



Original: **French**

No.: **ICC-01/04-01/07**  
Date: **17 December 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**

**Third Decision on the Disclosure of the Identities of Victims to the Parties**

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 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**

**The Office of Public Counsel for  
 Victims**

**The Office of Public Counsel for the  
 Defence**

**States' Representatives**

**Amicus Curiae**

**REGISTRY**

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**Registrar**

Ms Silvana Arbia

**Defence Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
 Section**

Ms Fiona McKay

**Other**

**TRIAL CHAMBER II** of the International Criminal Court (“the Chamber” and “the Court” respectively), 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 dispositive part of the decision on the 345 applications for participation, granting the status of victim participating in the proceedings to 288 applicants.<sup>1</sup> The grounds for the decision were filed on 23 September 2009.<sup>2</sup>
2. On 7 September 2009, the Defence for Germain Katanga submitted a motion requesting the disclosure of the identities of the applicants who had obtained victim status and who did not object to such disclosure.<sup>3</sup> On 9 September 2009, the Defence for Mathieu Ngudjolo concurred with the motion of the Defence for Germain Katanga.<sup>4</sup>
3. In a filing registered on 13 November 2009, Mr Gilissen indicated to the Chamber that the victims whom he represents agreed to the disclosure of their identities to the parties.<sup>5</sup>

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<sup>1</sup> *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.

<sup>2</sup> *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.

<sup>3</sup> 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.

<sup>4</sup> Defence for Mathieu Ngudjolo, “*Adjonction de la Défense de Mathieu Ngudjolo à la Requête de la Défense de Germain Katanga*” No. ICC-01/04-01/07-1461, 9 September 2009, ICC-01/04-01/07-1463.

<sup>5</sup> 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* (regulation 35 of the Regulations of the Court)”, 13 November 2009, ICC-01/04-01/07-1632.

4. On 20 October<sup>6</sup> and 13 November 2009,<sup>7</sup> Mr Luvengika advised the Chamber that some of the victims whom he represents wished their identities to be disclosed to the parties whilst others preferred to remain anonymous.<sup>8</sup>
5. By decisions issued on 12 and 18 November 2009, the Chamber authorised the disclosure of the identities of the majority of the victims authorised to participate in the proceedings.<sup>9</sup> The Chamber also asked the Victims and Witnesses Unit to submit by 9 January 2010 a report assessing the security risks to all of the victims participating in the proceedings and proposing, if so required, the appropriate measures and provisions to ensure their protection and security.<sup>10</sup>
6. On 23 November 2009, the Chamber issued the dispositive part of the second decision on the applications for participation, thereby granting the status of victim participating in the proceedings to 14 applicants.<sup>11</sup>

## **II. Information Submitted by Mr Fidel Nsita Luvengika and Findings of the Chamber**

7. In a submission dated 23 November 2009,<sup>12</sup> Mr Luvengika indicated to the Chamber that 36 victims, whom his team had recently been able to meet,

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<sup>6</sup> "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 Octobre 2009, with ex parte Annexes I, II, III and IV being confidential and only available to the Registry, ICC-01/04-01/07-1544.

<sup>7</sup> "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.

<sup>8</sup> "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.

<sup>9</sup> 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, pp.9 and 10; Deuxième Décision relative à la divulgation de l'identité des victimes aux parties, 18 November 2009, ICC-01/04-01/07-1650, pp. 8 and 9.

<sup>10</sup> Ibid., pp. 8 and 9.

<sup>11</sup> "Dispositif de la deuxième décision relative aux demandes de participation de victimes à la procédure", 23 November 2009, ICC-01/04-01/07-1669.

<sup>12</sup> "Troisième soumission de la représentation légale commune du groupe principal de victimes relative à la divulgation de l'identité des victimes", 23 November 2009, ICC-01/04-01/07-1671. This filing was registered on 24 November 2009.

confirmed to him their intention to disclose their identities to the parties.<sup>13</sup> However, it had not yet been possible to contact 10 other victims,<sup>14</sup> which led him to ask on their behalf that their anonymity be maintained in relation both to the parties and the public.<sup>15</sup> He confirmed that the consultation effort will continue and that the Chamber will be advised of the results “[TRANSLATION] as soon as possible”.<sup>16</sup> Finally, Mr Luvengika drew the Chamber’s attention to the fact that two victims are deceased and that he will approach their families shortly.<sup>17</sup>

8. Mr Luvengika asked the Chamber to note that the 36 victims referred to above do not object to the disclosure of their identities to the parties. Pending a report from the Victims and Witnesses Unit assessing security and the risks to the victims, Mr Luvengika asked the Chamber to order: (i) that the anonymity of those 36 victims be maintained in relation to the public; (ii) the parties to ensure that the members of their team do not disclose the identities of the said victims to third parties and to restrict the disclosure of this information to a limited number of their team members; (iii) the parties to provide the legal representative with adequate notice each time that they intend to contact one of those victims. Finally, he respectfully asked the Chamber to order that the anonymity of the ten victims it has not yet been possible to contact be maintained in relation both to the parties and the public until such time as it has been possible to consult these victims.

