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

Public

**Defence for Germain Katanga's Additional Observations on Victims'
Participation and scope thereof**

Source: Defence for Mr Germain Katanga

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Introduction

1. On 29 January 2009, the Defence for Mr. Katanga (“the Defence”) filed its *DEFENCE OBSERVATIONS REGARDING VICTIMS’ PARTICIPATION AND SCOPE THEREOF*,¹ setting out its views on the scope and modalities of victim participation. The Trial Chamber has not yet rendered a decision on this issue. The Defence referred to the issue discussed in this present filing, concerning disclosure of exculpatory material by victims, in the course of the status conference held on 3rd November 2009. That issue is visited here with a view to obtaining a ruling that the participating victims have a duty to disclose exculpatory material within their knowledge or possession.

2. Whether or not victim participants will be given any role to present evidence in the trial against Mr. Germain Katanga and Mr. Mathieu Ngudjolo, the Defence submits that victim participants, and through them their representatives, are vested with an obligation to disclose exonerating evidence under Article 67(2) of the ICC Statute and evidence falling under Rule 77. This is appropriate in any event, but particularly so in the event that participating victims and their representatives are given an investigative role.² In the course of their preparation victim representatives may well come across evidence which tends to show the innocence or mitigate the guilt of the accused, or which may affect the credibility of the incriminating evidence, or which is material to the preparation of the Defence. The Defence submits that such evidence should then be disclosed to the Defence on the grounds set forth below.

3. The Trial Chamber in Lubanga held that “no positive obligation is imposed on the other organs of the Court, the defence or the participants to disclose exculpatory material to the defence under Article 67(2) of the Statute, Rule 76 or Rule 77 of the Rules.”³ The Defence urges the Chamber not to follow this precedent. Whilst it is true that there is no explicit obligation on the victim participants to disclose exculpatory evidence, it is also true that there is no explicit right for participating victims to present incriminating evidence to the Court. It would not be fair to grant such a right to victim participants without imposing the corollary disclosure obligations. The issue of whether any such obligation exists for participating victims is still open and Trial Chamber II is entirely free to depart from the views expressed

¹ ICC-01/04-01/07-858.

² The Defence objected to vesting victim representatives with an investigatory role. See *ibid*, paras. 20-23.

³ *Prosecutor v. Lubanga*, Decision on the defence application for disclosure of victims applications, ICC-01/04-01/06-1637, 21 January 2009, para. 10.

by Trial Chamber I on this issue because the Appeals Chamber has not yet ruled on it. The Defence invites this Chamber to take a different view, because Trial Chamber I's finding on this issue is inconsistent with the Court's imperative mandates to ensure the fairness of the proceedings and to ascertain the truth.

Requirement of fairness

4. The Appeals Chamber has determined that victim participants are not parties in the proceedings.⁴ Yet, it held that this should not preclude victim participants from leading evidence pertaining to the guilt or innocence of the accused when requested and in limited circumstances,⁵ provided that it is not inconsistent with "the rights of the accused and a fair and impartial trial"⁶ or "the onus on the Prosecutor to prove the guilt of the accused".⁷ The Pre-Trial Chamber in Bemba confirmed that any intervention of victim participants "must be such as to not jeopardize or infringe on the fairness and expeditiousness of proceedings, both tenets of paramount importance to all proceedings before the Court."⁸
5. This is consistent with the Chamber's obligation under article 64(2) to ensure that "a trial is fair and expeditious and is conducted with full respect for the rights of the accused and due regard for the protection of victims and witnesses." Similarly, article 68(3) makes victim participation contingent on the fact that the exercise of this right should not be prejudicial to the defendant or inconsistent with a fair trial.⁹

⁴ DRC, 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. 55: "Participation pursuant to article 68 (3) of the Statute is confined to proceedings before the Court, and aims to afford victims an opportunity to voice their views and concerns on matters affecting their personal interests. This does not equate them, as the case law of the Appeals Chamber conclusively establishes, to parties to the proceedings before a Chamber, restricting their participation to issues arising therein touching upon their personal interests, and then at stages and in a manner not inconsistent with the rights of the accused and a fair and impartial trial".

⁵ ICC-01/04-01/06-1432, *Prosecutor v. Lubanga*, (AC) Judgment on the appeals of The Prosecutor and The Defence against Trial Chamber I's Decision on Victims' Participation of 18 January 2008, 11 July 2008, paras. 3, 93 and 94.

