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

Date: **11 April 2011**

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 on the disclosure of the identity of victims to the parties and order to the
Prosecutor and the Defence to submit additional observations in respect of certain
deceased victims**

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

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 Victims

Mr Jean-Louis Gilissen
 Mr Fidel Nsita Luvengika

Legal Representatives of Applicants

Office of Public Counsel for Victims

**Office of Public Counsel for the
 Defence**

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Ms Silvana Arbia

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
 Section**

Ms Fiona McKay

Other

TRIAL CHAMBER II of the International Criminal Court (the “Chamber” and the “Court”, respectively), acting pursuant to articles 64 and 68 of the Rome Statute (“the Statute”), rules 86, 87 and 89 of the Rules of Procedure and Evidence and regulation 86 of the Regulations of the Court, decides the following.

I. Procedural background

1. On 2 April and 10 and 23 June 2008, Pre-Trial Chamber I authorised 57 individuals to participate as victims in this case.¹
2. On 26 February 2009, the Chamber laid down the procedure to be followed by the Victims Participation and Reparations Section (“VPRS”) for the treatment of applications for participation, and in particular VPRS’s role in the preparation of redacted versions of applications for participation prior to their disclosure to the Prosecutor and the Defence.²
3. On 20 March 2009, the Registry submitted to the Chamber a report on the establishment of a system for the redaction of victims’ applications for participation. Annexed to this report is a table indicating the information which, in its view, is likely to be redacted, since it includes details identifying the applicants.³
4. On 31 July 2009, the Chamber issued the operative part of the decision on the 345 applications for participation, whereby it granted 288 applicants the status of

¹ Pre-Trial Chamber I, *Decision on the Applications for Participation in the Proceedings of Applicants a/0327/07 to a/0337/07 and a/0001/08*, 2 April 2008, ICC-01/04-01/07-357; Pre-Trial Chamber I, *Public Redacted Version of the “Decision on the 97 Applications for Participation at the Pre-Trial Stage of the Case”*, 10 June 2008, ICC-01/04-01/07-579; Pre-Trial Chamber I, *Decision on the Application for Participation of Witness 166*, 23 June 2008, ICC-01/04-01/07-632. In its decision of 10 June 2008, Pre-Trial Chamber I granted the status of victim participating in the proceedings to Applicants a/0025/08 and a/0051/08.

² *Decision on the treatment of applications for participation*, 26 February 2009, ICC-01/04-01/07-933-tENG (“Decision of 26 February 2009”), paras. 46-54.

³ See also 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 (“ICC-01/04-01/07-974-Conf-Exp”), with confidential, *ex parte* annex.

victims participating in the proceedings.⁴ The grounds for that decision were made public on 23 September 2009.⁵

5. Pursuant to the order of 22 July 2009 on the organisation of the common legal representation⁶ and the Registry's appointment of counsel of 22 September 2009,⁷ some of the victims authorised to participate in the proceedings were assigned to the main group of victims represented by Mr Nsita Luvengika, and others to the group of child soldier victims represented by Mr Gilissen.
6. On 23 November 2009, the Chamber granted leave to 14 additional victims to participate in the proceedings and requested seven other applicants and the person wishing to participate in the proceedings on behalf of a deceased victim to provide it with further information ("Operative Part of the 23 November 2009 Decision").⁸ The grounds for this decision were made public on 22 December 2009 ("Decision of 22 December 2009").⁹
7. At the request of the Defence teams,¹⁰ the victims authorised to participate in the proceedings gradually consented to their identity being disclosed to the parties.¹¹

⁴ *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. In that decision, the Chamber granted the status of victims participating in the proceedings to, *inter alia*, Applicants a/0175/08, a/0197/08, a/0117/09, a/0311/09, a/0321/09 and a/0373/09.

