

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **French**

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

Date: **16 March 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 annexes *ex parte* Registry and the legal representatives of the victims concerned.

Grounds for the Third Decision on Eight Applications for Participation as Victims 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 Victims

Mr Jean-Louis Gilissen
 Mr Fidel Nsita Luvengika

Legal Representatives of Applicants

Mr Jean Chrysostome Mulamba
 Nsokoloni
 Mr Vincent Lurquin
 Ms Flora Mbuyu Anjelani
 Mr Richard Kazadi Kabimba
 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

Registrar

Ms Silvana Arbia

Defence Support Section

**Victims Participation and Reparations
 Section**

Ms Fiona McKay

Trial Chamber II (“Chamber”) of the International Criminal Court (“Court”), acting pursuant to articles 21 and 68 of the Rome Statute (“Statute”), rules 85, 86 and 89 of the Rules of Procedure and Evidence (“Rules”) and regulation 86 of the Regulations of the Court, decides as follows.

I. Procedural history

1. In conformity with the procedure set out in the Chamber's decision of 26 February 2009,¹ the Victims Participation and Reparations Sections (“VPRS”) transmitted several reports² to the Chamber to which applications for participation were attached.

2. On 31 July 2009, the Chamber issued the operative part of the decision on 345 applications for participation, granting the status of victim authorized to

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

² “Filing of proposed redactions on victim’s applications in accordance with decision ICC-01/04-01/07-933”, 3 April 2009, ICC-01/04-01/07-1023-Conf-Exp with confidential *ex parte* annexes 1-97; “*Deuxième rapport du Greffe sur des demandes de participation en application de la norme 86-5 du Règlement de la Cour*”, 21 April 2009, ICC-01/04-01/07-1066-Conf-Exp; “*Troisième rapport du Greffe sur des demandes de participation en application de la norme 86-5 du Règlement de la Cour*”, 4 May 2009, ICC-01/04-01/07-1092-Conf-Exp; “*Quatrième rapport du Greffe sur des demandes de participation en application de la norme 86-5 du Règlement de la Cour*”, 8 May 2009, ICC-01/04-01/07-1121-Conf-Exp; “*Rapport sur les informations supplémentaires reçues sur les demandes de participation enregistrées avec les Troisième et Quatrième rapports du Greffe sur des demandes de participation de victimes*”, 29 May 2009, ICC-01/04-01/07-1181-Conf-Exp; “*Cinquième rapport du Greffe sur des demandes de participation en application de la norme 86-5 du Règlement de la Cour*”, 20 May 2009, ICC-01/04-01/07-1159-Conf-Exp; “*Dépôt de propositions d’expurgations de documents supplémentaires reçus sur des demandes de participation de victimes conformément à la décision ICC-01/04-01/07-933*”, 4 May 2009, ICC-01/04-01/07-1103-Conf-Exp; See also the corrected version filed on 8 May 2009, ICC-01/04-01/07-1103-Conf-Exp-Corr; “*Rapport du Greffe sur la demande de participation a/0114/08 en application de la norme 86-5 du Règlement de la Cour*”, 18 June 2009, ICC-01/04-01/07-1216-Conf-Exp; “*Deuxième Rapport du Greffe sur les informations supplémentaires reçues sur les demandes de participation*”, 17 July 2009, ICC-01/04-01/07-1311-Conf-Exp; “*Troisième rapport sur les informations supplémentaires reçues sur les demandes de participation*”, 24 August 2009, ICC-01/04-01/07-1421-Conf-Exp; “*Rapport du Greffe sur les informations supplémentaires reçues relativement aux demandes de participation incomplètes et au décès de deux victimes, et sur deux nouvelles demandes de participation*”, 15 October 2009, ICC-01/04-01/07-1534-Conf-Exp.

participate in the proceedings to 288 applicants.³ The grounds for the decision were made public on 23 September 2009 (“Decision of 23 September 2009”).⁴

3. On 23 November 2009, the Chamber authorized a further 14 victims to participate in the proceedings and requested additional information from seven other applicants as well as from the person seeking to participate in the proceedings on behalf of a deceased victim, by 11 January 2010 (“Operative Part of 23 November 2009”).⁵ The grounds for the decision were made public on 22 December 2009 (“Decision of 22 December 2009”).⁶

4. On 11 January 2010, the VPRS transmitted to the Chamber a report containing the additional documents requested, and provided by three applicants namely: a/0161/09, a/0215/09 and a/0267/09, and by the person seeking to participate in the proceedings on behalf of deceased Victim a/0120/09.⁷ Translations of some of the documents were filed on 9 February 2010.⁸

5. On 19 and 28 January 2010, Mr Gilissen filed two applications requesting that the Chamber grant him additional time to respond to the requests for additional

³ Operative part of the Decision on the 345 applications for participation as victims in the proceedings, 31 July 2009, “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.

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.

⁷ “*Cinquième rapport du Greffe sur les informations supplémentaires reçues concernant des demandes de participation de victimes*”, 11 January 2010, ICC-01/04-01/07-1756-Conf-Exp with confidentiel *ex parte* annexes 1-4.