⁶ *Ibid*, para. 96; also see para. 4. See also *Prosecutor v. Bemba*, Quatrième décision relative à la participation des victimes, ICC-01/05-01/08-320, 12 December 2008, para. 96.

⁷ ICC-01/04-01/06-1432, *Prosecutor v. Lubanga*, (AC) Judgment on the appeals of The Prosecutor and The Defence against Trial Chamber I's Decision on Victims' Participation of 18 January 2008, 11 July 2008, para. 4; also see para. 93. See also *Prosecutor v. Bemba*, Quatrième décision relative à la participation des victimes, ICC-01/05-01/08-320, 12 December 2008, para. 96.

⁸ *Prosecutor v. Bemba*, Quatrième décision relative à la participation des victimes, ICC-01/05-01/08-320, 12 December 2008, para. 96.

⁹ Article 68(3) provides: "Where the personal interests of the victims are affected, the Court shall permit their

6. Hence, in determining the scope and modalities of the victims' participation, the Chamber must be "vigilant in safeguarding the rights of the accused".¹⁰ In light of this pivotal duty upon the Chamber, the Defence submits that the presentation of evidence by victim participants should be conditioned on adequate prior disclosure to the Defence, both of incriminating evidence a victim participant intends to present in the course of the trial (as was submitted in the initial *Defence Observations regarding victims' participation and scope thereof*¹¹), and evidence which tends to exculpate the accused. It would clearly be prejudicial to or inconsistent with the rights of the accused if a victim participant, authorised to present incriminating evidence, is not obliged to disclose to the accused evidence that may be exculpatory or affect the credibility of the incriminating evidence tendered by him or her.

7. The Statute does not provide any explicit basis for allowing victim participants to tender evidence which pertains to the guilt of the accused. To tender such evidence is a power primarily vested in the parties. Allowing participating victims to tender such evidence notwithstanding that they are not recognised as parties can be done fairly only if victim participants are bound by the same obligations which apply to the parties in the exercise of this power. Thus, if victim participants are allowed to present evidence concerning the alleged guilt of the accused they should also meet the corollary obligation to disclose exculpatory material.

8. This submission finds support in the Appeals Chamber holding that the right of victim participants to tender evidence pertaining to the guilt or innocence of the accused is subject to the power of the Chamber to "rule on the modalities for the proper disclosure of such evidence".¹² In addition, Article 64(3)(c), which provides that the Trial Chamber shall, "[s]ubject to any other relevant provisions of this Statute, provide for disclosure of documents or information not previously disclosed,

views and concerns to be presented and considered at stages of the proceedings determined to be appropriate by the Court and in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial. Such views and concerns may be presented by the legal representatives of the victims where the Court considers it appropriate, in accordance with the Rules of Procedure and Evidence.

¹⁰ *Prosecutor v. Lubanga*, Judgment on the appeals of The Prosecutor and The Defence against Trial Chamber I's Decision on Victims' Participation of 18 January 2008, ICC-01/04-01/06-1432, 11 July 2008, para. 100.

¹¹ ICC-01/04-01/07-858, paras. 17(i) and (iii).

¹² *Ibid*, para 100

sufficiently in advance of the commencement of the trial to enable adequate preparation for trial”, vests the Chamber with a broad power to order whatever disclosure may be necessary for the adequate preparation of the trial. This provision is broad enough so as not to limit disclosure obligations to the parties to the proceedings.

Determination of the Truth

9. The onus to establish the guilt of the accused beyond any reasonable doubt lies on the Prosecutor. At the end of trial, an accused may only be found guilty if the Chamber is convinced of his or her guilt beyond reasonable doubt in accordance with article 66(3) of the ICC Statute.¹³ In view of this, the Court “has the authority to request the submission of all evidence that it considers necessary for the determination of the truth” pursuant to article 69(3) of the Statute.¹⁴ Also according to ICC Rule 43(a), the Presiding Judge, in consultation with the other members of the Chamber, “shall determine the mode and order of questioning witnesses and presenting evidence so as to: (a) Make the questioning of witnesses and the presentation of evidence fair and effective for the determination of the truth”.
10. It has been held that article 69(3) gives the Court a general right that is not dependent on the cooperation or the consent of the parties to request the presentation of all evidence necessary for the determination of the truth.¹⁵ This is so because the Trial Chamber is viewed as a ‘truth-finder’ invested with the difficult task of ascertaining the truth in relation to the guilt of the defendant for which it is believed that the greatest accessibility to the evidence is necessary.¹⁶
11. The accurate determination of the guilt or innocence of persons prosecuted before the ICC is important, not only for the accused who has the presumption of innocence, but also for the wider audience, in particular for victim participants “insofar as this issue

¹³ *Ibid*, para. 95.