⁵ *Grounds for the Decision on the 345 Applications for Participation in the Proceedings Submitted by Victims*, 23 December 2009, ICC-01/04-01/07-1491-Red-tENG with confidential, *ex parte* annex (see also the confidential redacted version of annex ICC-01/04-01/07-1491-Conf-Anx-Red).

⁶ *Order on the organisation of common legal representation of victims*, 22 July 2009, ICC-01/04-01/07-1328.

⁷ Registry, "*Désignation définitive de Me Fidel Nsita Luvengika comme représentant légal commun du groupe principal de victime et affectation des victimes aux différentes équipes*", 22 September 2009, ICC-01/04-01/07-1488.

⁸ *Operative Part of the Second Decision on the Applications by Victims for Participation in the Proceedings*, 23 November 2009, ICC-01/04-01/07-1669-tENG. By this decision, the Chamber authorised, *inter alia*, the person appointed by the family of deceased Victim a/0207/08 to participate on that victim's behalf. It further requested the person wishing to participate in the proceedings on behalf of deceased Victim a/0120/09 to provide it with further information.

⁹ *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 confidential, *ex parte* annex (see also the confidential redacted version of annex ICC-01/04-01/07-1737-Conf-Anx-Red).

¹⁰ 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; Defence

Accordingly, the Chamber issued several decisions ordering the lifting of their anonymity vis-à-vis those parties.¹²

8. More precisely, by filing number 1789, submitted by Mr Nsita Luvengika on 25 January 2010,¹³ the Chamber was informed that, with the exception of three victims in the main group of victims (a/0051/08, a/0197/08 and a/0311/09), all of the victims authorised to participate in the proceedings had agreed to the disclosure of their identity to the parties. Mr Nsita Luvengika specified that the remaining three victims, whose anonymity had not by then been lifted, were deceased. In response to that filing, the Chamber, in its oral decision on 18 February 2010, provisionally granted anonymity to said deceased victims with respect to the parties until the position of their family members on the

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

¹¹ Common legal representative for the main group of victims, *“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; *“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, ICC-01/04-01/07-1544; *“Soumission du Représentant légal du groupe principal de victimes relative à la divulgation de l’identité des victimes”*, 13 November 2009, ICC-01/04-01/07-1637; *“Troisième soumission de la représentation légale commune du groupe principal de victimes relative à la divulgation de l’identité des victimes”*, 24 November 2009, ICC-01/04-01/07-1671. Common legal representative for the group of child soldier victims, *“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; *“Soumission du représentant légal du groupe des victimes « enfants-soldats » relative à la communication de l’identité des victimes représentées aux parties et portant demande de report du délai imparti par la Chambre pour déposer une requête en mesures de protection (Norme 35 du Règlement de la Cour)”*, 13 November 2009, ICC-01/04-01/07-1632.

¹² Corrigendum to the *“Decision on the Disclosure to the Parties of the Identities of the Victims”* (ICC-01/04-01/07-1607), 12 November 2009, ICC-01/04-01/07-1607-Corr-tENG; *Deuxième décision relative à la divulgation de l’identité des victimes aux parties*, 18 November 2009, ICC-01/04-01/07-1650; *Third Decision on the Disclosure of the Identities of Victims to the Parties*, 17 December 2009, ICC-01/04-01/07-1731-tENG. See also the disclosures by the Registry: *“Divulgation de l’identité des victimes aux parties”*, 13 November 2009, ICC-01/04-01/07-1633-Conf-Exp; *“Divulgation de l’identité d’un deuxième groupe de victimes aux parties”*, 20 November 2009, ICC-01/04-01/07-1664-Conf-Exp; *“Divulgation de l’identité d’un troisième groupe de victimes aux parties”*, 20 November 2009, ICC-01/04-01/07-1663-Conf-Exp; *“Divulgation de l’identité d’un quatrième groupe de victimes aux parties”*, 18 December 2009, ICC-01/04-01/07-1733-Conf-Exp; *“Divulgation de l’identité d’un cinquième groupe de victimes aux parties”*, 1 February 2010, ICC-01/04-01/07-1816-Conf-Exp.

