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TRIAL CHAMBER II

Before: Judge Bruno Cotte, Presiding Judge
Judge Fatoumata Dembele Diarra
Judge Hans-Peter Kaul

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

***IN THE CASE OF
THE PROSECUTOR
v. Germain KATANGA and Mathieu NGUDJOLO CHUI***

Public

**Prosecution's Observations on the Applications for Participation in the
Proceedings of 87 Applicants**

Source: Office of the Prosecutor

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

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The Office of the Prosecutor ("Prosecution") respectfully submits its observations on the applications for participation in the case of *The Prosecutor v. Germain KATANGA and Mathieu NGUDJOLO CHUI* ("Case") of 87 Applicants ("Applicants"), pursuant to Rule 89(1) of the Rules of Procedure and Evidence ("Rules").

Background

1. On 19 May 2009, Trial Chamber II ("the Chamber") requested the Prosecution to file observations regarding 87 applications for participation as victims in the proceedings before the Chamber in the case of *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*.¹

2. The criteria required for applicants to be granted the procedural status of victim are set out in Rule 85(a) of the Rules and are described in detail in the "Decision on the Applications for Participation in the Proceedings of Applicants a/0327/07 to a/0337/07 and a/0001/08".² The four specific requirements are that (i) the applicant must be a natural person; (ii) who suffered emotional, physical or economic harm (iii) as a result of the crimes committed during the joint FNI/FRPI attack on Bogoro on or about 24 February 2003 (iv) as charged in the Document Containing the Charges.

3. Having examined the individual applications in view of these requirements, the Prosecution contends that Applicants a/0156/09, a/0158/09, a/0159/09, a/0163/09, a/0164/09, a/0165/09, a/0166/09, a/0167/09, a/0168/09, a/0169/09, a/0203/09, a/0206/09, a/0207/09, a/0208/09, a/0209/09, a/0210/09, a/0211/09, a/0212/09, a/0213/09, a/0214/09, a/0215/09, a/0216/09, a/0217/09, a/0218/09, a/0219/09, a/0220/09, a/0221/09, a/0222/09, a/0223/09, a/0224/09, a/0225/09,

¹ ICC-01/04-01/07-1151, 19 May 2009, p. 6.

² ICC-01/04-01/07-357, 2 April 2008, p. 8.

a/0226/09, a/0227/09, a/0228/09, a/0229/09, a/0230/09, a/0231/09, a/0232/09, a/0233/09, a/0250/09, a/0251/09, a/0252/09, a/0253/09, a/0255/09, a/0256/09, a/0257/09, a/0265/09, a/0267/09, a/0270/09, a/0271/09, a/0273/09, a/0274/09, a/0275/09, a/0276/09, a/0277/09, a/0278/09, a/0279/09, a/0280/09, a/0281/09, a/0282/09, a/0283/09, a/0288/09, a/0290/09, a/0294/09, a/0295/09, a/0296/09, a/0298/09, a/0299/09, a/0301/09, a/0302/09, a/0303/09, a/0304/09, a/0305/09, a/0308/09, a/0309/09, a/0310/09, a/0311/09, a/0313/09, a/0314/09, a/0316/09 and a/0520/08 should be granted procedural status of victim at the trial stage.

4. The Prosecution notes that Applicants a/0202/09, a/0205/09, a/0266/09, a/0293/09 and a/0307/09 indicate Nyakeru as the location of the events as a result of which they suffered harm. These applications will be discussed in more detail below.
5. The Prosecution submits that Applicant a/0157/09 should not be granted procedural status of victim as his application does not satisfy the four criteria set out above in paragraph 2. This application will be discussed in more detail below.

Factual analysis of the applications

1) Victim applicants who satisfy all the requirements

6. Applicants a/0158/09, a/0163/09, a/0164/09, a/0166/09, a/0167/09, a/0168/09, a/0169/09, a/0210/09, a/0216/09, a/0233/09, a/0265/09, a/0267/09, a/0270/09, a/0271/09, a/0273/09, a/0274/09, a/0294/09, a/0295/09, a/0296/09, a/0298/09, a/0299/09, a/0301/09, a/0303/09, a/0304/09, a/0305/09, a/0308/09, a/0309/09, a/0311/09, a/0313/09, a/0314/09 and a/0316/09 should be granted the procedural status of victims, since they meet the requirements as set out in

Rule 85(a) of the Rules and provide the necessary documentation in support of their applications.