¹⁴ As confirmed by the Appeals Chamber, see *ibid*, para. 95.

¹⁵ *Prosecutor v. Katanga and Ngudjolo*, Public Urgent Decision on the Set of Procedural Rights Attached to Procedural Status of Victim at the Pre-Trial Stage of the Case, ICC-01/04-01/07-474, 13 May 2008, para. 80, footnote 102. Also see *ibid*, para. 98.

¹⁶ ICC-01/04-01/06-102, para 55; also *Prosecutor v. Katanga and Ngudjolo*, Public Urgent Decision on the Set of Procedural Rights Attached to Procedural Status of Victim at the Pre-Trial Stage of the Case, ICC-01/04-01/07-474, 13 May 2008, paras. 109-113.

is inherently linked to the satisfaction of their right to the truth”.¹⁷ In this regard, the Single Judge of Pre-Trial Chamber I in the present proceedings has held that the victims' central interest in the search for the truth can only be satisfied if “(i) those responsible for perpetrating the crimes for which they suffered harm are declared guilty; and (ii) those not responsible for such crimes are acquitted, so that the search for those who are criminally liable can continue”.¹⁸ Accordingly, the criminal proceedings should “(i) bring clarity about what indeed happened; and (ii) close possible gaps between the factual findings resulting from the criminal proceedings and the actual truth.”¹⁹

12. Thus, the scope and modalities of victim participation are defined by the Chamber's paramount obligation to ascertain the truth as well as its obligation to ensure a fair trial. The Defence submits that these two mandates both require that the victim participants disclose exculpatory evidence to the Defence.

Importance of exonerating evidence

13. If exculpatory evidence exists but the Defence is unaware of its existence, it is not in a position to bring it to the attention of the Chamber. The Chamber is then deprived of an opportunity to render justice and ascertain the truth about the guilt of the accused on the basis of all available relevant evidence. This would not only be unfair to the accused, given that this may result in a wrongful conviction or too high a sentence, but also to the victims of crimes under the jurisdiction of the ICC and the public at large.
14. It is not in the interest of anyone if blame is wrongfully attached to an accused. Such would be in direct violation of the victims' 'right to the truth' as described above. Victims who do not participate in the proceedings also have a right to know what occurred, who is responsible and to which extent. If relevant and available evidence is not presented to the Court, victims who do not participate in the proceedings as well

¹⁷ *Prosecutor v. Katanga and Ngudjolo*, Public Urgent Decision on the Set of Procedural Rights Attached to Procedural Status of Victim at the Pre-Trial Stage of the Case, ICC-01/04-01/07-474, 13 May 2008, para. 35.

¹⁸ *Ibid*, para. 36 [emphasis added].

¹⁹ *Ibid*, para. 34.

as other interested persons may also be deprived of justice. In this regard, it is questionable whether the withholding of relevant material from the Defence, the Court and the public at large is “in conformity with the obligation of the Court to take into account all the relevant facts that could help us find out what really happened; as little secrecy as possible, especially in war crimes trials”.²⁰

15. It is also unfair on the accused if victim participants are in possession of information relevant to the case and helpful to the Defence if they are under no obligation to disclose such material. As aforementioned, if they are given an opportunity to produce incriminating material, they should also be obliged to produce exculpatory material. Otherwise, the evidence may be presented to the Chamber in a distorted manner. This is particularly evident where a victim participant is in possession of material which would affect the credibility or reliability of the evidence they intend to present to the Chamber, but applies equally to other types of exculpatory evidence.
16. Moreover, the victims have a monetary interest the granting of which is dependent on the outcome of the case. If, at the end of the trial, it appears that the victim participants were, in fact, not victims of the crimes charged, they may not receive financial compensation for their alleged victimhood. Accordingly, even if they are not considered as parties in the trial, they have a vested interest in the outcome of the trial.
17. This monetary interest may affect the neutrality of the victim participants. During the confirmation, many of the victim representatives made submissions highlighting the paramount importance of truth and justice.²¹ Yet, the question is whether victim participants are equally keen on the truth to be established if the truth does not correspond with the guilt of the accused, particularly if that would mean that they receive no financial compensation. To avoid at least the appearance of unfairness, it would be in everyone’s interest and the interests of justice and fairness to impose an obligation on victim participants to disclose to the Defence any exonerating material in their possession.