¹³ Common legal representative for the main group of victims, *“Quatrième soumission du représentant légal commun du groupe principal de victimes relative à la divulgation de l’identité des victimes”*, 25 January 2010, ICC-01/04-01/07-1789, paras. 4 and 5.

continuation of the initiated action was ascertained. The Chamber also ordered Mr Nsita Luvengika to contact the families of those victims as soon as possible in order to inform the Chamber whether the families intended to disclose the identity of the deceased victims to the parties. Lastly, the Chamber directed the Legal Representative to indicate, if necessary and after consultation with VWU, whether the families intended to submit an application for protective measures.¹⁴

9. On 17 March 2010, the Chamber granted victim status to three applicants (a/0161/09, a/0215/09 and a/0267/09) and granted leave to the person appointed by the family of deceased Victim a/0120/09 to participate in the proceedings on behalf of the victim. It further ordered the Registry to contact the Legal Representatives of four applicants (a/0114/08, a/0160/09, a/0390/09 and a/0452/09) as soon as possible in order to obtain additional information already requested in the Operative Part of the 23 November 2009 Decision and the Decision of 22 December 2009.¹⁵
10. In its decision of 8 November 2010 ("Decision of 8 November 2010"), the Chamber granted the status of victim participating in the proceedings to Applicants a/0390/09 and a/0452/09. It also reminded the Legal Representatives of Applicants a/0114/08 and a/0160/09, who had not submitted the additional documents requested by the Chamber, to provide them before 15 December 2010.¹⁶
11. On 7 December 2010, the Chamber was informed by VPRS of the steps Mr Nsita Luvengika was taking to secure the consent of the aforementioned victims to the disclosure of their identity to the parties and to ascertain the position of the

¹⁴ ICC-01/04-01/07-T-104-Red-FRA WT 18-02-2010, pp. 33 and 34.

¹⁵ *Motifs de la troisième décision relative à 8 demandes de participation de victimes à la procédure*, 17 March 2010, ICC-01/04-01/07-1967, with confidential, *ex parte* annexes 1-4 (see also confidential, redacted version of the annexes).

¹⁶ *Quatrième décision relative à 2 demandes de participation de victimes à la procédure*, 8 November 2010, ICC-01/04-01/07-2516, with confidential, *ex parte* annexes (see also the confidential redacted version of the annexes, ICC-01/04-01/07-2516-Conf-Anx1-Red and ICC-01/04-01/07-2516-Conf-Anx2-Red).

family members as to the continuation of the action initiated on behalf of the deceased victims and their intentions regarding the disclosure of the identity of those victims and their own identity to the parties.¹⁷

12. In an e-mail dated 17 December 2010, the Chamber took note of these steps and also invited Mr Gilissen to communicate with the two victims whom it had authorised to participate in proceedings in the Decision of 8 November 2010 in order to inform it whether they intend to disclose their identity to the parties. The Chamber then requested the two Legal Representatives to inform it, by 15 February 2011, “[TRANSLATION] whether the victims whose anonymity has not yet been lifted consent to the disclosure of their identity to the parties and, in respect of the deceased victims, whether the family members intend to continue their action and consent, therefore, to disclosure of the identity of those deceased victims and of their own identity”. The Chamber also indicated that, in the future, as soon as the Legal Representatives learn of the death of a victim, it will be incumbent upon them to contact the family members to seek their views regarding continuation of the action, and to inform the Chamber accordingly as soon as possible. Lastly, the Chamber reminded the Registry that once the Legal Representatives have informed it that the victims and the persons wishing to act on behalf of deceased victims consent to the disclosure of their identity to the parties, it should carry out such disclosure forthwith.¹⁸

13. By decision of 9 February 2011 (“Decision of 9 February 2011”), the Chamber granted the status of victim participating in the proceedings to Applicants a/0160/09 and a/0114/08.¹⁹

¹⁷ E-mail from VPRS to the Chamber, 7 December 2010 at 15.28.

