

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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PRE-TRIAL CHAMBER I

Before: Judge Akua Kuenyehia, Single Judge

**SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO
IN THE CASE OF
THE PROSECUTOR
*v. Germain Katanga and Mathieu Ngudjolo Chui***

Public Document

**Public Redacted Version of the "Decision on the 97 Applications for Participation
at the Pre-Trial Stage of the Case"**

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
Mr Éric MacDonald, Senior Trial Lawyer

**Counsel for the Defence for Germain
Katanga**

Mr David Hooper
Ms Caroline Buisman

**Counsel for the Defence for Mathieu
Ngudjolo Chui**

Mr Jean-Pierre Kilenda Kakengi
Ms Maryse Alié

Legal Representatives of the Victims

Ms Carine Bapita Buyagandu
Mr Joseph Keta
Mr J L Gilissen

Legal Representatives of the Applicants

Ms Carine Bapita Buyagandu
Mr Joseph Keta
Mr J L Gilissen
Mr Hervé Diakiese
Mr Jean-Christostome Mulamba
Nsokoloni

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**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 and Witnesses Unit

Mr Simo Väättäin

Detention Section

**Victims Participation and Reparations
Section**

Mr Didier Preira
Ms Fiona McKay

Other

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I, Judge Akua Kuenyehia, judge at the International Criminal Court (“the Court”);

NOTING the Warrant of Arrest against Germain Katanga issued by Pre-Trial Chamber I (“the Chamber”) on 2 July 2007;¹

NOTING the Warrant of Arrest against Mathieu Ngudjolo Chui issued by the Chamber on 6 July 2007;²

NOTING the “Prosecution’s Submission of the Document Containing the Charges and List of Evidence”³ (“the Prosecution’s Charging Document”) filed by the Prosecution on 21 April 2008;

NOTING the “Decision on the set of procedural rights attached to the procedural status of victim at the pre-trial stage of the case”⁴ (“the Decision on Procedural Rights for Victims”) issued by the Single Judge on 13 May 2008;

NOTING the “Information of receipt of application forms, which appear, *prima facie*, to relate to the case of *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*”² (“the Information on Receipt of Applications”) filed by the Registry on 26 May 2008;

NOTING the “Decision authorising the filing of observations on the applications for participation in the proceedings”⁵ issued by the Single Judge on 26 May 2008;

¹ ICC-01/04-01/07-1

² ICC-01/04-01/07-260

³ ICC-01/04-01/07-422 and its Annexes

⁴ ICC-01/04-01/07-474

⁵ ICC-01/04-01/07-509

NOTING the “*Transmission de 99 demandes de participation*”⁶ (“the Information from the Registry”) filed by the Registry on 26 May 2008 in which the Registry informs the Single Judge that it is transmitting applications for participation in the proceedings of the case of *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui* (“the Applications for participation”);⁷

NOTING the “Decision on Limitations of Set of Procedural Rights for Non-Anonymous Victims”⁸ (“the Decision on Limitations of Victims’ Procedural Rights”) issued by the Single Judge on 30 May 2008;

NOTING the “Report on Victims’ Applications under Regulation 86.5, Regulations of the Court”,⁹ filed by the Registrar as confidential and *ex parte* on 2 June 2008 in the record of the case *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, and an Addendum filed thereto on 2 June 2008;

NOTING the “*Observations de la Défense relatives à la question de la recevabilité de demandes de participation de présumées victimes*”¹⁰ (“the Defence for Mathieu Ngudjolo Chui’s Observations”) filed by the Defence for Mathieu Ngudjolo Chui on 4 June 2008;

⁶ ICC-01/04-01/07-510-Conf-Exp-Corr. “Corrigendum au titre du document ICC-01/04-01/07-510-Conf-Exp, *Le document intitulé «Transmission de 99 demandes de participation» doit être intitulé « Transmission de 97 demandes de participation»*”, ICC-01/04-01/07-534-Conf-Exp, “*Corrigendum à la demande de participation a/0090/08 enregistrée ICC-01/04-01/07-510-Conf-Exp-Anx75*”, and ICC-01/04-01/07-535-Conf-Exp, “*Corrigendum à la demande de participation a/0090/08 enregistrée ICC-01/04-01/07-518-Conf-Exp-Anx55*”

⁷ Applications for Participation a/0009/08, a/0010/08, a/0011/08, a/0012/08, a/0013/08, a/0014/08, a/0015/08, a/00016/08, a/0022/08, a/0024/08, a/0025/08, a/0027/08, a/0028/08, a/0029/08, a/0030/08, a/0031/08, a/0032/08, a/0033/08, a/0034/08, a/0035/08, a/0036/08, a/0037/08, a/0038/08, a/0039/08, a/0040/08, a/0041/08, a/0042/08, a/0043/08, a/0044/08, a/0045/08, a/0046/08, a/0047/08, a/0048/08, a/0049/08, a/0050/08, a/0051/08, a/0052/08, a/0053/08, a/0054/08, a/0055/08, a/0056/08, a/0057/08, a/0058/08, a/0059/08, a/0060/08, a/0061/08, a/0062/08, a/0063/08, a/0064/08, a/0065/08, a/0066/08, a/0067/08, a/0068/08, a/0069/08, a/0070/08, a/0071/08, a/0072/08, a/0073/08, a/0074/08, a/0075/08, a/0076/08, a/0077/08, a/0078/08, a/0079/08, a/0080/08, a/0081/08, a/0082/08, a/0083/08, a/0084/08, a/0085/08, a/0086/08, a/0087/08, a/0088/08, a/0089/08, a/0090/08, a/0091/08, a/0092/08, a/0093/08, a/0094/08, a/0095/08, a/0096/06, a/0097/08, a/0098/08, a/0099/08, a/0100/08, a/0101/08, a/0102/08, a/0103/08, a/0104 /08, a/0106/08, a/0107/08, a/0108/08, a/0109/08, a/0110/08, a/0111/08, a/0112/08

⁸ ICC-01/04-01/07-537

⁹ ICC-01/04-01/07-542-Conf-Exp and its confidential *ex parte* Annexes, and ICC-01/04-01/07-542-Conf-Exp-Anx1-Add

¹⁰ ICC-01/04-01/07-548-Conf

NOTING the “Prosecution’s Observations on the Applications for Participation in the Proceedings of Applicants a/0009/08 to a/0016/08 and a/0022/08 to a/0112/08”¹¹ (the Prosecution’s Observations”), filed by the Prosecution on the 4 June 2008;

NOTING the “Defence Observations on 97 applications for participation as victims”¹² (“the Defence for Germain Katanga’s Observations”), filed by the Defence for Germain Katanga on 4 June 2008;

NOTING the “*Requête du représentant légal des victimes a/0110/08, a/0111/08 et a/0112/08 sollicitant le maintien de l’anonymat*”,¹³ filed by the Legal Representative of Applicants for participation a/0110/08, a/0111/08 and a/0112/08 on 6 June 2008;

NOTING the “Additional report to the ‘Report on Victims’ Applications under Regulation 86.5, Regulations of the Court’ dated 2 June 2008 (ICC-01/04-01/07-542) on the question of requests for non-disclosure of the identities of the applicants”¹⁴ (“the Additional Registrar Report”) filed by the Registrar as confidential and *ex parte* on 6 June 2008;

NOTING the “Decision on the Temporary Replacement of the Single Judge”¹⁵ issued by the Chamber on 6 June 2008;

NOTING the “Second additional report to the ‘Report on Victims’ Applications under Regulation 86.5, Regulations of the Court’ dated 2 June 2008 (ICC-01/04-01/07-542) on the question of requests for non-disclosure of the identities”¹⁶ (“the Second Additional Registrar Report”) filed by the Registrar as confidential and *ex parte* on 9 June 2008;

¹¹ ICC-01/04-01/07-549-Conf-Exp

¹² ICC-01/04-01/07-550-Conf-Exp

¹³ ICC-01/04-01/07-557

¹⁴ ICC-01/04-01/07-558-Conf-Exp and its confidential *ex parte* Annexes

¹⁵ ICC-01/04-01/07-556

¹⁶ ICC-01/04-01/07-560-Conf-Exp and ICC-01/04-01/07-560-Conf-Exp-Anx1

NOTING the “*Enregistrement de procurations pour les demandeurs a/0010/08, a/0011/08, a/0012/08, a/0013/08, a/0015/08*”¹⁷ filed by the Registry on 10 June 2008;

NOTING articles 57(3)(c), 61 and 68 of the *Rome Statute* (“the Statute”), rules 86-89, 91, 121 and 122 of the *Rules of Procedure and Evidence* (“the Rules”) and regulation 86 of the *Regulations of the Court* (“the Regulations”);

I. Introduction

A. Prosecution observations

1. The Prosecution submits that the applications for participation a/0009/08, a/0011/08 to a/0013/08, a/0016/08, a/0022/08, a/0024/08, a/0025/08, a/0027/08, a/0028/08, a/0029/08, a/0032/08 to a/0035/08, a/0039/08, a/0043/08, a/0044/08, a/0046/08, a/0049/08, a/0050/08, a/0055/08 to a/0057/08, a/0060/08, a/0061/08, a/0067/08, a/0070/08 to a/0073/08, a/0076/08, a/0077/08, a/0079/08, a/0080/08, a/0083/08, a/0085/08, a/0088/08, a/0090/08, a/0092/08, a/0095/08, a/0096/08, a/0100/08, a/0101/08, a/0103/08, a/0104/08, a/0108/08 and a/0111/08 fulfil all the criteria as set out in rule 85(a) of the Rules and thus, they should be granted the procedural status of victim at the pre-trial stage of the present case.

2. However, the Prosecution notes that the documents appended to the applications for participation a/0027/08, a/0043/08, a/0044/08, a/0046/08, a/0071/08, a/0072/08, a/0079/08, a/0083/08, a/0085/08, a/0096/08, a/0100/08, a/0101/08, a/0108/08, which have been transmitted to the Prosecution, are illegible. In this respect, the Prosecution contends that if the identified supporting documents submitted with the original applications for participation to the Single Judge are legible, the

¹⁷ ICC-01/04-01/07-576 and ICC-01/04-01/07-576-Conf-Exp-Anxs1to5

aforementioned Applicants should be granted the procedural status of victim, since they fulfil all the criteria as set out in rule 85 of the Rules.

3. In addition, the Prosecution submits that Applicants a/0010/08, a/0051/08, a/0054/08, a/0066/08, a/0075/08, a/0084/08, a/0110/08 and a/0112/08 should be requested to provide the Single Judge with additional information and/or rectification to the documents appended to their applications for participation in order to duly establish their identities, before they are granted the status of victims. The Prosecution further underlines that although Applicants a/0010/08, a/0051/08, a/0054/08, a/0066/08, a/0075/08, a/0084/08, a/0110/08 and a/0112/08 satisfy the four criteria set out in rule 85 of the Rules, they should be requested to provide the Single Judge with additional information and/or rectify the information contained in their applications in order to duly establish their identity and to be granted the procedural status of victim.

4. Furthermore, the Prosecution submits that since Applicants a/0036/08, a/0037/08, a/0038/08, a/0040/08, a/0041/08, a/0042/08, a/0045/08, a/0047/08, a/0048/08, a/0052/08, a/0053/08, a/0058/08, a/0059/08, a/0060/08, a/0062/08, a/0063/08, a/0064/08, a/0065/08, a/0068/08, a/0069/08, a/0074/08, a/0078/08, a/0081/08, a/0082/08, a/0086/08, a/0087/08, a/0089/08, a/0091/08, a/0093/08, a/0094/08, a/0097/08, a/0098/08, a/0099/08, a/0102/08, a/0105/08, a/0106/08, a/0107/08 and a/0109/08 are not natural persons, they should be denied the procedural status of victim.