²⁰ *Prosecutor v. Florence Hartmann*, IT-02-54-R77.5-T, 17 June 2009, page 390 (per Ms Natasa Kandic, founder and director of the Humanitarian Law Centre in Belgrade, an organisation which documents war crimes and deals with transitional justice).

²¹ *Prosecutor v. Katanga and Ngudjolo*, ICC-01/04-01/07-T-38-ENG ET, Confirmation of Charges Hearing - Open Session, Opening Statement by Mr. Diakiese, page 56, lines 1-12; Opening Statement by Mr. Mulamba, page 62 lines 1-4; page 64 lines 21-25.

18. Victim participants may voluntarily choose to present such exonerating material to the Chamber. For instance, during the confirmation hearing, a victim representative in the present case informed the Court of his intention to demonstrate to the Court that it would be simplistic and inaccurate to consider the crimes the Prosecution sought to charge the defendants as being only the sole responsibility of the two defendants, but that this responsibility extended to many others, including the political leaders of their own and neighbouring States.²²
19. The evidence referred to here may well be exonerating because it may place the evidence pertaining to the guilt of the accused in a different context and mitigate his guilt. Unfortunately, it is not evident that such evidence will eventually be produced before the Chamber because the victim representative, who made those submissions, no longer participates in the present proceedings. In any event, whether or not to present exonerating evidence to the Chamber is not a decision to be made by victim participants. Instead, defence counsel are in a much better position to determine the relevance of such evidence in light of their defence strategy, defence lines to be adopted and all other evidence in their possession pertaining to the guilt or innocence of the accused.

Client-counsel privilege

20. Victim representatives may argue that they are not obliged to disclose exculpatory material because they consider such material to be covered by ‘client-counsel’ privilege. This was brought strikingly home to defence counsel who, participating in a seminar on ethics, posed to a victims representative, not a party to the present trial, whether, in the event that ‘his’ victim told him something that completely exonerated the accused of all guilt he would feel compelled to reveal that information. The victim representative’s answer was that he would not feel compelled to disclose and considered the information subject to a client-counsel privilege. The Defence submits that such a view is wrong and would work a terrible injustice if practiced. The victims are not on trial and, accordingly, their ‘client-counsel’ privilege should be interpreted

²² *Prosecutor v. Katanga and Ngudjolo*, ICC-01/04-01/07-T-38-ENG ET, Confirmation of Charges Hearing - Open Session, Opening Statement by Mr. Diakiese, pages 56-62.

more narrowly than the ‘client-counsel’ privilege a defence counsel enjoys with an accused. The Defence is the only party to the process exempt from a disclosure obligation, save for its obligations under Rule 79. Were the Defence counsel to be obliged to disclose material which would incriminate the accused, an accused would be better off without legal representation. It is clearly the task of the Prosecution to prove the case against the defendant. By virtue of his privilege against self-incrimination, the defendant has absolutely no obligation to assist the Prosecution in proving the case against him. These are fundamental principles, recognized in all legal systems.

21. Victim representatives cannot make similar claims to ‘client-counsel’ privilege in respect of exculpatory evidence because that would frustrate the truth-finding objective of the Court and affect the fairness of the proceedings. The Statute, Rules and Regulations also provide no privilege for victim participants against disclosure obligations.
22. Certain limits to the client-counsel privilege between victim participants and their legal representatives are already imposed by their participation in the proceedings. Participating victims are made aware during their application process that they may be required to submit additional documentation, which may be relevant to the proceedings or their application.²³ As such, the applicants who have freely chosen to participate as victims must necessarily accept any legal obligations which flow from such participation, or waive the right to participate. Alternatively, if applicants do not wish to comport with the documentary requirements of participating in the proceedings, they can participate as a potential witness, and vest the appropriate party (Defence or Prosecution) with the responsibility for executing disclosure obligations and producing corroborating documents.
23. Even if victim participants and their representatives are entitled to invoke client-counsel privilege, such entitlement is not unlimited and must be balanced with other