¹⁸ E-mail from a legal officer of the Chamber to the Legal Representatives of Victims, 17 December 2010 at 14.18.

¹⁹ *Cinquième décision relative à 2 demandes de participation de victimes à la procédure*, 9 February 2011, ICC-01/04-01/07-2693, with confidential, *ex parte* annexes (see also confidential, redacted version of annexes ICC-01/04-01/07-2693-Conf-Anxl-Red and ICC-01/04-01/07-2693-Conf-Anx2-Red).

14. On 15 February 2011, the Legal Representative of the main group of victims provided the information requested (“Information submitted by Mr Nsita Luvengika”).²⁰ He also indicated that he would transmit to VPRS additional documents related to the continuation of the action initiated before the Court on behalf of deceased Victims a/0025/08, a/0051/08, a/0197/08 and a/0311/09.²¹
15. On that same day, the Legal Representative of the group of child soldier victims moved the Chamber for an extension of time to inform it of the position of Victims a/0390/09 and a/0452/09 on the disclosure of their identity to the parties (“Mr Gilissen’s Application”),²² and, at the request of the Chamber,²³ he subsequently provided additional information in respect of his request for an extension of time as well as of the position of Victim a/0114/08 (“Information submitted by Mr Gilissen”).²⁴
16. On 25 February 2011, the Registry transmitted to the Chamber the applications for participation of deceased Victims a/0025/08, a/0051/08, a/0197/08 and a/0311/09 and the additional information pertaining to said victims provided by their Legal Representative.²⁵

²⁰ Common legal representative of the main group of victims, “Cinquième soumission du représentant légal relative à la notification du décès de cinq victimes, à la reprise des dossiers de certaines victimes décédées et à la divulgation de l’identité de victimes et/ou de repreneurs d’action de certaines victimes”, 15 February 2011, ICC-01/04-01/07-2706.

²¹ *Ibid.*, paras. 12-19.

²² Legal Representative of the group of child soldier victims. “Soumission du représentant légal du groupe des victimes enfants soldats relative à l’anonymat des victimes a/0390/09 et a/0452/09”, 15 February 2011, ICC-01/04-01/07-2707.

²³ E-mail from a legal officer of the Chamber to Mr Gilissen, 18 February 2011, at 10.00.

²⁴ E-mail from Mr Gilissen’s team to the Chamber, 18 February 2011, at 11.22; e-mail from Mr Gilissen to the Chamber, 22 February 2011, at 16.15.

²⁵ Registry, “Transmission des informations supplémentaires communiquées par Maître Nsita Luvengika, Représentant légal des victimes a/0025/08, a/0051/08, a/0197/08 et a/0311/09 en référence au document ICC-01/04-01/07-2706 du 15 février 2011”, with confidential, *ex parte* annexes, 25 February 2011, ICC-01/04-01/07-2737.

17. On 6 April 2011, the Registry disclosed to the parties the identity of Victims a/0160/09, a/0161/09, a/0215/09 and a/0267/09, as well as that of the person authorised to continue the action on behalf of Victim a/0120/09.²⁶

II. Information submitted by the Legal Representatives of Victims

1. Information submitted by Mr Nsita Luvengika

18. In his filing of 15 February 2011, Mr Nsita Luvengika informs the Chamber that, in addition to the deaths of Victims a/0051/08, a/0197/08 and a/0311/09, Victims a/0025/08, a/0175/08, a/0117/09, a/0321/09 and a/0373/09, who were admitted to participate in the proceedings, have died.²⁷ He submits that the files of deceased Victims a/0025/08, a/0051/08, a/0197/08 and a/0311/09, for which he transmitted additional documents to VPRS in connection with the continuation of the action instituted before the Court on their behalf, fulfil the conditions set by the Chamber for the continuation of action. Accordingly, he requests the Chamber to authorise the designated persons to continue the action of their family members in the proceedings.²⁸
19. Mr Nsita Luvengika further states that the families of Victims a/0175/08 and a/0321/09 have, however, so far been unable to provide the necessary documentation to complete their files and that despite the efforts of his team, it has not yet been possible to contact the family members of Victims a/0117/09 and a/0373/09.²⁹
20. Concerning the lifting of anonymity, Mr Nsita Luvengika informs the Chamber that Victims a/0160/09, a/0161/09, a/0215/09 and a/0267/09 have all consented to the disclosure of their identity to the parties.³⁰ Likewise, the person authorised to

