

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **French**

No.: **ICC-01/04-02/12**

Date: **15 May 2013**

THE APPEALS CHAMBER

Before: Judge Sanji Mmasenono Monageng, Presiding Judge
 Judge Sang-Hyun Song
 Judge Cuno Tarfusser
 Judge Erkki Kourula
 Judge Ekaterina Trendafilova

**SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO
 IN THE CASE OF
 THE PROSECUTOR *v.* MATHIEU NGUDJOLO CHUI**

Public document

**with Annexes 1 and 2, confidential, *ex parte*,
 only available to Mr Nsita, VPRS and VWU
 and Annex 3, confidential**

Request to resume the action initiated by deceased Victim a/0253/09

Source: Common legal representative of the main group of victims

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

Office of the Prosecutor

Ms Fatou Bensouda, Prosecutor

Mr Fabricio Guariglia

**Counsel for the Defence of Germain
Katanga**

**Counsel for the Defence of Mathieu
Ngudjolo Chui**

Mr Jean-Pierre Kilenda

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**

Registrar

Mr Herman von Hebel

Defence Support Section

Victims and Witnesses Unit

Mr Patrick Craig

Detention Section

**Victims Participation and Reparations
Section**

Ms Fiona McKay

Other

PROCEDURAL BACKGROUND

1. The trial of M. Ngudjolo commenced on 25 November 2009 before Trial Chamber II. Initially, the proceedings were held jointly against G. Katanga.¹ In the course of the trial, the Trial Chamber authorised 364 victims to participate in the proceedings, 353 of whom are represented by Mr F. Nsita Luvengika.²
2. Pursuant to a decision of Trial Chamber II on 21 November 2012, the charges against G. Katanga and M. Ngudjolo were severed.³ On 18 December 2012, the Trial Chamber issued a judgment pursuant to article 74 of the Statute acquitting M. Ngudjolo.⁴ In the aforementioned decision of November 2012, the Trial Chamber stated that the victims admitted to participate in the initial proceedings were authorised to continue participating in both of the severed cases.⁵
3. On 20 December 2012, the Prosecution lodged an appeal against the judgment pertaining to M. Ngudjolo.⁶ On 6 March 2013, the Appeals Chamber (“the Chamber”)

¹ *Decision on the confirmation of charges*, ICC-01/04-01/07-717, 30 September 2008.

² 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*, ICC-01/04-01/07-357, 2 April 2008; *Decision on the 97 applications for participation at the Pre-Trial Stage of the Case*, ICC-01/04-01/07-578-Conf, 10 June 2008; *Decision on the application for participation of witness 166*, ICC-01/04-01/07-631-Conf, 23 June 2008; Trial Chamber II, *Corrigendum of Operative Part of the Decision on the 345 applications for participation as victims in the proceedings*, ICC-01/04-01/07-1347-Corr-tENG, 31 July 2009; *Grounds for the Decision on the 345 applications for participation in the proceedings submitted by victims*, ICC-01/04-01/07-1491-Conf-tENG, 23 September 2009; *Operative Part of the Second Decision on the Applications by Victims for Participation in the Proceedings*, ICC-01/04-01/07-1669-tENG, 23 November 2009; *Motifs de la deuxième décision relative aux demandes de participation de victimes à la procédure*, ICC-01/04-01/07-1737, 22 December 2009; *Motifs de la troisième décision relative à 8 demandes de participation de victimes à la procédure*, ICC-01/04-01/07-1967, 17 March 2010; *Cinquième décision relative à 2 demandes de participation de victimes à la procédure*, ICC-01/04-01/07-2693, 9 February 2011; *Décision relative au maintien du statut de victime participant à la procédure des victimes a/0381/09 et a/0363/09 et à la demande de Me Nsita Luvengika en vue d’être autorisé à mettre fin à son mandat de Représentant légal desdites victimes*, ICC-01/04-01/07-3064, 7 July 2011.

³ *Decision on the implementation of regulation 55 of the Regulations of the Court and severing the charges against the accused persons and Dissenting Opinion of Judge C. Van den Wyngaert*, ICC-01/04-01/07-3319-tENG/FRA, para. 64.

⁴ ICC-01/04-02/12-3-tENG.

