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

Date: 8 November 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**

**With confidential, *ex parte* annexes only available to the Registry and the legal representative of the victim concerned**

**Fourth decision on two applications for victims' participation in the proceedings**

**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**

Mr Lievin Ngondji Ongombe

**Office of Public Counsel for Victims**

Ms Paolina Massidda

**Office of Public Counsel for the  
Defence**

**States' Representatives**

**Amicus Curiae**

**REGISTRY**

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**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”), acting in accordance with articles 21 and 68 of the Rome Statute (“the Statute”), rules 85, 86 and 89 of the Rules of Procedure and Evidence (“the Rules”) and regulation 86 of the Regulations of the Court, decides the following.

## **I. Procedural Background**

1. In accordance with the procedure stipulated in the Chamber’s 26 February 2009 decision,<sup>1</sup> the Victims Participation and Reparations Section (“VPRS”) transmitted to the Chamber several reports, to which applications for participation were attached.<sup>2</sup>
2. On 31 July 2009, the Chamber issued the operative part of the decision on 345 applications for participation, granting 288 applicants the status of victim participating in the proceedings.<sup>3</sup> The grounds for that decision were made public on 23 September 2009 (“the 23 September 2009 Decision”).<sup>4</sup>
3. On 23 November 2009, the Chamber granted a further 14 victims leave to participate in the proceedings, and asked seven other applicants and one individual seeking to participate in the proceedings on behalf of a deceased victim to submit additional details no later than 11 January 2010 (“the Operative

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<sup>1</sup> *Decision on the treatment of applications for participation*, 26 February 2009, ICC-01/04-01/07-933-tENG (“Decision of 26 February 2009”).

<sup>2</sup> In this regard, see reports of the Registry indicated in ICC-01/04-01/07-1967, footnote 2.

<sup>3</sup> *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.

<sup>4</sup> *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).

Part of the Decision of 23 November 2009").<sup>5</sup> The grounds for that decision were made public on 22 December 2009 ("the Decision of 22 December 2009").<sup>6</sup>

4. On 19 and 28 January 2010, Mr Gilissen filed two applications requesting the Chamber to grant him additional time to respond to the requests for additional information about Applicants a/0114/08 and a/0390/09.<sup>7</sup> On 21 and 29 January 2010, the Chamber, noting the difficulties encountered in locating the two individuals, granted the two applications and set new time limits, the last of which was to expire on 3 February 2010.<sup>8</sup> The additional information was not filed within those time limits.
5. On 17 March 2010, the Chamber granted victim status to three applicants and authorised the person appointed by the family of a deceased victim to participate in the proceedings on that victim's behalf ("the 17 March 2010 Decision"). 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 requested in the Operative Part of the Decision of 23 November 2009 and the 22 December 2009 Decision.<sup>9</sup>

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<sup>5</sup> 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.

<sup>6</sup> *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).

<sup>7</sup> Legal representative of the group of former child-soldier victims, "*Requête du représentant légal des demandeurs a/0114/08 et a/0390/09 visant à informer la Chambre de la survenance d'un élément nouveau et postulant l'obtention exceptionnelle d'un délai permettant la collecte d'informations concernant la situation des victimes*", 19 January 2010, ICC-01/04-01/07-1775; "*Requête du représentant légal des demandeurs a/0114/08 et a/0390/09 visant à informer la Chambre de l'évolution de la situation des demandeurs et postulant l'obtention d'un délai complémentaire permettant la collecte et la communication des informations concernant ces demandeurs*", 28 January 2010, ICC-01/04-01/07-1798.

<sup>8</sup> See e-mails sent on 21 and 29 January 2010 to Mr Gilissen by a legal officer of the Chamber. See also, *Decision Inviting the Prosecutor and the Defence to Submit Their Observations on Certain Applications for Participation from Victims (Rule 89(1) of the Rules of Procedure and Evidence)*, 16 February 2010, ICC-01/04-01/07-1876-tENG, para. 6.

<sup>9</sup> *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).

6. On 18 May 2010, VPRS transmitted to the Chamber a report containing the additional documents requested for Applicant a/0390/09 alone.<sup>10</sup> The legal representatives of Applicants a/0114/08, a/0160/09 and a/0452/09 and the Registry indicated that they had been unable to contact these applicants.<sup>11</sup>
7. In order to obtain the observations of the parties, on 26 May 2010 the Chamber ordered that a redacted version of the additional documents submitted by Applicant a/0390/09 be disclosed to them.<sup>12</sup>
8. On 4 June 2010, both Defence teams submitted their observations on that application for participation.<sup>13</sup>
9. On 20 August 2010, VPRS transmitted to the Chamber another report containing the additional information requested in respect of Applicant a/0452/09.<sup>14</sup> The legal representatives of Applicants a/0114/08 and a/0160/09 and the Registry indicated that they had not yet been able to contact the latter applicants.<sup>15</sup>
10. In order to obtain the observations of the parties, on 6 September 2010 the Chamber ordered that the additional documents submitted by Applicant a/0452/09 be disclosed to them.<sup>16</sup> Noting that applications for

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<sup>10</sup> 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.

<sup>11</sup> *Ibid.*, paras. 6-9.

<sup>12</sup> 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.

<sup>13</sup> 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.

<sup>14</sup> 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.

