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TRIAL CHAMBER II

Before: Judge Bruno Cotte, Presiding Judge
Judge Fatoumata Dembele Diarra
Judge Christine Van den Wyngaert

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

**IN THE CASE OF
THE PROSECUTOR
*v. GERMAIN KATANGA AND MATHIEU NGUDJOLO CHUI***

Public Document

**Prosecution's Observations on the Applications for Participation in the
Proceedings of Applicants a/0285/09, a/0286/09, a/0297/09 and a/0452/09 and on
Additional Documents Provided by Applicants**

Source: Office of the Prosecutor

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

The Office of the Prosecutor

**Counsel for the Defence of Germain
Katanga**

Mr David Hooper

Mr Andreas O'Shea

**Counsel for the Defence of Mathieu
Ngudjolo Chui**

Mr Jean-Pierre Kilenda Kakengi Basila

Mr Jean-Pierre Fofé Djofia Malewa

Legal Representatives of the Victims

Mr Jean-Louis Gilissen

Mr Fidel Nsita Luvengika

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

**The Office of Public Counsel for
Victims**

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

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Ms Silvana Arbia

Deputy Registrar

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

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* of Applicants a/0285/09, a/0286/09, a/0297/09 and a/0452/09 pursuant to Rule 89(1) of the Rules of Procedure and Evidence ("Rules"). The Prosecution also hereby submits its additional comments pursuant to the supplementary documents provided by Applicants a/0054/08, a/0140/08, a/0141/08, a/0207/08, a/0520/08, a/0528/08, a/0529/08, a/0530/08, a/0531/08, a/0533/08, a/0535/08, a/0536/08, a/0537/08, a/0538/08, a/0539/08, a/0120/09, a/0202/09, a/0205/09, a/0211/09, a/0216/09, a/0266/09, a/0267/09, a/0277/09, a/0285/09, a/0286/09, a/0293/09, a/0297/09, a/0304/09, a/0310/09, a/0340/09, a/0341/09, a/0342/09, a/0349/09, a/0350/09, a/0361/09, a/0389/09, a/0391/09 and a/0393/09.

Background

1. On 28 October 2009, Trial Chamber II ("the Chamber") requested the Prosecution to file observations regarding 39 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. 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), 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.²

¹ ICC-01/04-01/07-1567, 28 October 2009, p. 7.

² 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.

3. The criteria required for applicants to be granted the procedural status of victim as set out in Rule 85(a) 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 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

Factual analysis of the applications

1) Applicants a/0285/09, a/0286/09, a/0297/09 and a/0452/09

4. Applicants a/0285/09, a/0286/09, a/0297/09 and a/0452/09 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. However, the Prosecution notes that Applicants a/0285/09 and a/0286/09 did not attach death certificates and/or documentation regarding their relationship with the deceased family members.

2) Re-examination of previous Applicants in light of additional information provided

5. Applicants a/0140/08, a/0528/08, a/0529/08, a/0530/08, a/0531/08, a/0533/08, a/0535/08, a/0536/08, a/0537/08, a/0538/08, a/0539/08, a/0202/09, a/0205/09, a/0266/09, a/0267/09, a/0293/09, a/0304/09, a/0340/09, a/0341/09, a/0342/09,

³ ICC-01/04-01/07-357, 2 April 2008, p. 8.

a/0349/09 and a/0350/09 previously indicated that they suffered harm as a result of an attack on Nyakeru, while Applicant a/0141/08 mentioned Nyakeberu. In its Decision of 23 September 2009, the Chamber requested from a number of Applicants, including those mentioned above, to provide further details regarding the exact location of the attack pursuant to which they suffered harm.⁴

6. As mentioned in its previous submissions, the Prosecution would like to note that in his Statement⁵, witness 250 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. Furthermore, the Prosecution would also like to draw the attention of the Chamber to the Statement of witness 233⁶, who states that the primary schools in Kavali and Nyakeru, as well as the Institute of Nyakeru, were destroyed as a result of the attack on Bogoro in 2003. He states that he saw dead bodies of civilians and burnt and destroyed houses in Nyakeru on the fifth day after the 24 February 2003 attack.
7. In light of these Statements and the additional information provided by the Applicants mentioned at paragraph 6 above⁷, they should be granted the procedural status of victim at the trial stage.
8. Applicants a/0054/08, a/0207/08, a/0520/08, a/0120/09, a/0211/09, a/0216/09, a/0277/09, a/0310/09, a/0361/09, a/0389/09, a/0391/09 and a/0393/09 submitted additional documents as requested by the Chamber.⁸ These Applicants now meet all the requirements of Rule 85(a) and should therefore be granted the procedural status of victims.

⁴ ICC-01/04-01/07-1491, 23 September 2009, paras 75-76 and 96.

⁵ See in eCourt, DRC-OTP-1013-0002 (Statement of P-250), paras 97-99 (and sketch DRC-OTP-1013-0026).

⁶ See in eCourt, DRC-OTP-1007-0061 (Statement of P-233), paras 18 and 93-94.

⁷ All of the Applicants in question provide information indicating that the location where the harm was suffered was 1-5 km away from the center of Bogoro (in Nyakeru). Applicant a/0266/09 indicates that the distance was 10 km.

⁸ ICC-01/04-01/07-1491, 23 September 2009, paras 52, 64, 79, 102 and 106.

Request

9. For the foregoing reasons, the Prosecution requests Trial Chamber II to grant Applicants a/0054/08, a/0140/08, a/0141/08, a/0207/08, a/0520/08, a/0528/08, a/0529/08, a/0530/08, a/0531/08, a/0533/08, a/0535/08, a/0536/08, a/0537/08, a/0538/08, a/0539/08, a/0120/09, a/0202/09, a/0205/09, a/0211/09, a/0216/09, a/0266/09, a/0267/09, a/0277/09, a/0285/09, a/0286/09, a/0293/09, a/0297/09, a/0304/09, a/0310/09, a/0340/09, a/0341/09, a/0342/09, a/0349/09, a/0350/09, a/0361/09, a/0389/09, a/0391/09, a/0452/09 and a/0393/09 the procedural status of victim at the trial stage.



Luis Moreno-Ocampo, Prosecutor

Dated this 9th day of November 2009

At The Hague, The Netherlands