5. Finally, the Prosecution asserts that the procedural status of victim should be denied to Applicant a/0014/08 (who is also Applicant a/0026/08), Applicant a/0015/08 (who is also Applicant a/0023/08), and Applicants a/0030/08 and a/0031/08 as they do not establish the causal link between the harm they suffered and the crimes that are the subject of the Charging Document against Germain Katanga and Mathieu Ngudjolo Chui.

B. The Defences' observations

1. Defence for Germain Katanga

6. At the outset, the Defence for Germain Katanga underlines that the Applicants a/0110/08, a/0111/08, a/0112/08, a/0014/08, a/0015/08 have consented to the disclosure of their identity to the Defence. Thus, the Defence for Germain Katanga contends that if they are granted the status of victim, their identity should be disclosed to the Defence without delay. As a second general observation, the Defence for Germain Katanga further submits that the applicants' forms provided to the Defence appear unnecessarily heavily redacted.¹⁸

7. The Defence for Germain Katanga notes that most of the applicants allege that they suffered harm as a result of the alleged joint FRPI/FNI attack on the village of Bogoro on or about 24 February 2003. The Defence for Germain Katanga has no objection to those applicants obtaining the status of victim authorised to participate in the case against Germain Katanga and Mathieu Ngudjolo Chui unless their applications raise other concerns.¹⁹

8. In this respect, the Defence for Germain Katanga first underlines that Applicant a/0009/08 should be dismissed since there is a lack of consistency between the data indicated in the respective application forms and those mentioned in the documents appended to the application in order to establish the applicant's identity. Applicant a/0110/08, meanwhile, should be dismissed for lack of sufficient proof of identity as required.²⁰

9. The Defence for Germain Katanga further submits that applications filed on behalf of a deceased person should be dismissed. Accordingly, Applicants a/0036/08, a/0037/08, a/0038/08, a/0040/08, a/0041/08, a/0042/08, a/0045/08, a/0047/08, a/0048/08, a/0052/08, a/0053/08, a/0058/08, a/0059/08, a/0062/08, a/0063/08, a/0064/08, a/0065/08, a/0068/08, a/0069/08, a/0074/08, a/0078/08, a/0081/08, a/0082/08, a/0086/08, a/0087/08,

¹⁸ ICC-01/04-01/07-550-Conf-Exp, paras 2-3

¹⁹ ICC-01/04-01/07-550-Conf-Exp, para 7

²⁰ ICC-01/04-01/07-550-Conf-Exp, paras 11-13

a/0089/08, a/0091/08, a/0093/08, a/0094/08, a/0097/08, a/0098/08, a/0099/08, a/0102/08, a/0105/08, a/0106/08, a/0107/08 and a/0109/08 should not be granted the procedural status of victim authorised to participate in the case at hand.²¹

10. Moreover, the Defence for Germain Katanga asserts that Applicants a/0026/08 (which is also a/0014/08), a/0030/08, a/0031/08 and a/0086/08 have not established the link between the harm they allegedly suffered and the charges brought against Germain Katanga.²² The Defence also requests that the Single Judge ensure that proof of death and family link are sufficiently provided for in applications where applicants claim reparation for the moral harm caused by the death of members of their family.²³

11. In addition, the Defence for Germain Katanga contends that the applications for participation a/0111/08 and a/0112/08 should be dismissed at the pre-trial stage since the applicants do not specify that they wish to participate in this stage.

12. Finally, the Defence for Germain Katanga underlines that a number of applications seem to have been filed by the same person. In this regard, the Defence for Germain Katanga requests that they be reduced to a unique application for participation.²⁴

2. Defence for Mathieu Ngudjolo Chui

13. At the outset, the Defence for Mathieu Ngudjolo Chui underlines that the redactions applied to the Application Forms are excessive and incoherent, thus it is not in a position to formulate its observations based upon knowledge of all the facts and information. In particular, the Defence for Mathieu Ngudjolo Chui underlines the inconsistencies in Application a/0032/08 in relation to the identity of the

²¹ ICC-01/04-01/07-550-Conf-Exp , para. 17

²² ICC-01/04-01/07-550-Conf-Exp , paras 8-10

²³ ICC-01/04-01/07-550-Conf-Exp , para 15

²⁴ ICC-01/04-01/07-550-Conf-Exp , para 18

applicant, which the Defence was unable to evaluate due to the extensive redactions. Therefore, the Defence submits that Application a/0032/08 should be rejected.²⁵

14. The Defence for Mathieu Ngudjolo Chui submits that Applications a/0111/08 and a/0112/08 do not meet the conditions set forth in regulation 86(2) of the Regulations insofar as they are incomplete as the applicants did not sign the application form or provide proof of identity, respectively.²⁶

15. The Defence for Mathieu Ngudjolo Chui also submits its concerns regarding the linguistic consistency of the Applications a/0009/08, a/0010/08, a/0011/08, a/0012/08, a/0024/08, a/0025/08, a/0027/08, a/0028/08, a/0029/08, a/0030/08, a/0031/08, a/0032/08, a/0033/08, a/0034/08 and a/0035/08, in particular, when the applicant indicated Swahili as the language he or she understands, but the application form is completed in French. Thus, the Defence for Mathieu Ngudjolo Chui submits that the Single Judge should exercise extreme scrutiny when addressing the admissibility of these applications.²⁷ According to the Defence for Mathieu Ngudjolo Chui, particular attention should be given to Applications a/0009/08, a/0010/08, a/0011/08, a/0012/08, which also show some inconsistencies concerning the proof of identity provided, and therefore, they should be rejected.²⁸

16. The Defence for Mathieu Ngudjolo Chui underlines as well that Applications a/0091/08 and a/0092/08 fall outside the temporal jurisdiction of the Court and, thus, should be rejected.

17. The Defence for Mathieu Ngudjolo Chui questions, as a preliminary point, the probative value of certain documents submitted with the application forms. In particular, according to the Defence for Mathieu Ngudjolo Chui, the death certificates and documents certifying family relationships are governed by Congolese law. In this respect, the Defence for Mathieu Ngudjolo Chui argues that

²⁵ Defence for Mathieu Ngudjolo Chui's Observations, paras 3 (a) and 43

²⁶ Defence for Mathieu Ngudjolo Chui's Observations, paras 6 and 38-39

²⁷ Defence for Mathieu Ngudjolo Chui's Observations, paras. 22 and 41-42

²⁸ Defence for Mathieu Ngudjolo Chui's Observations, paras 51-52

some of the aforementioned documents are not in conformity with Congolese law. In addition, the Defence for Mathieu Ngudjolo Chui questions the authenticity of certain documents due to, *inter alia*, their issuance by persons not authorised to issue such documents.²⁹

18. The Defence for Mathieu Ngudjolo Chui submits that due to the *prima facie* incoherence in the submissions of Applicant a/0102/08 (related to the link between the harm suffered and the charges), the Single Judge should deny this Applicant the procedural status of victim at the pre-trial stage of the case.³⁰ Moreover, it also argues that the information furnished by Applicants a/0030/08, a/0031/08 and a/0110/08 do not satisfy the third criterion of rule 85(a) of the Rules as they do not establish the link between the charges and the harm suffered.³¹

19. The Defence for Mathieu Ngudjolo Chui also indicates that a number of applications for participation are made on behalf of deceased close family members. The Defence for Mathieu Ngudjolo Chui contends that, according to the case law of this Chamber, those applications in which moral harm is claimed as a result of the loss or disappearance of a family member would only meet the criteria of rule 85 of the Rules if the applicant was in a close family relationship with the deceased person.³² In this regard, the Defence for Mathieu Ngudjolo Chui asserts that a cousin or an uncle does not meet this definition.³³

20. The Defence for Mathieu Ngudjolo Chui further submits that Applications a/0014/08 and a/0026/08 (first set), and a/0015/08 and a/0023/08 (second set) are also submitted by the same person. The Defence for Mathieu Ngudjolo Chui also asserts that each set of applicants are represented by two different legal representatives and their applications indicate two different dates of submission. The Defence for Mathieu Ngudjolo Chui argues that submitting several applications in which

²⁹ Defence for Mathieu Ngudjolo Chui's Observations, paras 11-14 and 18-19

³⁰ Defence for Mathieu Ngudjolo Chui's Observations, para 29

³¹ Defence for Mathieu Ngudjolo Chui's Observations, paras. 36, 37 and 44

³² Defence for Mathieu Ngudjolo Chui's Observations, paras 32-33

³³ Defence for Mathieu Ngudjolo Chui's Observations, para 28

different legal representatives are designated is contrary to the statutory framework. The Defence for Mathieu Ngudjolo Chui also points out numerous incoherencies in the Applications, thus it requests that the abovementioned Applicants be denied the procedural status of victim at the pre-trial stage of the case.³⁴

21. The Defence for Mathieu Ngudjolo Chui also underlines that Applications a/0098/08, a/0099/08 and a/0100/08 have been submitted by the same person, and that only Application a/0100/08 should be granted the procedural status of victim.³⁵

22. The Defence for Mathieu Ngudjolo further submits that Applications a/0025/08, a/0028/08 and a/0029/08 should be rejected because the information submitted in relation to the harm suffered is contradictory to other information submitted by the Office of the Prosecutor to the Defence.³⁶

23. Finally, the Defence for Mathieu Ngudjolo Chui further submits that Applications a/0071/08 and a/0072/08 are the only ones submitted by legal persons. The Defence argues that Application a/0071/08 did not furnish enough information to establish the applicant's identity. In relation to Application a/0072/08, the Defence submits that it does not meet the criteria, and in particular the first criterion, set out in rule 85(b) of the Rules.³⁷

C. Preliminary remarks

1. Preliminary observations on the participation of victims at the pre-trial phase of a case

24. At the outset, the Single Judge would like to recall that according to the case-law of this Chamber (i) the analysis of whether victims' personal interests are affected under article 68(3) of the Statute is to be conducted in relation to "stages of

³⁴ Defence for Mathieu Ngudjolo Chui's Observations, paras 46-50

³⁵ Defence for Mathieu Ngudjolo Chui's Observations, paras 26-27

³⁶ Defence for Mathieu Ngudjolo Chui's Observations, para 45

³⁷ Defence for Mathieu Ngudjolo Chui's Observations, paras 23-25

the proceedings” and not in relation to each specific procedural activity or piece of evidence dealt with at a given stage of the proceedings; (ii) the investigation of a situation and the pre-trial phase of a case are stages of the proceedings in relation to which the analysis of whether victims’ personal interests are affected under article 68(3) of the Statute is to be conducted;³⁸ and (iii) this interpretation is consistent with the Decision of the Appeals Chamber of 13 June 2007.³⁹

25. Furthermore, this Chamber has also highlighted that:

[A]ccording to the Single Judge's interpretation of article 68(3) of the Statute, the personal interests of victims are affected at the investigation stage of a situation and the pre-trial stage of a case; that these are appropriate stages of the proceedings for victims' participation; and that accordingly, victims have a procedural status in proceedings concerning the investigation of a situation and the pre-trial stage of a case.⁴⁰

26. In the view of the Single Judge, all of the 97 Applicants are seeking recognition of the procedural status of victim in the proceedings concerning the pre-trial stage of the case of *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*.⁴¹

27. The Single Judge would like to recall that the Prosecution’s Charging Document against Germain Katanga and Mathieu Ngudjolo Chui is confined to crimes falling within the jurisdiction of the Court which were allegedly committed during the alleged joint FRPI/FNI attack on the village of Bogoro on or about 24 February 2003.⁴²

28. Furthermore, under rule 89(4) of the Rules, the Single Judge is required to ensure that the proceedings are conducted expeditiously and that in doing so, the Single Judge may consider applications in such a manner as to ensure the effectiveness of the proceedings. The Single Judge will therefore provide only the essential information on each applicant in this decision.

