a/0083/08; a/0085/08; a/0088/08; a/0090/08; a/0092/08; a/0095/08; a/0100/08; a/0101/08; a/0103/08; a/0104/08 and a/0110/08 shall have the set of procedural rights provided for in Section VII of the Decision on Procedural Rights for Victims, including the right to attend the public parts of the confirmation hearing scheduled to start on Friday 27 June 2008;

**ORDER** the Registry to notify Victims a/0009/08; a/0022/08 a/0038/08; a/0039/08; a/0043/08; a/0044/08; a/0046/08; a/0049/08; a/0050/08; a/0051/08; a/0055/08; a/0056/08; a/0057/08; a/0060/08; a/0061/08; a/0066/08; a/0070/08; a/0071/08; a/0073/08; a/0076/08;

a/0077/08; a/0078/08; a/0079/08; a/0080/08; a/0083/08; a/0085/08; a/0088/08; a/0090/08;  
a/0092/08; a/0095/08; a/0100/08; a/0101/08; a/0103/08; a/0104/08 and a/0110/08 of:

- (i) the Decision on Procedural Rights for Victims (ICC-01/04-01/07-474); and
- (ii) the Decision on the Schedule for the Confirmation Hearing (ICC-01/04-01/07-587 and ICC-01/04-01/07-587-AnxI).

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



**Judge Sylvia Steiner**  
Single Judge

Dated this Monday 23 June 2008

At The Hague, the Netherlands