<sup>15</sup> *Ibid.*, paras. 4 to 6.

<sup>16</sup> 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), 6 September 2010, ICC-01/04-01/07-2367-tENG.

participation a/0114/08 and a/0160/09 remained incomplete, the Chamber ordered the legal representatives of those two applicants to provide the additional documents requested by 15 December 2010.<sup>17</sup>

11. On 10 and 13 September 2010, the Prosecutor<sup>18</sup> and the Defence for Mathieu Ngudjolo<sup>19</sup> submitted their observations on application for participation a/0452/09.

## II. Applicable Law

12. The Chamber will rely on the statutory and regulatory provisions underpinning its Decision of 23 September 2009,<sup>20</sup> in particular article 68(1) and 68(3) of the Statute and rules 85, 86 and 89 of the Rules.

## III. Discussion

13. In light of the observations of the parties, the Chamber has considered the two applications for participation submitted by Applicants a/0390/09 and a/0452/09 in order to determine whether they could be granted the status of victim participating in the proceedings.
14. The Chamber notes that Applicant a/0390/09 complied with its request and provided a statement setting out, *inter alia*, the exact date of the events in Bogoro and a document whereby he consents to his father acting on his behalf. He also appointed Mr Jean-Louis Gilissen as his legal representative. Applicant a/0452/09 also complied with the Chamber's request by providing the exact date of the Bogoro attack and a document establishing his identity and family relationship with the person acting on his behalf.

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<sup>17</sup> *Ibid.*, p. 6.

<sup>18</sup> Office of the Prosecutor, "Prosecution's Observations on Additional Documents Provided by Applicant a/0452/09", 10 September 2010, ICC-01/04-01/07-2382.

<sup>19</sup> Defence for Mathieu Ngudjolo, "*Observations de la Défense de Mathieu Ngudjolo sur la demande de participation de la victime a/0452/09 (règle 89(1) du Règlement de procédure et de preuve)*", 13 September 2010, ICC-01/04-01/07-2384.

<sup>20</sup> 23 September 2009 Decision, paras. 12-16.

15. The Chamber has examined the completed applications, annexed hereto. It considered the applications in accordance with rule 85(a) and 85(b) of the Rules and with the Appeals Chamber's criteria to satisfy itself: that the applicants were natural persons or organisations; that they suffered harm; that harm was suffered as the result of the commission of a crime falling within the jurisdiction of the Court and appearing in the *Decision on the confirmation of charges*; and that there was a causal link between the harm suffered and the crime.
16. The Chamber recalls that, in its 23 September 2009 Decision, it considered both the general and specific observations submitted by the parties.<sup>21</sup> It holds that the conclusions it reached at that time apply *mutatis mutandis* to the applications here. Such is the case, for example, for its approach to the redaction of applications for participation,<sup>22</sup> documents establishing the applicants' identity,<sup>23</sup> proof supplied by a death certificate or certificate of family relationship<sup>24</sup> and the possible influence of intermediaries.<sup>25</sup>
17. In response to the objection in the last observations of the Defence for Germain Katanga as to the inappropriate and untimely manner in which it received the additional information about Applicant a/0390/09, the Chamber notes, as it states in the annex, that this is information which it itself requested and which contains more details about the Bogoro attack and the account of the events already contained in that applicant's application form. The Chamber further notes that any information about the alleged crimes which is provided in an application for participation is taken into account only in order to assess whether or not the applicant concerned should be granted the status of victim participating in the proceedings. It considers that the time at which this additional information was provided and the form thereof are not prejudicial to the Defence.

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<sup>21</sup> 23 September 2009 Decision, paras. 20-56.

<sup>22</sup> *Ibid.*, paras. 24 and 25.

<sup>23</sup> *Ibid.*, paras. 31-33. See also 26 February 2009 Decision, paras. 30 and 34.

<sup>24</sup> *Ibid.*, paras. 34-39.

<sup>25</sup> *Ibid.*, paras. 40-43.

18. For the reasons set out in the annex hereto and in accordance with article 68(3) of the Statute and rule 85(a) of the Rules, the Chamber will grant the status of victim participating in the proceedings to Applicants a/0390/09 and a/0452/09.

19. Lastly, the Chamber reminds the legal representatives of Applicants a/0114/08 and a/0160/09 to provide the additional information already requested in the Operative Part of the 23 November 2009 Decision and in the Decision of 22 December 2009, prior to 15 December 2010.<sup>26</sup>

**FOR THESE REASONS, THE CHAMBER**

**GRANTS** the status of victim participating in the proceedings to Applicants a/0390/09 and a/0452/09;

**ORDERS** the Registry to add the said victims to the group of victims represented by Mr Jean-Louis Gilissen;

**REMINDS** the legal representatives of Applicants a/0114/08 and a/0160/09, who have not yet submitted the additional documents requested by the Chamber, to provide those documents prior to 15 December 2010.

Done in both English and French, the French version being authoritative.

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[signed]  
**Judge Bruno Cotte**  
**Presiding Judge**

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[signed]  
**Judge Fatoumata Dembele Diarra**

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[signed]  
**Judge Christine Van den Wyngaert**

Dated this 8 November 2010  
At The Hague, The Netherlands

<sup>26</sup> *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)*, 6 September 2010, ICC-01/04-01/07-2367-tENG, p. 6.