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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 86 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 86 Applicants ("Applicants"), pursuant to Rule 89(1) of the Rules of Procedure and Evidence ("Rules").

Background

1. On 12 June 2009, Trial Chamber II ("the Chamber") requested the Prosecution to file observations regarding 85 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 On 19 June 2009, the Chamber requested the parties to file observations regarding the participation of one additional victim applicant.²
2. According to the Appeals Chamber jurisprudence, a person has the right to participate in proceedings if a) he/she qualifies as a victim under the definition of this term provided by Rule 85(a) of the Rules, and b) his/her personal interests are affected by the proceedings in hand, i.e. by the issues, legal or factual, raised therein pursuant to Article 68(3) of the Statute.³
3. The criteria required for applicants to be granted the procedural status of victim as 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" are that (i) the applicant must be a natural person; (ii) who suffered emotional, physical or economic

¹ ICC-01/04-01/07-1206, 12 June 2009, p. 8.

² ICC-01/04-01/07-1224-Corr, 19 June 2009, p. 5 (applicant a/0114/08).

³ Cf., for instance, *The Prosecutor v. Thomas Lubanga Dyilo*, Decision on victims' participation, ICC-01/04-01/06-1119, 18 January 2008, para. 86 and *Situation in the Democratic Republic of the Congo*, Judgment on victim participation in the investigation stage of the proceedings in the appeal of the OPCD against the decision of Pre-Trial Chamber I of 7 December 2007 and in the appeals of the OPCD and the Prosecutor against the decision of Pre-Trial Chamber I of 24 December 2007, ICC-01/04-556, 19 December 2008, para. 45.

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.⁴

4. Having examined the individual applications in view of these requirements, the Prosecution contends that Applicants a/0317/09, a/0318/09, a/0319/09, a/0320/09, a/0321/09, a/0322/09, a/0323/09, a/0324/09, a/0325/09, a/0326/09, a/0327/09, a/0328/09, a/0329/09, a/0330/09, a/0331/09, a/0332/09, a/0333/09, a/0334/09, a/0335/09, a/0336/09, a/0337/09, a/0338/09, a/0339/09, a/0345/09, a/0346/09, a/0347/09, a/0348/09, a/0351/09, a/0352/09, a/0353/09, a/0354/09, a/0355/09, a/0356/09, a/0359/09, a/0360/09, a/0361/09, a/0363/09, a/0364/09, a/0365/09, a/0366/09, a/0367/09, a/0368/09, a/0369/09, a/0370/09, a/0371/09, a/0372/09, a/0373/09, a/0374/09, a/0375/09, a/0376/09, a/0377/09, a/0378/09, a/0379/09, a/0380/09, a/0381/09, a/0382/09, a/0383/09, a/0384/09, a/0385/09, a/0386/09, a/0387/09, a/0388/09, a/0389/09, a/0390/09, a/0391/09, a/0392/09, a/0393/09, a/0395/09, a/0607/08, a/0160/09, a/0161/09, a/0162/09, a/0268/09, a/0306/09, a/0315/09, a/0010/08, a/0014/08, a/0111/08 and a/0114/08 should be granted procedural status of victim at the trial stage.
5. The Prosecution notes that Applicants a/0340/09, a/0341/09, a/0342/09, a/0343/09, a/0349/09 and a/0350/09 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.
6. The Prosecution submits that Applicant a/0112/08 should be granted the procedural status of victim, once he/she provides additional information as will be explained below.

⁴ ICC-01/04-01/07-357, 2 April 2008, p. 8.

Factual analysis of the applications

1) Victim applicants who satisfy all the requirements

7. Applicants a/0338/09, a/0339/09, a/0345/09, a/0346/09, a/0347/09, a/0348/09, a/0351/09, a/0353/09, a/0354/09, a/0355/09, a/0359/09, a/0360/09, a/0607/08 and a/0306/09 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.

