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No.: **ICC-01/04-01/07**
Date: **12 November 2009**

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

**Corrigendum to the “Decision on the Disclosure to the Parties of the Identities of
the Victims” (ICC-01/04-01/07-1607)**

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 the Defence of 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 and Witnesses Unit

Others

**Victims Participation and Reparations
Section**

Ms Fiona McKay

TRIAL CHAMBER II of the International Criminal Court (respectively, “the Chamber” and “the Court”), acting pursuant to articles 64 and 68 of the Statute of Rome (“the Statute”) and rules 86 and 87 of the Rules of Procedure and Evidence (“the Rules”), decides as follows.

I. Procedural Background

1. On 31 July 2009, the Chamber issued the operative part of its decision on 345 requests for participation, according the status of victim participating in the proceedings to 288 applicants. It further requested 45 applicants to provide additional information, refused leave to participate to five others, and decided to join the applications of seven others to those of victims already authorised to participate.¹

2. In the reasons for this decision, filed on 23 September 2009, the Chamber stated that it would rule at a later date on disclosure to the parties of the identities of applicants who had not asked to remain anonymous if they were granted victim status.²

3. On 7 September 2009, the Defence for Germain Katanga submitted an application requesting the disclosure of the identities of the applicants having being granted victim status who did not object to such disclosure.³ On 9 September 2009, the Defence for Mathieu Ngudjolo associated itself with the application by the Defence for Germain Katanga.⁴

¹ *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.

² *Grounds for the Decision on the 345 Applications for Participation in the Proceedings Submitted by Victims*, 23 September 2009, ICC-01/04-01/07-1491-Red-tENG, para. 26.

³ Defence for Germain Katanga, “Defence Motion Requesting the Disclosure of the Identity of Applicants Having Obtained the Status of Victims”, 7 September 2009, ICC-01/04-01/07-1461.

⁴ Defence for Mathieu Ngudjolo, “*Adjonction de la Défense de Mathieu Ngudjolo à la Requête de la Défense de Germain Katanga*”, ICC-01/04-01/07-1461, 9 September 2009, ICC-01/04-01/07-1463.

4. On 22 September 2009, the Legal Representative for the main group of victims, Mr Fidel Nsita Luvengika, asked the Chamber to extend the time limit for his response in order to give him the necessary time to meet all the victims authorised to participate in the proceedings, to ask them if they agreed to having their identities disclosed, and to check with the Office of the Prosecutor whether some of them were also Prosecution witnesses.⁵

5. At a status conference on 1 October 2009, the Chamber asked the Legal Representatives of the Victims, Mr Jean-Louis Gilissen and Mr Fidel Nsita Luvengika, to confirm to it that the victims who had stated that they did not object to their identities being disclosed to the parties still consented to such disclosure.⁶ The Chamber indicated that it wished to receive a response by 20 October 2009.⁷

6. On that date, Mr Gilissen,⁸ for the “child-soldiers” group of victims, and Mr Fidel Nsita Luvengika, for the main group of victims, effectively filed their responses. Mr Luvengika’s response was submitted in the form of an Addendum to his filing of 22 September 2009.⁹

II. Arguments of the parties and of the participants

7. In its application, the Defence for Germain Katanga asks the Chamber to order disclosure of the identities of applicants having obtained victim status who have not objected to such disclosure.¹⁰

⁵ “Réponse du Représentant légal commun du groupe principal de victimes aux requêtes 1461 et 1463 des équipes de Défense sur la divulgation de l’identité des victimes”, 22 September 2009, ICC-01/04-01/07-1490, para. 16.

⁶ ICC-01/04-01/07-T-71-Red-FRA, p. 6, lines 18-24.

⁷ Ibid., p.8, lines 7-9.

⁸ “Réponse du Représentant légal des victimes 0315/09 et 0316/09 à la demande de la Défense visant à la communication de l’identité desdites victimes”, 20 October 2009, ICC-01/04-01/07-1543.

⁹ “Addendum à la Réponse du Représentant légal commun du groupe principal de victimes aux requêtes 1461 et 1463 des équipes de Défense sur la divulgation de l’identité des victimes”, 20 October 2009, with confidential ex parte Annexes I, II, III and IV available only to the Registry, ICC-01/04-01/07-1544.

