



Original: **French**

No.: **ICC-01/04-01/07**
Date: **16 February 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

**Decision Inviting the Prosecutor and the Defence to Submit Their Observations
on Certain Applications for Participation from Victims
(Rule 89(1) of the Rules of Procedure and Evidence)**

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

The Office of the Prosecutor

Mr Luis Moreno-Ocampo, Prosecutor
Ms Fatou Bensouda, Deputy Prosecutor
Mr Éric MacDonald, Senior Trial Lawyer

Counsel for Germain Katanga

Mr David Hooper
Mr Andreas O'Shea

Counsel for 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

**The Office of Public Counsel for
Victims**

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

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Ms Silvana Arbia

Defence Support Section

**Victims Participation and Reparations
Section**

Ms Fiona McKay

TRIAL CHAMBER II of the International Criminal Court (“the Chamber” and “the Court” respectively), acting pursuant to article 68 of the Rome Statute (“the Statute”), rule 89(1) of the Rules of Procedure and Evidence and regulation 86 of the Regulations of the Court, decides as follows.

1. On 26 February 2009, the Chamber decided on the procedure to be followed by the Victims Participation and Reparations Section (VPRS) in order to process the applications for participation and, more specifically, the section’s role in the preparation of redacted versions of applications for participation before they are disclosed to the Prosecutor and to the Defence.¹
2. On 20 March 2009, the Registry sent the Chamber a report on the establishment of a system for redacting applications for participation from victims. Appended to this report is a table containing the information which, according to the VPRS, may be redacted because it constitutes information identifying the applicants.²
3. On 31 July 2009, the Chamber issued the dispositive part of its decision on the 345 applications for participation and, on that occasion, granted 288 applicants the status of victims participating in the proceedings.³ The grounds for that decision were made public on 23 September 2009.⁴
4. On 23 November 2009, the Chamber authorised a further 14 victims to participate in the proceedings and it requested seven other applicants as well as the person wishing to participate in the proceedings on behalf of a

¹ *Decision on the treatment of applications for participation*, 26 February 2009, ICC-01/04-01/07-933-tENG, paras. 46 to 54 (“the Decision of 26 February 2009”).

² Registry, “Rapport du Greffe sur la mise en place d’un régime d’expurgation des demandes de participation de victimes, conformément à la décision du 26 février 2009” (ICC-01/04-01/07-933), 20 March 2009, ICC-01/04-01/07-974-Conf-Exp with *ex parte* confidential annex.

³ *Dispositif de la décision relative aux 345 demandes de participation de victimes à la procédure*, 31 July 2009, ICC-01/04-01/07-1347; *Corrigendum du dispositif de la décision relative aux 345 demandes de participation de victimes à la procédure*, 5 August 2009, ICC-01/04-01/07-1347-Corr.

⁴ *Motifs de la décision relative au traitement de 345 demandes de participation de victimes à la procédure*, 23 September 2009, ICC-01/04-01/07-1491-Red with *ex parte* confidential annex.

deceased victim to provide it with additional details by 11 January 2010.⁵ The grounds for that decision were made public on 22 December 2009.⁶

5. The VPRS transmitted to the Chamber a report containing the additional documents requested on 11 January 2010.⁷ The translations of some of those documents were filed on 9 February 2010.⁸
6. On 19 January 2010, Mr Gilissen filed a request asking the Chamber to grant him “[TRANSLATION] on a very exceptional basis” an extension of time until 26 January 2010 to respond to the requests for additional information regarding Applicants 0114/08 and 0390/09.⁹ Taking into consideration the difficulties encountered in locating these two applicants as described by the legal representative, the Chamber granted this request by e-mail dated 21 January 2010. On 28 January 2010, Mr Gilissen asked for a further extension of time limit, citing the continuing difficulties he was experiencing in contacting these two persons¹⁰ and, by e-mail dated 29 January 2010, the Chamber granted this second request, setting a new time limit for 3 February 2010. The Chamber notes, however, that to date Mr Gilissen has still not filed the additional information requested.

⁵ *Dispositif de la deuxième décision relative aux demandes de participation de victimes à la procédure*, 23 November 2009, ICC-01/04-01/07-1669.

