

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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

Date: 31 March 2009

TRIAL CHAMBER II

Before: Judge Bruno Cotte, Presiding Judge
Judge Fatoumata Dembele Diarra
Judge Fumiko Saiga

**SITUATION IN THE DEMOCRATIC REPUBLIC OF CONGO
IN THE CASE OF
THE PROSECUTOR
v. GERMAIN KATANGA *and* MATHIEU NGUDJOLO CHUI**

**Public
URGENT**

**Application of the OPCV to extend the time limit for the submission of
observations with regard to the admissibility proceedings**

Source: Office of Public Counsel for Victims

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

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Mr Eric Macdonald, Senior Trial Lawyer

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Unrepresented Victims

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States Representatives

Amicus Curiae

REGISTRY

Registrar & Deputy Registrar

Ms Silvana Arbia

Defence Support Section

Victims and Witnesses Unit

Detention Section

Victims Participation and Reparations Section

Other

I. PROCEDURAL HISTORY

1. On 26 February 2009, Trial Chamber II (the "Chamber") rendered the "Décision relative au traitement des demandes de participation", in which the Chamber appointed the Office of Public Counsel for Victims (the "OPCV" or the "Office") as legal representative of those victims who have applied for participation in the proceedings and who do not have a legal representative, pending such time as the Chamber rules on their status or until they appoint another legal representative.¹

2. On 5 March 2009, the Chamber rendered the «Décision arrêtant la procédure à suivre au titre de l'article 19 du Statut (règle 58 du Règlement de procédure et de preuve)» (the "Decision") in which it acknowledged the receipt of a submission filed confidentially by the Defence for Germain Katanga challenging the admissibility of the case before the Court pursuant to article 19(2)(a) of the Rome Statute.² In the said Decision, the Chamber ordered, *inter alia*, 1) that the Defence for Mr. Katanga file a public redacted version of its submission as soon as possible, 2) that the Registrar inform the Democratic Republic of the Congo (the "DRC") authorities, the Legal Representatives of anonymous and non-anonymous victims, as well as those victims having communicated with the Court in the case, the last group *via* the Office's intervention, of the Defence's submission challenging the case's admissibility by 6 March 2009, 3) that the Registrar provide to the victims mentioned in rule 59(1)(b) of the Rules of Procedure and Evidence by 26 March 2009 and pursuant to rule 59(2) of the Rules of Procedure and Evidence, a summary of the grounds upon which the admissibility of the case has been challenged by the Defence for Mr. Katanga and 4) that, upon receiving the said summary, the concerned victims file their observations by 16 April 2009.³

¹ See the «Décision relative au traitement des demandes de participation », dated 26 February 2009 and notified on 27 February 2009, No. ICC-01/04-01/07-933, p. 20.

² See the «Décision arrêtant la procédure à suivre au titre de l'article 19 du Statut (règle 58 du Règlement de procédure et de preuve)», 5 March 2009, No. ICC-01/04-01/07-943-Conf.

³ *Idem*, pp. 6-7.

3. On 6 March 2009, the Registrar, informed the Office, by way of a confidential memorandum, that the Defence for Mr. Katanga had filed a submission challenging the admissibility of the case before the Court pursuant to article 19(2)(a) of the Rome Statute. Such memorandum has been filed in the record of the case⁴.

4. On 6 March 2009, and in accordance with the Chamber's order in its Decision dated 26 February 2009⁵, the Registrar appointed the Principal Counsel of the Office as the Legal Representative of victims a/0140/08, a/0142/08, a/0145/08, a/0148/08, a/0155/08, a/0210/08, a/0212/08, a/0213/08, a/0214/08, a/0216/08, a/0281/08 and a/0282/08.⁶

5. On 9 March 2009 and in further compliance with the Chamber's Decisions of 26 February 2009 and of 5 March 2009, the Registrar appointed the Principal Counsel of the Office as the Legal Representative of victims a/0520/08, a/0524/08, a/0527/08, a/0053/09, a/0067/09, a/0068/09, a/0069/09, a/0070/09, a/0071/09, a/0072/09, a/0073/09, a/0074/09, a/0075/09, a/0076/09, a/0077/09, a/0078/09, a/0079/09, a/0080/09, a/0081/09, a/0082/09, a/0083/09, a/0084/09, a/0085/09, a/0086/09, a/0112/09, a/0113/09, a/0114/09, a/0115/09, a/0116/09, a/0117/09, a/0118/09, a/0119/09, a/0120/09, a/0122/09, a/0123/09, a/0124/09, a/0125/09, a/0126/09, a/0127/09 and a/0128/09.⁷

⁴ See the «Registrar's report on the notification of the information to the DRC authorities, the Legal Representatives of anonymous and non-anonymous victims and the OPCV of the submission of the "Motion Challenging the Admissibility of the Case by the Defence of Germain Katanga, pursuant to Article 19(2)(a) of the Statute"', 24 March 2009, No. ICC-01/04-01/07-984-Conf + Conf- Anxs.

⁵ See the «Décision relative au traitement des demandes de participation », *supra* note 1.

⁶ See the «Désignation du Conseil principal du Bureau du conseil public pour les victimes pour représenter les victimes a/0140/08, a/0142/08, a/0145/08, a/0145/08, a/0155/08, a/0210/08, a/0212/08, a/0213/08, a/0214/08, a/0216/08, a/0281/08, a/0282/08», 6 March 2009, No. ICC-01/04-01/07-945.