²⁶ Registry, “*Divulgence de l’identité d’un sixième groupe de victimes aux parties*”, 6 April 2011, ICC-01/04-01/07-2820-Conf-Exp.

²⁷ Information submitted by Mr Nsita Luvengika, ICC-01/04-01/07-2706, paras. 10 and 14-19.

²⁸ *Ibid.*, para. 19.

²⁹ *Ibid.*, paras. 17 and 18.

³⁰ *Ibid.*, para. 20.

participate on behalf of deceased Victim a/0120/09 has also consented to the disclosure of his or her identity to the parties, since the victim's identity has itself already been disclosed.³¹

21. The Legal Representative further states that the persons appointed by their respective families to continue the action of the three deceased Victims a/0051/08, a/0197/08 and a/0311/09 have all consented to the disclosure of their own identity, as well as the identity of the deceased victims whose action they wish to continue, to the parties, in the event the Chamber authorises them to continue the action brought by their family members.³² Furthermore, the person appointed to continue the action of deceased Victim a/0025/08 does not object to the disclosure of his or her identity to the parties, in the event the Chamber grants his or her application, since the identity of deceased Victim a/0025/08 has itself already been disclosed to the parties.³³

22. Lastly, Mr Nsita Luvengika requests the extension of the protective measures previously ordered for all victims authorised to participate in the proceedings thus far to Victims a/0160/09, a/0161/09, a/0215/09 and a/0267/09, as well as to those continuing the action of Victims a/0120/09, a/0025/08, a/0051/08, a/0197/08 and a/0311/09, in the event these four persons are authorised to continue their action. More precisely, he requests that (i) the anonymity of these persons be preserved vis-à-vis the public;³⁴ (ii) disclosure of this information be limited to a restricted number of members of the parties' teams;³⁵ (iii) the *Protocol on investigations in relation to witnesses benefiting from protective measures* be applied;³⁶

³¹ *Ibid.*, para. 21.

³² *Ibid.*, para. 22.

³³ *Ibid.*, para. 23.

³⁴ *Ibid.*, para. 25, referring to ICC-01/04-01/07-T-104-CONF-FRA ET, 18-02-2010, pp. 33 and 34.

³⁵ *Ibid.*, para. 25, referring to ICC-01/04-01/07-T-104-CONF-FRA ET, 18-02-2010, pp. 33 and 34.

³⁶ *Ibid.*, para. 25, referring to the *Decision on the Protocol on investigations in relation to witnesses benefiting from protective measures*, 26 April 2010, ICC-01/04-01/07-2047-tENG; "Victims and Witnesses Unit's observations on the 'Protocol on investigations in relation to witnesses benefiting from protective measures'", 26 March 2010, ICC-01/04-01/07-2007-Conf (confidential annex, ICC-01/04-01/07-2007-Conf-Anxl).

