



Original: **French**

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

Date: **19 May 2009**

**TRIAL CHAMBER II**

**Before: Judge Bruno Cotte, Presiding Judge  
Judge Fatoumata Dembele Diarra  
Judge Hans-Peter Kaul**

**SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO**

**IN THE CASE OF**

***THE PROSECUTOR v. GERMAIN KATANGA AND MATHIEU NGUDJOLO  
CHUI***

**Public Document**

**Third Decision Inviting the Parties to Submit their Observations on Applications  
for Participation (Rule 89(1) of the Rules of Procedure and Evidence)**

Decision to be notified in accordance with regulation 31 of the Regulations of the Court to:

**The Office of the Prosecutor**

Mr Luis Moreno-Ocampo, Prosecutor  
 Ms Fatou Bensouda, Deputy Prosecutor  
 Mr Éric MacDonald, Senior Trial Lawyer

**Counsel for the Defence of Germain  
 Katanga**

Mr David Hooper  
 Mr Andreas O'Shea

**Counsel for Mathieu Ngudjolo Chui**

Mr Jean-Pierre Kilenda Kakengi Basila  
 Mr Jean-Pierre Fofé Djofia Malewa

**Legal Representatives of the Victims**

Ms Carine Bapita Buyangandu  
 Mr Joseph Keta  
 Mr Jean-Louis Gilissen  
 Mr Hervé Diakiese  
 Mr Jean Chrysostome Mulamba  
 Nsokoloni  
 Mr Fidel Nsita Luvengika  
 Mr Vincent Lurquin  
 Ms Flora Ambuyu Andjelani

**Legal Representatives of the Applicants**

**The Office of Public Counsel for  
 Victims**

Ms Paolina Massida

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

**States' Representatives**

**Amicus Curiae**

**REGISTRY**

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**Registrar**

Ms Silvana Arbia

**Defence Support Section**

**Victims Participation and Reparations  
 Section**

Ms Fiona McKay

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

1. On 26 February 2009, the Chamber laid down the procedure to be followed concerning the treatment of applications for participation by the Victims Participation and Reparations Section (VPRS), in particular the modalities of the procedure for redacting applications prior to their disclosure to the parties.<sup>1</sup>

2. On 20 March 2009, the Registry submitted to the Chamber a report on the establishment of a redaction regime for victims’ applications for participation. Annexed to this report, which sets out the criteria used by VPRS for this purpose, is a table indicating the information which, in the latter’s view, is liable to be redacted, since it constitutes information identifying applicants.<sup>2</sup>

3. In accordance with the procedure set out in the Decision of 26 February 2009, VPRS transmitted to the Chamber several reports containing its proposed redactions. An initial report was submitted on 3 April 2009.<sup>3</sup> It concerned 97 applications for participation, including seven applications filed with Pre-Trial Chamber I on 26 May 2008<sup>4</sup> and supplemented on 2 June 2008<sup>5</sup> on which no decision had been made. An additional report concerning one applicant represented by the

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

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

<sup>3</sup> Registry, “*Filing of proposed redactions on victims’ applications in accordance with decision ICC-01/04-01/07-933*”, 3 April 2009, ICC-01/04-01/07-1023-Conf-Exp with confidential *ex parte* Annexes 1 to 97.

<sup>4</sup> Registry, “*Transmission de 97 demandes de participation*”, 26 May 2008, ICC-01/04-01/07-510-Conf-Exp-Corr with confidential *ex parte* Annexes 1 to 97.

<sup>5</sup> Registry, “*Report on Victims’ Applications under Regulation 86.5, Regulations of the Court*”, 2 June 2008, ICC-01/04-01/07-542-Conf-Exp with confidential *ex parte* Annexes 1 to 9.

Office of Public Counsel for Victims was filed on 8 April 2009.<sup>6</sup> Those 97 applications were disclosed to the parties for their observations.<sup>7</sup>

4. On 21 April 2009, a second report was submitted to the Chamber, in which the Registry stated that it had received 70 new applications for participation completed in accordance with the criteria set forth by the Chamber in its Decision of 26 February 2009.<sup>8</sup> These 70 applications were disclosed to the parties for their observations.<sup>9</sup>

5. A third<sup>10</sup> and fourth<sup>11</sup> report were submitted to the Chamber on 4 and 8 May 2009. In those reports the Registry informs the Chamber of the receipt of 54 new applications for participation, of which 50 are complete,<sup>12</sup> and of the receipt of 45 new applications for participation, of which 37 are complete.<sup>13</sup> All 99 applicants are seeking to obtain the status of participant in the proceedings in the present case. The Chamber also notes that these proposals for redactions were made after prior consultation with the Victims and Witnesses Unit, in accordance with paragraph 48 of the Decision of 26 February 2009.

