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

Date: 4 May 2009

TRIAL CHAMBER II

**Before: Judge Bruno Cotte, Presiding Judge
Judge Fatoumata Dembele Diarra
Judge Hans-Peter Kaul**

**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 Parties to Submit their Observations on Applications for
Participation
(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 the Defence of 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

Ms Carine Bapita Buyangandu
 Mr Joseph Keta
 Mr Jean-Louis Gilissen
 Mr Hervé Diakiese
 Mr Jean Chrysostome Mulamba
 Nsokoloni
 Mr Fidel Nsita Luvengika
 Mr Vincent Lurquin
 Ms Flora Ambuyu Andjelani

Legal Representatives of the Applicants

**The Office of Public Counsel for
 Victims**

Ms Paolina Massida

**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 16 December 2008, the Registry informed the Chamber that it had received around 94 new applications for participation which, in the Registry’s view, have a direct link to the charges confirmed by Pre-Trial Chamber I in this case.¹ On 19 December 2008,² in accordance with the Chamber’s instructions, the Registry transmitted to the latter 90 other applications for participation.
2. On 26 February 2009, the Chamber laid down the procedure to be followed concerning the treatment of applications for participation by the Victims Participation and Reparations Section (VPRS), in particular the modalities of the procedure for redacting applications prior to their disclosure to the parties.³
3. On 20 March 2009, the Registry submitted to the Chamber a report on the establishment of a redaction regime for victims’ applications for participation. Annexed to this report, which sets out the criteria used by VPRS for this purpose, is a table indicating the information which, in the latter’s view, is liable to be redacted, since it constitutes information identifying applicants.⁴
4. In accordance with the procedure set out in the Decision of 26 February 2009, VPRS transmitted to the Chamber several reports containing its proposed redactions.

¹ Registry, “*Rapport complémentaire du Greffe sur diverses questions liées au traitement des demandes de participation conformément à l’ordonnance du 10 décembre 2008*”, 16 December 2008, ICC-01/04-01/07-796-Conf.

² Registry, “Registry’s First Report on Applications for Participation pursuant to Regulation 86(5) of the Regulations of the Court”, 19 December 2008, ICC-01/04-01/07-803-Conf-Exp-tENG, with confidential, *ex parte* Annexes 1 to 92.

³ *Decision on the treatment of applications for participation*, 26 February 2009, ICC-01/04-01/07-933-tENG, paras. 46 to 54 (“Decision of 26 February 2009”).

⁴ 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 confidential, *ex parte* annex.

An initial report was submitted on 3 April 2009.⁵ It concerned 97 applications for participation, including seven applications filed with Pre-Trial Chamber I on 26 May 2008⁶ and supplemented on 2 June 2008⁷ on which no decision had been made. An additional report concerning one applicant represented by the Office of Public Counsel for Victims was filed on 8 April 2009.⁸ The 97 applicants wish to be granted the status of participants in the proceedings in this case.

5. After a careful assessment of the redacted version of each application for participation, the Chamber considers that they may be disclosed to the parties for their observations.

6. The Chamber recalls that, under article 68(1) of the Statute, the Court has an obligation to protect, inter alia, the safety and physical and psychological well-being of victims. Hence the Chamber must take all appropriate measures to protect them, particularly in view of the existence of real security risks on the territory of the Democratic Republic of the Congo.

7. The Chamber considers that all of the redactions now proposed, which it has reviewed in accordance with its Decision of 26 February 2009, satisfy the principle of proportionality, since they are necessary and constitute the only possible and sufficient measure. It considers that, in order to protect applicants effectively at this stage of the authorisation procedure, it must order that their identities and identifying information are not to be disclosed until it has ruled on their status as participants in the proceedings. In the Chamber's view, the proposed redactions fall within the limits defined in paragraphs 49 and 51 of the Decision of 26 February

⁵ Registry, "Filing of proposed redactions on victim's applications in accordance with decision ICC-01/04-01/07-933", 3 April 2009, ICC-01/04-01/07-1023-Conf-Exp, with confidential, *ex parte* Annexes 1 to 97.

⁶ Registry, "Transmission de 97 demandes de participation", 26 May 2008, ICC-01/04-01/07-510-Conf-Exp-Corr, with confidential, *ex parte* Annexes 1 to 97.

⁷ Registry, "Report on Victims' Applications under Regulation 86.5, Regulations of the Court", 2 June 2008, ICC-01/04-01/07-542-Conf-Exp, with confidential, *ex parte* Annexes 1 to 9.

⁸ Registry, "Rapport supplémentaire du Greffe sur le rapport proposant les expurgations des demandes de participation des victimes conformément à la décision ICC-01/04-01/07-933", 8 April 2009, ICC-01/04-01/07-1048-Conf-Exp, with confidential, *ex parte* Annexes 1 to 97.

2009. Lastly, the Chamber notes that these proposed redactions were made after prior consultation with the Victims and Witnesses Unit, in accordance with paragraph 48 of the Decision of 26 February 2009.

FOR THESE REASONS,

DECIDES that, at this stage of the procedure, redactions of information enabling applicants to be identified are necessary and constitute the only measures capable of ensuring respect for their privacy and of guaranteeing their safety and physical well-being;

ORDERS the Registrar to disclose redacted copies of the 97 applications for participation to both Defence teams and to the Prosecutor, no later than 4 p.m. on 5 May 2009;

DECIDES that both Defence teams and the Prosecutor have until 4 p.m. on 19 May 2009 to file their observations on whether or not the status of participant in the proceedings should be granted to the 97 applicants;

ORDERS the parties to refer to the applicants by the number assigned to them by the Registry.

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

[signed]

Judge Bruno Cotte
Presiding Judge

[signed]

Judge Fatoumata Dembele Diarra

[signed]

Judge Hans-Peter Kaul

Dated this 4 May 2009
At The Hague, The Netherlands