



Original: **French**

No.: **ICC-01/04-01/07**
Date: **10 January 2011**

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 observations on two
victims' applications for participation
(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

Defence Support Section

**Victims Participation and Reparations
Section**

Ms Fiona McKay

TRIAL CHAMBER II of the International Criminal Court (“the Chamber” and “the Court”, respectively), acting 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 VPRS’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 reported to the Chamber on the establishment of a system for redacting applications for participation from victims. Appended to this report is a table containing the information which, according to the VPRS, is likely to be redacted because it can identify the applicants.²
3. On 31 July 2009, the Chamber issued the operative part of its decision on the 345 applications for participation, granting the status of victim participating in the proceedings to 288 applicants.³ The grounds for this decision were made public on 23 September 2009.⁴
4. On 23 November 2009, the Chamber authorised a further 14 victims to participate in the proceedings, and requested seven other applicants and the person wishing

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 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 with confidential, *ex parte* annex (see also the confidential redacted version of the annex, ICC-01/04-01/07-1491-Conf-Exp-Anx-Red).

to participate in the proceedings on behalf of a deceased victim to provide further details.⁵ The grounds for that decision were made public on 22 December 2009.⁶

5. On 16 March 2010, the Chamber granted the status of victim participating in the proceedings 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. 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 practicable in order to obtain the additional information previously required in the operative part issued on 23 November 2009 and the decision of 22 December 2009.⁷
6. On 18 May and 20 August 2010, the VPRS transmitted to the Chamber two reports containing the additional documents required in relation to Applicants a/0390/09⁸ and a/0452/09.⁹ 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 these applicants.¹⁰
7. On 8 November 2010, the Chamber granted the status of victim participating in the proceedings to Applicants a/0390/09 and a/0452/09. It also reminded the legal representatives of Applicants a/0114/08 and a/0160/09, who had not yet

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 (see also the confidential redacted version of the annex, ICC-01/04-01/07-1737-Conf-Anx-Red).

⁷ *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).

⁸ 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.

⁹ 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.

¹⁰ ICC-01/04-01/07-2104-Conf-Exp, paras. 6 to 8; ICC-01/04-01/07-2307-Conf-Exp, paras. 4 to 6.

submitted the additional documents requested by the Chamber, to provide those documents before 15 December 2010.¹¹

8. On 8 December 2010, the VPRS transmitted to the Chamber a report containing the additional documents required in relation to Applicant a/0160/09 only.¹² Mr Gilissen stated that he had been unable to contact Applicant a/0114/08 to request that the application be completed, but that he would continue his efforts during an *in situ* mission planned for the coming days.¹³
9. In light of the message it received from Mr Gilissen's team on 14 December 2010,¹⁴ and mindful of his efforts to obtain and transmit the additional information in relation to Applicant a/0114/08, the Chamber granted a final extension of the time limit for providing the information to 4 January 2011.¹⁵
10. The VPRS transmitted to the Chamber a report dated 4 January 2011 and registered on 5 January containing the additional information requested. It stated, *inter alia*, that it had received the information on 3 January 2011, that is, within the time limit set by the Chamber.¹⁶ By e-mail of 3 January 2011, Mr Gilissen made sure to inform the Chamber that the information had been sent to the VPRS that same day, again highlighting the considerable difficulties he had encountered.¹⁷

¹¹ *Quatrième décision relative à 2 demandes de participation de victimes à la procédure*, 8 November 2010, ICC-01/04-01/07-2516, with confidential, *ex parte* annexes (see also the confidential redacted version of the annexes, ICC-01/04-01/07-2516-Conf-Anx1-Red and ICC-01/04-01/07-2516-Conf-Anx2-Red).

¹² Registry, "*Huitième rapport du Greffe sur les informations supplémentaires reçues concernant des demandes de participation de victimes*", 8 December 2010, ICC-01/04-01/07-2621-Conf-Exp with confidential, *ex parte* annex.

¹³ ICC-01/04-01/07-2621-Conf-Exp, paras. 4 and 5.

¹⁴ E-mail sent by Mr Gilissen's team to the Chamber on 14 December 2010 at 15:57.

¹⁵ E-mail sent to Mr Gilissen by a legal officer of the Chamber on 17 December 2010 at 14:34.

¹⁶ Registry, "*Neuvième rapport du Greffe sur les informations supplémentaires reçues concernant des demandes de participation de victimes*", 5 January 2011, ICC-01/04-01/07-2639-Conf-Exp with confidential, *ex parte* annex.

¹⁷ E-mail sent by Mr Gilissen's team to the Chamber on 3 January 2011 at 23:06.

11. In its report of 4 January 2011, the VPRS noted that the original version of the statement of Applicant a/0114/08 sent to the Registry by e-mail bears a barely legible fingerprint which does not, however, appear on the scanned version attached to the report.¹⁸
12. The Chamber requests the VPRS to redact the additional documents concerning Applicants a/0160/09 and a/0114/08, after prior consultation with the Victims and Witnesses Unit, in accordance with the Decision of 26 February 2009 and the Registry's report of 20 March 2009.¹⁹
13. Once these redactions have been made, the Registry is ordered to provide to the Prosecutor and the Defence the redacted version of the additional documents transmitted to the Chamber on 8 December 2010 and 4 January 2011.

FOR THESE REASONS,

ORDERS the Registry to disclose to the Prosecutor and the Defence a redacted version of the additional documents provided by Applicants a/0160/09 and a/0114/08, by 4 p.m. on 13 January 2011;

ORDERS the Prosecutor and both Defence teams to submit their observations as to whether or not Applicants a/0160/09 and a/0114/08 should be granted the status of victim participating in the proceedings, by 4 p.m. on 21 January 2011; and

ORDERS the parties to refer to these applicants by the numbers assigned to them by the Registry.

¹⁸ ICC-01/04-01/07-2639-Conf-Exp, para. 3.

¹⁹ Decision of 26 February 2009; ICC-01/04-01/07-974-Conf-Exp with confidential, *ex parte* annex.

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 10 January 2011

At The Hague, The Netherlands