²³ Regulation 86 (2) of the Regulations of the Court stipulates that in completing the applications forms, applicants shall, to the extent possible, provide “any relevant supporting documentation”. Potential applicants are expressly advised in the explanatory guide produced by the Court that they may be required to submit confidential documentation to both the Chambers and the parties: Victims Before the International Criminal Court: A Guide for the Participation of victims in the Proceedings of the Court, at page 21. http://www.icc-cpi.int/library/victims/VPRS_Booklet_En.pdf

interests, such as justice, fairness and truth. Could it be fair to rely on this privilege if, for instance, victim participants have material in their possession which clearly suggests that the accused is not guilty of the crimes charged? Or less drastically, can it be fair to withhold information which may affect the credibility of incriminating evidence or may assist the Defence in any other way? Lack of disclosure of such material may distort the overall picture being presented to the Chamber because the picture would omit parts of the story. In order to ascertain the truth, it is important that the evidence is presented fairly to the Chamber. For instance, if evidence is available that would put the credibility of a witness in question the Chamber should be made aware of this evidence in order to reach a reasonable and fair conclusion on the evidence.

24. This corresponds with the view of Mr. Louis Joinet, former magistrate and UN expert on human rights, who was called as an expert in a case before the ICTY. He held that the truth triumphs over other conflicting interests because the ultimate purpose of international justice is to find the truth. So if there are other conflicting rights, “you have to decide for the one which will allow you to get as close as possible to truth”.²⁴ Limitations on other rights are allowed “provided they do not impede justice from establishing the truth, which is its final objective”.²⁵
25. In an analogous scenario concerning article 54(3)(e) information which had come within the exclusive control of the Prosecution, the Appeals Chamber emphasized that the power to obtain this information must be exercised in a manner which is consistent with the obligation to disclose information which is relevant to the defence or potentially exculpatory: investigatory powers are thus intrinsically linked to disclosure obligations.²⁶

²⁴ *Prosecutor v. Florence Hartmann*, IT-02-54-R77.5-T, T. 16 June 2009, page 310, lines 10-13.

²⁵ *Prosecutor v. Florence Hartmann*, IT-02-54-R77.5-T, 16 June 2009, page 316, lines 7-8 and 12-14.

²⁶ Judgment on the appeal of the Prosecutor against the decision of Trial Chamber I entitled "Decision on the consequences of non-disclosure of exculpatory materials covered by Article 54(3)(e) agreements and the application to stay the prosecution of the accused, together with certain other issues raised at the Status Conference on 10 June 2008, 21 October 2008, ICC-01/04-01/06-1486.

Comparison with other jurisdictions

26. In light of the above considerations, it is unsurprising that the Special Tribunal for Lebanon recently amended Rule 113 so as to broaden disclosure obligations in respect of exculpatory material to apply equally to victim participants. Amended Rule 113 provides:

Disclosure of Exculpatory Material

(A) Subject to the provisions of Rules 116, 117 and 118, the Prosecutor shall, as soon as practicable, disclose to the Defence any information in his possession or actual knowledge, which may reasonably suggest the innocence or mitigate the guilt of the accused or affect the credibility of the Prosecutor's evidence.

(B) Victims participating in the proceedings shall have the same obligations as set out in paragraph (A). (added 30 October 2009)

27. The need for procedural safeguards to protect the defence is also reflected in civil law countries, which have adopted several accountability mechanisms to ensure that victims do not tender incriminating allegations, whilst withholding exculpatory information. Under article 82(1) of the French Code of Criminal Procedure, the parties possess the power to request the investigating judge to collect any information from persons, which may be necessary for the manifestation of the truth. This includes the power to request that the investigating judge obtain such information from a civil party.²⁷ Victims are only exempt from this direct disclosure obligation under article 82(1) of Code of Criminal Procedure if they participate purely as a witness under oath, and not as a civil party.²⁸

²⁷Article 82(1) of the Code de procédure pénale français provides that:

