



Original: **French**

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

Date: **18 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

Second Decision on the Disclosure to the Parties of the Identities of the Victims

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 Victims

Mr Jean-Louis Gilissen
Mr Fidel Nsita Luvengika

Legal Representatives of 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 Rome Statute (“the Statute”) and rules 86 and 87 of the Rules of Procedure and Evidence (“the Rules”), decides as follows.

I. Procedural history

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 accorded 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 accorded 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 *Motifs de la décision relative au traitement de 345 demandes de participation de victimes à la procédure*, 23 September 2009, ICC-01/04-01/07-1491-Red, 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. 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.⁵ On 20 October 2009, the Legal Representatives submitted their responses.⁶
5. By decision of 6 November 2009,⁷ followed by a corrigendum dated 12 November 2009,⁸ the Chamber authorised the disclosure of the identities of 208 victims. It further requested the Legal Representatives of the Victims (i) to make clear to the Chamber the intentions of the other victims whom they represent regarding disclosure of their identities to the parties and (ii) to submit, by 4.00 p.m. on 13 November 2009, an application requesting any protective measures sought by the victims.⁹
6. By an application registered on 13 November 2009,¹⁰ Mr Gilissen informed the Chamber that the victims whom he represents agreed to have their identities disclosed to the parties, and requested an extension of the time limit due to expire that day. In light of its urgent nature, the Chamber granted this request for an extension and set a new deadline of 20 November 2009.¹¹

⁵ ICC-01/04-01/07-T-71-Red-FRA, p. 6, lines 18-24.

⁶ “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; “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 Annexes I, II, III and IV, confidential, *ex parte*, only available to the Registry, ICC-01/04-01/07-1544.

⁷ *Décision relative à la divulgation de l’identité des victimes aux parties*, 6 November 2009, ICC-01/04-01/07-1607, p. 9.

⁸ *Corrigendum de la « Décision relative à la divulgation de l’identité des victimes aux parties »* (ICC-01/04-01/07-1607), 12 November 2009, ICC-01/04-01/07-1607-Corr, p. 9.

⁹ *Ibid.*, p. 10.

¹⁰ Legal Representative of the Victims, “*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.

¹¹ See e-mail of 13 November 2009, in which the Legal Adviser to the Trial Division informs Mr Gilissen that the Chamber authorises extension of the time limit to 20 November 2009 pursuant to regulation 35 of the Regulations of the Court.

7. That same 13 November 2009, Mr Luvengika informed the Chamber that certain of the victims whom he represents were willing for their identities to be disclosed to the parties, while others preferred to remain anonymous.¹²

II. Arguments of the participants and conclusions of the Chamber

8. Before making certain general observations, the Chamber will analyse in turn the situation of the victims represented by Mr Luvengika, then that of the victims represented by Mr Gilissen.

a. Victims represented by Mr Fidel Nsita Luvengika

9. Mr Luvengika informs the Chamber that his team recently met with 35 victims¹³ who confirmed their intention to disclose their identities to the parties.¹⁴ He further states that 19 other victims,¹⁵ who were met during a mission conducted in October 2009, “[TRANSLATION] had consented to their identities being disclosed to the parties, but had not been included in [his filing] of 20 October 2009 following difficulties regarding their identification”.¹⁶ Finally, he states that, in the course of a mission conducted in July 2009, he had met six victims¹⁷ who had also expressed their willingness for their identities to be disclosed to the parties.¹⁸

¹² “*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.

¹³ Victims a/0142/08, a/0145/08, a/0189/08, a/0193/08, a/0204/08, a/0210/08, a/0005/09, a/0006/09, a/0011/09, a/0020/09, a/0209/09, a/0214/09, a/0219/09, a/0222/09, a/0223/09, a/0224/09, a/0227/09, a/0233/09, a/0252/09, a/0253/09, a/0255/09, a/0273/09, a/0274/09, a/0276/09, a/0279/09, a/0280/09, a/0282/09, a/0290/09, a/0298/09, a/0320/09, a/0354/09, a/0364/09, a/0369/09 and a/0387/09. The identity of victim a/0347/09 has already been disclosed. See ICC-01/04-01/07-1633-Conf-Exp, p. 6.

¹⁴ ICC-01/04-01/07-1637, para. 8.

¹⁵ Victims a/0188/08, a/0401/08, a/0010/09, a/0218/09, a/0296/09, a/0302/09, a/0317/09, a/0326/09, a/0327/09, a/0330/09, a/0336/09, a/0337/09, a/0346/09, a/0368/09, a/0375/09, a/0380/09, a/0382/09, a/0386/09 and a/0388/09.

¹⁶ ICC-01/04-01/07-1637, para. 9.

¹⁷ Victims a/0183/08, a/0194/08, a/0196/08, a/0202/08, a/0205/08 and a/0003/09.

¹⁸ ICC-01/04-01/07-1637, para. 10.