⁵ *Decision on the implementation of regulation 55 of the Regulations of the Court and severing the charges against the accused persons and Dissenting Opinion of Judge C. Van den Wyngaert*, ICC-01/04-01/07-3319-tENG/FRA, para. 64.

⁶ “Prosecution’s Appeal against Trial Chamber II’s ‘Jugement rendu en application de l’article 74 du Statut’”, ICC-01/04-02/12-10.

authorised the participation of the victims in the appeal. It requested the Registry to provide it and the parties and participants with a list of the victims who had participated in the proceedings in M. Ngudjolo's case and whose victim status had not been withdrawn.⁷

4. On 12 April 2013, the Legal Representative submitted his observations on the list. He also informed the Chamber of the death of Victim a/0253/09.⁸
5. As indicated in the aforementioned submissions, the Legal Representative hereby seeks the resumption of Victim a/0253/09's action by a family member (I) and protective measures for the successor of the action and the members of the family meeting which so designated him (II).
6. The present request is public. However, Annexes 1 and 2 have been filed as confidential, *ex parte*, only available to the Legal Representative, the Victims Participation and Reparations Section ("VPRS") and the Victims and Witnesses Unit ("VWU"), pursuant to regulation 23 *bis* of the Regulations of the Court. They contain information which identifies the successor of the action and certain family members. Annex 1 contains the full version of the documents. Annex 2 presents the proposed redactions for the same documents (a red box for those proposed by the Legal Representative and a blue box for additional redactions proposed by VWU and VPRS). The redactions are applied in Annex 3. Should the Chamber grant the present request, the successor's identity may be disclosed to the Prosecution and the Defence for M. Ngudjolo ("Defence"). In the interim, a redacted version of Annex 1 has been filed as confidential and is accessible to the parties and participant (Annex 3). The Legal Representative wished to take this step in order to minimise the number of filings and to facilitate optimum treatment of the present request. The third annex

⁷ *Decision on the participation of victims in the appeal against Trial Chamber II's "Jugement rendu en application de l'article 74 du Statut"*, ICC-01/04-02/12-30, p. 3

⁸ "Observations of the legal representative concerning the list of victims participating in the appeal proceedings transmitted by the Registry and application for re-classification of document ICC-01/04-02/12-55-Conf-Exp-Anx3-Corr", ICC-01/04-02/12-62-tENG, 12 April 2013, para. 21.

has been filed as confidential because of the information likely to identify the victim, which is not public owing to earlier protective measures which are still in force.

7. Insofar as the deceased is also a participating victim in the proceedings against G. Katanga, the Legal Representative is today submitting a similar request to Trial Chamber II seeking leave for the successor to continue the action initiated by Victim a/0253/09 in the proceedings against G. Katanga.

I. BASIS FOR THE REQUEST TO RESUME ACTION

(1) Applicable principles

8. Article 68(3) of the Statute sets out the general principle of victims' participation in proceedings before the Court. It enables victims whose personal interests are affected to present their views and concerns "at stages of the proceedings determined to be appropriate by the Court and in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial".
9. Under rule 85(a) of the Rules of Procedure and Evidence ("Rules"), the term "victims" includes "natural persons who have suffered harm as a result of the commission of any crime within the jurisdiction of the Court".
10. Pursuant to rule 89 of the Rules, read jointly with regulation 86 of the Regulations of the Court, victims must submit a written application to participate in the proceedings, specifically using a standard application form, addressed to the Registrar, who then transmits the application to the relevant Chamber.