(iv) the arrangements for contact between a party and a represented victim ordered by the Chamber be applied;³⁷ and (v) access to the Initial Response System be granted.³⁸

2. Information submitted by Mr Gilissen

23. The Legal Representative of the group of child soldier victims filed a submission on 15 February 2011 requesting the Chamber to grant an extension of time for informing it of the position of Victims a/0390/09 and a/0452/09 on the disclosure of their identity to the parties.³⁹ Based on the information acquired through his team's intermediaries, Mr Gilissen stated that these two victims remain reluctant to have their anonymity lifted. Accordingly, he informed the Chamber that in the circumstances and in view of the challenges encountered in obtaining a definite position, he is unable to request the lifting of anonymity in relation to these two victims.⁴⁰

24. In order to be able to make an informed ruling on this request, the Chamber directed Mr Gilissen on 18 February 2011 to specify the date when his team will be able to obtain the outstanding information or the date when the Legal Representative plans to visit the DRC to meet the victims. Lastly, the Chamber reminded him that, pursuant to the Decision of 9 February 2011, it is also incumbent upon him to contact Victim a/0114/08 to obtain the requested information.⁴¹

25. By e-mail of 22 February 2011, Mr Gilissen transmitted to the Chamber a message stating that the following week he was to meet the head of the Congolese NGO with which his team is working on the ground and that he expected to receive

³⁷ *Ibid.*, para. 25, referring to the *Décision relative aux modalités de contact entre des victimes représentées et les parties*, 23 November 2010, ICC-01/04-01/07-2571.

³⁸ *Ibid.*, para. 25, referring to the *Victims and Witnesses Unit's report on the risk assessment of participating victims*, ICC-01/04-01/07-1757-Conf, 11 January 2010.

³⁹ Information submitted by Mr Gilissen, ICC-01/04-01/07-2707.

⁴⁰ *Ibid.*, paras. 5-14.

⁴¹ See *supra*, footnote 23.

news at that time of the victims concerned which would enable him to ascertain whether he would need to go there himself. The Legal Representative reiterated the continued reluctance of Victims a/0390/09 and a/0452/09 to have their anonymity lifted. Lastly, he promised to inform the Chamber as soon as he is in possession of any useful information.⁴²

26. In respect of Victim a/0114/08, the Legal Representative of the group of child soldier victims stated that he had not understood that he was supposed to include the victim in his filing of 15 February 2011 “[TRANSLATION] inasmuch as, in the application form for participation, the victim had no objection to the disclosure of the victim’s identity to the Defence teams, unlike Victims 390/09 and 452/09, who have subsequently reiterated their desire to remain anonymous”.⁴³ He further stated that Victim a/0114/08 has not subsequently informed him of any request for the purposes of modifying this decision on the disclosure of the victim’s identity.⁴⁴

III. Findings of the Chamber

27. In order to rule on the request for authorisation to continue action brought before the Court on behalf of deceased Victims a/0025/08, a/0051/08, a/0197/08 and a/0311/09 by persons appointed by their respective families, the Chamber considers it necessary for the Registry to transmit the redacted versions of the additional documents to the Prosecutor and the Defence, once the redactions to the additional documents transmitted by the Registry on 25 February 2011 have been made by VPRS following prior consultation with the Victims and Witnesses Unit, pursuant to the Decision of 26 February 2009 and the Registrar’s report of 20 March 2009.⁴⁵

⁴² E-mail from Mr Gilissen to the Chamber on 22 February 2011, at 16.15.

⁴³ E-mail from Mr Gilissen’s team to the Chamber on 18 February 2011, at 11.22.

⁴⁴ *Ibidem*.

⁴⁵ Decision of 26 February 2009; ICC-01/04-01/07-974-Conf-Exp, with confidential, *ex parte* annex.