¹⁰ ICC-01/04-01/07-1461, para. 6.

8. For its part, the Defence for Mathieu Ngudjolo considers that disclosure of the identities of the victims is necessary in order that it may have available to it sufficiently in advance of the commencement of the trial, pursuant to article 64(3)(c) of the Statute, all of the documents and information not previously disclosed, thus enabling the Defence teams to prepare adequately for the defence of their clients.¹¹

9. In his response, Mr Gilissen states that “[TRANSLATION] the real potential risk to [Victims a/0315/09 and a/0316/09] if their identities were to be disclosed is no longer the same as it was at the time when they agreed to possible conditional disclosure”.¹² He further states that the accused’s Defence teams “[TRANSLATION] have cited no reasons, or a specific procedural intention, in relation to Victims a/0315/09 and a/0316/09, which might cause it to be feared that non-disclosure to the Defence of the identities of these two victims is, or could be, prejudicial to the rights of the accused’s Defence or to the requirements of a fair and impartial trial”.¹³ He furthermore undertakes to inform the Chamber and the parties of any significant development in the situation of these victims in the event that they should decide to disclose their identities. Finally, he expresses the wish that the Victims and Witnesses Unit, in the event that the Chamber should decide to lift the anonymity currently enjoyed by Victims a/0315/09 and a/0316/09, inform the Chamber of the protective measures necessary to guarantee their security.¹⁴

10. In his Addendum, Mr Luvengika informs the Chamber that the victims whom he met on his visit to the Democratic Republic of the Congo (“DRC”) confirmed that they consented to disclosure of their identities to the Defence lawyers and to the Office of the Prosecutor, but that they refused any disclosure to the general public.¹⁵

¹¹ ICC-01/04-01/07-1463, paras. 10 to 12.

¹² ICC-01/04-01/07-1543, p. 5.

¹³ *Idem*.

¹⁴ *Ibid.*, pp. 5 and 6.

¹⁵ ICC-01/04-01/07-1544, para. 5.

III. The Chamber's analysis

11. The Chamber notes the various arguments put forward in their applications by the two Defence teams. It will first analyse the situation of the victims represented by Mr Luvengika, and will then address that of the victims represented by Mr Gilissen.

a. Victims represented by Mr Fidel Nsita Luvengika

12. The Chamber notes that Mr Luvengika, common Legal Representative of the main group of victims, has informed it that all of the victims whom he met and who are authorised to participate in the proceedings in the present case accept that their identities may be disclosed to the two Defence teams and to the Prosecutor.¹⁶ It observes that this group includes 18 victims authorised to participate during the preliminary phase of the proceedings,¹⁷ 190 victims which it has itself authorised to participate, as well as a number of applicants currently awaiting its decision on their requests for participation.¹⁸

13. The Chamber notes that certain victims¹⁹ authorised to participate in the proceedings and represented by Mr Luvengika do not, however, appear in his filing

¹⁶ ICC-01/04-01/07-1544, paras. 5 and 8.

¹⁷ Victims a/0009/08, a/0022/08, a/0043/08, a/0046/08, a/0061/08, a/0067/08, a/0073/08, a/0076/08, a/0077/08, a/0079/08, a/0080/08, a/0085/08, a/0088/08, a/0092/08, a/0100/08, a/0101/08, a/0103/08 and a/0104/08.

¹⁸ ICC-01/04-01/07-1544, para. 8.