⁷ See the «Désignation du Conseil principal du Bureau du conseil public pour les victimes pour représenter les victimes a/0520/08, a/0524/08, a/0527/08, a/0053/09, a/0067/09 à a/0086/09, a/0112/09 à a/0120/09 et a/0122/09 à a/0128/09», 09 March 2009, No. ICC-01/04-01/07-947 + Conf-Exp-Anxs 1-40.

6. On 11 March 2009, the Defence for Mr. Katanga filed the public redacted version of the "Motion Challenging the Admissibility of the Case by the Defence of Germain Katanga, pursuant to Article 19(2)(a) of the Statute".⁸

7. On 26 March 2009, the Registrar transmitted to the Office a confidential summary of the submission challenging the admissibility of the case filed by Mr. Katanga's Defence, in compliance with the Decision and pursuant to rule 59(2) of the Rules of Procedure and Evidence.

II. REASONS FOR THE REQUEST FOR EXTENTION OF TIME LIMIT

8. Pursuant to regulation 35(1) of the Regulations of the Court, "[a]pplications to extend or reduce any time limit [...] ordered by the Chamber shall be made in writing or orally to the Chamber seized of the matter setting out the grounds on which the variation is sought." Sub-paragraph (2) of the said regulation further states that "[t]he Chamber may extend or reduce a time limit if good cause is shown [...]."

9. Accordingly, the Office, representing victims a/0140/08, a/0142/08, a/0145/08, a/0148/08, a/0155/08, a/0210/08, a/0212/08, a/0213/08, a/0214/08, a/0216/08, a/0281/08 and a/0282/08, a/0520/08, a/0524/08, a/0527/08, a/0053/09, a/0067/09, a/0068/09, a/0069/09, a/0070/09, a/0071/09, a/0072/09, a/0073/09, a/0074/09, a/0075/09, a/0076/09, a/0077/09, a/0078/09, a/0079/09, a/0080/09, a/0081/09, a/0082/09, a/0083/09, a/0084/09, a/0085/09, a/0086/09, a/0112/09, a/0113/09, a/0114/09, a/0115/09, a/0116/09, a/0117/09, a/0118/09, a/0119/09, a/0120/09, a/0122/09, a/0123/09, a/0124/09, a/0125/09, a/0126/09, a/0127/09 and a/0128/09, respectfully submits the following observations which the OPCV contends meet the criteria of regulation 35(1) of the Regulations of the Court.

⁸ See the "Motion Challenging the Admissibility of the Case by the Defence for Germain Katanga, pursuant to Article 19 (2) (a) of the Statute", 11 March 2009, No. ICC-01/04-01/07-949.

10. Following the notification of the Decision, as a preliminary matter, the Office has contacted some individuals in the DRC in order to assess their availability to help the OPCV in entering in contact with the victims it is representing for the purposes of article 19 proceedings. Such individuals have expressed their willingness to help the Office but underlined some concerns related to the fact that, despite their best efforts, considering the security situation in the country, as well as the logistical difficulties to reach the majority of the places where victims reside, they will not be able to enter in contact with a meaningful part of the victims before three to four weeks.

11. Making matters more complicated, many of the victims represented by the Office live in areas of the DRC that are difficult to access, they speak diverse local languages and therefore cannot be simply called on the phone by staff members of the Office without advance coordination of interpretation services, if they are able to be contacted by phone at all. Moreover, the majority of them work far away from their usual place of residence and are reachable only during the weekends or late in the evening.

12. Furthermore, the Office was not in the position to proceed in contacting and explaining the challenge by Mr. Katanga's Defence on the admissibility of the case to the victims until 26 March 2009, date of the transmission by the Registrar of the summary of the grounds on which the admissibility of the case has been challenged.

13. The Office is currently in the process of contacting the victims and explaining to them the grounds on which the admissibility of the case has been challenged. Only thereafter will the victims be able to convey to the Office their views and concerns on the matter.

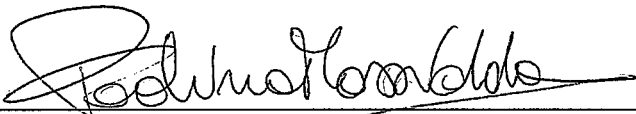
14. As a result of the above-mentioned challenges, the Office does not believe that it will be able to receive the views and concerns of the victims and to submit to the Chamber the representations of the victims it currently represents on the issue of the admissibility challenge raised by Mr. Katanga's Defence, prior to the end of the month of April.

15. Considering that the legal issue *sub-judice* is of such paramount importance to the victims represented by the Office, particularly because the said issue could potentially suspend all proceedings before the Court in this case, the Office submits that it should be given further time to a) satisfactorily contact the victims it has been appointed to represent before the Chamber and b) submit their representations to the Chamber after being given the opportunity to consult with them about the possible legal ramifications implicated by the challenge of the admissibility of the case before the Court raised by Mr. Katanga's Defence.

16. Accordingly, the Principal Counsel respectfully argues that the deadline established by the Trial Chamber does not suffice for enabling victims to submit their observations on the important issue of the admissibility of the case pursuant to article 19(3) of the Rome Statute and that good cause has been shown for the extension of the time-limit.

FOR THE FOREGOING REASONS

The Principal Counsel of the Office respectfully requests that Trial Chamber II extend the time limit for submitting observations on the admissibility of the case until 29 April 2009, since good cause has been shown.



Paolina Massidda
Principal Counsel
Office of Public Counsel for Victims

Done in English

Dated this 31st day of March, 2009

At The Hague (The Netherlands)