



Original: **French**

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

Date: **12 June 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

**Fourth 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 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) for handling applications for participation, in particular the modalities of the procedure for redacting applications prior to their disclosure to the parties.¹

2. 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.²

3. 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. An initial report was submitted on 3 April 2009.³ It concerned 97 applications for participation, including seven applications filed with Pre-Trial Chamber I on 26 May 2008⁴ and supplemented on 2 June 2008⁵ on which no decision had been made. An additional report concerning one applicant represented by the

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 confidential *ex parte* annex.

³ Registry, “*Filing of proposed redactions on victims’ 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 I to 97.

⁴ Registry, “*Transmission de 97 demandes de participation*”, 26 May 2008, ICC-01/04-01/07-510-Conf-Exp-Corr with confidential *ex parte* Annexes I to 97.

⁵ 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.

Office of Public Counsel for Victims was filed on 8 April 2009.⁶ Those 97 applications were disclosed to the parties for their observations.⁷

4. On 21 April 2009, a second report was submitted to the Chamber, in which the Registry stated that it had received 70 new applications for participation completed in accordance with the criteria set forth by the Chamber in its Decision of 26 February 2009.⁸ These 70 applications were disclosed to the parties for their observations.⁹

5. A third¹⁰ and fourth¹¹ report were submitted to the Chamber on 4 and 8 May 2009. In those reports the Registry informed the Chamber of the receipt of 54 new applications for participation, of which 50 were complete,¹² and of the receipt of 45 new applications for participation, of which 37 were complete.¹³ The Chamber authorised the disclosure of only 87 applications to the parties for their observations.¹⁴ Of the remaining applications requiring completion, only seven were forwarded by the Registry to the Chamber on 29 May 2009.¹⁵

6. A fifth report was submitted to the Chamber on 20 May 2009, in which the Registry informed the Chamber of the receipt of 74 new applications for

⁶ 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 confidential ex parte Annexes I to 97.

⁷ Décision invitant les parties à présenter leurs observations relatives aux demandes de participation (règle 89-1 du Règlement de procédure et de preuve), 4 May 2009, ICC-01/04-01/07-1094.

⁸ Registry, “Deuxième rapport du Greffe sur des demandes de participation en application de la norme 86-5 du Règlement de la Cour”, 21 April 2009, ICC-01/04-01/07-1066-Conf-Exp.

⁹ Deuxième décision invitant les parties à présenter leurs observations relatives aux demandes de participation (règle 89-1 du Règlement de procédure et de preuve), 12 May 2009, ICC-01/04-01/07-1129.

¹⁰ Registry, “Troisième rapport du Greffe sur des demandes de participation en application de la norme 86-5 du Règlement de la Cour”, 4 May 2009, ICC-01/04-01/07-1092-Conf-Exp.

¹¹ Registry, “Quatrième rapport du Greffe sur des demandes de participation en application de la norme 86-5 du Règlement de la Cour”, 8 May 2009, ICC-01/04-01/07-1121-Conf-Exp.

¹² ICC-01/04-01/07-1092-Conf-Exp, para. 4.

¹³ ICC-01/04-01/07-1121-Conf-Exp, para. 5.

¹⁴ Troisième décision invitant les parties à présenter leurs observations relatives aux demandes de participation (règle 89-1 du Règlement de procédure et de preuve), 19 May 2009, ICC-01/04-01/07-1151.

¹⁵ Registry, “Rapport sur les informations supplémentaires reçues sur les demandes de participation enregistrées avec les Troisième et Quatrième rapports du Greffe sur des demandes de participation de victimes”, 29 May 2009, ICC-01/04-01/07-1181-Conf-Exp.

participation.¹⁶ All 74 applicants are seeking the status of participant in the proceedings in this case.

7. Furthermore, on 4 May 2009 the Registry submitted to the Chamber a report on the 40 applications rejected by the Pre-Trial Chamber,¹⁷ four of which were the subject of proposals for redactions relating to additional documents.¹⁸

8. The Chamber recalls that, in accordance with its Decision of 26 February 2009, it shall assess the applications rejected by the Pre-Trial Chamber only “if the applicants file a new application, duly completed” in accordance with the criteria set out by the Chamber.¹⁹

9. Accordingly, of the 40 applications rejected by the Pre-Trial Chamber, only four appear to comply with the Decision of 26 February 2009. In effect, the additional documents produced by those four applicants may, in the Chamber’s opinion, be treated as new applications, and it considers it necessary for the parties to have the opportunity to submit their observations on the content of those documents.