(2) Application in the present matter

11. In the present case, Victim a/0253/09 submitted an application for participation on 23 March 2009. Trial Chamber II considered that the conditions of rules 85 and 89 were properly satisfied and authorised a/0253/09 to participate.⁹
12. The victim died in the course of the proceedings. The successor is a direct close relative of the victim. He has been mandated by a family meeting of three persons to continue the action initiated before the Court (see Annexes 1, 2 and 3). In accordance with that mandate, his sole intention is to continue the action initiated by Victim a/0253/09 on the victim's behalf and as defined in the victim's application for participation. In no way does he seek to invoke personal harm or to initiate any personal action whatsoever.
13. This request is in accordance with the provisions of article 68(3) of the Statute, rule 89 of the Rules and regulation 86 of the Regulations of the Court. Victim a/0253/09's request to participate in the proceedings, the grounds, and the demonstration of the victim's personal interest in the case are contained in the application for participation which was previously accepted by Trial Chamber II. Continuing the action initiated by that application will not be prejudicial to the rights of the Defence or a fair trial. The successor intends to continue on behalf of the deceased victim and within the bounds of the application for participation of which the Defence and the Prosecution have already been apprised. Hence, no new information has been added to the file.
14. For the parties, the continuation of a/0253/09's application by a family member will itself have no real bearing on the subsequent proceedings. It will, however, ensure the effective participation of victims in the Court's work of rendering justice in accordance with the Statute, and in particular, will prevent such participation from

⁹ *Corrigendum of Operative part of the Decision on the 345 applications for participation as victims in the proceedings*, ICC-01/04-01/07-1347-Corr-tENG, 31 July 2009; *Grounds for the Decision on the 345 Applications for Participation in the Proceedings Submitted by Victims*, ICC-01/04-01/07-1491-Conf-tENG, 23 September 2009.

being unjustly revoked because some victims did not survive until the end of the trial owing to the length of proceedings.

15. It is worth noting that in the present case, Trial Chamber II has systematically authorised the continuation of an application submitted by a victim who was authorised to participate but died in the course of the proceedings. It has thus authorised the continuation of the applications of six victims.¹⁰ In this respect, it required the action initiated by the deceased victim be continued “[TRANSLATION] on behalf of the deceased victim and within the limits of the views and concerns which the victim set out in his or her initial application”.¹¹ Furthermore, the person resuming the action must provide evidence of the death of the victim in question, his or her relationship to the victim, and his or her designation by other family members of the victim as the person resuming the action.
16. Trial Chamber II considered the submission of the following documents to be sufficient evidence that the aforementioned conditions had been satisfied:
 - a death certificate for the victim;
 - the minutes of a family meeting, indicating the family relationship between the deceased victim and the person wishing to act on the victim’s behalf, and stating specifically that the person has been mandated by the deceased victim’s family to continue the action initiated before the Court.¹²

¹⁰ The victims concerned are a/0207/08, a/0120/09, a/0051/08, a/0197/08, a/0025/08 and a/0311/09, who were granted authorisation to participate by the following decisions: *Motifs de la deuxième décision relative aux demandes de participation de victimes à la procédure ICC-01/04-01/07-1737*, 22 December 2009; *Motifs de la troisième décision relative à 8 demandes de participation de victimes à la procédure*, ICC-01/04-01/07-1967, 17 March 2010; *Decision on the applications to resume action submitted by the family members of deceased Victims a/0025/08, a/0051/08, a/0197/08 and a/0311/09*, ICC-01/04-01/07-3018-tENG, 14 June 2011; *Corrigendum of the decision on the applications to resume action submitted by the family members of deceased Victims a/0025/08 and a/0311/09*, ICC-01/04-01/07-3185-Corr-tENG, 24 October 2011.

¹¹ *Motifs de la deuxième décision relative aux demandes de participation de victimes à la procédure*, ICC-01/04-01/07-1737, 22 December 2009, para. 30.

¹² ICC-01/04-01/07-1737, paras. 30-32; *Decision on the applications to resume action submitted by the family members of deceased Victims a/0025/08, a/0051/08, a/0197/08 and a/0311/09*, ICC-01/04-01/07-3018-tENG, 14 June 2011, paras. 20-29.

17. The parties have never contested the principles thus defined by Trial Chamber II.¹³
18. While the Appeals Chamber is not bound by the decisions of Trial Chamber II, it is worth noting that this request concerns a “joint” victim in the present case and in the ongoing proceedings against G. Katanga. The Legal Representative intends to submit a similar request to Trial Chamber II seeking the continuation of the action of Victim a/0253/09 by the successor designated in the annex.

II. BASIS FOR THE PROTECTIVE MEASURES SOUGHT

(1) Applicable principles

19. Pursuant to article 68(1) of the Statute, the Chamber may order any protective measures in order to “protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses”, provided that they are not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial. Rule 87(3) of the Rules provides *inter alia* for the possibility of not disclosing to the public information which would identify a victim. Furthermore, regulation 42(1) of the Regulations of the Court provides that protective measures ordered for a victim in the context of a case “shall continue to have full force and effect in relation to any other proceedings before the Court”.