³⁸ ICC-02/05-121, p 6 See also ICC-01/04-444, pp 8 and 10

³⁹ ICC-02/05-121, p 6 See also ICC-01/04-444, p 8

⁴⁰ ICC-02/05-118, p 5 See also ICC-02/05-121, pp 7 and 8, and ICC-01/04-438, p 5

⁴¹ ICC-01/04-374, paras 2 and 4

⁴² ICC-01/04-01/07-55, paras 9-16, and ICC-01/04-01/07-262, paras 9-16

29. Moreover, The Single Judge observes that Applicant a/0108/08 is also Witness 166, a witness on whom the Prosecution intends to rely at the confirmation hearing. Due to his unique status, the Single Judge will examine his application for participation at the pre-trial stage of the case against Germain Katanga and Mathieu Ngudjolo Chui in a separate decision.

2. Preliminary remarks on the submissions of the parties

a. Redacted Version of the Applications

30. In relation to the general observations of both Defences that the victim applications forms provided to the Defence appear to be unnecessarily heavily redacted, which makes it impossible for the Defences to submit meaningful observations,⁴³ the Single Judge would like to recall that in previous decisions she held:

that the format in which a copy of any application for participation is to be transmitted to the Prosecutor and the Defence is governed by the provisions of the Statute, in particular of article 68 (1), which states that the Pre-Trial Chamber and the other organs of the Court shall take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims without being prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial;⁴⁴

when the safety of an applicant so requires, the Pre-Trial Chamber may instruct the Registrar to transmit to the Prosecutor and the Defence a redacted copy of the applicant's application for participation expunged of any information which could lead to his or her identification;⁴⁵

that the Single Judge ordered the redactions of the identities and identifying information of the applicants in light of the security situation in the DRC (and in particular in the Ituri district) referred to and explained in Section II of the First Decision on the Prosecution Request for Authorisation to Redact Witness Statements, issue that has not been appealed by either parties; and that due to the fact that the applicants' places of residence are located in the areas covered by the security situation analysis made in the aforementioned decision, the Single Judge ordered the redaction of the identities and identifying information of the applicants in so far as

⁴³ Defence for Germain Katanga's Observations, para 3, and Defence for Mathieu Ngudjolo Chui's Observations, para 3 (a)

⁴⁴ ICC-01/04-01/06-494-tEN, p 2

⁴⁵ ICC-01/04-01/06-494-tEN, p 3

it was the only protective measure available and which might have been implemented to duly protect the applicants who have not yet been granted the status of victims;⁴⁶

31. In the Single Judge's view, the redactions applied in the victims' applications are limited to what is strictly necessary in light of the security situation in the DRC and the applicants' safety; and are not prejudicial to or inconsistent with the rights of the suspects and a fair and impartial trial as the observations of the Defences for Germain Katanga and Mathieu Ngudjolo Chui show that, despite such redactions, the Defences were in a position to submit meaningful observations.⁴⁷

b. Language of the Applications

32. The Defence for Mathieu Ngudjolo Chui raises its concerns regarding the language used to complete applications for participation a/0024/08, a/0025/08, a/0027/08, a/0028/08, a/0029/08, a/0030/08, a/0031/08, a/0032/08, a/0033/08, a/0034/08 and a/0035/08. In particular, the Defence for Mathieu Ngudjolo Chui notes that the aforementioned applicants indicated Swahili as the language that they understand, but the application forms were completed in French. The Defence for Mathieu Ngudjolo Chui submits that, as a consequence, the Single Judge should exercise extreme scrutiny when addressing the admissibility of these applications.⁴⁸

33. The Single Judge recalls in this respect the earlier decisions of the Chamber, whereby the Chamber stated that :

In carrying out such an assessment, the Chamber must receive from the applicants all of the necessary information referred to in the standard forms pursuant to regulation 86(2) of the Regulations. The Chamber will then be in a position to thoroughly assess the applications once they are complete.⁴⁹

34. The Chamber has further held that:

Concerning the OPCD's request that the Applicants should be requested to file applications using only standardised translations and qualified interpreters, the Single Judge notes that regulation 86 of the Regulations does not require that an application be filed in this manner. Furthermore, in its decision of 17 August 2007, the Chamber outlined the information that

⁴⁶ ICC-01/04-01/07-241, p 6

⁴⁷ ICC-01/04-01/06-494-tEN, p 3

⁴⁸ Defence for Mathieu Ngudjolo Chui's Observations, paras 22, 41 and 52

⁴⁹ ICC-01/04-374, para 6

should be provided for an application to be complete and it does not encompass the use of standardised translations and qualified interpreters. The Single Judge is of the view that it is only when there are indications that there might have been a misunderstanding or a misrepresentation of applicants' statements, that further information would be requested pursuant to regulation 86(7) of the Regulations.⁵⁰

35. In this regard, the Single Judge, after reviewing the applications referred by the Defence for Mathieu Ngudjolo Chui, finds that, in the process of completing applications a/0024/08, a/0025/08, a/0027/08, a/0028/08, a/0029/08, a/0030/08, a/0031/08, a/0032/08, a/0033/08, a/0034/08, the applicants were all assisted by the same intermediary, and that the intermediary duly completed the information requested in Section I of the applications. Therefore, in the view of the Single Judge, there are no linguistic problems with the aforementioned applications for participation.

c. Congolese documents and their probative value

36. The Defence for Mathieu Ngudjolo Chui questions the probative value of certain documents submitted with the application forms, in particular death certificates and documents certifying family relationships, which are, according to the Defence for Mathieu Ngudjolo Chui, governed by Congolese law and were not issued in conformity with such law.⁵¹

37. In relation to the documents certifying kinship or guardianship, the Single Judge recalls that these documents are notably necessary when "the application is made by a person acting on the behalf of a victim, in the case of a victim who is a child." Among the applications before the Single Judge, only one has been made on behalf of a child (a/0110/08), and the document of proof of guardianship is an official Congolese document.

⁵⁰ ICC-02/05-111-Corr, para 24

⁵¹ Defence for Mathieu Ngudjolo Chui's Observations, paras 11-14 and 18-19

38. In relation to the death certificates, the Single Judge will not address this issue because, as provided for in the 17 August 2007 Decision, the aforementioned documents are not required to have a complete application.⁵²

d. Alleged inconsistencies between the information provided in certain applications and information disclosed to the Defence by the Prosecution

39. The Single Judge takes note of the observation of the Defence for Mathieu Ngudjolo Chui regarding the contradictory information between, on the one hand information given by the Prosecution to the Defence, and on the other hand Applications a/0015/08, a/0024/08, a/0025/08, a/0027/08, a/0028/08 and a/0029/08, a/0032/08, a/0035/08, a/0041/08, a/0042/08, a/0044/08, a/0045/08, a/0052/08, a/0053/08, a/0056/08, a/0070/08, a/0071/08, a/0076/08, a/0083/08, a/0088/08, a/0091/08, a/0098/08, a/0099/08, a/0100/08 and a/0104/08.

40. Nevertheless, the Single Judge observes that the alleged inconsistencies refer exclusively to whether witness 166, the MONUC, certain NGOs and international and local investigators directly witnessed the alleged joint FRPI/FNI attack on Bogoro or on about 24 February 2007 or learnt about it afterwards.

41. The Single Judge considers that, given the broad range of individuals and entities referred to by the above-mentioned applicants in subsection D.4 of their applications, it is most likely that they misunderstood the question posed in that subsection. As a result, when the applicants refer to individuals and organisations that witnessed the events, they in all probability meant individuals and organisations that have knowledge of the events.

42. For this reason, the Single Judge considers that the inconsistencies pointed out by the Defence of Mathieu Ngudjolo Chui do not necessarily raise doubts as to the

⁵² ICC-01/04-374, para 12

veracity of the information provided by the above-mentioned applicants in the rest of their applications.

II. Evaluation of individual applications for participation as victims in the proceedings

A. Incomplete applications for participation

43. The Single Judge recalls that as set out in the Decision on Procedural Rights for Victims, any applications for the recognition of the status of victim in the present case that were transmitted by the Registry to the Single Judge after Monday 26 May 2008, pursuant to rule 89 of the Rules and regulation 86 of the Regulations, will not be considered for the purposes of the confirmation hearing in the present case.

44. The Single Judge also recalls that she will only be in a position to properly assess the applications once they are complete⁵³ and that she must receive all necessary information referred to in the standard forms for participation pursuant to regulation 86(2) of the Regulations. According to the 17 August 2007 Decision, an application is considered complete if it contains the following information:

- (i) the identity of the applicant;
- (ii) the date of the crime(s);
- (iii) the location of the crime(s);
- (iv) a description of the harm suffered as a result of the commission of any crime within the jurisdiction of the Court;
- (v) proof of identity;
- (vi) if the application is made by a person acting with the consent of the victim, the express consent of that victim;
- (vii) if the application is made by a person acting on behalf of a victim, in the case of a victim who is a child, proof of kinship or legal guardianship; or, in the case of a victim who is disabled, proof of legal guardianship;
- (viii) a signature or thumb-print of the applicant on the document, at the very least, on the last page of the application.⁵⁴

⁵³ ICC-01/04-374, para 6

⁵⁴ ICC-01/04-374, para 12

45. The Chamber has also recognised the need for the presentation of proper identification documents for all victims who apply to participate in the early stage of Court proceedings.⁵⁵ However, in taking cognisance of certain difficulties in obtaining the required proof of identity, kinship, guardianship and legal guardianship, the Chamber has stated that “in regions which are or have been ravaged by conflict, not all civil status records may be available, and if available, may be difficult or too expensive to obtain.”⁵⁶

46. Accordingly, the Chamber has allowed the submission of any of the following documents in order to prove identity, kinship, guardianship or legal guardianship:

- (i) national identity card, passport, birth certificate, death certificate, marriage certificate, family registration booklet, will, driving licence, card from a humanitarian agency;
- (ii) voting card, student identity card, pupil identity card, letter from local authority, camp registration card, documents pertaining to medical treatment, employee identity card, baptism card;
- (iii) certificate/attestation of loss of documents (loss of official documents), school documents, church membership card, association and political party membership card, documents issued in rehabilitation centres for children associated with armed groups, certificates of nationality, pension booklet; or
- (iv) a statement signed by two witnesses attesting to the identity of the applicant or the relationship between the victim and the person acting on his or her behalf, providing that there is consistency between the statement and the application. The statement should be accompanied by proof of identity of the two witnesses.⁵⁷

47. The Single Judge notes that the Legal Representatives of Applicants a/0040/08, a/0041/08, a/0042/08, a/0053/08, a/0091/08, a/0098/08 and a/0102/08 have submitted supplementary information, which was filed on 2 June 2008. The Single Judge further notes that the supplementary information was filed after the deadline to submit applications for participation set out in the Decision on Procedural Rights for Victims. Therefore, the Single Judge will not take into consideration the above-mentioned supplementary information.

