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No.: **ICC-01/04-01/07**

Date: **1 June 2010**

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
Applicant a/0390/09**

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

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**Unrepresented Applicants
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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 application for participation in the case of *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui* of Applicant a/0390/09, pursuant to Rule 89(1) of the Rules of Procedure and Evidence ("Rules").

Background

1. On 26 May 2010, Trial Chamber II ("the Chamber") requested the Prosecution to file observations regarding the application for participation as victim in the case of *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, of Applicant a/0390/09.¹
2. According to the Appeals Chamber jurisprudence, a natural person has the right to participate in proceedings under Article 68(3) of the Statute if: a) he/she qualifies as a victim under the definition of this term provided by Rule 85(a); b) his/her personal interests are affected by the proceedings at hand, *i.e.* by the issues, legal or factual, raised therein; c) the applicant's participation is appropriate at that particular stage of the proceedings; and d) the manner of participation is not prejudicial or inconsistent with the rights of the accused and a fair and an impartial trial.²
3. As described by the Chamber in the "*Dispositif de la deuxième décision relative aux demandes de participation de victimes à la procédure*", for a person to be granted the status of a victim under Rule 85: (i) the applicant must be a natural or legal person; (ii) the applicant must have suffered harm; (iii) the crime from which the

¹ ICC-01/04-01/07-2134, 26 May 2010, p. 5.

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.

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

4. In addition, the jurisprudence has held that for the purposes of participation in the pre-trial or trial proceedings in a particular case, the harm suffered by a victim must be linked with the charges: *i.e.* the charges confirmed against the accused or, at earlier stages in the proceedings, the offences alleged in the warrant of arrest or summons to appear or the document containing the charges.⁴

Factual analysis of the application

Re-examination of a/0390/09's Application in light of additional information provided

5. Applicant a/0390/09 submitted additional documents as requested by the Chamber.⁵ Namely, the Applicant provided precisions regarding the date of the Bogoro attack mentioned in his previous Application and consented to the Application being introduced by a third person on his behalf. Applicant a/0390/09 now meets all the requirements mentioned at paragraphs 2-4 above.

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

⁴ *Prosecutor v. Thomas Lubanga Dyilo*, Judgment on the appeals of The Prosecutor and The Defence against Trial Chamber I's Decision on Victims's Participation of 18 January 2008, ICC-01/04-01/06-1432, 11 July 2008, para. 2; *Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, Public Redacted Version of the 'Decision on the 97 Applications for Participation at the Pre-Trial Stage of the Case', ICC-01/04-01/07-579, 10 June 2008, paras 66-67; *Prosecutor v. Bahar Idriss Abu Garda*, Decision on the 34 Applications for Participation at the Pre-Trial Stage of the Case, ICC-02/05-02/09-121, 25 September 2009, paras 12-13.

⁵ ICC-01/04-01/07-1347-Corr and ICC-01/04-01/07-1669.

Request

6. For the foregoing reasons, the Prosecution requests Trial Chamber II to grant Applicant a/0390/09 the right to participate as victim in the trial proceedings of this case.



Luis Moreno-Ocampo, Prosecutor

Dated this 1st day of June 2010

At The Hague, The Netherlands