¹³ “Prosecution’s Observations on the Applications for Participation in the Proceedings of Applicants a/0285/09, a/0286/09, a/0297/09 and a/0452/09 and on Additional Documents Provided by Applicants”, ICC-01/04-01/07-1611, 9 November 2009; “Defence Observations on the Applications for Participation as Victims and Additional Information Disclosed on 29 October 2009”, ICC-01/04-01/07-1616, 9 November 2009; *Motifs de la deuxième décision relative aux demandes de participation de victimes à la procédure*, ICC-01/04-01/07-1737-Conf-Exp-Anx, 22 December 2009, pp. 22-25 and pp. 90-93; Defence for Mathieu Ngudjolo, “Observations de la Défense de Mathieu Ngudjolo sur certaines demandes de participation de victimes a/0161/09, a/0215/09, a/0267/09 et a/0120/09 (Règle 89(1) du Règlement de procédure et de preuve)”, 24 February 2010, ICC-01/04-01/07-1905; Office of the Prosecutor, “Prosecution’s Observations on Additional Documents Provided by Applicants a/0161/09, a/0215/09 and a/0267/09 and on the Request Related to Victim a/0120/09”, 24 February 2010, ICC-01/04-01/07-1904; Defence for Mathieu Ngudjolo, “Observations de la Défense de Mathieu Ngudjolo Chui sur la demande de reprise de l’action, et en particulier sur les informations complémentaires fournies par le Représentant légal commun concernant la reprise d’instance par les proches des victimes décédées a/0025/08, a/0051/08, a/0197/08 et a/0311/09”, 19 April 2011, ICC-01/04-01/07-2842; ICC-01/04-01/07-2842 *certaines victimes décédées*, 20 April 2011, ICC-01/04-01/07-2847.

20. Relying on several provisions of the Statute and the Rules (including rule 87(1)), the Chamber considered that the application of protective measures (in particular, non-disclosure of a person's identity) must not be restricted to witnesses and victims or their family members.¹⁴ It thereby extended the possibility of granting protective measures to include "persons at risk on account of the activities of the Court". In the Chamber's view, "the specific provisions of the Statute and the Rules for the protection not only of witnesses and victims and members of their families, but also of others at risk on account of the activities of the Court are indicative of an overarching concern to ensure that persons are not unjustifiably exposed to risk through the activities of the Court".¹⁵
21. The Legal Representative notes that in the context of redactions made by the Prosecution to witness statements disclosed to the Defence, the Appeals Chamber established a series of criteria to be taken into account to enable the relevant chamber to make a ruling.¹⁶ Thus, when a chamber is assessing a request for redactions in regard to the Defence and concerning witnesses, it must consider:
- (a) whether disclosure of the information would pose a danger to the particular person – the alleged danger must involve an objectively justifiable risk to the safety of the person concerned;
 - (b) whether the risk arises from disclosing the particular information to the Defence, as opposed to the public at large;
 - (c) whether or not it is possible to implement a measure less restrictive than redactions;

¹⁴ Appeals Chamber, *Judgment on the appeal of the Prosecutor against the decision of Pre-Trial Chamber I entitled "First Decision on the Prosecution Request for Authorisation to Redact Witness Statements"*, 13 May 2008, ICC-01/04-01/07-475, paras. 48-54.

¹⁵ ICC-01/04-01/07-475, para. 54.

¹⁶ See, *inter alia*: ICC-01/04-01/07-475, 13 May 2008, paras. 67 *et seq.*; *The Prosecutor v. Thomas Lubanga Dyilo, Judgment on the appeal of Mr. Thomas Lubanga Dyilo against the decision of Pre-Trial Chamber I entitled "First Decision on the Prosecution Requests and Amended Requests for Redactions under Rule 81"*, ICC-01/04-01/06-773, 14 December 2006, paras. 21 and 33.

(d) whether the information is relevant to the Defence and, if so, whether the interests of the person potentially placed at risk outweigh those of the Defence.