28. The Chamber notes that the lifting of the anonymity, vis-à-vis the parties, of deceased Victims a/0051/08, a/0197/08, and a/0311/09 and those continuing their action, as well as that of the person wishing to act on behalf of Victim a/0025/08, and the granting of protective measures for those resuming action will be subject to the Chamber's authorisation of the continuation of the action by the persons appointed by the families of deceased Victims a/0025/08, a/0051/08, a/0197/08 and a/0311/09.
29. As for the situation of Victims a/0175/08, a/0321/09, a/0117/09 and a/0373/09, the Chamber directs the common legal representative to continue his efforts to contact their respective families and to inform it whether the family members intend to continue the action of the victims and, if so, whether they consent to the disclosure of their own identity to the parties.
30. In respect of Victims a/0160/09, a/0161/09, a/0215/09 and a/0267/09 and the person authorised to continue the action on behalf of deceased Victim a/0120/09, the Chamber notes that their identity has been disclosed to the parties.⁴⁶
31. The Chamber notes the intention of Victim a/0114/08, as confirmed by the victim's Legal Representative, to disclose the victim's identity to the parties. As for the request for an extension of time to ascertain the wishes of Victims a/0390/09 and a/0452/09 in respect of the lifting of their anonymity vis-à-vis the parties, the Chamber notes the steps taken by Mr Gilissen and directs him to gather and transmit said information as soon as possible.
32. The Chamber recalls its decision granting anonymity vis-à-vis the public for all the victims authorised to participate in these proceedings.⁴⁷
33. The Chamber further reminds the parties of their obligation under the Code of Professional Conduct for counsel to ensure that their team members do not

⁴⁶ See *supra*, para. 17.

⁴⁷ See, *inter alia*, ICC-01/04-01/07-T-104-Red-FRA WT 18-02-2010, pp. 33 and 34.

disclose to third parties the identity of the victims authorised to participate in the proceedings and, to this end, to limit disclosure to a restricted number of team members.⁴⁸

34. Lastly, it recalls that the *Decision on the "Protocol on investigations in relation to witnesses benefiting from protective measures"* of 26 April 2010⁴⁹ and the *Décision relative aux modalités de contact entre des victimes représentées et les parties* of 23 November 2010⁵⁰ apply to all the victims, both protected and represented, including the persons authorised to participate in the proceedings on behalf of deceased victims.

35. As for Mr Nsita Luvengika's request to grant the victims access to the Initial Response System, the Chamber invites him to contact the VWU, which will assess their security situation.

FOR THESE REASONS, THE CHAMBER

ORDERS the Registry to provide the Prosecutor and the Defence, on 13 April 2011, with a redacted version of the additional documents related to deceased Victims a/0025/08, a/0051/08, a/0197/08 and a/0311/09;

ORDERS the Prosecutor and the two Defence teams to submit by 20 April 2011 any observations on the request for the continuation of the action of certain deceased victims, in particular on the additional information provided by the common legal representative in respect of the continuation of action by the family members of deceased Victims a/0025/08, a/0051/08, a/0197/08 and a/0311/09;

⁴⁸ *Ibidem*.

⁴⁹ *Decision on the "Protocol on investigations in relation to witnesses benefiting from protective measures"*, 26 April 2010, ICC-01/04-01/07-2047-tENG.

⁵⁰ *Decision on the arrangements for contact between represented victims and the parties*, 23 November 2010, ICC-01/04-01/07-2571-tENG.

REMINDS the Registry that once the Legal Representatives have informed the Chamber that the victims have consented to the disclosure of their identity to the parties, it must proceed immediately with said disclosure, in particular with respect to Victim a/0114/08;

RECALLS that all the victims authorised to participate in the proceedings are afforded anonymity vis-à-vis the public;

RECALLS that the *Decision on the "Protocol on investigations in relation to witnesses benefiting from protective measures"* of 26 April 2010 and the *Décision relative aux modalités de contact entre des victimes représentées et les parties* of 23 November 2010 apply to all the victims, both protected and represented, including the persons authorised to participate in the proceedings on behalf of deceased victims;

ORDERS Mr Nsita Luvengika to continue his efforts to contact the respective families of Victims a/0175/08, a/0321/09, a/0117/09 and a/0373/09 and to transmit to the Chamber the relevant information to enable it to rule on their applications;

GRANTS Mr Gilissen's Application and **ORDERS** him to ascertain as soon as possible the position of Victims a/0390/09 and a/0452/09 in respect of the disclosure of their identity to the parties.

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 11 April 2011

At The Hague, The Netherlands