

**Cour
Pénale
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**International
Criminal
Court**

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No.: ICC-01/04-01/07
Date: 23 September 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**

Confidential

**Prosecution's Observations on the Legal Representative's Requête aux Fins
d'Autorisation de Comparution des Victimes
a/0381/09, a/0018/09, a/0191/09 et pan0363/09 agissant au nom de a/0363/09**

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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Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

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Other

The Office of the Prosecutor ("Prosecution") respectfully submits its observations on the Legal Representative's « Requête aux Fins d'Autorisation de Comparution des Victimes a/0381/09, a/0018/09, a/0191/09 et pan0363/09 agissant au nom de a/0363/09 » ("Request") filed on 15 September 2010. In the Request, M^e Fidel Luvengika Nsita, the Legal Representative acting for the principal group of victims, moves Trial Chamber II to have four victims appear before the court, in the case of *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*. To that end, the Legal Representative requests that redactions be applied to the statements of said victims, which are appended as Annexes A-D to the LR's Request. In light of the provisions of the Statute and the Rules, and the jurisprudence to that effect, the Prosecution fully supports the Legal Representative's Request.

Background

1. In its filing, the Legal Representative requests to have four victims which the Legal Representative has selected out of the 354 persons who have been granted victims' status in the current proceedings. The Legal Representative contends that to hear victims a/0381/09, a/0018/09, a/0191/09 and pan0363/09 (who represents a/0363/09, a child), will provide the Chamber with additional factual elements necessary for the determination of the truth.¹ Furthermore, according to the Legal Representative, such testimony will give the Chamber the opportunity to hear the views and concerns of the victims, pursuant to Article 68 of the Statute and, in particular, to give them an opportunity to describe the consequences of the attack on their lives.² The Legal Representative argues that the expected testimony of these victims conform to the criteria set by the Chamber.³

¹ ICC-01/04-01/07-2393-Conf, 15 September 2010, para. 11.

² ICC-01/04-01/07-2393-Conf, 15 September 2010, para. 12.

³ ICC-01/04-01/07-2393-Conf, 15 September 2010, para. 13.

Analysis of the Legal Representative's Request

Conditions for victims a/0381/09, a/0018/09, a/0191/09 and pan0363/09 (who represents a/0363/09, a child), to testify are satisfied

The conditions set by the Directions

2. As the Legal Representative notes, in its "Directions for the conduct of the proceedings and testimony in accordance with Rule 140" ("Directions"),⁴ the Trial Chamber has outlined the conditions for victims to give oral testimony: applications on behalf of victims will be granted only when their testimony can make a genuine contribution to the ascertainment of the truth.⁵ The overriding concern guiding the Chamber will be that such testimony will take place in an expeditious manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.⁶ In so doing, the Chamber subjected the Legal Representatives' possibility to call witnesses to three important limitations: that the victim's participation through his/her testimony in person does not infringe the accused's right to be tried without undue delay;⁷ the calling of witnesses by Legal Representatives does not, in effect, transform them into auxiliary prosecutors;⁸ and the victims do not testify anonymously vis-à-vis the Defence.⁹
3. In its Directions, the Trial Chamber has determined that, after giving due weight to these pre-conditions, it may authorize Legal Representatives to call their clients to testify in person before the Court and give evidence under oath, after the

⁴ ICC-01/04-01/07-1665, 20 November 2009, para. 19.

⁵ ICC-01/04-01/07-1665, 20 November 2009, para. 20.

⁶ ICC-01/04-01/07-1665, 20 November 2009, para. 21.

⁷ ICC-01/04-01/07-1665, 20 November 2009, para. 22.a.

⁸ ICC-01/04-01/07-1665, 20 November 2009, para. 22.b.

⁹ ICC-01/04-01/07-1665, 20 November 2009, para. 22 c.

Prosecution has concluded its case and insofar as it does not undermine the integrity of the proceedings.¹⁰

4. When submitting an application for a victim to be called to testify, the Legal Representative must provide, inter alia, the Chamber and the parties with a signed statement by the victim, which contains a comprehensive summary of the testimony to be given by the victim,¹¹ and avoid applying unnecessary redactions in said statement in consultation with the Victims and Witnesses Unit.¹²
5. When evaluating an application to have a victim testify, the Chamber will take into consideration for instance, whether: the proposed testimony constitutes repetitive evidence already tendered by parties, the topics to be covered by victims' testimony are sufficiently closely related to issues the Chamber must consider in its assessment of the charges brought against the accused, and the victim's testimony represents a commonality of experience among the group of victims and will likely bring new information relevant to issues which the Chamber must consider in its assessment of charges.