22. The Chamber further emphasised that any such application for non-disclosure must be assessed on a case-by-case basis, balancing the various interests at stake and taking account of the stage of the proceedings.¹⁷
23. Such criteria must be understood within the specific context of the Chamber's decisions pertaining to (non-) disclosure of information contained in witness statements (and not information in connection with a victim's application for participation). Should the Chamber nevertheless decide to apply them, in whole or in part, to the present request, the Legal Representative will demonstrate below that the requisite conditions for non-disclosure (whether temporary or permanent) of certain information to the Prosecution and the Defence in the context of a request to resume action have been satisfied, taking account of the requirements of a fair trial and the rights of the Defence.

(2) Application

24. In the present matter, three types of protective measures are being sought:
- (a) continued anonymity for the deceased victim in respect of the public;
 - (b) certain protective measures in respect of the Defence and Prosecution;
 - (c) anonymity for the successor and some of his family members in respect of the public;
- (a) Continued anonymity for the deceased victim toward the public*
25. The identity of the deceased victim has already been disclosed to the Prosecution and the Defence.¹⁸ However, Trial Chamber II ordered that the victim's identity should

¹⁷ See, *inter alia*: ICC-01/04-01/07-475, paras. 66 and 68; *Judgment on the appeal of Mr Germain Katanga against the decision of Pre-Trial Chamber I entitled "First Decision on the Prosecution Request for Authorisation to Redact Witness Statements"*, ICC-01/04-01/07-476, 13 May 2008, para. 57.

not be disclosed to the public.¹⁹ This was a measure recommended by VWU, which proposed that it be applied for the duration of the proceedings and for all victims.²⁰ Trial Chamber II's decision has not been varied, nor has any application been made to vary it.

26. Consequently, the deceased victim's anonymity must be maintained toward the public, pursuant to regulation 42(1) of the Regulations of the Court. Maintaining this measure is especially important, since disclosure of Victim a/0253/09's identity could lead to the identification of the successor.

(b) *Protective measures for the successor and his family in respect of the Defence and the Prosecution*

27. Should the Chamber grant the request to resume action, the successor does not object to his identity being disclosed to the Defence and the Prosecution. It should nevertheless be disclosed to a limited number of team members of each party in order also to protect the successor's anonymity in respect of the public (see paragraphs 38 *et seq* below.)
28. However, pending the Chamber's ruling on the present request, the successor seeks non-disclosure of his identity to the parties and participants. The purpose of the measure is to protect the safety, well-being and privacy of the successor and his family members, in accordance with article 68(1) of the Statute. This measure would be wholly temporary.
29. The successor has indicated that he has serious fears for his own safety and that of his family owing to his participation in the proceedings. His fears are supported by recent reports on the local security situation, which describe acute inter-ethnic

¹⁸ "Divulgence de l'identité d'un deuxième groupe de victimes aux parties", ICC-01/04-01/07-1664-Conf-Exp, 20 November 2009.

¹⁹ *Second Decision on the Disclosure to the Parties of the Identities of the Victims*, ICC-01/04-01/07-1650, 18 November 2009, para. 15.

²⁰ "Victims and Witnesses Unit's report on the risk assessment of participating victims", ICC-01/04-01/07-1757-Conf, 11 January 2010, para. 9.

tensions between the Hema, Lendu and Ngiti in the area in which he lives (see paragraphs 32 and 39 below). Identifying him as a “victim” would seriously endanger his safety and well-being and those of his family members. If, however, the Chamber were to deny his request to continue the action, the parties would have no interest in accessing the particulars of a third party. Withholding his identity from the Defence and the Prosecution at this stage of the proceedings would substantially reduce the risk of information being leaked to the public. Non-disclosure of the successor’s identity to the Defence and the Prosecution at this stage of the proceedings is the only measure which would guarantee that information concerning a third party is not needlessly disclosed (in the event that the Chamber denies the request).

