



Original: **French**

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

Date: **19 June 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

**Corrigendum of the Decision Inviting the Parties to Submit their Observations
on Application for Participation a/0114/08
(Rule 89(1) of the Rules of Procedure and Evidence)**

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

The Office of the Prosecutor

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

Counsel for Germain Katanga

Mr David Hooper
 Mr Andreas O'Shea

Counsel for Mathieu Ngudjolo Chui

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

Legal Representatives of the Victims

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 Mbuyu Anjelani

Legal Representatives of the Applicants

**The Office of Public Counsel for
 Victims**

Ms Paolina Massidda

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

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Ms Silvana Arbia

Defence Support Section

**Victims Participation and Reparations
 Section**

Ms Fiona McKay

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

1. On 26 February 2009, the Chamber determined the procedure to be followed for processing applications for participation by the Victims Participation and Reparations Section (VPRS), in particular the details of the procedure for redacting applications prior to their disclosure to the parties.¹

2. This procedure ordered the VPRS to transmit to the Chamber “by 4 May 2009 and in accordance with the terms of regulation 86(5) of the Regulations of the Court, all new applications for participation, barring exceptional circumstances, which it must justify”.²

3. On 18 June 2009, the Registry sent to the Chamber a report on application for participation a/0114/08 together with proposals for redaction.³ According to the Registry, this report was not recorded in previous reports due to “[TRANSLATION] a technical error on the part of the Registry”.⁴ The Registry explained moreover that it only received this application on 30 May 2008 and that the application was completed by a second application from the same person on 17 June 2008.⁵

4. After close examination of the redacted version of application for participation a/0114/08, the Chamber considers that it meets the criteria for a complete application as set out in the Decision of 26 February 2009.⁶

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

² *Ibid.*, p. 24.

³ Registry, “*Rapport du Greffe sur la demande de participation a/0114/08 en application de la norme 86-5 du Règlement de la Cour*”, 18 June 2009, ICC-01/04-01/07-1216-Conf-Exp.

⁴ *Ibid.*, para. 2.

⁵ *Ibid.*, para. 3.

⁶ ICC-01/04-01/07-933-tENG, para. 28.

5. Furthermore, it considers that the reasons put forward by the Registry in its report constitute exceptional circumstances justifying the late submission of this application. It also decides that this application can be disclosed to the parties for observations.

6. The Chamber recalls that article 68(1) of the Statute provides that the Court has an obligation to protect, *inter alia*, the safety and physical and psychological well-being of victims. Accordingly, the Chamber must take all necessary measures to protect them, particularly in view of the existence of real threats to safety in the Democratic Republic of the Congo.

7. The Chamber considers in fact that all the redactions sought in this case, and over which it has exercised control pursuant to its Decision of 26 February 2009, satisfy the principle of proportionality, since they are necessary and constitute the only possible adequate measure. The Chamber considers that, in order to protect the applicants effectively at this stage of the proceedings, their identity and information leading to their identification must not be disclosed until the Chamber has rendered its decision on their status as participants in the proceedings. In the Chamber's opinion, the redactions sought are within the limits set out in paragraphs 49 and 51 of the Decision of 26 February 2009.

FOR THESE REASONS, THE CHAMBER

DECIDES that, at this stage of the proceedings, the redactions of information enabling identification of the applicants are necessary and constitute the only measures able to guarantee their privacy, safety and physical well-being;

ORDERS the Registrar to disclose a redacted copy of application for participation a/0114/08 to both teams for the Defence and to the Prosecutor by 4 p.m. on 19 June 2009;

DECIDES that both teams for the Defence and the Prosecutor have until 4 p.m. on 24 June 2009 to submit their observations on the feasibility of granting to this applicant the status of participant in the proceedings;

ORDERS the parties to refer to the applicants by the numbers allocated to them by the Registry.

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

[signed]

Judge Bruno Cotte
Presiding Judge

[signed]

Judge Fatoumata Dembele Diarra

[signed]

Judge Hans-Peter Kaul

Dated this 19 June 2009

At The Hague, The Netherlands