The application to have victims testify complies with conditions imposed by the Directions

6. Pursuant to the Directions, the Legal Representative provided, in its Request, a summary of the four proposed testimonies pointing out their relevance in relation to the charges brought against the accused. Each of the four testimonies, although representative of a common experience of the group of victims of Bogoro, provides elements or details that shed an additional light on the case before this Chamber,¹³ such as, for instance, the practical and emotional consequences the attack had on the civilian population;¹⁴ details of events at the Bogoro Institute

¹⁰ ICC-01/04-01/07-1665, 20 November 2009, para. 24.

¹¹ ICC-01/04-01/07-1665, 20 November 2009, paras. 26 & 28.

¹² ICC-01/04-01/07-1665, 20 November 2009, para. 27..

¹³ ICC-01/04-01/07-2393-Conf, 15 September 2010, paras 30-62.

¹⁴ See ICC-01/04-01/07-2393-Conf, 15 September 2010, paras. 36, 41, 46, 53 and 62.

during the days preceding the attack;¹⁵ the involvement of the Red Cross after the attack;¹⁶ the distinction made between Hemas and non-Hemas during the attack by the attackers, as explained by a civilian who was neither targeted nor acted in support of the perpetrators.¹⁷

7. Such testimonies contribute to ascertaining the truth of the events which occurred in Bogoro in 2003 and are not prejudicial to or inconsistent with the rights of the accused. In fact, the number of witnesses, the length of their testimony (each estimated to last less than four hours¹⁸), the timing of this application militate for their appearance before the court, as it provides sufficient notice for the Defence to prepare. The Prosecution also argues that having the four victims testify under oath, non-anonymously to the Defence, and subjecting them to cross-examination by the Defence, shall provide the necessary safeguards to ensure that the right of the accused to a fair and impartial trial is protected.

Redactions are proportionate to meet the security needs of the victims

8. The Prosecution supports the redactions requested by the Legal Representative and listed by categories in the Request.¹⁹ They are limited and concern the names of the victims' relatives (parents, children and partners), their current location and the names of third parties.
9. These proposed redactions conform to the Victims and Witnesses Unit's recommendations and espouse the principle set by the Chamber in its Directions. In the "Victims and Witnesses Unit's report on the risk assessment of participating victims",²⁰ this organ "supports maintaining the non-disclosure of

¹⁵ ICC-01/04-01/07-2393-Conf, 15 September 2010, para. 39.

¹⁶ ICC-01/04-01/07-2393-Conf, 15 September 2010, para. 36.

¹⁷ ICC-01/04-01/07-2393-Conf, 15 September 2010, paras. 54-62.

¹⁸ ICC-01/04-01/07-2393-Conf, 15 September 2010, para. 23.

¹⁹ ICC-01/04-01/07-2393-Conf, 15 September 2010, para. 69.

²⁰ ICC-01/04-01/07-1757-Conf, 11 January 2010.

information regarding the current location of the participating victims to the parties and participants".²¹

10. Regarding redactions to the names of family members and third parties, the Trial Chamber stated in its Directions that "if it is necessary to protect the safety, physical or psychological well-being of the victims or third persons who are implicated by the participation of a victim, the Chamber may authorise redactions".²²

11. The proposed redactions are indeed necessary, since without them possible procedural protective measures (in case the victims may appear before the Chamber in person) might be ineffective. Nor will they unduly prejudice the Defence in the preparation of their case.

Request

12. For the foregoing reasons, the Prosecution, supports the Legal Representative's Request and submits that it should be granted.



Luis Moreno-Ocampo, Prosecutor

Dated this 23rd day of September 2010

At The Hague, The Netherlands

²¹ ICC-01/04-01/07-1757-Conf, 11 January 2010, para. 10.

²² ICC-01/04-01/07-1665, 20 November 2009, para. 27.