



Original: **French**

No.: **ICC-01/04-01/07**
Date: **28 October 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

**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)**

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

Registrar

Ms Silvana Arbia

Counsel Support Section

**Victims Participation and Reparations
 Section**

Ms Fiona McKay

TRIAL CHAMBER II of the International Criminal Court (“the Chamber” and “the Court” respectively), pursuant to article 68 of the Rome Statute (“the Statute”), rule 89(1) of the Rules of Procedure and Evidence and regulation 86 of the Regulations of the Court, decides the following.

1. On 26 February 2009, the Chamber set out the procedure to be followed by the Victims Participation and Reparations Section (VPRS) for the treatment of the applications for participation and, more specifically, the section’s role in the preparation of redacted versions of applications for participation before they are disclosed to the Prosecutor and to the Defence.¹
2. On 20 March 2009, the Registry sent the Chamber a report on the establishment of a system for redacting applications for participation from victims. Appended to this report, which sets out the criteria used by the VPRS for this purpose, is a table containing the information which, according to the section, may be redacted because it constitutes identifying information about the applicants.²
3. On 31 July 2009, the Chamber issued the disposition of its decision on the 345 applications for participation, granting the status of victim participating in the proceedings to 288 applicants. The Chamber also requested additional information from 45 applicants in order to rule on their applications for participation at a later date.³ The grounds for this decision were made public on 23 September 2009.⁴

¹ *Decision on the treatment of applications for participation*, 26 February 2009, ICC-01/04-01/07-933-tENG, paras. 46 to 54 (“the Decision of 26 February 2009”).

² The Registry, “*Rapport du Greffe sur la mise en place d’un régime d’expurgation des demandes de participation de victimes, conformément à la décision du 26 février 2009*” (ICC-01/04-01/07-933), 20 March 2009, ICC-01/04-01/07-974-Conf-Exp with Confidential *ex parte* Annex.

³ *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.

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 and ICC-01/04-01/07-1491-Conf-Exp-Anx.

4. The VPRS transmitted to the Chamber three reports containing the additional documents requested on 17 July,⁵ 24 August⁶ and 15 October 2009⁷ respectively. The final report also refers to two new applications for participation from applicants a/0452/09 and a/0649/09, to the deaths of two victims and to additional information relating to the application of applicant a/0054/08, which was submitted during the pre-trial stage.
5. The Chamber recalls that Pre-Trial Chamber I deemed the application from applicant a/0054/08 incomplete because his or her identity had not duly been established.⁸ Pursuant to its decision of 26 February 2009⁹ however, the Chamber will examine this application in the light of the new information submitted.
6. With respect to the new applications, only the application submitted by applicant a/0452/09 was in fact received by the Registry before the expiry of the time limit of 20 April 2009 set by the Chamber.¹⁰ The application of applicant a/0649/09 was received by the VPRS on 12 August 2009,¹¹ that is, after the time limit which, according to the Chamber's information, was known to the applicant. Therefore, this application will not be evaluated; however, the decision taken here presents no future obstacle to the possibility of submitting an application for reparations.

⁵ The Registry, "*Deuxième Rapport sur les informations supplémentaires reçues sur les demandes de participation*", 17 July 2009, ICC-01/04-01/07-1311-Conf-Exp with Confidential *ex parte* Annexes 1 to 8.

⁶ The Registry, "*Troisième rapport sur les informations supplémentaires reçues sur les demandes de participation*", 24 August 2009, ICC-01/04-01/07-1421-Conf-Exp with Confidential *ex parte* Annexes 1 to 19.

⁷ The Registry, "*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 with Confidential *ex parte* Annexes 1 to 15.

⁸ Pre-Trial Chamber I, *Public Redacted Version of the 'Decision on the 97 Applications for Participation at the Pre-Trial Stage of the Case'*, 10 June 2008, ICC-01/04-01/07-579, para. 52 and p. 51.

⁹ ICC-01/04-01/07-933, p. 14.

¹⁰ ICC-01/04-01/07-933, p. 26.

¹¹ ICC-01/04-01/07-1534-Conf-Exp.