48. The Single Judge also observes that the majority of the applications considered in the present decision are signed or have a thumbprint. Moreover, they

⁵⁵ ICC-01/04-374, para 13

⁵⁶ ICC-01/04-374, para 14

⁵⁷ ICC-01/04-374, para 15

specify the name of the applicant along with proof of his or her identity, the place and date of the alleged crime(s) as well as a description of the alleged harm suffered. Nevertheless, some of the Applications remain incomplete for the reasons explained in the following subsections.

1. Proof of identity

49. The Single Judge notes that both Defences raise concerns in relation to one alleged inconsistency between the application form and the document proving the identity of Applicant a/0009/08. In this regard, the Single Judge finds that the alleged inconsistency is strictly limited to one letter of the applicant's name and does not alter the consonance of her name. Therefore, the Single Judge is of the view that Applicant a/0009/08 has duly established her identity.

50. In addition, the Defence for Mathieu Ngudjolo Chui also raises concerns in relation to alleged inconsistencies between the application forms and the documents proving the identity of Applicants a/0011/08 and a/0012/08. In this regard, the Single Judge finds that, as underlined by Applicant a/0011/08's legal representative, there is no inconsistency in the name appearing in the application form and the one mentioned in the document proving a/0011/08's identity. Therefore, the Single Judge is of the view that Applicant a/0011/08 has duly established her identity.

51. In relation to application for participation a/0012/08, the Single Judge notes that the alleged inconsistency is strictly limited to one letter and therefore does not alter the consonance of the applicant's name. Accordingly, the Single Judge is of the view that Applicant a/0012/08 has duly established his identity.

52. In relation to application for participation a/0054/08, the Single Judge observes that the applicant has appended to his application two identification documents. However, the date and place of birth mentioned in the aforementioned documents

are different. Accordingly, in the absence of any justification for such an inconsistency, the identity of Applicant a/0054/08 has not been duly established.

53. In relation to applications a/0075/08, a/0084/08, and a/0112/08, the Single Judge notes that the applicants have not provided any of the documents listed in paragraph 46 above in order to prove their identity. In the view of the Single Judge, an "*attestation de logement*" is not a document attesting to the identity of the applicant. Hence, applications a/0075/08, a/0084/08 and a/0112/08 are incomplete.

54. Finally, in relation to application for participation of a/0110/08, the Defence for Germain Katanga submits that it "contains only one proof of identity (of either the alleged victim or his cousin – we cannot know this since the identity is redacted) and the attestation of legal tutoring. Therefore, one proof of identity is missing and the application should be dismissed on that basis."⁵⁸

55. In this regard, the Single Judge observes that a document proving the relationship between Applicant a/0110/08 and the person acting on his behalf has been appended to the application. This latter document from the local authority also attests to the identity of the child. Furthermore, a document proving the identity of the person introducing the application for Applicant a/0110/08 has also been attached to the said application. Therefore, the Single Judge is of the view that the identities of both the child and the person acting on his behalf have been duly established.

2. The signature or thumb print of the applicant

56. The Single Judge observes that the application for participation of a/0010/08 cannot be deemed complete as, at the very least, the Applicant has not signed Section J of the application form.

⁵⁸ ICC-01/04-01/07-550-Conf-Exp, para 13

57. Furthermore, the Single Judge notes that in relation to the application for participation of a/0111/08, the first name indicated on page 3 of the application form differs from the one appearing on the electoral card appended to the application for participation. In addition, the Single Judge also underlines that Applicant a/0111/08, at the very least, has not signed under Section J of the application form. Under these circumstances, the Single Judge finds that application a/0111/08 is incomplete.

3. Conclusion

58. The Single Judge finds that applications a/0010/08, a/0054/08, a/0075/08 a/0084/08, a/0094/08, a/0097/08, a/0111/08 and a/0112/08 are currently incomplete and therefore, they will not be considered for the purpose of the confirmation hearing in the present case.

59. Nevertheless, the Single Judge underlines that Applicants a/0010/08, a/0054/08, a/0075/08 a/0084/08, a/0094/08, a/0097/08, a/0111/08 and a/0112/08 may provide the necessary information and/or explanations to complete their applications and that, in the event that the charges against Germain Katanga and Mathieu Ngudjolo Chui are confirmed, such applications shall be decided upon by the Trial Chamber.

C. Applications submitted on behalf of deceased relatives

60. The Single Judge notes that a number of applications for participation were submitted on behalf of deceased relatives. The Single Judge also notes that some of these applications for participation were submitted by individuals who are not only acting on behalf of deceased relatives, but are also alleging in such applications for participation that they themselves have also personally suffered harm.

61. In this regard the Single Judge notes that :

- (i) Applicants a/0043/08, a/0044/08, a/0046/08, a/0048/08, a/0054/08, a/0056/08, a/0057/08, a/0060/08, a/0061/08, a/0066/08, a/0067/08, a/0080/08, a/0084/08, a/0085/08, a/0090/08, a/0100/08 and a/0103/08 are acting not only in their own behalf but are also submitting separate applications for participation on behalf of deceased relatives;⁵⁹
- (ii) applications for participation a/0040/08, a/0041/08, a/0042/08, a/0074/08 and a/0091/08 have been submitted by the same person who is not only acting on behalf of his deceased relatives but also alleges that he personally suffered harm as a result of the death of his relatives;
- (iii) applications for participation of a/0078/08 and a/0109/08 have been submitted by the same person who is not only acting on behalf of his deceased relatives but also alleges that he personally suffered harm as a result of the death of his relatives;
- (iv) applications for participation of a/0094/08 and a/0097/08 have been submitted by the same person who is not only acting on behalf of his deceased relatives but also alleges that he personally suffered harm as a result of the death of his relatives;
- (v) application for participation of a/0038/08 has been submitted by a person who also alleges in the application that he personally suffered harm as a result of the death of his son; and

⁵⁹ Applicant a/0043/08 has also introduced application a/0093/08, Applicant a/0044/08 has also introduced application a/0045/08, Applicant a/0046/08 has also introduced application a/0047/08, Applicant a/0048/08 has also introduced application a/0049/08, Applicant a/0054/08 has also introduced applications a/0036/08 and a/0037/08, Applicant a/0056/08 has also introduced application a/0053/08, Applicant a/0057/08 has also introduced applications a/0105/08, a/0106/08 and a/0107/08, Applicant a/0060/08 has also introduced applications a/0058/08 and a/0059/08, Applicant a/0061/08 has also introduced application a/0062/08, Applicant a/0066/08 has also introduced applications a/0063/08, a/0064/08, a/0065/08 and a/0069/08, Applicant a/0067/08 has also introduced application a/0068/08, Applicant a/0080/08 has also introduced application a/0081/08, Applicant a/0084/08 has also introduced application a/0082/08, Applicant a/0085/08 has also introduced applications a/0086/08 and a/0087/08, Applicant a/0090/08 has also introduced application a/0089/08, Applicant a/0100/08 has also introduced applications a/0052/08, a/0098/08 and a/0099/08, Applicant a/0103/08 has also introduced application a/0102/08

- (vi) Applicant a/0084/08 has also made an application a/0082/08 on behalf of his deceased father, however, he does not allege in either of the applications any harm as a result of the death of his father.

62. In this respect, the Single Judge would like to recall that:

rule 89(3) of the Rules states that an application for participation may be made by a person acting on behalf of the victim concerned with the victim's consent, or on the victim's behalf in the case of a child or a disabled person. However, no provision permits the submission of an application for participation on behalf of a deceased person. Rule 89(3) authorises the submission of an application for participation on a person's behalf provided the person consents. The Single Judge notes that such consent cannot be given by a deceased person. She is therefore of the opinion that deceased persons cannot be considered to be natural persons within the meaning of rule 85(a). However, close relations of deceased and disappeared persons may be considered to be victims under the Statute, the Rules, and the Regulations of the Court provided they fulfil the necessary criteria.⁶⁰

63. Accordingly, all applications made on behalf of deceased persons will, in principle, be rejected. Only in those cases in which the person making the application alleges moral harm resulting from the death of his or her relatives, and when such application is complete, will the Single Judge analyse whether such an individual can be granted the procedural status of victim at the pre-trial stage of the present case.

D. Complete applications for participation

1. Natural Persons

a) Applicable law

64. Rule 85(a) of the Rules defines the term "victims" as follows:

'Victims' means natural persons who have suffered harm as a result of the commission of any crime within the jurisdiction of the Court.

65. In this regard, the Single Judge recalls that, as the Chamber has held on several occasions, to be granted the procedural status of victim in the proceedings concerning the pre-trial stage of a case, the following four criteria must be satisfied:

⁶⁰ ICC-01/04-423-Corr-tEN, para 24, ICC-02/05-111, paras 35 and 36

(i) the applicant must be a natural person; (ii) the applicant must have suffered harm; (iii) the crime from which the harm resulted must fall within the jurisdiction of the Court and must be the subject of “a warrant of arrest or summons to appear, and, subsequently, a charging document (crimes encompassed by the relevant case);” and (iv) there must be a causal link between the crime and the harm.⁶¹

66. In relation to the fourth requirement, the Single Judge recalls that the applicant and, as the case may be, the immediate family or the dependents of the direct applicant, must show that they suffered harm (i) as a result of the crimes which were allegedly committed during the alleged joint FRPI/FNI attack on the village of Bogoro on or about 24 February 2003 (direct link between the harm and the alleged crimes); or (ii) in intervening to assist direct victims in the case at hand, or to prevent their victimisation as a result of the alleged commission of the said crimes.⁶²

67. Furthermore, the Single Judge underlines that the applicants are only required to demonstrate that the four requirements established by rule 85(a) of the Rules are met *prima facie*⁶³ and that therefore the Single Judge’s analysis of the Applications “will not consist in assessing the credibility of the [applicants’] statement[s] or engaging in a process of corroboration *stricto sensu*”,⁶⁴ but will assess the applicants’ statements first and foremost on the merits of their intrinsic coherence, as well as on the basis of the information otherwise available to the Single Judge.⁶⁵

b) The applications for participation

- *Application a/0009/08*

68. The Single Judge is of the view that Applicant a/0009/08 has provided evidence establishing *prima facie* that she suffered moral harm and economic loss as a result of the crimes allegedly committed in the alleged joint FRPI/FNI attack on

⁶¹ See ICC-02/05-121, p 8, ICC-01/04-101, para 94, and ICC-01/04-01/06-601, p 9

⁶² ICC-01/04-01/06-172, p 7 and 8

⁶³ ICC-01/04-101-Corr, para 66 See also, ICC-01/04-417, para 8

⁶⁴ ICC-01/04-101-Corr, para.101

⁶⁵ ICC-01/04-417, para 8

Bogoro on or about 24 February 2003, during which, *inter alia*, members of her family, including her husband and her children, were killed and her house and property were pillaged and destroyed.

▪ *Application a/0011/08*

69. The Single Judge is of the view that Applicant a/0011/08 has provided evidence establishing *prima facie* that he suffered moral harm and economic loss as a result of the crimes allegedly committed in the alleged joint FRPI/FNI attack on Bogoro on or about 24 February 2003, during which, *inter alia*, members of his family, including his wives and respective children, were killed and his house and property were pillaged and destroyed.

▪ *Application a/0012/08*

70. The Single Judge is of the view that Applicant a/0012/08 has provided evidence establishing *prima facie* that he suffered moral harm and economic loss as a result of the crimes allegedly committed in the alleged joint FRPI/FNI attack on Bogoro on or about 24 February 2003, during which, *inter alia*, his daughter was killed and his house and property were pillaged.