7. Applicants a/0159/09, a/0203/09, a/0208/09, a/0209/09, a/0211/09, a/0215/09, a/0217/09, a/0218/09, a/0219/09, a/0220/09, a/0221/09, a/0222/09, a/0223/09, a/0224/09, a/0225/09, a/0226/09, a/0227/09, a/0228/09, a/0229/09, a/0230/09, a/0231/09, a/0232/09, a/0275/09, a/0276/09, a/0277/09, a/0278/09 and a/0302/09 fulfill all the criteria as set out in Rule 85(a) of the Rules.
8. Applicants a/0276/09 and a/0310/09 fulfill all the criteria as set out in Rule 85(a) of the Rules. Regarding Applicant a/0276/09, the Prosecution notes that there may be a discrepancy between the year of birth mentioned in Section A of the Victim Application Form and his “carte d’élève”³. Applicant a/0310/09 did not provide any proof of identity.
9. Applicants a/0156/09, a/0165/09, a/0206/09, a/0207/09, a/0208/09, a/0209/09, a/0212/09, a/0213/09, a/0214/09, a/0215/09, a/0218/09, a/0219/09, a/0220/09, a/0223/09, a/0224/09, a/0225/09, a/0226/09, a/0227/09, a/0229/09, a/0230/09, a/0231/09, a/0232/09, a/0250/09, a/0251/09, a/0252/09, a/0253/09, a/0255/09, a/0256/09, a/0257/09, a/0275/09, a/0276/09, a/0277/09, a/0278/09, a/0279/09, a/0280/09, a/0281/09, a/0282/09, a/0283/09, a/0288/09, a/0290/09 and a/0520/08 also fulfill all the criteria as set out in Rule 85(a) of the Rules and should therefore be granted the procedural status of victims. However, the Prosecution notes that these Applicants did not attach death certificates and/or documentation regarding their relationship with the deceased family members.

³ ICC-01/04-01/07-1153-Conf-Exp-Anx58, p. 3 and p.18

2) Victim applicants who indicate that they suffered harm as a result of events that took place in Nyakeru

10. Applicants a/0202/09, a/0205/09, a/0266/09, a/0293/09 and a/0307/09 specify that they suffered harm as a result of an attack on Nyakeru. The Pre-Trial Chamber denied those applications which claimed that the harm suffered was a result of events that took place in Nyakeru-Ngida.⁴ The Prosecution would like to draw the attention of the Trial Chamber to the Statement of witness 250⁵. The witness states that civilians fleeing the Bogoro attack of 24 February 2003 were also killed around Katonie (which is located some 7-8 km from Bogoro towards Nyakeru), indicating that civilian casualties resulting from the Bogoro attack stretched beyond the immediate borders of Bogoro.

11. The Prosecution notes that some applications were provided to the Prosecutor where the distances between the center of Bogoro and the location where the relevant harm occurred was redacted, making it impossible for the Prosecution to determine whether the damages took place in Bogoro or in nearby areas, such as Nyakeru.

3) Victim applicant who does not satisfy all the requirements

12. Applicant a/0157/09 does not satisfy all the criteria as set out in Rule 85(a) as his application relates to events that have taken place in Nyakeru in July 2003.

⁴ ICC-01/04-01/07-578-Conf, 10 June 2008, para. 83.

⁵ See in eCourt, DRC-OTP-1013-0002 (Statement of W-250), paras 97-99 (and sketch DRC-OTP-1013-0026).

Request

13. For the foregoing reasons, the Prosecution requests that Trial Chamber II grant Applicants a/0156/09, a/0158/09, a/0159/09, a/0163/09, a/0164/09, a/0165/09, a/0166/09, a/0167/09, a/0168/09, a/0169/09, a/0203/09, a/0206/09, a/0207/09, a/0208/09, a/0209/09, a/0210/09, a/0211/09, a/0212/09, a/0213/09, a/0214/09, a/0215/09, a/0216/09, a/0217/09, a/0218/09, a/0219/09, a/0220/09, a/0221/09, a/0222/09, a/0223/09, a/0224/09, a/0225/09, a/0226/09, a/0227/09, a/0228/09, a/0229/09, a/0230/09, a/0231/09, a/0232/09, a/0233/09, a/0250/09, a/0251/09, a/0252/09, a/0253/09, a/0255/09, a/0256/09, a/0257/09, a/0265/09, a/0267/09, a/0270/09, a/0271/09, a/0273/09, a/0274/09, a/0275/09, a/0276/09, a/0277/09, a/0278/09, a/0279/09, a/0280/09, a/0281/09, a/0282/09, a/0283/09, a/0288/09, a/0290/09, a/0294/09, a/0295/09, a/0296/09, a/0298/09, a/0299/09, a/0301/09, a/0302/09, a/0303/09, a/0304/09, a/0305/09, a/0308/09, a/0309/09, a/0310/09, a/0311/09, a/0313/09, a/0314/09, a/0316/09 and a/0520/08, the procedural status of victim at the trial stage in the case of *The Prosecutor v. Germain KATANGA and Mathieu NGUDJOLO CHUI*.

14. The Prosecution requests that Applicant a/0157/09 should not be granted the procedural status of victim in the Case since the Applicant does not satisfy the criteria set by Rule 85 and as interpreted by the Pre-Trial Chamber.



Luis Moreno-Ocampo, Prosecutor

Dated this 2nd day of June 2009

At The Hague, The Netherlands