8. Applicants a/0317/09, a/0318/09, a/0319/09, a/0320/09, a/0321/09, a/0322/09, a/0323/09, a/0324/09, a/0325/09, a/0326/09, a/0327/09, a/0328/09, a/0329/09, a/0330/09, a/0331/09, a/0332/09, a/0333/09, a/0334/09, a/0335/09, a/0336/09, a/0337/09, a/0356/09, a/0363/09, a/0364/09, a/0365/09, a/0366/09, a/0367/09, a/0368/09, a/0369/09, a/0370/09, a/0371/09, a/0372/09, a/0373/09, a/0374/09, a/0375/09, a/0376/09, a/0377/09, a/0378/09, a/0379/09, a/0381/09, a/0382/09, a/0383/09, a/0384/09, a/0385/09, a/0386/09, a/0387/09, a/0388/09, a/0390/09, a/0391/09, a/0395/09, a/0160/09, a/0161/09, a/0162/09, a/0010/08, a/0014/08 and a/0114/08 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.

9. Applicants a/0317/09, a/0318/09, a/0320/09, a/0321/09, a/0323/09, a/0324/09, a/0325/09, a/0326/09, a/0328/09, a/0330/09, a/0331/09, a/0332/09, a/0333/09, a/0334/09, a/0335/09, a/0336/09, a/0337/09, a/0352/09, a/0364/09, a/0365/09, a/0367/09, a/0368/09, a/0369/09, a/0371/09, a/0372/09, a/0373/09, a/0374/09, a/0375/09, a/0376/09, a/0377/09, a/0379/09, a/0380/09, a/0381/09, a/0382/09, a/0384/09, a/0385/09, a/0387/09, a/0388/09, a/0391/09, a/0393/09, a/0395/09 and

a/0010/08 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, the Prosecution notes that these Applicants did not attach death certificates and/or documentation regarding their relationship with the deceased family members.

10. Applicants a/0162/09, a/0268/09, a/0361/09, a/0363/09, a/0389/09, a/0391/09, a/0392/09 and a/0393/09 fulfill all the criteria as set out in Rule 85(a) of the Rules. However, the applications in question lack in, or provide insufficient proof of the identity of the Applicant or of the person applying on his/ her behalf:

- The applications of a/0389/09 and a/0393/09 mention that they provided their *carte d'électeur*, but this document is not attached to the applications received by the Prosecution.
- Applicants a/0391/09 and a/0363/09 do not provide any proof of identity.
- Two applicants: a/0162/09 and a/0392/09, suggest that the "Attestation de Décès" and the "Attestation de Lien de Parenté" signed by two witnesses and accompanied by copies of these witnesses' *cartes d'électeur*, should be considered as proof of identity of the Applicants.
- Due to the extent of the redactions applied to the application of a/0361/09, it is not possible to tell whether the proof of the identity of the individual applying on behalf of a/0361/09 is provided or not.
- Application a/0268/09 was filed on behalf of a primary school located in Bogoro. The representative of the primary school died in February 2009. The Prosecution is of the view that, since all the relevant criteria were satisfied at the time of filing the application to the Court, the Applicant should be granted the status of victim.

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

11. Applicants a/0340/09, a/0341/09, a/0342/09, a/0343/09, a/0349/09 and a/0350/09 specify that they suffered harm as a result of an attack on Nyakeru. The Pre-Trial Chamber denied those applications which claimed that the harm suffered was a result of events that took place in Nyakeru-Ngida.⁵ The Prosecution would like to draw the attention of the Trial Chamber to the Statement of witness 250⁶. 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.

3) Re-examination of Applicants a/0010/08, a/0014/08, a/0111/08 and a/0112/08 in light of additional information provided

12. The applications of a/0010/08, a/0014/08, a/0111/08 and a/0112/08 were previously reviewed by the Prosecution in June 2008.⁷ After being rejected by Pre-Trial Chamber I⁸, the Applicants in question submitted additional information, in light of which their eligibility for participation as victims in the proceedings is being re-examined.

- Applicant a/0010/08 submitted a “Déclaration de confirmation”, verifying that the previously submitted unsigned victim application form was indeed his/her application. The *déclaration* also confirms the status of his/her legal representative. The Prosecution submits that, in light of this additional

⁵ ICC-01/04-01/07-578-Conf, 10 June 2008, para. 83.