▪ *Application a/0013/08*

71. The Single Judge is of the view that Applicant a/0013/08 has provided evidence establishing *prima facie* that he suffered physical harm and economic loss as a result of the crimes allegedly committed in the alleged joint FRPI/FNI attack on Bogoro on or about 24 February 2003, during which, *inter alia*, he was injured by gunshots and his house and property were pillaged.

▪ *Application a/0014/08*

72. The Single Judge notes that Applicant a/0014/08 has submitted, through two legal representatives, two different applications for participation, one on 21 January 2008 (“the first application”), and the other on 20 February 2008 (“the second application”). The Single Judge observes that, in his first application, the Applicant

alleges having suffered harm as a result, *inter alia*, of the death of his wife, their children and his brother who were allegedly killed during an alleged attack on a village other than Bogoro (a locality which is, according to the first application for participation, few kilometres away from the centre of the village of Bogoro) in July 2002. However, the Single Judge observes that in his second application, the same Applicant alleges harm as a result, *inter alia*, of the death of his wife and four children who were allegedly killed during the alleged joint FRPI/FNI attack on Bogoro on or about 24 February 2003. The Single Judge notes that in a letter sent by one of the legal representative of Applicant a/0014/08 to the Head of the Victim Participation and Reparation Section and appended to the application, the legal representative underlines that the date of the alleged crimes is 24 February 2003.⁶⁶

73. Under these circumstances, the Single Judge must take appropriate notice of the incoherence in the declaration of the individual who submitted the two above-mentioned applications. Accordingly, in the absence of any justification for such an inconsistency, Applicant a/0014/08 cannot be granted the status of victim authorised to participate in the case of *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*.

- *Application a/0015/08*

74. The Single Judge notes that Applicant a/0015/08 has submitted, through two legal representatives, two different applications for participation – one on 26 November 2007 and the other on 22 February 2008. However, the Single Judge notes that by a letter of 24 May 2008 entitled “Déclaration de choix avocat” and appended to the application for participation, Applicant a/0015/08 has designated Mr Jean-Christostome Mulamba Nsokoloni to represent him during the proceedings before the Court. Furthermore, a power of attorney has been filed on 10 June 2008 to that effect.⁶⁷

⁶⁶ ICC-01/04-01/07-510-Conf-Exp-Anx33, p 27

⁶⁷ ICC-01/04-01/07-576-Conf-Exp-Anx5

75. In addition, the Single Judge observes that the two applications for participation are coherent. After a careful assessment of both applications, the Single Judge is of the view that Applicant a/0015/08 has provided evidence establishing *prima facie* that he suffered physical and moral harm as well as economic loss as a result of the crimes allegedly committed in the alleged joint FRPI/FNI attack on Bogoro on or about 24 February 2003, during which, *inter alia* he was injured, his wife and children were killed, and his house and property were pillaged and destroyed.

- *Application a/0016/08*

76. The Single Judge is of the view that Applicant a/0016/08 has provided evidence establishing *prima facie* that she suffered moral harm and economic loss as a result of the crimes allegedly committed in the alleged joint FRPI/FNI attack on Bogoro on or about 24 February 2003, during which, *inter alia*, her husband and children were killed, and her house and property were destroyed.

- *Application a/0022/08*

77. The Single Judge is of the view that Applicant a/0022/08, has provided evidence establishing *prima facie* that she suffered moral harm and economic loss as a result of the crimes allegedly committed in the alleged joint FRPI/FNI attack on Bogoro on or about 24 February 2003, during which, *inter alia*, members of her family were killed, and her house and property were pillaged and destroyed.

- *Application a/0024/08*

78. The Single Judge is of the view that Applicant a/0024/08, has provided evidence establishing *prima facie* that he suffered moral harm and economic loss as a result of the crimes allegedly committed in the alleged joint FRPI/FNI attack on Bogoro on or about 24 February 2003, during which, *inter alia*, his children were killed and his property was pillaged.

- *Application a/0025/08*

79. The Single Judge is of the view that Applicant a/0025/08 has provided evidence establishing *prima facie* that he suffered moral harm and economic loss as a result of the crimes allegedly committed in the alleged joint FRPI/FNI attack on Bogoro on or about 24 February 2003, during which, *inter alia*, his mother and brother were killed, and his house and property were pillaged and destroyed.

- *Application a/0027/08*

80. The Single Judge is of the view that Applicant a/0027/08 has provided evidence establishing *prima facie* that he suffered moral harm and economic loss as a result of the crimes allegedly committed in the alleged joint FRPI/FNI attack on Bogoro on or about 24 February 2003, during which, *inter alia*, his brother was killed and his property was pillaged.

- *Application a/0028/08*

81. The Single Judge is of the view that Applicant a/0028/08, has provided evidence establishing *prima facie* that he suffered moral harm and economic loss as a result of the crimes allegedly committed in the alleged joint FRPI/FNI attack on Bogoro on or about 24 February 2003, during which, *inter alia*, his sister was killed and his house and property were pillaged and destroyed.

- *Application a/0029/08*

82. The Single Judge is of the view that Applicant a/0029/08 has provided evidence establishing *prima facie* that he suffered moral harm and economic loss as a result of the crimes allegedly committed in the alleged joint FRPI/FNI attack on Bogoro on or about 24 February 2003, during which, *inter alia*, his father was killed and his house and property were pillaged and destroyed.

- *Applications a/0030/08 and a/0031/08*

83. The Single Judge notes that Applicants a/0030/08 and a/0031/08 allege harm as a result of, *inter alia*, the pillaging and destruction of their respective property, including a house belonging to a/0031/08, as well as the death of relatives allegedly

killed during an alleged attack on 23 February 2003. The Single Judge observes that Applicants a/0030/08 and a/0031/08 allege that the events took place in [REDACTED], which is, according to the application for participation, about [REDACTED] kilometres away from the centre of the village of Bogoro. Accordingly, the Single Judge is of the view that Applicants a/0030/08 and a/0031/08 cannot be granted the procedural status of victim at the pre-trial stage of the present case insofar as it seems *prima facie* that the harm claimed by these two applicants did not result from the crimes allegedly committed in the alleged joint FRPI/FNI attack on Bogoro on or about 24 February 2003.

- *Application a/0032/08*

84. The Single Judge is of the view that Applicant a/0032/08 has provided evidence establishing *prima facie* that he suffered moral harm and economic loss as a result of the crimes allegedly committed in the alleged joint FRPI/FNI attack on Bogoro on or about 24 February 2003, during which, *inter alia*, his wife and sister were killed and his house and property were pillaged and destroyed.

- *Application a/0033/08*

85. The Single Judge is of the view that Applicant a/0033/08 has provided evidence establishing *prima facie* that he suffered moral harm and economic loss as a result of the crimes allegedly committed in the alleged joint FRPI/FNI attack on Bogoro on or about 24 February 2003, during which, *inter alia*, members of his family, including his parents and siblings, were killed and his house and property were pillaged and destroyed.

- *Application a/0034/08*

86. The Single Judge is of the view that Applicant a/0034/08 has provided evidence establishing *prima facie* that he suffered moral harm and economic loss as a result of the crimes allegedly committed in the alleged joint FRPI/FNI attack on Bogoro on or about 24 February 2003, during which, *inter alia*, members of his

family, including his parents and his sister were killed and his house and property were pillaged and destroyed.

- *Application a/0035/08*

87. The Single Judge is of the view that Applicant a/0035/08 has provided evidence establishing *prima facie* that he suffered moral harm and economic loss as a result of the crimes allegedly committed in the alleged joint FRPI/FNI attack on Bogoro on or about 24 February 2003, during which, *inter alia*, his brother was killed and his house and property were pillaged and destroyed.

- *Application a/0038/08*

88. The Single Judge notes that this application has been submitted by the father of a deceased son. In the application, the father also alleges to have personally suffered harm for the loss of his son. The Single Judge is of the view that the person who submitted application a/0038/08 (thereafter Applicant a/0038/08) has provided evidence establishing *prima facie* that he suffered moral harm as a result of the crimes committed in the alleged joint FRPI/FNI joint attack on Bogoro on or about 24 February 2003, during which, *inter alia*, his son was killed.

- *Application a/0039/08*

89. The Single Judge is of the view that Applicant a/0039/08 has provided evidence establishing *prima facie* that he suffered economic loss as a result of the crimes allegedly committed in the alleged joint FRPI/FNI attack on Bogoro on or about 24 February 2003, during which, *inter alia*, his house and property were pillaged and destroyed.

- *Applications a/0040/08, a/0041/08, a/0042/08, a/0074/08 and a/0091/08*

90. The Single Judge notes that applications a/0040/08, a/0041/08, a/0042/08, a/0074/08 and a/0091/08 have been made by the same person on behalf of deceased persons.

91. The Single Judge observes that the individual making the applications for participation is the sibling of the deceased persons, and who also alleges to have suffered harm as a result of the death of his five siblings.

92. However, the Single Judge observes that the person making the applications has provided the Single Judge with inconsistent dates of the alleged events during which his siblings were allegedly killed. In this respect, the Single Judge recalls that the application is assessed on the merits of its intrinsic coherence. As a result, in light of the abovementioned incoherence, the Single Judge cannot grant the procedural status of victim at the pre-trial stage of the present case to the individual making the applications for participation a/0040/08, a/0041/08, a/0042/08, a/0074/08 and a/0091/08.

- *Application a/0043/08*

93. The Single Judge is of the view that Applicant a/0043/08 has provided evidence establishing *prima facie* that he suffered physical and moral harm as well as economic loss as a result of the crimes allegedly committed in the alleged joint FRPI/FNI attack on Bogoro on or about 24 February 2003, during which, *inter alia*, he was injured, his brother was killed and his properties were pillaged and destroyed.

- *Application a/0044/08*

94. The Single Judge is of the view that Applicant a/0044/08 has provided evidence establishing *prima facie* that he suffered moral harm and economic loss as a result of the crimes allegedly committed in the alleged joint FRPI/FNI attack on Bogoro on or about 24 February 2003, during which, *inter alia*, his wife was killed and his houses and property were pillaged and destroyed.

- *Application a/0046/08*

95. The Single Judge is of the view that Applicant a/0046/08 has provided evidence establishing *prima facie* that he suffered moral harm and economic loss as a result of the crimes allegedly committed in the alleged joint FRPI/FNI attack on

Bogoro on or about 24 February 2003, during which, *inter alia*, his father was killed and his houses and property were pillaged and destroyed.

- *Application a/0049/08*

96. The Single Judge is of the view that Applicant a/0049/08 has provided evidence establishing *prima facie* that she suffered moral harm and economic loss as a result of the crimes allegedly committed in the alleged joint FRPI/FNI attack on Bogoro on or about 24 February 2003, during which, *inter alia*, her husband was killed and her house and property were pillaged and destroyed.

- *Application a/0050/08*

97. The Single Judge is of the view that Applicant a/0050/08 has provided evidence establishing *prima facie* that he suffered economic loss as a result of the crimes allegedly committed in the alleged joint FRPI/FNI attack on Bogoro on or about 24 February 2003, during which, *inter alia*, his house and property were pillaged and destroyed.

- *Application a/0051/08*

98. The Single Judge is of the view that Applicant a/0051/08 has provided evidence establishing *prima facie* that he suffered moral harm and economic loss as a result of the crimes allegedly committed in the alleged joint FRPI/FNI attack on Bogoro on or about 24 February 2003, during which, *inter alia*, his house and property were pillaged and destroyed.