10. Mr Luvengika further explained to the Chamber that his team was unable to meet 48 other victims,¹⁹ in respect of whom he accordingly requests that their anonymity be maintained.²⁰ He states that “[TRANSLATION] disclosure of the identity of these victims can be effected on a case-by-case basis, in particular where the victim seeks procedural rights more extensive than those granted by the Chamber”.²¹
11. Mr Luvengika further requests the Chamber to order investigations in the localities where the victims whom he represents reside, with a view to an assessment of their security situation during and after the trial and, if necessary, the adoption of appropriate protective measures.²²
12. The Chamber considers that the identities of the victims to whom Mr Luvengika refers in paragraphs 8, 9 and 10 of his filing of 13 November 2009²³ must be disclosed to the Prosecutor and to the two Defence teams. On the other hand, the identities of the victims whom he has not yet been able to meet²⁴ should not be disclosed. The Chamber accordingly again invites the Legal Representative to make contact with them as soon as possible, in order that he may inform it whether or not they agree to their anonymity being lifted. If this should not be the case, the Chamber asks him to submit an application, after prior consultation with the Victims and Witnesses Unit, requesting such specific protective measures as may be sought by these victims.

¹⁹ Victims a/0038/08, a/0039/08, a/0040/08, a/0044/08, a/0050/08, a/0051/08, a/0055/08, a/0056/08, a/0057/08, a/0060/08, a/0066/08, a/0070/08, a/0071/08, a/0078/08, a/0083/08, a/0090/08, a/0095/08, a/0096/08, a/0155/08, a/0400/08, a/0540/08, a/0607/08, a/0207/09, a/0208/09, a/0210/09, a/0212/09, a/0213/09, a/0217/09, a/0221/09, a/0225/09, a/0226/09, a/0228/09, a/0232/09, a/0250/09, a/0251/09, a/0256/09, a/0257/09, a/0283/09, a/0305/09, a/0311/09, a/0324/09, a/0332/09, a/0343/09, a/0345/09, a/0351/09, a/0360/09, a/0363/09 and a/0385/09.

²⁰ ICC-01/04-01/07-1637, para. 13.

²¹ ICC-01/04-01/07-1637, para. 16.

²² ICC-01/04-01/07-1637, p. 6.

²³ ICC-01/04-01/07-1637, paras. 8, 9 and 10.

²⁴ ICC-01/04-01/07-1637, para. 13.

b. Victims represented by Mr Jean-Louis Gilissen

13. The Chamber notes that Mr Gilissen, common legal representative of the group of “child-soldier” victims, has informed it that all of the victims whom he represents,²⁵ and who have been authorised to participate in the proceedings in this case, refuse any disclosure to the general public,²⁶ but agree to their identities being disclosed to the two Defence teams and to the Prosecutor.²⁷ It accordingly orders disclosure to those parties.²⁸

14. Regarding Mr Gilissen’s request for an extension of time so as to enable him to submit an application for protective measures, the Chamber considers that the fact that it is currently impossible for him, within the time limit set by the Chamber, to meet with the Victims and Witnesses Unit as well as with the victims whom he represents, in order to seek their opinions, constitutes a valid ground under regulation 35 of the Regulations of the Court. It accordingly extends this time limit to 20 November 2009.

c. General observations

15. The Chamber considers that, at this stage of the proceedings, and in light of the information available to it on the current security situation in the Democratic Republic of the Congo, anonymity must be maintained in relation to the general public, and to all other participants in the proceedings, in respect of all of the victims represented by Mr Luvengika and Mr Gilissen.

16. Finally, the Chamber requests the Victims and Witnesses Unit to submit a report to it evaluating the risks faced by all victims participating in the proceedings and, in the event of real danger, to make provision for the necessary measures and arrangements to ensure their protection and safety.

²⁵ Victims a/0333/07, a/0110/08, a/0111/08, a/0112/08, a/0136/08, a/0314/09, a/0315/09 and a/0316/09.

²⁶ ICC-01/04-01/07-1632, para. 10.

²⁷ *Ibid.*, para. 9.

²⁸ *Idem.*

FOR THESE REASONS, the Chamber

GRANTS the Application by Mr Gilissen for an extension of the time limit for him to submit an application for protective measures in respect of the victims whom he represents, and **SETS** the new deadline at 4.00 p.m. on 20 November 2009;

ORDERS the Registry to disclose to the parties the identities, together with the particulars relating thereto, of the victims listed by Mr Luvengika in paragraphs 8, 9 and 10 of his filing of 13 November 2009;²⁹

ORDERS the Registry to disclose to the parties the identities, together with the particulars relating thereto, of the victims listed by Mr Gilissen in paragraph 9 of his filing of 12 November 2009, registered on 13 November 2009;³⁰

DECIDES provisionally to grant anonymity to the victims represented by Mr Luvengika and listed in paragraph 13 of his filing of 13 November 2009;³¹

ORDERS Mr Luvengika to make contact as soon as possible with the victims whom he has not yet been able to meet, in order that he may inform the Chamber whether they are willing for their identities to be disclosed to the parties and, if not, with a view to his submission, after prior consultation with the Victims and Witnesses Unit and by 4.00 p.m. on 24 November 2009, of an application requesting such specific protective measures as may be sought by the victims; and

REQUESTS the Victims and Witnesses Unit to submit, by 4.00 p.m. on 9 January 2010, a report evaluating, in terms of their security, the risks faced by all of the victims participating in the proceedings and proposing, if necessary, appropriate measures to ensure their protection and their security.

²⁹ ICC-01/04-01/07-1637, paras. 8, 9 and 10.

³⁰ ICC-01/04-01/07-1632, para. 9.

³¹ ICC-01/04-01/07-1637, para. 13.

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 18 November 2009

At The Hague, The Netherlands