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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

URGENT

**Prosecution's Observations on the Applications for Participation in the
Proceedings of 70 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 70 Applicants ("Applicants"), pursuant to Rule 89(1) of the Rules of Procedure and Evidence ("Rules").

Background

1. On 12 May 2009, Trial Chamber II ("the Chamber") requested the Prosecution to file observations regarding 70 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 are 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/0001/09, a/0003/09, a/0005/09, a/0006/09, a/0007/09, a/0008/09, a/0009/09, a/0010/09, a/0011/09, a/0012/09, a/0013/09, a/0014/09, a/0015/09, a/0016/09, a/0017/09, a/0018/09, a/0019/09, a/0020/09, 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,

¹ ICC-01/04-01/07-1129, 12 May 2009, p.5.

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

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, a/0128/09, a/0198/08, a/0204/08, a/0524/08, a/0527/08, a/0528/08, a/0533/08 and a/0540/08 should be granted procedural status of victim at the trial stage.

4. Applicants a/0529/08, a/0530/08, a/0534/08, a/0535/08 and a/0539/08 submitted applications on behalf of their deceased relatives. As was noted by the Prosecution in its previous filing, the present Chamber is yet to rule on the right of an applicant to apply on behalf of a deceased relative.³
5. The Prosecution notes that Applicants a/0529/08, a/0530/08, a/0531/08, a/0535/08, a/0536/08, a/0537/08, a/0538/08 and a/0539/08 indicate Nyakeru as the location of the events as a result of which they suffered harm. These applications will be discussed in more detail below.

Factual analysis of the applications

1) Victim applicants who satisfy all the requirements

6. Applicants a/0001/09, a/0003/09, a/0005/09, a/0007/09, a/0008/09, a/0009/09, a/0010/09, a/0011/09, a/0012/09, a/0013/09, a/0014/09, a/0015/09, a/0016/09, a/0017/09, a/0018/09, a/0019/09, a/0020/09, 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/0083/09, a/0084/09, a/0085/09, a/0086/09, a/0113/09, a/0115/09, a/0116/09, a/0118/09, a/0119/09, a/0122/09, a/0123/09, a/0124/09, a/0125/09, a/0126/09, a/0127/09, a/0128/09,

³ ICC-01/04-01/07-1139, 15 May 2009, para. 10.

a/0198/08, a/0204/08, a/0533/08 and a/0540/08 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/0006/09, a/0082/09, a/0112/09, a/0114/09, a/0117/09 and a/0120/09 fulfill all the criteria as set out in Rule 85(a) of the Rules. However, the Prosecution would like to note 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 emphasize that Applicant a/0524/08 does not currently have any legal representation.
8. Applicants a/0524/08, a/0527/08, a/0528/08, a/0531/08 and a/0536/08 also fulfill all the criteria as set out in Rule 85(a) of the Rules and should therefore be granted the procedural status of victims. However, these Applicants did not attach death certificates and/or documentation regarding their relationship with the deceased family members.

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

9. Applicants a/0529/08, a/0530/08, a/0534/08, a/0535/08 and a/0539/08 applied on behalf of their deceased relatives. As was previously noted by the Prosecution, the approach adopted by Pre-Trial Chambers I and III concerning applications for deceased persons is inconsistent.⁴ The status of these applications will therefore depend on the method to be adopted by Trial Chamber II regarding this matter.

⁴ *Ibid.*

3) Victim applicants who indicate that they suffered harm as a result of events that took place in Nyakeru

10. Applicants a/0529/08, a/0530/08, a/0531/08, a/0535/08, a/0536/08, a/0537/08, a/0538/08 and a/0539/08 specify that they suffered harm as a result of an attack on Nyakeru. As was rightfully pointed out by the Defence,⁵ the Pre-Trial Chamber denied the application of persons alleging that the events took place in Nyakeru-Ngida.⁶ The Prosecution would like to draw the attention of the Trial Chamber to the Statement of witness 250⁷. The witness states that civilians fleeing the Bogoro attack of 24 February 2003 were also killed around Katonie (which is located some 7-8 km from Bogoro towards Nyakeru), indicating that civilian casualties resulting from the Bogoro attack stretched beyond the immediate borders of Bogoro.

Request

11. For the foregoing reasons, the Prosecution requests that Trial Chamber II grant Applicants a/0001/09, a/0003/09, a/0005/09, a/0006/09, a/0007/09, a/0008/09, a/0009/09, a/0010/09, a/0011/09, a/0012/09, a/0013/09, a/0014/09, a/0015/09, a/0016/09, a/0017/09, a/0018/09, a/0019/09, a/0020/09, 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, a/0128/09, a/0198/08, a/0204/08, a/0524/08, a/0527/08, a/0528/08, a/0533/08 and a/0540/08

⁵ ICC-01/04-01/07-1152-Conf, 19 May 2009, para. 9.

⁶ ICC-01/04-01/07-578-Conf, 10 June 2008, para. 83.

⁷ See in eCourt, DRC-OTP-1013-0002 (Statement of W-250), paras 97-99 (and sketch DRC-OTP-1013-0026).

the procedural status of victim at the trial stage in the case of *The Prosecutor v. Germain KATANGA and Mathieu NGUDJOLO CHUI*.

12. The Prosecution recalls that Applicant a/0524/08 does not currently have any legal representation and should therefore be assisted by the Court in finding such representation.
13. The Prosecution submits that during the trial phase only victims of the crimes charged should be allowed to participate. The other victims may have rights to participate during the sentencing and reparations phases.



Luis Moreno-Ocampo, Prosecutor

Dated this 26th day of May 2009

At The Hague, The Netherlands