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<sup>13</sup> ICC-01/04-01/07-1671, para. 1. With reference to Victims a/0038/08, a/0039/08, a/0055/08, 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/0607/08, a/0207/09, a/0208/09, a/0210/09, a/0212/09, a/0213/09, a/0221/09, a/0225/09, a/0228/09, a/0232/09, a/0250/09, a/0256/09, a/0257/09, a/0283/09, a/0305/09, a/0324/09, a/0332/09, a/0343/09, a/0345/09, a/0351/09, a/0360/09, a/0363/09, a/0385/09.

<sup>14</sup> ICC-01/04-01/07-1671, para. 5. With reference to victims, a/0040/08, a/0044/08, a/0050/08, a/0056/08, a/0057/08, a/0400/08, a/0540/08, a/0217/09, a/0226/09 and a/0251/09.

<sup>15</sup> ICC-01/04-01/07-1671, para. 8.

<sup>16</sup> Ibid., para. 6.

<sup>17</sup> Ibid., paras. 3 and 4.

9. The Chamber considers that the identities of the 36 victims to whom Mr Luvengika refers in paragraph one of his filing dated 23 November 2009<sup>18</sup> must be disclosed to the Prosecutor and the two Defence teams. However, the Chamber finds that the identities of the ten victims Mr Luvengika has not yet been able to meet<sup>19</sup> must not be disclosed at all.
10. The Chamber requests the common legal representative to contact as quickly as possible the said ten victims as well as the 14 victims authorised to participate in the proceedings by the Chamber's decision of 23 November 2009,<sup>20</sup> and to inform the Chamber whether or not they agree to have their anonymity lifted. Furthermore, once the legal representative has informed the Chamber that the victims consent to the disclosure of their identities to the parties, the Chamber invites the Registry to proceed with said disclosure without delay.
11. The Chamber recalls that, at this stage of the proceedings and in the light of the information available to it concerning the current security situation in the Democratic Republic of the Congo, the anonymity of all of the victims authorised to participate in the present case must be maintained in relation both to the public and any other participant in the proceedings.
12. The Chamber also reminds the parties of their obligation under the Code of Professional Conduct for Counsel to ensure that the members of their team do not disclose the identities of the victims authorised to participate in the proceedings to third parties and, in order to do so, to restrict the disclosure of this information to a limited number of their team members.
13. Finally, the Chamber sees no impediment to the request that the parties wishing to contact a victim should first inform his or her legal representative. However, the Chamber leaves it to the participants to establish the modalities for

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<sup>18</sup> ICC-01/04-01/07-1671, para. 1.

<sup>19</sup> ICC-01/04-01/07-1671, para. 5.

<sup>20</sup> ICC-01/04-01/07-1669, p. 6.

providing such information by mutual agreement, it being stated that the Chamber shall be seized in the event of any difficulty.

**FOR THESE REASONS,**

**ORDERS** the Registry to disclose to the parties the identity and particulars of the 36 victims whom Mr Luvengika mentions in paragraph one of his filing dated 23 November 2009;<sup>21</sup>

**DECIDES** to provisionally grant anonymity in relation to the parties to the ten victims whom Mr Luvengika represents and who are mentioned in paragraph five of his filing dated 23 November 2009;<sup>22</sup>

**DECIDES** to provisionally grant anonymity in relation to the public and any other participant in the proceedings to all of the victims authorised to participate in the present case;

**ORDERS** Mr Luvengika to make contact as quickly as possible with the victims whom he has not yet been able to meet so as to inform the Chamber whether the said victims intend to disclose their identities to the parties and, if necessary and following prior consultation with the Victims and Witnesses Unit, to submit a request seeking the protective measures they would seek to receive;

**ORDERS** the Registry to proceed immediately with the disclosure once Mr Luvengika has informed the Chamber that the remaining victims consent to the disclosure of their identities to the parties.

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<sup>21</sup> ICC-01/04-01/07-1671, para. 1.

<sup>22</sup> ICC-01/04-01/07-1671, para. 5.

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 17 December 2009,  
At The Hague, The Netherlands