- *Application a/0055/08*

99. The Single Judge is of the view that Applicant a/0055/08 has provided evidence establishing *prima facie* that he suffered economic loss as a result of the crimes allegedly committed in the alleged joint FRPI/FNI attack on Bogoro on or about 24 February 2003, during which, *inter alia*, his house and property were pillaged and destroyed.

- *Application a/0056/08*

100. The Single Judge is of the view that Applicant a/0056/08 has provided evidence establishing *prima facie* that he suffered physical and moral harm as well as economic loss as a result of the crimes allegedly committed in the alleged joint FRPI/FNI attack on Bogoro on or about 24 February 2003, during which, *inter alia*, he was injured, his mother was killed and his house and property were pillaged and destroyed.

- *Application a/0057/08*

101. The Single Judge is of the view that Applicant a/0057/08 has provided evidence establishing *prima facie* that he suffered economic loss as a result of the crimes allegedly committed in the alleged joint FRPI/FNI attack on Bogoro on or about 24 February 2003, during which, *inter alia*, his property was pillaged.

- *Application a/0060/08*

102. The Single Judge is of the view that Applicant a/0060/08 has provided evidence establishing *prima facie* that he suffered economic loss as a result of the crimes allegedly committed in the alleged joint FRPI/FNI attack on Bogoro on or about 24 February 2003, during which, *inter alia*, his house and property were pillaged and destroyed.

- *Application a/0061/08*

103. The Single Judge is of the view that Applicant a/0061/08 has provided evidence establishing *prima facie* that he suffered economic loss as a result of the crimes allegedly committed in the alleged joint FRPI/FNI attack on Bogoro on or about 24 February 2003, during which, *inter alia*, his houses and property were pillaged and destroyed.

- *Application a/0066/08*

104. The Single Judge is of the view that Applicant a/0066/08 has provided evidence establishing *prima facie* that he suffered moral harm and economic loss as a

result of the crimes allegedly committed in the alleged joint FRPI/FNI attack on Bogoro on or about 24 February 2003, during which, *inter alia*, members of his family, including his mother and brother, were killed and his house was pillaged and destroyed.

▪ *Application a/0067/08*

105. The Single Judge is of the view that Applicant a/0067/08 has provided evidence establishing *prima facie* that she suffered economic loss as a result of the crimes allegedly committed in the alleged joint FRPI/FNI attack on Bogoro on or about 24 February 2003, during which, *inter alia*, her house and property were pillaged and destroyed;

▪ *Application a/0070/08*

106. The Single Judge is of the view that Applicant a/0070/08 has provided evidence establishing *prima facie* that he suffered economic loss as a result of the crimes allegedly committed in the alleged joint FRPI/FNI attack on Bogoro on or about 24 February 2003, during which, *inter alia*, his house and property were pillaged and destroyed.

▪ *Application a/0073/08*

107. The Single Judge is of the view that Applicant a/0073/08 has provided evidence establishing *prima facie* that she suffered moral harm and economic loss as a result of the crimes allegedly committed in the alleged joint FRPI/FNI attack on Bogoro on or about 24 February 2003, during which, *inter alia*, her husband was killed and her house and property were pillaged and destroyed.

▪ *Application a/0076/08*

108. The Single Judge is of the view that Applicant a/0076/08 has provided evidence establishing *prima facie* that he suffered economic loss as a result of the crimes allegedly committed in the alleged joint FRPI/FNI attack on Bogoro on or

about 24 February 2003, during which, *inter alia*, his house and property were pillaged and destroyed.

- *Application a/0077/08*

109. The Single Judge is of the view that Applicant a/0077/08 has provided evidence establishing *prima facie* that he suffered economic loss as a result of the crimes allegedly committed in the alleged joint FRPI/FNI attack on Bogoro on or about 24 February 2003, during which, *inter alia*, his cattle was pillaged.

- *Applications a/0078/08 and a/0109/08*

110. The Single Judge notes that applications a/0078/08 and a/0109/08 have been made by the son of two deceased persons, who alleges in the applications that he suffered moral harm as a result of the death of his parents. In the view of the Single Judge, applications a/0078/08 and a/0109/08 provide evidence establishing *prima facie* that he suffered moral harm as a result of the crimes allegedly committed in the alleged joint FRPI/FNI attack on Bogoro on or about 24 February 2003, during which, *inter alia*, his parents were killed.

- *Application a/0079/08*

111. The Single Judge is of the view that Applicant a/0079/08 has provided evidence establishing *prima facie* that he suffered economic loss as a result of the crimes allegedly committed in the alleged joint FRPI/FNI attack on Bogoro on or about 24 February 2003, during which, *inter alia*, his house and property were pillaged and destroyed.

- *Application a/0080/08*

112. The Single Judge is of the view that Applicant a/0080/08 has provided evidence establishing *prima facie* that he suffered economic loss as a result of the crimes allegedly committed in the alleged joint FRPI/FNI attack on Bogoro on or about 24 February 2003, during which, *inter alia*, his house and property were pillaged and destroyed.

- *Application a/0083/08*

113. The Single Judge is of the view that Applicant a/0083/08 has provided evidence establishing *prima facie* that he suffered economic loss as a result of the crimes allegedly committed in the alleged joint FRPI/FNI attack on Bogoro on or about 24 February 2003, during which, *inter alia*, his house and property were pillaged and destroyed.

- *Application a/0085/08*

114. The Single Judge notes that Applicant a/0085/08 mentions economic loss as a result of an alleged attack on Bogoro in August 2002 and of the alleged joint FRPI/FNI attack on Bogoro on or about 24 February 2003. In this regard, the Single Judge considers that Applicant a/0085/08 has provided evidence establishing *prima facie* that he suffered economic loss as a result of the crimes allegedly committed in the alleged joint FRPI/FNI attack on Bogoro on or about 24 February 2003, during which, *inter alia*, his house and property were pillaged and destroyed.

- *Application a/0088/08*

115. The Single Judge is of the view that Applicant a/0088/08 has provided evidence establishing *prima facie* that he suffered physical harm and economic loss as a result of the crimes allegedly committed in the alleged joint FRPI/FNI attack on Bogoro on or about 24 February 2003, during which, *inter alia*, he was injured by gunshots and his house and property were pillaged and destroyed.

- *Application a/0090/08*

116. The Single Judge is of the view that Applicant a/0090/08 has provided evidence establishing *prima facie* that he suffered economic loss as a result of the crimes allegedly committed in the alleged joint FRPI/FNI attack on Bogoro on or about 24 February 2003, during which, *inter alia*, his house and property were pillaged and destroyed. .

- *Application a/0092/08*

117. At the outset, the Single Judge notes that the Defence for Mathieu Ngudjolo Chui requested that the status of victims be denied to Applicant a/0092/08 as the alleged events do not fall within the temporal jurisdiction of the Court in the present case.

118. However, after careful assessment of the application for participation, the Single Judge is of the view that Applicant a/0092/08 has provided evidence establishing *prima facie* that he suffered economic loss as a result of the crimes allegedly committed in the alleged joint FRPI/FNI attack on Bogoro on or about 24 February 2003, during which, *inter alia*, his house and property were pillaged and destroyed.

- *Application a/0095/08*

119. The Single Judge is of the view that Applicant a/0095/08 has provided evidence establishing *prima facie* that he suffered economic loss as a result of the crimes allegedly committed in the alleged joint FRPI/FNI attack on Bogoro on or about 24 February 2003, during which, *inter alia*, his house and property were pillaged and destroyed

- *Application a/0096/08*

120. The Single Judge is of the view that Applicant a/0096/08 has provided evidence establishing *prima facie* that he suffered economic loss as a result of the crimes allegedly committed in the alleged joint FRPI/FNI attack on Bogoro on or about 24 February 2003, during which, *inter alia*, his house and property were pillaged and destroyed.

- *Application a/0100/08*

121. The Single Judge is of the view that Applicant a/0100/08 has provided evidence establishing *prima facie* that he suffered economic loss as a result of the crimes allegedly committed in the alleged joint FRPI/FNI attack on Bogoro on or about 24 February 2003, during which, *inter alia*, members of his family, including

his wife and children were killed and his house and property were pillaged and destroyed.

- *Application a/00101/08*

122. The Single Judge is of the view that Applicant a/0101/08 has provided evidence establishing *prima facie* that he suffered economic loss as a result of the crimes allegedly committed in the alleged joint FRPI/FNI attack on Bogoro on or about 24 February 2003, during which, *inter alia*, his house and property were pillaged and destroyed.

- *Application a/00103/08*

123. The Single Judge is of the view that Applicant a/0103/08 has provided evidence establishing *prima facie* that he suffered economic loss as a result of the crimes allegedly committed in the alleged joint FRPI/FNI attack on Bogoro on or about 24 February 2003, during which, *inter alia*, his house and property were pillaged and destroyed.

- *Application a/00104/08*

124. The Single Judge is of the view that Applicant a/0104/08 has provided evidence establishing *prima facie* that he suffered economic loss as a result of the crimes allegedly committed in the alleged joint FRPI/FNI attack on Bogoro on or about 24 February 2003, during which, *inter alia*, his house and property were pillaged and destroyed.

- *Application a/0110/08*

125. The Single Judge further notes that Applicant a/0110/08 alleges that he (i) was recruited into the FRPI in September 2002; (ii) consequently underwent military training; and (iii) took part in hostilities in an alleged attack on Bogoro in February 2003.

126. The Single Judge is of the view that he has provided evidence establishing *prima facie* that he suffered moral harm as a result of the crimes allegedly committed in the alleged joint FRPI/FNI attack on Bogoro on or about 24 February 2003, *inter alia*, his participation in hostilities resulting in psychological problems.

c) Conclusion

127. After having carefully considered each application, the Single Judge is of the view that Applicants a/0009/08, a/0011/08, a/0012/08, a/0013/08, a/0015/08, a/0016/08, a/0022/08, a/0024/08, a/0025/08, a/0027/08, a/0028/08, a/0029/08, a/0032/08, a/0033/08, a/0034/08, a/0035/08, a/0038/08, a/0039/08, a/0043/08, a/0044/08, a/0046/08, a/0049/08, a/0050/08, a/0051/08, a/0055/08, a/0056/08, a/0057/08, a/0060/08, a/0061/08, a/0066/08, a/0067/08, a/0070/08, a/0073/08, a/0076/08, a/0077/08, a/0079/08, a/0080/08, a/0083/08, a/0085/08, a/0088/08, a/0090/08, a/0092/08, a/0095/08, a/0096/08, a/0100/08, a/0101/08, a/0103/08, a/0104/08 and a/0110/08 fulfil all the criteria as set out in rule 85(a) of the Rules and should therefore be granted the procedural status of victim at the pre-trial stage of the case of *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*.

128. The Single Judge is further of the view that the person submitting applications a/0078/08 and a/0109/08 fulfils all the criteria as set out in rule 85(a) of the Rules and should therefore be granted the procedural status of victim at the pre-trial stage of the case of *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*. Nevertheless, for reasons of clarity, the person submitting applications a/0078/08 and a/0109/08 shall be assigned a unique applicant's number.

129. Furthermore, as the Chamber has already held in a previous case, victims of the case "are also recognised as victims in the investigation into the situation in the DRC with regard to the crimes associated with this case";⁶⁸ and that therefore those granted the procedural status of victim in the present case must also be granted the

⁶⁸ ICC-01/04-01/06-228-tEN, pp 13 and 14

procedural status of victim at the stage of the investigation into the situation in the DRC.