⁶ *Motifs de la deuxième décision relative aux demandes de participation de victimes à la procédure*, 22 December 2009, ICC-01/04-01/07-1737 with *ex parte* confidential annex.

⁷ Registry, “Cinquième rapport du Greffe sur les informations supplémentaires reçues concernant des demandes de participation de victimes”, 11 January 2010, ICC-01/04-01/07-1756-Conf-Exp with *ex parte* confidential annexes 1 to 4.

⁸ Transmission de traductions en complément du ‘Cinquième rapport du Greffe sur les informations supplémentaires reçues concernant des demandes de participation de victimes’ (ICC-01/04-01/07-1756-Conf-Exp), 9 February 2010, ICC-01/04-01/07-1850-Conf-Exp with *ex parte* confidential annexes 1 and 2.

⁹ Legal representative of the victims of the group of former child soldiers “*Requête du représentant légal des demandeurs a/0114/08 et a/0390/09 visant à informer la Chambre de la survenance d’un élément nouveau et postulant l’obtention exceptionnelle d’un délai permettant la collecte d’informations concernant la situation des victimes*”, 19 January 2010, ICC-01/04-01/07-1775.

¹⁰ Legal representative of the victims of the group of former child soldiers “*Requête du représentant légal des demandeurs a/0114/08 et a/0390/09 visant à informer la Chambre de l’évolution de la situation des demandeurs et postulant l’obtention d’un délai complémentaire permettant la collecte et la communication des informations concernant ces demandeurs*”, 28 January 2010, ICC-01/04-01/07-1798.

7. In respect of Applicants a/0452/09 and a/0160/09, their legal representatives have indicated that they have not yet been able to contact them.¹¹
8. The Chamber notes, however, that Applicants a/0161/09, a/0215/09 and a/0267/09 have completed their applications. The Chamber also notes that the additional information requested in respect of Victim a/0120/09 has also been provided. The applications for participation of Applicants a/0114/08, a/0160/09, a/0390/09 and a/0452/09 remain incomplete in the absence of the requested information.
9. The Chamber requests the VPRS to proceed with the redactions in all of the additional documents, following prior consultation with the Victims and Witnesses Unit, in accordance with the Decision of 26 February 2009 and the Report of the Registry of 20 March 2009.¹²
10. The Chamber therefore orders the Registry to transmit to the Prosecutor and to the Defence the redacted versions of the additional documents transmitted to the Chamber on 11 January 2010.¹³

FOR THESE REASONS,

ORDERS the Registry to disclose to the Prosecutor and to the Defence by 4.00 p.m. on 17 February 2010 a redacted version of the additional documents provided by Applicants a/0161/09, a/0215/09 and a/0267/09 as well as the person wishing to participate in the proceedings on behalf of Victim a/0120/09;

ORDERS the Prosecutor and the two Defence teams to make their observations as to whether the status of victim participating in the proceedings should be

¹¹ ICC-01/04-01/07-1756-Conf-Exp, paras. 8 and 9.

¹² Decision of 26 February 2009; ICC-01/04-01/07-974-Conf-Exp with *ex parte* confidential annex.

¹³ ICC-01/04-01/07-1756-Conf-Exp with *ex parte* confidential annexes 1 to 4; ICC-01/04-01/07-1850-Conf-Exp with *ex parte* confidential annexes 1 and 2.

granted to the three applicants referred to in the preceding paragraph and on the application of Victim a/0120/09 by 4.00 p.m. on 24 February 2010;

ORDERS the parties to refer to the said three applicants and the said victim by the numbers that have been assigned to them by the Registry; and

ORDERS the legal representatives of the four applicants a/0114/08, a/0160/09, a/0390/09 and a/0452/09 who have not submitted the additional documents requested by the Chamber to file this information as soon as possible.

Done in both English and French, the French version being authoritative.

_____[signed]_____
Judge Bruno Cotte
Presiding Judge

_____[signed]_____
Judge Fatoumata Dembele Diarra

_____[signed]_____
Judge Christine Van den Wyngaert

Dated this 16 February 2010
At The Hague, the Netherlands