6. The Chamber recalls that, under article 68(1) of the Statute, the Court has an obligation to protect, inter alia, the safety and physical and psychological well-being of victims. Hence, the Chamber must take all appropriate measures to protect them,

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<sup>6</sup> Registry, “Rapport supplémentaire du Greffe sur le rapport proposant les expurgations des demandes de participation des victimes conformément à la décision ICC-01/04-01/07-933”, 8 April 2009, ICC-01/04-01/07-1048-Conf-Exp confidential *ex parte* Annexes 1 to 97.

<sup>7</sup> *Décision invitant les parties à présenter leurs observations relatives aux demandes de participation (règle 89-1 du Règlement de procédure et de preuve)*, 4 May 2009, ICC-01/04-01/07-1094.

<sup>8</sup> Registry, “Deuxième rapport du Greffe sur des demandes de participation en application de la norme 86-5 du Règlement de la Cour”, 21 April 2009, ICC-01/04-01/07-1066-Conf-Exp.

<sup>9</sup> *Deuxième décision invitant les parties à présenter leurs observations relatives aux demandes de participation (règle 89-1 du Règlement de procédure et de preuve)*, 12 May 2009, ICC-01/04-01/07-1129.

<sup>10</sup> Registry, “Troisième rapport du Greffe sur des demandes de participation en application de la norme 86-5 du Règlement de la Cour”, 4 May 2009, ICC-01/04-01/07-1092-Conf-Exp.

<sup>11</sup> Registry, “Quatrième rapport du Greffe sur des demandes de participation en application de la norme 86-5 du Règlement de la Cour”, 8 May 2009, ICC-01/04-01/07-1121-Conf-Exp.

<sup>12</sup> ICC-01/04-01/07-1092-Conf-Exp, para. 4.

<sup>13</sup> ICC-01/04-01/07-1121-Conf-Exp, para. 5.

particularly in view of the existence of real security risks on the territory of the Democratic Republic of the Congo.

7. After a careful assessment of the redacted version of each application for participation, the Chamber notes that only 87 of them meet the criteria for a complete application as set out in the Decision of 26 February 2009.<sup>14</sup> In the Chamber's opinion, only these 87 applications may be disclosed to the parties for their observations.

8. The Chamber considers that all of the redactions now proposed, which it has reviewed in accordance with its Decision of 26 February 2009, satisfy the principle of proportionality, since they are necessary and constitute the only possible and sufficient measure. It considers that, in order to protect applicants effectively at this stage of the authorisation procedure, it must order that their identities and identifying information are not to be disclosed until it has ruled on their status as participants in the proceedings. In the Chamber's view, the proposed redactions fall within the limits defined in paragraphs 49 and 51 of the Decision of 26 February 2009.

9. Lastly, the Chamber considers that the twelve incomplete applications must be completed before being sent to the parties for their observations. The Chamber is of the opinion that the Registry must contact the legal representatives of these twelve applicants so that they may complete their applications for participation.

#### **FOR THESE REASONS, THE CHAMBER**

**DECIDES** that, at this stage of the procedure, redactions of information enabling applicants to be identified are necessary and constitute the only measures capable of ensuring respect for their privacy and of guaranteeing their safety and physical well-being;

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<sup>14</sup> ICC-01/04-01/07-933, para. 28.

**ORDERS** the Registrar to disclose redacted copies of the applications for participation contained in her third report,<sup>15</sup> excluding applications a/0607/08, a/0160/09, a/0161/09 and a/0162/09, to both Defence teams and to the Prosecutor no later than 4 p.m. on 19 May 2009;

**ORDERS** the Registrar to disclose redacted copies of the applications for participation contained in her fourth report,<sup>16</sup> excluding applications a/0268/08, a/0284/09, a/0285/09, a/0286/09, a/0291/09, a/0297/09, a/0306/09 and a/0315/09, to both Defence teams and to the Prosecutor no later than 4 p.m. on 19 May 2009;

**DECIDES** that both Defence teams and the Prosecutor have until 4 p.m. on 2 June 2009 to file their observations on whether or not the status of participant in the proceedings should be granted to the 87 applicants;

**ORDERS** the Registrar to contact the Legal Representatives of Applicants a/0607/08, a/0160/09, a/0161/09, a/0162/09, a/0268/08, a/0284/09, a/0285/09, a/0286/09, a/0291/09, a/0297/09, a/0306/09 and a/0315/09 in order to obtain the necessary additional information to complete their applications for participation and, once they have been completed, to transmit them to the Chamber by 4 p.m. on 29 May 2009;

**ORDERS** the parties to refer to the applicants by the number assigned to them by the Registry.

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<sup>15</sup> ICC-01/04-01/07-1092-Conf-Exp.

<sup>16</sup> ICC-01/04-01/07-1121-Conf-Exp.

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

[signed]

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**Judge Bruno Cotte**  
**Presiding Judge**

[signed]

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**Judge Fatoumata Dembele Diarra**

[signed 19/5/09]

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**Judge Hans-Peter Kaul**

Dated this 19 May 2009

At The Hague, The Netherlands