2. “Organisations or institutions”

a) Applicable law

130. Rule 85(b) defines the term “victims” as follows:

Victims may include organisations and institutions that have sustained direct harm to any of their property which is dedicated to religion, education, art or science or charitable purposes, and to their historic monuments, hospitals and other places and objects for humanitarian purposes

131. The Single Judge considers that rule 85(b) sets out four criteria necessary for granting victim status, regardless of the stage of the proceedings at which the applicants wish to participate: i) the victim must be an organisation or institution which has some property dedicated to religion, education, art or science or charitable purposes, a historical monument, hospital or other place or object for humanitarian purposes; ii) the organisation or institution must have sustained harm in such property; iii) the crime from which the harm arises must fall within the jurisdiction of the Court; and iv) there must be a direct causal link between the crime and the harm.⁶⁹

132. Furthermore, the Single Judge underlines that the applicants are only required to demonstrate that the four requirements established in rule 85(b) of the Rules are met *prima facie*⁷⁰ and that therefore the Single Judge’s analysis of the Applications “will not consist in assessing the credibility of the [applicants’] statement[s] or engaging in a process of corroboration *stricto sensu*”,⁷¹ but will assess the applicants’ statements first and foremost on the merits of their intrinsic

⁶⁹ ICC-01/04-423-Corr, paras 140-141

⁷⁰ ICC-01/04-101-Corr, para 66 See also, ICC-01/04-417, para 8

⁷¹ ICC-01/04-101-Corr, para.101

coherence, as well as on the basis of the information otherwise available to the Single Judge.⁷²

b) The applications for participation

▪ *Application a/0071/08*

133. The Single Judge notes that application for the participation of Applicant a/0071/06 was submitted on behalf of the [REDACTED]. In this regard, the Single Judge observes that the document entitled "*Commission d'affectation*" and appended to the application for participation, supports the conclusion that the person has the *locus standi* to act on behalf of the [REDACTED].

134. The Single Judge further notes that - despite the inconsistency in the last digit of the [REDACTED] registration number between one of the documents attached to the application and the relevant *arrêté ministériel* [REDACTED].

135. Moreover, the Single Judge considers that Applicant a/0071/08 has provided evidence establishing *prima facie* that the [REDACTED], which was dedicated to [REDACTED] purposes, sustained direct harm as a result of the crimes allegedly committed in the alleged joint FRPI/FNI attack on Bogoro on or about 24 February 2003, during which, *inter alia*, the [REDACTED] was pillaged and the [REDACTED] facilities destroyed.

▪ *Application a/0072/08*

136. The Single Judge notes that application for the participation of Applicant a/0072/08 was submitted by the [REDACTED] whose administrative centre is Bogoro.

137. The Single Judge observes that the individual submitting the application alleges the destruction on the 24 February 2003 of the administrative buildings of the *groupement* in Bogoro.

⁷² ICC-01/04-417, para 8

138. As the application merely refers to the administrative use of the buildings destroyed, the Single Judge considers that it has not provided evidence establishing *prima facie* that such buildings were dedicated to religion, education, art or science or charitable purposes, historical monuments, hospitals or other places or objects for humanitarian purposes.

c) Conclusion

139. After having carefully considered each application, the Single Judge is of the view that Applicant a/0071/08 fulfils all the criteria as set out in rule 85(b) of the Rules and therefore the [REDACTED] is granted the procedural status of victim at the pre-trial stage of the case of *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*.

140. Furthermore, as the Chamber has already held in a previous case, victims of the case “are also recognised as victims in the investigation into the situation in the DRC with regard to the crimes associated with this case”;⁷³ and that therefore Applicant a/0071/08 is also granted the procedural status of victim at the stage of the investigation into the situation in the DRC.

141. In relation to Applicant a/0072/08, the Single Judge is of the view that it cannot be granted the procedural status of victim either at the pre-trial stage of the present case or at the stage of the investigation into the situation in the DRC.

III. Procedural Rights attached to the Procedural Status of Victims

A. Non-anonymous victims

142. In the annexes to the Additional Registry Report, the Legal Representatives inform the Single Judge that Applicants a/0011/08, a/0012/08, a/0013/08, a/0015/08, a/0016/08, a/0024/08, a/0025/08, a/0027/08, a/0028/08, a/0029/08, a/0032/08, a/0033/08, a/0034/08 and a/0035/08 do not wish to request anonymity *vis-à-vis* the Defences for

⁷³ ICC-01/04-01/06-228-tEN, pp 13 and 14.

Germain Katanga and Mathieu Ngudjolo Chui, but that they do request that their identity not be disclosed to the public.⁷⁴

143. Considering the security situation in the areas where Applicants a/0011/08, a/0012/08, a/0013/08, a/0015/08, a/0016/08, a/0024/08, a/0025/08, a/0027/08, a/0028/08, a/0029/08, a/0032/08, a/0033/08, a/0034/08 and a/0035/08 currently live in the Ituri District, the Single Judge is of the view that they are taking an inherent risk by appearing before the Court to exercise the rights attached to the procedural status of victim in the present case without requesting that their identities not be disclosed to both Defences.

144. The Single Judge considers, regardless of the reasons for Applicants a/0011/08, a/0012/08, a/0013/08, a/0015/08, a/0016/08, a/0024/08, a/0025/08, a/0027/08, a/0028/08, a/0029/08, a/0032/08, a/0033/08, a/0034/08 and a/0035/08's choice, it is the duty of the Single Judge, pursuant to articles 57(3)(c) and 68(1) of the Statute, to minimise this risk.

145. In this regard, the Single Judge is of the view that the risk assumed by Applicants a/0011/08, a/0012/08, a/0013/08, a/0015/08, a/0016/08, a/0024/08, a/0025/08, a/0027/08, a/0028/08, a/0029/08, a/0032/08, a/0033/08, a/0034/08 and a/0035/08 can be minimised by not disclosing their identities to the public and the media. This entails keeping their names confidential and ordering the Prosecution, the Defences for Germain Katanga and Mathieu Ngudjolo Chui and any other participant in the proceedings to refer to them by the numbers currently assigned to them by the Registry and not by their names.

146. In relation to the procedural rights attached to the procedural status of victim, the Single Judge has held in the Decision on Procedural Rights for Victims that the specific procedural rights attached to non-anonymous victims can be divided into the following six groups:

⁷⁴ ICC-01/04-01/07-558-Conf-Exp

The first group is comprised of the right to have access, prior to and during the confirmation hearing, to the record of the case kept by the Registry, including to the evidence filed by the Prosecution and the Defence pursuant to rule 121 of the Rules.

The Single Judge considers that this right includes the right to have access to all filings and decisions contained in the record of the case regardless of whether they are classified as public or as confidential. It does not, however, include the right to access those filings and decisions classified as "*ex parte*" and only available to the Prosecution, the Defence, a different participant, the Registry or a combination thereof.

In the view of the Single Judge, this first group also includes the right to be notified on the same basis as the Prosecution and the Defence of all decisions, requests, motions, responses and other procedural documents which are filed in the record of the case and are not classified "*ex parte*" and only available to the Prosecution, the Defence, a different participant, the Registry or a combination thereof.

Furthermore, the right to have access to the transcripts of hearings contained in the record of the case regardless of whether such hearings were held in public or in closed session also falls within this first group. The same cannot be stated, however, for the right to access the transcripts of those hearings held on an *ex parte* basis with the Prosecution, the Defence, a different participant, the Registry or a combination thereof.

In the view of the Single Judge, this first group also includes the right to be notified on the same basis as the Prosecution and the Defence of all proceedings before the Court, including public and closed session hearings (including those held *ex parte*) and any postponements thereof, and the date of delivery of decisions.

Furthermore, the right to have access to the evidence proposed by the Prosecution and the Defence and contained in the record of the case also falls within this first group. However, this right to have access to the evidence is limited to the format (unredacted versions, redacted versions or summaries, as well as electronic versions with the data required by the e-Court Protocol) in which the evidence is made available to the party which has not proposed it.

Finally, the Single Judge underlines that the right to have access to non-public filings and decisions included in the Registry's record of the situation to which the relevant case is related falls outside this first group of rights. In this regard, the Single Judge recalls that such non-public filings and decisions concern the Prosecution investigation of other aspects of the relevant situation, and that a copy of all those materials included in the record of a situation which are relevant for a given case are incorporated into the record of such a case when it arises.⁷⁵

The second group is comprised of the rights (i) to make submissions on all issues relating to the admissibility and probative value of the evidence on which the Prosecution and the Defence intend to rely at the confirmation hearing; and (ii) to examine such evidence at the confirmation hearing.

The third group relates to the examination of witnesses. [...] this third group includes the right to examine, at the confirmation hearing, any witness proposed by the Prosecution and the Defence, as this is part of the evidentiary debate that takes place at the confirmation hearing.

⁷⁵ ICC-01/04-01/06-8-Corr, ICC-01/04-01/06-35, ICC-01/04-01/07-27, ICC-01/04-01/07-59

The Single Judge considers that the examination of witnesses by those granted the procedural status of victim should take place after their examination by the Prosecution and within the amount of time allocated by the Chamber. Moreover, those granted the procedural status of victim, like the Prosecution and the Defence, should not have to file the list of questions that they intend to pose to the relevant witnesses prior to the examination of the witnesses. In this regard, the Single Judge notes that the Prosecution, the Defence and those granted the procedural status of victim can always, after a question is posed and before it is answered by the witness, make an oral motion requesting the Chamber not to admit the relevant question or to request the examining party to reformulate it.

Finally, the examination of witnesses by those granted the procedural status of victim should take place subject to any other direction that the Chamber may give prior to, or during, the said examination.

The fourth group is comprised of the right to attend all public and closed session hearings convened in the proceedings leading to the confirmation hearing, as well as in all public and closed sessions of the confirmation hearing. However, it does not include the right to attend those hearings held on an *ex parte* basis with the Prosecution, the Defence, a different participant, the Registry or a combination thereof.

The fifth group includes the right to participate by way of oral motions, responses and submissions in: (i) all those hearings in which those granted the procedural status of victim have the right to attend; and (ii) in relation to all matters other than those in which their intervention has been excluded by the Statute and the Rules - for instance, matters relating to the *inter partes* disclosure process or any discussion of the evidence which aims at extending the factual basis contained in the Prosecution [Amended] Charging Document.

The sixth and last group is comprised of the right to file written motions, responses and replies in accordance with regulation 24 of the Regulations, in relation to all matters other than those in which the victim's intervention has been excluded by the Statute and the Rules.

In the view of the Single Judge, the fifth and the sixth groups of rights also include the right to (i) file, in accordance with rule 121(7) of the Rules, written submissions with the Pre-Trial Chamber on evidentiary and legal issues to be discussed at the confirmation hearing; (ii) make opening and closing statements at the confirmation hearing as provided for in rule 89(1) of the Rules; and (iii) raise objections or make observations concerning issues related to the proper conduct of the proceedings prior to the confirmation hearing in accordance with rule 122(3) of the Rules.

Nevertheless, the Single Judge considers that the right to resort to certain procedural remedies that, according to the Statute and the Rules, can only be exercised by Prosecution, Defence and/or other participants, falls outside of these last two groups of rights. This is the case, *inter alia*, for the right to make challenges to, or raise issues relating to, the jurisdiction of the Court or the admissibility of a case pursuant to article 19(2) and (3) of the Statute and rule 122(2) of the Rules.