⁸ “*Transmission de traductions en complément du “Cinquième rapport du Greffe sur les informations supplémentaires reçues concernant des demandes de participation de victimes” (ICC-01/04-01/07-1756-Conf-Exp)*”, 9 February 2010, ICC-01/04-01/07-1850-Conf-Exp with confidential *ex parte* annexes 1 and 2.

information concerning Applicants a/0114/08 and a/0390/09.⁹ On 21 and 29 January 2010, the Chamber, noting the difficulties encountered in locating the two individuals, granted both applications and set new time limits, the last of which was to expire on 3 February 2010.¹⁰ The Chamber notes, however, that Mr Gilissen has not yet filed the additional information requested.

6. Regarding Applicants a/0452/09 and a/0160/09, their Legal Representatives have stated that they are still unable to reach them.¹¹

7. In order to obtain the observations of the parties, on 16 February 2010, the Chamber ordered that redacted versions of the additional documents that were submitted, i.e. information provided by Applicants a/0161/09, a/0215/09 and a/0267/09, and information concerning Victim a/0120/09, be disclosed to them.¹²

8. On 24 February 2010, the Prosecutor¹³ and the Defence for Mathieu Ngudjolo¹⁴ filed observations on those applications for participation.

⁹ “*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.

¹⁰ Emails of 21 and 29 January 2010 sent 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.

¹¹ ICC-01/04-01/07-1756-Conf-Exp, paras. 8 and 9.

¹² “*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.

¹³ “*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.

¹⁴ “*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.

II. Applicable Law

9. The Chamber will rely on the statutory and regulatory provisions cited in its Decision of 23 September 2009,¹⁵ namely article 68(1) and 68(3) of the Statute and rules 85, 86 and 89 of the Rules.

III. Discussion

10. In light of the parties' observations, the Chamber examined the three applications for participation submitted to it to determine which applicants could be granted the status of victims participating in the proceedings. It also examined the application concerning the person seeking to act on behalf of a deceased victim.

11. The Chamber notes that Applicant a/0161/09 complied with the Chamber's request and provided a document establishing his or her identity. Applicant a/0215/09 confirmed the application to participate by signing the last pages of the form. Applicant a/0267/09 provided sufficient clarification to establish the date of the events in Bogoro.

12. Regarding Application a/0120/09, the Chamber notes that the person seeking to participate in the proceedings on behalf of the deceased victim has provided a document through his or her legal representative establishing that the victim's family had appointed the applicant to do so. The applicant also established his or her relationship with the deceased.

13. The Chamber then analysed the application forms with the additional information. The analysis appears in the annex to this decision. The Chamber examined each application in the light of rule 85(a) and (b) of the Rules and following

¹⁵ Decision of 23 September 2009, paras. 12-16.

the criteria set out by the Appeals Chamber, to satisfy itself that the applicant was a natural person or legal entity; that the applicant had suffered harm; that the crime that caused the harm fell within the jurisdiction of the Court and was included in the decision on the confirmation of charges; and that there was a causal link between the harm caused and the crime.

14. The Chamber recalls that, in its Decision of 23 September 2009, it considered both the general and specific observations of the parties.¹⁶ It is of the view that the findings it reached at that time apply *mutatis mutandis* to these new applications, as does its position on, for example, the redaction of application forms for participation,¹⁷ documents that may establish the applicants' identity,¹⁸ proof provided by a death certificate or certificate of family relationship,¹⁹ and on the influence, if any, of intermediaries.²⁰

15. For the reasons set out in the annexes appended hereto, and pursuant to article 68(3) of the Statute and rule 85(a) of the Rules, the Chamber will grant Applicants a/0161/09, a/0215/09 and a/0267/ the status of victim participating in the proceedings. It will also authorize the person seeking to act on behalf of deceased Victim a/0120/09 to participate in the proceedings.

16. Lastly, in the absence of the additional documents requested by the Chamber, the applications, as they stand, of the four applicants – a/0114/08, a/0160/09, a/0390/09 and a/0452/09 – must be considered incomplete. The Chamber therefore invites the legal representatives of those applicants to provide the clarification previously

¹⁶ Decision of 23 September 2009, paras. 20-56.

¹⁷ *Ibid.*, paras. 24 and 25.

¹⁸ *Ibid.*, paras. 31-33. See also Decision of 26 February 2009, paras. 30 and 34.

¹⁹ *Ibid.*, paras. 34-39.

²⁰ *Ibid.*, paras. 40-43.

requested in the Operative Part of 23 November 2009 and in the Decision of 22 December 2009.

FOR THESE REASONS, the Chamber:

Grants the status of victims participating in the proceedings to three (3) applicants: a/0161/09, a/0215/09 and a/0267/09;

ORDERS the Registry to add those victims to the main group of victims represented by Mr Fidel Nsita Luvengika;

AUTHORIZES the person mandated by the family of deceased Victim a/0120/09 to participate in the proceedings on behalf of Victim a/0120/09;

ORDERS the Registry to contact the legal representatives of the four (4) applicants – a/0114/08, a/0160/09, a/0390/09 and a/0452/09 – with the least delay to obtain the additional information previously requested in the Operative Part of 23 November 2009 and the Decision of 22 December 2009;

DECIDES that the additional details requested above shall be transmitted to the Chamber with the least delay.

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 16 March 2010

At The Hague, Netherlands