¹⁹ Inter alia: Victims a/0040/08, a/0142/08, a/0145/08, a/0155/08, a/0183/08, a/0188/08, a/0189/08, a/0193/08, a/0194/08, a/0196/08, a/0197/08, a/0202/08, a/0204/08, a/0205/08, a/0207/08, a/0210/08, a/0400/08, a/0401/08, a/0540/08, a/0607/08, a/0003/09, a/0005/09, a/0006/09, a/0010/09, a/0011/09, a/0020/09, a/0207/09, a/0208/09, a/0209/09, a/0210/09, a/0212/09, a/0213/09, a/0214/09, a/0217/09, a/0218/09, a/0219/09, a/0221/09, a/0222/09, a/0223/09, a/0224/09, a/0225/09, a/0226/09, a/0227/09, a/0228/09, a/0232/09, a/0233/09, a/0250/09, a/0251/09, a/0252/09, a/0253/09, a/0255/09, a/0256/09, a/0257/09, a/0273/09, a/0274/09, a/0276/09, a/0279/09, a/0280/09, a/0282/09, a/0283/09, a/0290/09, a/0296/09, a/0298/09, a/0302/09, a/0305/09, a/0311/09, a/0317/09, a/0320/08, a/0324/09, a/0326/09, a/0327/09, a/0330/09, a/0332/09, a/0336/09, a/0337/09, a/0343/09, a/0345/09, a/0346/09, a/0351/09, a/0354/09, a/0360/09, a/0363/09, a/0364/09, a/0368/09, a/0369/09, a/0375/09, a/0380/09, a/0382/09, a/0385/09, a/0386/09, a/0387/09 and a/0388/09.

of 20 October 2009,²⁰ thus making it impossible for the Chamber to know whether these victims consent or not to disclosure of their identities to the parties.

14. The Chamber accordingly considers that the identities of the victims whom Mr Luvengika met on his visit to the DRC should be disclosed to the two Defence teams and to the Prosecutor. On the other hand, the identities of those not mentioned in his filing of 20 October 2009 should not be disclosed to the parties. In this regard, the Chamber invites their common Legal Representative to make contact as soon as possible with the victims whom he has not yet met, and to inform it whether or not they are willing for their identities to be disclosed to the parties, and to submit, following prior consultation with the Victims and Witnesses Unit, an application for any appropriate protective measures.

b. Victims represented by Mr Jean-Louis Gilissen

15. The Chamber notes that Mr Gilissen asks that Victims a/0315/09 and a/0316/09 may continue to remain anonymous, and that, in the event that it should prove necessary for their identities to be disclosed, the Chamber order the adoption of alternative protective measures in order to guarantee their safety.²¹

16. The Chamber notes, however, that Victims a/0315/09 and a/0316/09 are also mentioned in the response filed by Mr Luvengika, where they state that they “[TRANSLATION] confirm that they are willing for their identities to be disclosed to the Defence lawyers for Germain Katanga and Mathieu Ngudjolo Chui and to the Office of the Prosecutor”.²² It thus follows that there is serious doubt as to the precise intentions of these two victims, which needs to be clarified.

²⁰ ICC-01/04-01/07-1544.

²¹ ICC-01/04-01/07-1543, pp. 5 and 6.

²² ICC-01/04-01/07-1544, para. 7.

17. Moreover, the Chamber notes that Mr Gilissen fails to make it clear whether or not the other victims whom he represents are willing for their identities to be disclosed to the parties.²³

18. The Chamber accordingly invites Mr Gilissen to verify the real intentions of Victims a/0315/09 and a/0316/09, as well as those of the other victims whom he represents, and to make contact with the Victims and Witnesses Unit, in order to identify any protective measures required in respect of these victims and, if necessary, to submit an application requesting such measures.

19. As regards the applicants who do not object to their identities being disclosed to the parties, the Chamber will authorise such disclosure only in the event that it accords them the status of victim participating in the proceedings.

20. In the event that the Chamber authorises the participation of the anonymous victims, it will consider the question of their anonymity being raised, if, at a subsequent stage of the proceedings, it should happen that an anonymous victim wishes to participate individually, in accordance with the modalities for participation to be fixed by this Chamber.

FOR THESE REASONS, the Chamber

DECIDES to grant in part the applications by the two Defence teams;

ORDERS the Registry to disclose to the parties the identities, together with the particulars relating to their identities, of the following 190 victims: a/0010/08, a/0143/08, a/0144/08, a/0146/08, a/0147/08, a/0148/08, a/0153/08, a/0154/08, a/0156/08, a/0157/08, a/0158/08, a/0159/08, a/0160/08, a/0161/08, a/0162/08, a/0163/08, a/0164/08, a/0165/08, a/0166/08, a/0167/08, a/0168/08, a/0169/08, a/0170/08, a/0171/08, a/0172/08, a/0173/08, a/0174/08, a/0175/08, a/0176/08, a/0178/08, a/0179/08, a/0180/08, a/0186/08,