« Les parties peuvent, au cours de l'information, saisir le juge d'instruction d'une demande écrite et motivée tendant à ce qu'il soit procédé à leur audition ou à leur interrogatoire, à l'audition d'un témoin, à une confrontation ou à un transport sur les lieux, à ce qu'il soit ordonné la production par l'une d'entre elles d'une pièce utile à l'information, ou à ce qu'il soit procédé à tous autres actes qui leur paraissent nécessaires à la manifestation de la vérité. A peine de nullité, cette demande doit être formée conformément aux dispositions du dixième alinéa de l'article 81 ; elle doit porter sur des actes déterminés et, lorsqu'elle concerne une audition, préciser l'identité de la personne dont l'audition est souhaitée. Le juge d'instruction doit, s'il n'entend pas y faire droit, rendre une ordonnance motivée au plus tard dans le délai d'un mois à compter de la réception de la demande. Les dispositions du dernier alinéa de l'article 81 sont applicables. [...] ».

²⁸ Arrêt de la Chambre criminelle de la Cour de cassation en date du 25 mars 1997 (n° de pourvoi 96-83118).

28. The right to participate as a victim before human rights courts is also subject to corresponding disclosure obligations. The Court possesses the power to request any evidence from participating victims and complainants which it deems relevant to the proceedings.²⁹ Complainants, who wish to tender evidence before the Inter-American Court of Human Rights must also disclose information concerning the source, authenticity, and chain of custody.³⁰ The consequence of non-compliance would normally be the dismissal of the actual application. In this connection, the Court has stated that it “must preserve a fair balance between the protection of human rights, which is the ultimate purpose of the system, and the legal certainty and procedural equity that will ensure the stability and reliability of the international protection mechanism. In the instant case, to continue with a proceeding aimed at ensuring the protection of the interests of alleged victims in the face of manifest violations of the procedural norms established by the Convention itself would result in a loss of authority and credibility that are indispensable to organs charged with administering the system for the protection of human rights”.³¹

29. With respect to the European Court of Human Rights, Rule 44(A) of the Rules of the Court stipulates that the complainant has “a duty to cooperate fully in the conduct of the proceedings, and, in particular, to take such action within their power as the Court considers necessary for the proper administration of justice”.³² Rule 44(C) states that if a complainant “fails to adduce evidence or provide information requested by the Court or to divulge relevant important information of its own motion or otherwise fails to participate effectively in the proceedings, the Court may draw such inferences as it deems appropriate”.

²⁹ Article 47 of the Rules of Procedure provides that “The Court may, at any stage of the proceedings:

1. Obtain, on its own motion, any evidence it considers helpful and necessary. In particular, it may hear, in the capacity as alleged victim, witness, expert witness, or in any other capacity, any person whose declaration, testimony, or opinion it deems to be relevant.

2. Request the parties to provide any evidence within their reach or any explanation or statement that, in its opinion, may be useful” (Version as of 31 January 2009). <http://www.corteidh.or.cr/reglamento.cfm>

³⁰ The Court has concluded that documents submitted in the proceedings will not be taken into consideration if “they lack authentication, present defects and do not comply with the minimum formal requirements for admissibility as it is impossible to precisely establish their source, and also the procedure by which they were obtained. *Bámaca Velásquez Case*, Judgment of November 25, 2000, Inter-Am Ct. H.R. (Ser. C) No. 70 (2000) at para. 105. <http://www1.umn.edu/humanrts/iachr/C/70-ing.html>

³¹ *Cayara Case v. Peru*, Preliminary Objections, Judgment of 3 February 1993 Series C No. 14 at para 63.

³² Rules of Court, as amended July 2006, <http://www.echr.coe.int/NR/rdonlyres/D1EB31A8-4194-436E-987E-65AC8864BE4F/0/RulesOfCourt.pdf>.

Conclusion

30. On these grounds, the Defence requests that the victim participants and their representatives, in any event and in particular if given any role in presenting incriminating evidence, have an obligation to disclose to the Defence any evidence in their possession or control, which tends to show the innocence, or mitigate the guilt, of the accused, or which may affect the credibility of the incriminating evidence or is material to the preparation of the Defence.

Respectfully submitted,



David Hooper, Lead Counsel

Dated this 10th November 2009

At London, United Kingdom