

**Cour
Pénale
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**International
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TRIAL CHAMBER II

Before: Judge Bruno Cotte, Presiding Judge
Judge Fatoumata Dembele Diarra
Judge Hans-Peter Kaul

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

***IN THE CASE OF
THE PROSECUTOR***

v. Germain KATANGA and Mathieu NGUDJOLO CHUI

Public

**Prosecution's Observations on the Applications for Participation in the
Proceedings of 97 Applicants**

Source: Office of the Prosecutor

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

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The Office of the Prosecutor ("Prosecution") respectfully submits its observations on the applications for participation in the case of *The Prosecutor v. Germain KATANGA and Mathieu NGUDJOLO CHUI* ("Case") of 97 Applicants ("Applicants"), pursuant to Rule 89(1) of the Rules of Procedure and Evidence ("Rules").

Background

1. On 4 May 2009, Trial Chamber II ("the Chamber") requested the Prosecution to file observations regarding 97 applications for participation as victims in the proceedings before the Chamber in the case of *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*.¹
2. The criteria required for applicants to be granted the procedural status of victim are set out in rule 85(a) of the Rules and described in detail in the "Decision on the Applications for participation in the Proceedings of Applicants a/0327/07 to a/0337/07 and a/0001/08"². The four specific requirements are that (i) the applicant must be a natural person; (ii) who suffered emotional, physical or economic harm (iii) as a result of the crimes committed during the joint FNI/FRPI attack on Bogoro on or about 24 February 2003 (iv) as charged in the Document Containing the Charges.
3. Having examined the individual applications in view of these requirements, the Prosecution contends that Applicants a/0136/08, a/0140/08, a/0141/08, a/0142/08, a/0143/08, a/0144/08, a/0145/08, a/0146/08, a/0147/08, a/0148/08, a/0150/08, a/0151/08, a/0153/08, a/0154/08, a/0155/08, a/0156/08, a/0157/08, a/0158/08, a/0159/08, a/0160/08, a/0161/08, a/0162/08, a/0163/08, a/0164/08, a/0165/08, a/0166/08, a/0167/08, a/0168/08, a/0169/08, a/0170/08, a/0171/08,

¹ ICC-01/04-01/07-1094, 4 May 2009, p.6.

² ICC-01/04-01/07-357, 2 April 2008, p.8.

a/0172/08, a/0173/08, a/0174/08, a/0175/08, a/0176/08, a/0178/08, a/0179/08, a/0180/08, a/0183/08, a/0186/08, a/0187/08, a/0188/08, a/0189/08, a/0190/08, a/0191/08, a/0192/08, a/0193/08, a/0194/08, a/0195/08, a/0196/08, a/0197/08, a/0199/08, a/0201/08, a/0202/08, a/0203/08, a/0205/08, a/0206/08, a/0207/08, a/0208/08, a/0210/08, a/0212/08, a/0213/08, 2/0214/08, a/0215/08, a/0216/08, a/0217/08, a/0218/08, a/0219/08, a/0220/08, a/0221/08, a/0222/08, a/0223/08, a/0224/08, a/0225/08, a/0226/08, a/0227/08, a/0228/08, a/0229/08, a/0230/08, a/0231/08, a/0281/08, a/0282/08, a/0397/08, a/0398/08, a/0399/08, a/0400/08, a/0401/08 and a/0402/08 should be granted procedural status of victim at the trial stage.

4. Applicants' a/0040/08, a/0041/08, a/0042/08, a/0053/08, a/0091/08, a/0098/08 and a/0102/08 submitted applications on behalf of their deceased relatives. As will be discussed in more detail below, the Chamber is yet to rule on the right of an applicant to apply on behalf of a deceased relative.
5. The Prosecution submits that Applicant a/0152/08 should be denied the procedural status of victim, unless she provides additional information as will be explained below.

Factual analysis of the applications

1) Victim applicants who satisfy all the requirements

6. Applicants a/0183/08, a/0186/08, a/0187/08, a/0188/08, a/0189/08, a/0190/08, a/0191/08, a/0192/08, a/0193/08, a/0194/08, a/0195/08, a/0196/08, a/0202/08, a/0203/08, a/0206/08, a/0208/08, a/0217/08, a/0218/08, a/0219/08 and a/0220/08 should be granted the procedural status of victims, since they meet the

requirements as set out in rule 85(a) of the Rules and provide the necessary documentation in support of their applications.

7. Applicants a/0136/08, a/0150/08, a/0151/08, a/0153/08, a/0154/08, a/0156/08, a/0157/08, a/0158/08, a/0159/08, a/0160/08, a/0161/08, a/0162/08, a/0163/08, a/0164/08, a/0165/08, a/0166/08, a/0167/08, a/0168/08, a/0169/08, a/0170/08, a/0171/08, a/0172/08, a/0173/08, a/0174/08, a/0175/08, a/0176/08, a/0178/08, a/0179/08, a/0215/08, a/0221/08, a/0222/08, a/0223/08, a/0224/08, a/0225/08, a/0226/08, a/0227/08, a/0228/08, a/0229/08, a/0230/08, a/0231/08, a/0397/08, a/0398/08, a/0399/08, a/0400/08, a/0401/08 fulfill all the criteria as set out in rule 85(a) of the Rules. However, the Prosecution would like to draw the attention of the Chamber to the fact that these Applicants did not attach a copy of the legal mandate to their applications, although they indicate the names of their legal representatives in Section G of their Victim Application Forms. In addition, the Prosecution would like to note that Applicants a/0180/08 and a/0148/08 do not currently have any legal representation.