⁶ See in eCourt, DRC-OTP-1013-0002 (Statement of W-250), paras 97-99 (and sketch DRC-OTP-1013-0026).

⁷ ICC-01/04-01/07-549-Conf-Exp, 4 June 2008.

⁸ ICC-01/04-01/07-578-Conf, 10 June 2008.

information Applicant a/0010/08 should be granted the procedural status of victim.

- In its Decision regarding the status of applicant a/0014/08, the Single Judge noted that “Applicant a/0014/08 has submitted, through two legal representatives, two different applications for participation”.⁹ These two applications contained discrepancies in relation to the date and the location of the alleged crimes leading to the harm suffered by the Applicant. The Single Judge concluded that “in the absence of any justification for such an inconsistency, Applicant a/0014/08 cannot be granted the status of victim authorised to participate in the case of *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*”.¹⁰ Following this conclusion, one of the legal representatives of the Applicant provided additional information indicating that the attack of 24 February 2003 on Bogoro should be seen as the main object of the application. In view of this clarification, a/0014/08 should be granted the procedural status of victim.
- Applicant a/0111/08 provided additional information in the form of a “*Declaration complémentaire et rectificative*”, which completes his/her previous application form and carries his/her signature. As was observed by the Prosecution in June 2008¹¹ and in light of the new information provided by a/0111/08, this Applicant should be granted the procedural status of victim, since he/she fulfills all the criteria as set out in Rule 85(a) of the Rules.
- Following the Single Judge’s observations that a/0112/08 did not provide a valid document attesting to his/her identity, the Applicant in question submitted his/her “*Carte d’élève*”. The Applicant also provided supplementary information regarding his/her recruitment into the militia, but did not give further information regarding the date and the location of the events that led to the physical and economic harm suffered. In absence of this information, it is not possible to establish a causal link between the attack on Bogoro and the harm in question.

Request

13. For the foregoing reasons, the Prosecution requests Trial Chamber II to grant Applicants a/0317/09, a/0318/09, a/0319/09, a/0320/09, a/0321/09, a/0322/09, a/0323/09, a/0324/09, a/0325/09, a/0326/09, a/0327/09, a/0328/09, a/0329/09, a/0330/09, a/0331/09, a/0332/09, a/0333/09, a/0334/09, a/0335/09, a/0336/09,

⁹ *Ibid.*, paras 72-73.

¹⁰ *Ibid.*

¹¹ ICC-01/04-01/07-549-Conf-Exp, 4 June 2008, paras 3, 8 and 13.

a/0337/09, a/0338/09, a/0339/09, a/0345/09, a/0346/09, a/0347/09, a/0348/09, a/0351/09, a/0352/09, a/0353/09, a/0354/09, a/0355/09, a/0356/09, a/0359/09, a/0360/09, a/0361/09, a/0363/09, a/0364/09, a/0365/09, a/0366/09, a/0367/09, a/0368/09, a/0369/09, a/0370/09, a/0371/09, a/0372/09, a/0373/09, a/0374/09, a/0375/09, a/0376/09, a/0377/09, a/0378/09, a/0379/09, a/0380/09, a/0381/09, a/0382/09, a/0383/09, a/0384/09, a/0385/09, a/0386/09, a/0387/09, a/0388/09, a/0389/09, a/0390/09, a/0391/09, a/0392/09, a/0393/09, a/0395/09, a/0607/08, a/0160/09, a/0161/09, a/0162/09, a/0268/09, a/0306/09, a/0315/09, a/0010/08, a/0014/08, a/0111/08 and a/0114/08 the procedural status of victim at the trial stage in the case of *The Prosecutor v. Germain KATANGA and Mathieu NGUDJOLO CHUI*.

14. The Prosecution requests the Chamber to request Applicant a/0112/08 to provide additional information, if any, linking his/her application to the crimes.



Luis Moreno-Ocampo, Prosecutor

Dated this 24th day of June 2009

At The Hague, The Netherlands