30. Such a measure will not violate the rights of the Defence and will be consistent with a fair trial. Nor will it preclude the parties from duly submitting their observations on the request to resume action, since they have access to all relevant information: the fact that the victim is deceased, the existence of a close, direct family relationship between the victim and the successor, and the existence of a mandate from the family. This information is attested by the documents attached as Annex 3, the redacted version of Annex 1, which contains all the information relevant to the request. It is worth noting that the practice of temporarily withholding disclosure to the Defence and the Prosecution of the identity of a person resuming action has been applied by Trial Chamber II in similar cases.²¹
31. The successor further seeks non-disclosure to the Prosecution and the Defence, for the duration of the proceedings, of information pertaining to his home or identifying his place of residence²² and information which would identify his family members²³

²¹ See: *Decision on the applications to resume action submitted by the family members of deceased Victims a/0025/08, a/0051/08, a/0197/08 and a/0311/09*, ICC-01/04-01/07-3018-tENG, 14 June 2011, paras. 30-31; *Corrigendum of the decision on the applications to resume action submitted by the family members of deceased Victims a/0025/08 and a/0311/09*, ICC-01/04-01/07-3185-Corr-tENG, 24 October 2011, paras. 6-7.

²² Address and/or area of residence, place of death of the victim, place and issuing authority of the death certificate, and any mention of the voter registration card which would enable the card to be

and their place of residence.²⁴ This measure is intended to ensure his safety, well-being and privacy and those of his family, in accordance with article 68(1) of the Statute.

32. As explained above, the successor has expressed serious fears for his safety and that of his family members owing to his participation in the proceedings. Such fears are objectively justified by recent reports, including by MONUSCO, on the local security situation, which describe acute inter-ethnic tensions between the Hema, Lendu and Ngiti in the area in which he lives (see paragraph 29 above).²⁵ Several victims have stated that the renewed tension was linked, *inter alia*, to the judgment in M. Ngudjolo's case. Furthermore, his acquittal has reinforced a sense of impunity in certain militia members who were identified during proceedings as being linked to M. Ngudjolo or G. Katanga. Yet these militia members are still conducting military action in the region, and are targeting the Hema population in particular.²⁶
33. It happens that victims and people collaborating with the Court in general are soon identified in the towns in villages where they live. They face a serious risk to their safety and well-being, not only from members of other ethnic communities (who

identified in the national register of the National Independent Electoral Commission (CENI). A person may be identified from the number on the voter registration card.

²³ Surnames, given names, dates and places of birth, fingerprints and signatures, and any mention of the voter registration card which would enable the card to be identified in the national register of CENI. A person may be identified from the number on the voter registration card.

²⁴ Addresses and/or area of residence, place of death of the victim, and place and issuing authority of the death certificate.

²⁵ See, *inter alia*, the reports of MONUSCO press conferences for the last several months, indicating: "[TRANSLATION] In Ituri, inter-ethnic tensions persist in the south of Irumu territory between the Hema and Ngiti communities." Verbatim report of the conference of 17 April 2013, p. 4, <http://radiookapi.net/files/Conf-hebdo-verbatim-17-avril.pdf>.

²⁶ See, *inter alia*, the following recent press reports: Radio Okapi, 19 April 2013, *Province Orientale: l'auditorat militaire de l'Ituri a rouvert le dossier contre Cobra Matata*, <http://radiookapi.net/actualite/2013/04/19/province-orientale-lauditorat-militaire-de-lituri-rouvert-le-dossier-contre-cobra-matata-2/>; 3 April 2013, *RDC: la situation sécuritaire est préoccupante dans 8 territoires de la Province Orientale*, <http://radiookapi.net/actualite/2013/04/02/rdc-la-situation-securitaire-est-preoccupante-dans-8-territoires-de-la-province-orientale/>; 14 March 2013, *Province Orientale: les députés de l'Ituri plaident pour le retour de la paix dans leur région*, <http://radiookapi.net/actualite/2013/03/14/province-orientale-les-deputes-de-lituri-plaident-pour-le-retour-de-la-paix-dans-leur-region/>.

seek vengeance), but sometimes also from members of their own community (due to jealousy or because some members of their community do not believe in collaborating with the Court in general).²⁷ If the address (or place of residence) of the successor and of his family is not disclosed to the Prosecution and the Defence, the risk of information being leaked to the public or, more broadly, of the public becoming aware of their victim status will be substantially reduced. Such a measure will protect the successor and his family members from any threat to their safety, well-being and privacy, in accordance with article 68 of the Statute. Furthermore, these family members have not consented to disclosure of their particulars.