8. Applicants a/0140/08, a/0141/08, a/0142/08, a/0143/08, a/0144/08, a/0145/08, a/0146/08, a/0147/08, a/0148/08, a/0150/08, a/0151/08, a/0153/08, a/0154/08, a/0155/08, a/0157/08, a/0158/08, a/0159/08, a/0160/08, a/0161/08, a/0163/08, a/0167/08, a/0168/08, a/0169/08, a/0173/08, a/0175/08, a/0176/08, a/0178/08, a/0180/08, a/0197/08, a/0199/08, a/0201/08, a/0205/08, a/0207/08, a/0210/08, a/0212/08, a/0213/08, a/0214/08, a/0215/08, a/0216/08, a/0281/08, a/0282/08, a/0397/08, a/0398/08, a/0400/08, a/0401/08, a/0402/08 also fulfill all the criteria as set out in rule 85(a) of the Rules and should be granted the procedural status of victims. However, these Applicants do not provide death certificates and/or documentation regarding their relationship with the deceased family members.

9. Application a/0136/08 is made by a person acting on behalf of a victim who is a minor with the “Attestation de Succession et de Prise en Charge” attesting to the legal guardianship over the minor attached.

2) Victim applications pending Chamber’s decision in relation to deceased applicants

10. Applicants’ a/0040/08, a/0041/08, a/0042/08, a/0053/08, a/0091/08, a/0098/08 and a/0102/08 applied on behalf of their deceased relatives. The current position of the Court regarding such applicants is divergent. Pre-Trial Chamber I denied granting the procedural status of victim to such applicants, highlighting that rule 89(3) of the Rules “limits the submission of applications on behalf of others to applications made on behalf of children under the age of 18 and disabled persons”. The Chamber also concluded that deceased persons do not fall within the meaning of "natural persons" under rule 85(a) of the Rules.³ However, in a more recent decision based on the jurisprudence of the Inter-American Court of Human Rights, Pre-Trial Chamber III held that “although a deceased person cannot present his or her “views and concerns” in the proceedings, the Single Judge sees no impediment that the rights of the deceased victim are exercised by their successors during the proceedings, if these successors are victims recognized as participants in the proceedings”.⁴ The present Trial Chamber noted this conflicting approach in its Decision of February 2009.⁵

³ ICC-01/04-423-Corr, 31 January 2008, para. 24; ICC-02/05-111-Corr, 14 December 2007, paras 35-36.

⁴ ICC-01/05-01/08-320, 12 December 2008, para. 47.

⁵ ICC-01/04-01/07-933, 26 February 2009, paras 41-42.

3) Victim applicant who does not satisfy the 4 criteria

11. Applicant a/0152/08 at present, states facts in the application which seem to relate to events that took place outside of the Bogoro attack of February 2003.

Request

12. For the foregoing reasons, the Prosecution requests that Trial Chamber II grant Applicants a/0136/08, a/0140/08, a/0141/08, a/0142/08, a/0143/08, a/0144/08, a/0145/08, a/0146/08, a/0147/08, a/0148/08, a/0150/08, a/0151/08, a/0153/08, a/0154/08, a/0155/08, a/0156/08, a/0157/08, a/0158/08, a/0159/08, a/0160/08, a/0161/08, a/0162/08, a/0163/08, a/0164/08, a/0165/08, a/0166/08, a/0167/08, a/0168/08, a/0169/08, a/0170/08, a/0171/08, a/0172/08, a/0173/08, a/0174/08, a/0175/08, a/0176/08, a/0178/08, a/0179/08, a/0180/08, a/0183/08, a/0186/08, a/0187/08, a/0188/08, a/0189/08, a/0190/08, a/0191/08, a/0192/08, a/0193/08, a/0194/08, a/0195/08, a/0196/08, a/0197/08, a/0199/08, a/0201/08, a/0202/08, a/0203/08, a/0205/08, a/0206/08, a/0207/08, a/0208/08, a/0210/08, a/0212/08, a/0213/08, a/0214/08, a/0215/08, a/0216/08, a/0217/08, a/0218/08, a/0219/08, a/0220/08, a/0221/08, a/0222/08, a/0223/08, a/0224/08, a/0225/08, a/0226/08, a/0227/08, a/0228/08, a/0229/08, a/0230/08, a/0231/08, a/0281/08, a/0282/08, a/0397/08, a/0398/08, a/0399/08, a/0400/08, a/0401/08 and a/0402/08 the procedural status of victim at the trial stage in the case of *The Prosecutor v. Germain KATANGA and Mathieu NGUDJOLO CHUI*.

13. The Prosecution recalls that Applicants a/0180/08 and a/0148/08 do not currently have any legal representation and should therefore be assisted by the Court in finding such representation.

14. The Prosecution requests the Chamber to request Applicant a/0152/08 to provide additional information linking its Application to the crimes, if any.

A handwritten signature in blue ink, appearing to read 'Luis Moreno-Ocampo', is centered on the page. The signature is fluid and cursive, with a long horizontal stroke extending to the left.

Luis Moreno-Ocampo, Prosecutor

Dated this 15th day of May 2009

At The Hague, The Netherlands