



Original: **French**

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

Date: 6 September 2010

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 inviting the Prosecutor and the Defence to submit their observations on a
victim's application 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:

Office of the Prosecutor

Mr Luis Moreno-Ocampo, Prosecutor
Ms Fatou Bensouda, Deputy Prosecutor
Mr Éric MacDonald, Senior Trial Lawyer

Counsel for 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

Mr Jean-Louis Gilissen
Mr Fidel Nsita Luvengika

Legal Representatives of the 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 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 the following.

1. On 26 February 2009, the Chamber laid down the procedure to be followed by the Victims Participation and Reparations Section (“VPRS”) in processing applications for participation and, more specifically, its role in the preparation of redacted versions of applications for participation prior to their disclosure to the Prosecutor and the Defence.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 that report was a table indicating the information which, in its view, is liable to be redacted, since it constitutes information identifying applicants.²
3. On 31 July 2009, the Chamber issued the operative part of its decision on the 345 applications for participation, wherein it granted 288 applicants the status of victim participating in the proceedings.³ The grounds for that decision were published on 23 September 2009.⁴
4. On 23 November 2009, the Chamber granted a further 14 victims leave to participate in the proceedings, and requested seven other applicants and the person wishing to

¹ *Decision on the treatment of applications for participation*, 26 February 2009, ICC-01/04-01/07-933-tENG, paras. 46 to 54 (“the 26 February 2009 Decision”).

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 *Operative part of the Decision on the 345 applications for participation as victims in the proceedings*, 31 July 2009, ICC-01/04-01/07-1347-tENG; *Corrigendum of Operative part of the Decision on the 345 applications for participation as victims in the proceedings*, 5 August 2009, ICC-01/04-01/07-1347-Corr-tENG.

⁴ *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 with confidential, *ex parte* annex (see also the confidential redacted version of the annex, ICC-01/04-01/07-1491-Conf-Anx-Red).

participate in the proceedings on behalf of a deceased victim to provide additional information.⁵ The grounds for that decision were published on 22 December 2009.⁶

5. On 16 March 2010, the Chamber granted the status of victim participating in the proceedings to three applicants, and granted the person appointed by the family of a deceased victim leave to participate in these proceedings on that victim's behalf. It also 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 the additional information already requested by the Chamber in the operative part of the 23 November 2009 Decision and the 22 December 2009 Decision.⁷
6. On 18 May 2010, VPRS submitted to the Chamber a report containing the additional documents requested for Applicant a/0390/09 only.⁸ The Legal Representatives of Applicants a/0114/08, a/0160/09 and a/0452/09 and the Registry indicated that they had not yet been able to contact those applicants.⁹
7. Following a decision of the Chamber dated 26 May 2010,¹⁰ a redacted version of the additional documents provided by Applicant a/0390/09 was transmitted to the parties, and on 4 June 2010, both Defence teams filed their observations as to whether

⁵ *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.

⁶ *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 the annex, ICC-01/04-01/07-1737-Conf-Anx-Red).

⁷ *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 to 4 (see also the confidential, redacted version of the annexes).

⁸ Registry, "*Sixième rapport du Greffe sur les informations supplémentaires reçues concernant des demandes de participation de victimes*", 18 May 2010, ICC-01/04-01/07-2104-Conf-Exp with confidential, *ex parte* annex.

⁹ ICC-01/04-01/07-2104-Conf-Exp, paras. 6-9.

¹⁰ *Decision inviting the Prosecutor and the Defence to submit their observations on an application for participation by a victim (rule 89(1) of the Rules of Procedure and Evidence)*, 26 May 2010, ICC-01/04-01/07-2134-tENG.

or not that applicant should be granted the status of victim participating in the proceedings.¹¹

8. On 20 August 2010, VPRS transmitted to the Chamber a report containing the additional information requested in relation to Applicant a/0452/09.¹² The Legal Representatives of Applicants a/0114/08 and a/0160/09 indicted that they had not yet been able to contact those applicants.¹³
9. The Chamber requests VPRS to redact the additional documents concerning Applicant a/0452/09 – after prior consultation with the Victims and Witnesses Unit – in accordance with the 26 February 2009 Decision and the Registry’s report of 20 March 2009.¹⁴
10. Accordingly, the Chamber orders the Registry to transmit to the Prosecutor and the Defence the redacted version of the additional documents transmitted to the Chamber on 20 August 2010.

FOR THESE REASONS,

ORDERS the Registry to disclose to the Prosecutor and the Defence a redacted version of the additional documents provided by Applicant a/0452/09 by 4 p.m. on 7 September 2010;

¹¹ Defence for Mathieu Ngudjolo, “*Observations de la Défense de Mathieu Ngudjolo sur les documents additionnels fournis par le demandeur a/0390/09*”, 4 June 2010, ICC-01/04-01/07-2163; Defence for Germain Katanga, “*Defence Observations on the Complementary Documents concerning a/0390/09*”, 4 June 2010, ICC-01/04-01/07-2165.

¹² Registry, “*Septième rapport du Greffe sur les informations supplémentaires reçues concernant des demandes de participation de victimes*”, 20 August 2010, ICC-01/04-01/07-2307-Conf-Exp with confidential, *ex parte* annex.

¹³ ICC-01/04-01/07-2307-Conf-Exp, paras. 4-6.

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

ORDERS the Prosecutor and both Defence teams to submit their observations as to whether Applicant a/0452/09 should be granted the status of victim participating in the proceedings, by 4 p.m. on 16 September 2010;

ORDERS the parties to refer to this applicant by the number assigned by the Registry; and

ORDERS the Legal Representatives of Applicants a/0114/08 and a/0160/09, who have not submitted the additional documents requested by the Chamber, to submit said documents prior to 15 December 2010.

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 6 September 2010
At The Hague, The Netherlands