34. Moreover, non-disclosure of this information must be assessed in light of the nature of the information in question, of the request at issue and of the stage of the proceedings. The present request concerns only the issue of the continuation of proceedings by a family member of the deceased victim. It is being submitted at the appeals stage. This stage is conducted essentially in writing and is restricted to the grounds of appeal advanced by the Prosecution in its Appeal Brief.²⁸ Its purpose is not to assess the merits of the individual application of each participating victim. Accordingly, information pertaining to the successor's place of residence and information identifying his family members (including their place of residence) is of little to no interest to the Defence and the Prosecution in the current circumstances. It is worth noting that Trial Chamber II also considered that, during the trial stage, the victims' interest in having their information protected outweighed any interest of the Prosecution or the Defence might have in accessing it. Indeed, Trial Chamber II has always classified any information pertaining to the identity of a victim's family members or the place of residence of a victim or victim's successor as *ex parte* and not

²⁷ "Rapport d'évaluation actualisé de l'Unité d'aide aux victimes et aux témoins relatif aux risques individuels qu'encourraient les victimes a/0381/09, a/0018/09, a/0191/08, a/0363/09 ainsi que pan/0363/09 en cas de divulgation de leur identité au public", ICC-01/04-01/07-2634-Conf, 16 December 2010.

²⁸ "Prosecution's Document in Support of Appeal against the 'Jugement rendu en application de l'article 74 du Statut'", 22 March 2013, ICC-01/04-02/12-45-Conf ("Appeal Brief").

available to the parties and participant.²⁹ To date, none of the parties has requested that such a measure be varied. It therefore does not infringe the rights of the Defence and is consistent with a fair trial. In no way does it prevent the parties from submitting their observations on the continuation of the deceased victim's application by the successor.

35. Both VWU and VPRS support the proposed redactions. Indeed, the Legal Representative sought the opinion of both units on the proposed redactions prior to submitting them to the Chamber.³⁰

36. In addition to the redactions proposed by the Legal Representative, VWU suggested also redacting the precise family relationship between the successor and the deceased victim.³¹ VPRS also suggested the following redactions:³²

- On the family mandate:
 - Day and month of death (VPRS stated that this information is usually redacted, but that this redaction may not necessarily be required since the victim is known to the parties)
- On the death certificate:
 - Day and month of death (same comment as above)
 - Day and month of issuance

37. The Legal Representative has applied these additional proposals to Annex 3.³³ However, he defers to this Chamber's ruling as to the need also to implement the

²⁹ See, for example, the e-mail from the legal officer of the Trial Chamber on 21 September 2011, authorising the redactions proposed in document ICC-01/04-01/07-3162-Conf-Exp and annexes, and the corresponding filings ICC-01/04-01/07-3156-Conf-Exp-Anx1-Red and ICC-01/04-01/07-3156-Conf-Exp-Anx2-Red; see the e-mail from the legal officer of the Trial Chamber on 26 October 2011, authorising the redactions proposed in document ICC-01/04-01/07-3186 and annexes, and the corresponding filings ICC-01/04-01/07-3156-Conf-Exp-Anx1-Red2 and ICC-01/04-01/07-3156-Conf-Exp-Anx2-Red2. See also document ICC-01/04-01/07-2831 and annexes.

³⁰ E-mail sent by the Legal Representative on 6 May 2013.

³¹ E-mail sent by the VWU staff member on 6 May 2013.

³² E-mail sent by the VPRS staff member on 8 May 2013.

redactions proposed by VWU and VPRS. In the Legal Representative's view, the redactions proposed in paragraphs 26 to 32 are the minimum of information which must not be disclosed (temporarily or permanently) to the Prosecution and the Defence.