10. The Chamber further notes that all of the proposals for redactions have been put forward after prior consultation with the Victims and Witnesses Unit, in accordance with paragraph 48 of the Decision of 26 February 2009.

11. 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,

¹⁶ Registry, “Cinquième rapport du Greffe sur des demandes de participation en application de la norme 86-5 du Règlement de la Cour”, 20 May 2009, ICC-01/04-01/07-1159-Conf-Exp.

¹⁷ Registry, “Rapport du Greffe sur des demandes de participation rejetées par la Chambre Préliminaire”, 4 May 2009, ICC-01/04-01/07-1104-Conf-Exp; See also the corrigendum filed on 8 May 2009, ICC-01/04-01/07-1104-Conf-Exp-Corr.

¹⁸ Registry, “Dépôt de propositions d’expurgations de documents supplémentaires reçus sur des demandes de participation de victimes conformément à la décision ICC-01/04-01/07-933”, 4 May 2009, ICC-01/04-01/07-1103-Conf-Exp; See also the corrigendum filed on 8 May 2009, ICC-01/04-01/07-1103-Conf-Exp-Corr.

¹⁹ ICC-01/04-01/07-933-tENG, para. 14.

particularly in view of the existence of real security risks on the territory of the Democratic Republic of the Congo.

12. After a careful assessment of the redacted version of each application for participation, the Chamber notes that the 74 applications included in the fifth Registry report,²⁰ the four applications rejected by the Pre-Trial Chamber²¹ and the seven applications containing additional documents²² meet the criteria for a complete application as set out in the Decision of 26 February 2009.²³ In the Chamber's opinion, only these 85 applications may be disclosed to the parties for their observations.

13. 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 2009.

14. Lastly, since the parties have already received redacted versions of the applications rejected by the Pre-Trial Chamber, to which they had already submitted their observations,²⁴ the Chamber considers that only the documents supplementing those applications must be forwarded to the parties for their observations.

²⁰ ICC-01/04-01/07-1159-Conf-Exp.

²¹ ICC-01/04-01/07-1103-Conf-Exp-Corr.

²² ICC-01/04-01/07-1181-Conf-Exp.

²³ ICC-01/04-01/07-933-tENG, para. 28.

²⁴ Office of the Prosecutor, "Prosecution's Observations on the Applications for Participation in the Proceedings of Applicants a/0327/07 to a/0337/07 and a/0001/08, 6 March 2008, ICC-01/04-01/07-250-Conf-Exp; Germain Katanga's Defence, "Defence observations of the 12 applications for participation as victims", 7 March 2008, ICC-01/04-01/07-253; Mathieu Ngudjolo's Defence, "*Observations de la*

FOR THESE REASONS, THE CHAMBER

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 74 applications for participation contained in her fifth report²⁵ to both Defence teams and to the Prosecutor by 4 p.m. on 15 June 2009;

ORDERS the Registrar to disclose redacted copies of the additional documents relating to applications a/0010/08, a/0014/08, a/0111/08, and a/0112/08 to both Defence teams and to the Prosecutor by 4 p.m. on 15 June 2009;

ORDERS the Registrar to disclose redacted copies of the additional documents relating to applications a/0607/08, a/0160/09, a/0161/09, a/0162/09, a/0268/09, a/0306/09, and a/0315/09 to both Defence teams and to the Prosecutor by 4 p.m. on 15 June 2009;

DECIDES that both Defence teams and the Prosecutor have until 4 p.m. on 24 June 2009 to file their observations on whether or not the status of participant in the proceedings should be granted to the 85 applicants;

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

Défense Relatives aux 12 Demandes de Participation a/0327/07 à a/0337/07 et a/0001/08", 20 March 2008, ICC-01/04-01/07-332; Mathieu Ngudjolo's Defence, "Observations de la Défense relatives à la question de la recevabilité de demandes de participation de présumées victimes", 4 June 2008, ICC-01/04-01/07-548-Conf; Office of the Prosecutor, "Prosecution's Observations on the Applications for Participation in the Proceedings of Applicants a/0009/08 to a/0016/08 and a/0022/08 to a/0112/08, 4 June 2008, ICC-01/04-01/07-549-Conf-Exp; Germain Katanga's Defence, "Defence Observations on 97 applications for participation as victims", ICC-01/04-01/07-550-Conf-Exp.

²⁵ ICC-01/04-01/07-1159-Conf-Exp.

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

[signed]

Judge Bruno Cotte
Presiding Judge

[signed]

Judge Fatoumata Dembele Diarra

[signed 12/6/09]

Judge Hans-Peter Kaul

Dated this 12 June 2009

At The Hague, The Netherlands