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No.: ICC-01/04-01/07
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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 Additional Documents Provided by Applicants
a/0161/09, a/0215/09 and a/0267/09 and on the Request Related to Victim a/0120/09**

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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**Unrepresented Applicants
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Defence Support Section

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Detention Section

**Victims Participation and Reparations
Section**

Other

The Office of the Prosecutor ("Prosecution") respectfully submits its additional observations on the applications for participation in the case of *The Prosecutor v. Germain KATANGA and Mathieu NGUDJOLO CHUI* of Applicants a/0161/09, a/0215/09 and a/0267/09 pursuant to Rule 89(1) of the Rules of Procedure and Evidence ("Rules"). The Prosecution also hereby submits its comments regarding the request related to the deceased victim a/0120/09.

Background

1. On 16 February 2010, Trial Chamber II ("the Chamber") requested the Prosecution to file observations regarding three applications for participation as victims in the case of *The Prosecutor v. Germain KATANGA and Mathieu NGUDJOLO CHUI*, and the request related to the deceased victim a/0120/09.¹
2. According to the Appeals Chamber jurisprudence, a natural 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 at hand, i.e. by the issues, legal or factual, raised therein pursuant to Article 68(3) of the Statute.²
3. The criteria required for applicants to be granted the procedural status of victim in the present proceedings as described in detail by the Chamber in the "*Dispositif de la deuxième décision relative aux demandes de participation de victimes à la procédure*" are that (i) the applicant must be a natural or legal person; (ii) the applicant must have suffered harm; (iii) the crime from which the harm resulted must fall within

¹ ICC-01/04-01/07-1876, 16 February 2010, p. 6.

² Cf., for instance, *The Prosecutor v. Thomas Lubanga Dyilo*, 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, paras. 1-2 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.

the jurisdiction of the Court and must be the subject of the decision confirming the charges; (iv) there must be a causal link between the crime and the harm.³

Factual analysis of the applications

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

4. Applicants a/0161/09, a/0215/09 and a/0267/09 submitted additional documents as requested by the Chamber.⁴ These Applicants now meet all the requirements above and should therefore be granted the procedural status of victims.

2) Request related to the deceased victim a/0120/09

5. Following the request of the Chamber⁵, the person wishing to act on behalf of the deceased victim a/0120/09 provided more information regarding his relationship with the victim. From this supplementary information, it also becomes clear that the family of the victim a/0120/09 gave this person the mandate to act on behalf of the deceased victim. The Prosecution therefore submits that this person should be granted the right to act on behalf of the deceased victim a/0120/09.

³ ICC-01/04-01/07-1669, 23 November 2009, para. 8.

⁴ ICC-01/04-01/07-1347-Corr and ICC-01/04-01/07-1669.

⁵ ICC-01/04-01/07-1669, 23 November 2009, p. 8.

Request

6. For the foregoing reasons, the Prosecution requests Trial Chamber II to grant Applicants a/0161/09, a/0215/09 and a/0267/09 the procedural status of victim at the trial stage.
7. The Prosecution submits that the person wishing to act on behalf of the deceased victim a/0120/09 should be granted the right to do so.



Luis Moreno-Ocampo, Prosecutor

Dated this 23rd day of February 2010

At The Hague, The Netherlands