7. The Chamber will rule as to how to proceed with the applications submitted by applicants a/0207/08 and a/0120/09, now deceased, in the light of the observations which will be submitted by the parties as well as the documents presented by the legal representatives.
8. The Chamber wishes to state in particular that it had ordered the Registry to contact the legal representatives of certain applicants, including applicants a/0284/09, a/0285/09, a/0286/09, a/0291/09 and a/0297/09,¹² for them to supplement their applications for participation. As of 29 May 2009, the additional information requested had not been filed.¹³ Accordingly, the Chamber did not order these applications for participation to be disclosed to the parties in order to gather their observations, and it did not undertake any evaluation thereof in the annex of the decision on the 345 applications for participation from victims.¹⁴
9. The Chamber notes that, to date, applicants a/0285/09, a/0286/09 and a/0297/09 have supplemented their applications.¹⁵ Those of applicants a/0284/09 and a/0291/09 however, as they do not provide proof of their identities, are still incomplete and will not be evaluated by the Chamber at this stage of the proceedings.
10. The Chamber recalls that the proposed redactions for all of the supplementary documents were made following prior consultation with the Victims and Witnesses Unit, in accordance with paragraph 48 of the Decision of 26 February 2009. The Chamber considers that all of the proposed redactions satisfy the proportionality principle in that they are necessary and constitute the sole

¹² *Troisième décision invitant les parties à présenter leurs observations relative aux demandes de participation (Règle 89(1) du règlement de procédure et de preuve)*, 19 May 2009, ICC-01/04-01/07-1151, p. 6.

¹³ The Registry, "*Rapport sur les informations supplémentaires reçues sur les demandes de participation enregistrées avec les Troisième et Quatrième rapport du Greffe sur des demandes de participation de victimes*", 29 May 2009, ICC-01/04-01/07-1181-Conf-Exp and Confidential *ex parte* Annexes 1 and 2.

¹⁴ ICC-01/04-01/07-1491-Conf-Anx-Red.

¹⁵ ICC-01/04-01/07-1311-Conf-Exp, Annexes 1 and 2; ICC-01/04-01/07-1421-Conf-Exp and Confidential *ex parte* Annex 8.

possible and adequate measure to ensure that the applicants are effectively protected at this stage of the proceedings, within the meaning of article 68 of the Statute.

11. Furthermore, the Chamber has examined the proposed redactions to the applications presented by applicants a/0285/09, a/0286/09, a/0297/09 and a/0452/09. They fall within the scope set out in paragraphs 49 and 51 of the Decision of 26 February 2009.
12. The Chamber therefore orders the Registry to transmit to the Prosecutor and the Defence the redacted versions of the additional documents presented by the applicants and transmitted to the Chamber on 17 July,¹⁶ 24 August¹⁷ and 15 October 2009¹⁸ and also those of applicants a/0285/09, a/0286/09, a/0297/09 and a/0452/09.

FOR THESE REASONS,

DECIDES not to evaluate the application presented by applicant a/0649/09;

ORDERS the Registry to provide the Prosecutor and the Defence with redacted versions of the applications for participation from applicants a/0285/09, a/0286/09, a/0297/09 and a/0452/09 by 4.00 p.m. on 29 October 2009;

ORDERS the Registry to provide the Prosecutor and the Defence with redacted versions of the additional documents submitted by the 38 applicants a/0054/08, a/0140/08, a/0141/08, a/0207/08, a/0520/08, a/0528/08, a/0529/08, a/0530/08, a/0531/08, a/0533/08, a/0535/08, a/0536/08, a/0537/08, a/0538/08, a/0539/08, a/0120/09, a/0202/09, a/0205/09, a/0211/09, a/0216/09, a/0266/09, a/0267/09, a/0277/09, a/0285/09, a/0286/09,

¹⁶ ICC-01/04-01/07-1311-Conf-Exp with Confidential *ex parte* Annexes 1 to 8.

¹⁷ ICC-01/04-01/07-1421-Conf-Exp with Confidential *ex parte* Annexes 1 to 19.

¹⁸ ICC-01/04-01/07-1534-Conf-Exp with Confidential *ex parte* Annexes 1 to 15.

a/0293/09, a/0297/09, a/0304/09, a/0310/09, a/0340/09, a/0341/09, a/0342/09, a/0349/09, a/0350/09, a/0361/09, a/0389/09, a/0391/09 and a/0393/09 by 4.00 p.m. on 29 October 2009;

INVITES the Prosecutor and the two Defence teams to make their observations as to whether the status of victim participating in the proceedings should be granted to all of the 39 applicants referred to in the two preceding paragraphs by 4.00 p.m. on 9 November 2009;

RECALLS that the eight applicants a/0114/08, a/0160/09, a/0161/09, a/0215/09, a/0268/09, a/0335/09, a/0390/09 and a/0392/09 have not submitted the additional documents requested by the Chamber;

RECALLS that, to date, the two applications submitted by applicants a/0284/09 and a/0291/09 remain incomplete and will not be transmitted to the parties; and

ORDERS the parties to refer to the applicants by the numbers that have been assigned to them by the Registry.

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

[signed]

Judge Bruno Cotte
Presiding Judge

[signed]

Judge Fatoumata Dembele Diarra

Dated this 28 October 2009

At The Hague, The Netherlands

[signed]

Judge Christine Van den Wyngaert