Furthermore, the Single Judge would like to highlight that any procedural rights attached to the procedural status of victim at the pre-trial stage of the case cannot be exercised retroactively. Moreover, unless otherwise provided by the Chamber in any future decision granting the procedural status of victim in the pre-trial proceedings of the present case, the set of specific procedural rights embraced in the present decision shall also belong to all natural and legal persons to whom such status shall be granted by the Chamber.⁷⁶

⁷⁶ICC-01/04-01/07-474, Section V.1 4 2, paras 127-145

147. Furthermore, in the Decision on Limitations of Victims' Procedural Rights the Single Judge held that the procedural rights of non-anonymous victims are limited in the following manner:

- (i) only the Legal Representatives of non-anonymous victims shall have the rights to access the confidential part of the record of the present case and to attend closed session hearings;
- (ii) non-anonymous victims shall not have access to the confidential part of the case record, nor shall they attend closed session hearings; and
- (iii) the Legal Representatives of non-anonymous victims shall be prohibited from transmitting to their clients copies of any document or evidence included in the confidential part of the case record, as well as any transcript of hearings held in closed session.

148. The Single Judge also recalls that:

- (i) the above limitations shall not extend to a general prohibition on the Legal Representatives of non-anonymous victims from discussing with their clients the information and evidence to which they are privy through accessing the confidential part of the case record and attending closed session hearings; and
- (ii) the Legal Representatives of non-anonymous victims shall only be prohibited from discussing with their clients the above-mentioned information and evidence insofar as it would allow the non-anonymous victims that they represent to identify the specific witnesses in the confirmation hearing of the present case.

B. Victims requesting anonymity

149. The Single Judge notes that in the annexes to the Additional Registry Report, the Legal Representative informs the Single Judge that Applicants a/0038/08, a/0039/08, a/0043/08, a/0044/08, a/0046/08, a/0049/08, a/0050/08, a/0055/08, a/0057/08, a/0060/08, a/0061/08, a/0066/08, a/0067/08, a/0070/08, a/0071/08,⁷⁷ a/0073/08, a/0076/08, a/0077/08, a/0079/08, a/0080/08, a/0083/08, a/0085/08, a/0088/08, a/0090/08, a/0092/08, a/0095/08, a/0096/08, a/0100/08, a/0101/08, a/0103/08, a/0104/08 and the person who submitted applications for participation a/0078/08 and a/0109/08 do not wish to request anonymity *vis-à-vis* the Defence Counsels, but request that their identities not to be disclosed to the suspects.⁷⁸

150. The Single Judge is of the view that, in light of the fact that the above-mentioned applicants maintain their request for anonymity *vis-à-vis* both suspects, their requests amount to requests for anonymity *vis-à-vis* the Defences for Germain Katanga and Mathieu Ngudjolo Chui, and shall be treated as such.

151. Furthermore, in the annexes to the Additional Registry Report, the Legal Representatives inform the Single Judge that Applicants a/0051/08,⁷⁹ a/0056/08⁸⁰ and a/0110/08⁸¹ have also requested that their identities remain confidential during the proceedings leading to and at the confirmation hearing in the present case.

152. Moreover, the Single Judge observes that Applicant a/0009/08⁸² requests anonymity *vis-à-vis* the Defence in Section H of her application, and that, in

⁷⁷ The Single Judge notes that the name of Applicant a/0071/08, namely [REDACTED], has already been disclosed to the Defence, as a result, the Single Judge is of the view that the present request for anonymity is made by the person submitting the application on behalf of the [REDACTED]

⁷⁸ ICC-01/04-01/07-558-Conf-Exp, para 8

⁷⁹ ICC-01/04-01/07-558-Conf-Exp, para 8, and ICC-01/04-01/07-558-Conf-Exp-Anx1

⁸⁰ ICC-01/04-01/07-558-Conf-Exp, para 8, and ICC-01/04-01/07-558-Conf-Exp-Anx1

⁸¹ ICC-01/04-01/07-557

⁸² Applicant a/0009/08 requests anonymity in Section H of her application. Subsequently, by a letter addressed to the Victims Participation and Reparation Section ("the VPRS"), Mr Hervé Diakiese informed the VPRS that he will file soon a power of attorney signed by Applicant a/0009/08. Moreover, Mr Hervé Diakiese informed the VPRS that Applicant a/0009/08 has changed her original choice, and that she is not requesting any longer anonymity *vis-à-vis* the Defences for Germain Katanga and Mathieu Ngudjolo Chui. Nevertheless, the Single Judge is of the view, that only after a power of attorney for Mr Hervé Diakiese signed by Applicant a/0009/08 is transmitted to the VPRS, will Mr Hervé Diakiese become

accordance with her application and the information provided for in the Second Additional Registry Report, Applicant a/0022/08 also requests anonymity *vis-à-vis* the Defence.⁸³

153. The Single Judge reminds the afore-mentioned Victims that both the Prosecution and the Defence are entitled to submit observations on their request for anonymity in the proceedings leading to and at the confirmation hearing. However, the Single Judge would like to recall that, in the event that their requests for anonymity are granted, they will be entitled to the set of procedural rights provided for in Section VII of the Decision on Procedural Rights for Victims.

her Legal Representative. Moreover, the Single Judge considers that until otherwise stated by Applicant a/0009/08, or by her Legal Representative, she maintains her initial request for anonymity [REDACTED]

⁸³ The head of Office of Public Counsel for Victims states in the Second Additional Registry Report in relation to Applicant a/0022/08 that due to the fact that she has not received any information on the person, nor her application form, she is not in a position to fully secure the rights and interests of the Applicant, and therefore she has advised Applicant a/0022/08 to maintain anonymity until a Legal Representative will be able to assess her position (ICC-01/04-01/07-560-Conf-Exp-Anx1)

FOR THESE REASONS,

DECIDES that applications a/0010/08, a/0054/08, a/0075/08 a/0084/08, a/0094/08, a/0097/08, a/0111/08 and a/0112/08 are incomplete and will not be considered for the purpose of the confirmation hearing in the present case.

DENY the procedural status of victim at the pre-trial stage of the case of *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, as well as the stage of investigation into the situation in the DRC, to Applicants a/0014/08, a/0030/08, a/0036/08, a/0037/08, a/0040/08, a/0041/08, a/0042/08, a/0045/08, a/0047/08, a/0048/08, a/0052/08, a/0053/08, a/0058/08, a/0059/08, a/0062/08, a/0063/08, a/0064/08, a/0065/08, a/0068/08, a/0069/08, a/0072/08, a/0074/08, a/0078/08, a/0081/08, a/0082/08, a/0086/08, a/0087/08, a/0089/08, a/0091/08, a/0093/08, a/0094/08, a/0098/08, a/0099/08, a/0102/08, a/0105/08, a/0106/08, a/0107/08, and a/0109/08;

DENY the procedural status of victim at the pre-trial stage of the case of *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui* to Applicant a/0031/08; and

DECIDE that his application to be granted the procedural status of victim at the stage of the investigation into the situation in the DRC shall be examined by the Chamber in due course;

GRANT the procedural status of victim at the pre-trial stage of the case of *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui* and at the stage of the investigation into the DRC situation to Applicants a/0009/08, a/0011/08, a/0012/08, a/0013/08, a/0015/08, a/0016/08, a/0022/08, a/0024/08, a/0025/08, a/0027/08, a/0028/08, a/0029/08, a/0032/08, a/0033/08, a/0034/08, a/0035/08, a/0038/08, a/0039/08, a/0043/08, a/0044/08, a/0046/08, a/0049/08, a/0050/08, a/0051/08, a/0055/08, a/0056/08, a/0057/08, a/0060/08, a/0061/08, a/0066/08, a/0067/08, a/0070/08, a/0071/08, a/0073/08, a/0076/08,

a/0077/08, a/0079/08, a/0080/08, a/0083/08, a/0085/08, a/0088/08, a/0090/08, a/0092/08, a/0095/08, a/0096/08, a/0100/08, a/0101/08, a/0103/08, a/0104/08 and a/0110/08 as well as to the person who submitted the applications for participation a/0078/08 and a/0109/08;

DECIDE that the person who submitted the applications for participation a/0078/08 and a/0109/08 shall be referred as Applicant a/0078/08;

ORDER that all those applicants to whom the procedural status of victim at the pre-trial stage of the case of *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui* is granted in the present decision:

- (i) must only be referred to by the numbers assigned to them by the Registry, unless otherwise ordered by the Chamber; and
- (ii) shall only be contacted through their Legal Representatives (until Applicants a/0009/08 and a/0022/08 appoint a legal representative, they shall only be contacted through the VPRS);

DECIDE that all those applicants to whom the procedural status of victim at the pre-trial stage of the case of *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui* is granted in the present decision shall be entitled to attend the hearing scheduled for 10 June 2008 and the status conference to be held on 19 June 2008;

ORDER the Registry:

- (i) to notify all those Applicants to whom the procedural status of victim at the pre-trial stage of the case of *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui* is granted in the present decision of:

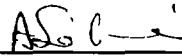
- a. the Decision on Procedural Rights for Victims (ICC-01/04-01/07-474);
 - b. the Decision on Limitations of Victims' Procedural Rights (ICC-01/04-01/07-537); and
 - c. the Decision Distributing the Proposed Schedule for the Confirmation hearing (ICC-01/04-01/07-547).
- (ii) to immediately contact Applicants a/0009/08 and a/0022/08 so as to facilitate their appointment of a legal representative by 20 June 2007;
 - (iii) to notify to the Defence for Germain Katanga and the Defence for Mathieu Ngudjolo the identity of Applicants a/0011/08, a/0012/08, a/0013/08, a/0015/08, a/0016/08, a/0024/08, a/0025/08, a/0027/08, a/0028/08, a/0029/08, a/0032/08, a/0033/08, a/0034/08 and a/0035/08;

DECIDE that Applicants a/0011/08, a/0012/08, a/0013/08, a/0015/08, a/0016/08, a/0024/08, a/0025/08, a/0027/08, a/0028/08, a/0029/08, a/0032/08, a/0033/08, a/0034/08 and a/0035/08, who have been granted the procedural status of victim at the pre-trial stage of the present case and whose identity is to be disclosed to both Defences in accordance with the present decision, shall have the set of procedural rights provided for in Sections V.1.4.2. and VI of the Decision on Procedural Rights for Victims with the limitations imposed by the Single Judge in the Decision on Limitations of Victims' Procedural Rights; and

DECIDE that the Prosecution and the Defences for Germain Katanga and Mathieu Ngudjolo Chui shall have until Monday 16 June 2008 at 16h00 to submit, pursuant to rule 89(1) of the Rules, their observations on the request for anonymity from Applicants a/0009/08, a/0022/08, a/0038/08, a/0039/08, a/0043/08, a/0044/08, a/0046/08, a/0049/08, a/0050/08, a/0051/08, a/0055/08, a/0056/08, a/0057/08, a/0060/08, a/0061/08, a/0066/08, a/0067/08, a/0070/08, a/0071/08, a/0073/08, a/0076/08, a/0077/08, a/0078/08,

a/0079/08, a/0080/08, a/0083/08, a/0085/08, a/0088/08, a/0090/08, a/0092/08, a/0095/08,
a/0096/08, a/0100/08, a/0101/08, a/0103/08, a/0104/08 and a/0110/08.

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



Judge Akua Kuenyehia
Single Judge

Dated this Tuesday 10 June 2008

At The Hague, the Netherlands