(c) Anonymity of the successor and his family members in respect of the public

38. The successor has stated that he has serious fears for his safety and that of his family members should his identity and that of the family members mentioned in the minutes of the family meeting, as well as his participation in the proceedings, become public.
39. Recent security reports on the area in which the successor and his family live describe acute tensions between the Hema, Lendu and Ngiti communities and severe local insecurity (see paragraphs 29 and 32 above). Like the other victims in this case (whose anonymity toward the public has been maintained), the successor and his family members face an objective risk to their safety and well-being as a result of their participation in proceedings before the Court (and in particular, if they are identified as having victim status).
40. In light of the foregoing, the following protective measures are necessary to ensure the safety and well-being of the successor and his family members who are named in the minutes of the family meeting, in accordance with article 68(1) of the Statute and rule 87(3) of the Rules of Procedure and Evidence:
 - non-disclosure to the public of any information identifying the successor and his family members;
 - disclosure of the successor's identity to a limited number of the parties' team members, in order to reduce any risk of accidental disclosure to the public; and
 - application of the measures contained in the "Protocol on investigations in relation to witnesses benefiting from protective measures" (ICC-01/04-01/07-

³³ The additional redactions proposed by VPRS and VWU are indicated in blue in Annex 2.

2007-Conf-Anx1).³⁴ They state how, in practical terms, witnesses' and victims' anonymity must be preserved toward the public. They include a prohibition on disclosing to a third party that a protected witness or victim is a witness or is involved with the Court.³⁵

41. The proposed protective measures toward the public are in no way prejudicial to the rights of the accused and are consistent with a fair and impartial trial. The Legal Representative notes that the measures thus requested all apply to Victim a/0253/09; that they have always been granted by Trial Chamber II in similar circumstances; and have never been contested by the parties or the participant.³⁶
42. Should the Appeals Chamber decline to grant these protective measures in whole or in part, the Legal Representative seeks leave to consult with the successor and the family members of the deceased victim in order to ascertain their willingness to continue with their request to resume action, prior to any order for disclosure of information to the Defence, the Prosecution or the public, in accordance with rule 87(1) of the Rules and regulation 42(4) of the Regulations of the Court.
43. Furthermore, the Legal Representative intends to seek similar protective measures from Trial Chamber II. Without wishing to pre-judge Trial Chamber II's decision on such a request, the Legal Representative notes that it is wholly consistent with that chamber's practice to date.

³⁴ "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-Anx1); Trial Chamber II, *Decision on the "Protocol on investigations in relation to witnesses benefiting from protective measures"*, ICC-01/04-01/07-2047-tENG, 26 April 2010.

³⁵ ICC-01/04-01/07-2047-tENG, para. 11; ICC-01/04-01/07-2007-Conf-Anx1, c).

³⁶ Trial Chamber II, *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*, ICC-01/04-01/07-2827-tENG, 11 April 2011, paras. 32-34; See also: *Third Decision on the Disclosure of the Identities of Victims to the Parties*, ICC-01/04-01/07-1731-tENG, 17 December 2009; ICC-01/04-01/07-T-104-FRA ET, 18 February 2011, pp. 33-34; *Decision on the applications to resume action submitted by the family members of deceased Victims a/0025/08, a/0051/08, a/0197/08 and a/0311/09*, ICC-01/04-01/07-3018-tENG, 14 June 2011, paras. 30-35.

FOR THESE REASONS,

MAY IT PLEASE THE CHAMBER TO:

1. **AUTHORISE** the person designated by the family of deceased victim a/0253/09 to continue the action before the Court on the victim's behalf;
2. **ORDER** the following protective measures, pursuant to article 68(1) of the Statute, rule 87 and regulation 42(1) of the Regulations of the Court:
 - a. continued non-disclosure to the public of any information identifying the deceased victim;
 - b. disclosure of the successor's identity to a limited number of team members of the Defence and the Prosecution, if and when the Chamber authorises the continuation of the deceased victim's application;
 - c. non-disclosure of the identity and address (or place of residence) of the family members listed in the minutes of the family meeting, to the Prosecution, the Defence, the participant and the public;
 - d. non-disclosure of the successor's address (or place of residence) to the Prosecution, the Defence, the participant and the public;
 - e. application of the measures contained in the "Protocol on investigations in relation to witnesses benefiting from protective measures" (ICC-01/04-01/07-2007-Conf-Anx1).
3. **AUTHORISE**, consequently, the redactions applied in Annex 3 in respect of the Defence and the Prosecution.

[signed]

Fidel Luvengika Nsita

Common legal representative of the main group of victims

Dated this 15 May 2013, at Brussels, Belgium