²³ Victims a/0111/08, a/0112/08, a/0136/08 and a/0314/09.

a/0187/08, a/0190/08, a/0191/08, a/0192/08, a/0195/08, a/0198/08, a/0199/08, a/0201/08, a/0203/08, a/0206/08, a/0208/08, a/0212/08, a/0213/08, a/0214/08, a/0215/08, a/0216/08, a/0217/08, a/0218/08, a/0219/08, a/0220/08, a/0221/08, a/0222/08, a/0223/08, a/0224/08, a/0225/08, a/0226/08, a/0227/08, a/0228/08, a/0229/08, a/0230/08, a/0231/08, a/0281/08, a/0282/08, a/0397/08, a/0398/08, a/0399/08, a/0402/08, a/0524/08, a/0527/08, a/0001/09, a/0007/09, a/0008/09, a/0009/09, a/0012/09, a/0013/09, a/0014/09, a/0015/09, a/0016/09, a/0017/09, a/0018/09, a/0019/09, a/0067/09, a/0068/09, a/0069/09, a/0070/09, a/0071/09, a/0072/09, a/0073/09, a/0074/09, a/0075/09, a/0076/09, a/0077/09, a/0078/09, a/0079/09, a/0080/09, a/0081/09, a/0082/09, a/0083/09, a/0084/09, a/0085/09, a/0086/09, a/0112/09, a/0113/09, a/0114/09, a/0115/09, a/0116/09, a/0117/09, a/0118/09, a/0119/09, a/0120/09, a/0122/09, a/0123/09, a/0124/09, a/0125/09, a/0126/09, a/0127/09, a/0128/09, a/0156/09, a/0158/09, a/0159/09, a/0162/09, a/0163/09, a/0164/09, a/0165/09, a/0166/09, a/0167/09, a/0168/09, a/0169/09, a/0203/09, a/0206/09, a/0220/09, a/0229/09, a/0230/09, a/0231/09, a/0265/09, a/0270/09, a/0271/09, a/0275/09, a/0278/09, a/0281/09, a/0288/09, a/0294/09, a/0295/09, a/0299/09, a/0301/09, a/0303/09, a/0306/09, a/0307/09, a/0308/09, a/0309/09, a/0313/09, a/0318/09, a/0319/09, a/0321/09, a/0322/09, a/0323/09, a/0325/09, a/0328/09, a/0329/09, a/0331/09, a/0333/09, a/0334/09, a/0338/09, a/0339/09, a/0347/09, a/0348/09, a/0352/09, a/0353/09, a/0355/09, a/0356/09, a/0359/09, a/0365/09, a/0366/09, a/0367/09, a/0370/09, a/0371/09, a/0372/09, a/0373/09, a/0374/09, a/0376/09, a/0377/09, a/0378/09, a/0379/09, a/0381/09, a/0383/09, a/0384/09 and a/0395/09;

ORDERS the Registry to disclose to the parties the identities, together with the particulars relating to their identities, of the following 18 victims: a/0009/08, a/0022/08, a/0043/08, a/0046/08, a/0061/08, a/0067/08, a/0073/08, a/0076/08, a/0077/08, a/0079/08, a/0080/08, a/0085/08, a/0088/08, a/0092/08, a/0100/08, a/0101/08, a/0103/08 and a/0104/08;

ORDERS Mr Luvengika to make contact as soon as possible with the other victims whom he represents, in order to make it clear to the Chamber whether or not they are willing to have their identities disclosed to the parties, and, after consultation

with the Victims and Witnesses Unit, to submit, by 4.00 p.m. on 13 November 2009, an application requesting any protective measures sought by them.

ORDERS Mr Gilissen (i) to make clear to the Chamber the precise intentions of the victims whom he represents regarding disclosure of their identities to the parties and (ii) to make contact with the Victims and Witnesses Unit, in order to identify any protective measures required in respect of these victims, and to submit, by 4.00 p.m. on 13 November 2009, an application requesting such measures.

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 12 November 2009

At The Hague (The Netherlands)