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**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 redacted version**

**With confidential *ex parte* Annex only available to the Registry and to the Legal  
Representatives of the Victims**

**Grounds for the Decision on the 345 Applications for Participation in the  
Proceedings Submitted by Victims**

**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**

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 Mr Andreas O'Shea

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**Legal Representatives of the Victims**

Mr Jean-Louis Gilissen  
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**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 articles 21 and 68 of the Rome Statute ("the Statute"), rules 85, 86 and 89 of the Rules of Procedure and Evidence ("the Rules") and regulation 86 of the Regulations of the Court, sets out herein the grounds for the decision rendered by it on 31 July 2009.<sup>1</sup>

## I. Procedural history

1. On 26 February 2009, the Chamber rendered a decision which stipulated the procedure to be followed by the Victims Participation and Reparations Section (VPRS) for the treatment of applications for participation and set out the modalities for the redaction of applications prior to their disclosure to the parties (the "Decision of 26 February 2009").<sup>2</sup>
2. Pursuant to that Decision, the Registry submitted a report<sup>3</sup> to the Chamber on 20 March 2009 regarding the arrangements for the redaction of applications for participation. This report, which sets out the criteria for redaction, includes a table appended as an Annex containing the information liable to be redacted because it allows applicants to be identified.
3. In accordance with the procedure described in the Decision of 26 February 2009 and after prior consultation with the Victims and Witnesses Unit, VPRS submitted a series of reports to the Chamber containing its proposed redactions. An initial report was submitted on 3 April 2009.<sup>4</sup> This involved 97 applications for participation, seven of which had already been filed

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<sup>1</sup> *Dispositif de la décision relative aux 345 demandes de participation de victimes à la procédure*, 31 July 2009, ICC-01/04-01/07-1347; *Corrigendum du dispositif de la décision relative aux 345 demandes de participation des victimes à la procédure*, 5 August 2009, ICC-01/04-01/07-1347-Corr.

<sup>2</sup> *Decision on the treatment of applications for participation*, 26 February 2009, ICC-01/04-01/07-933-tENG ("the Decision of 26 February 2009"), paras. 46 to 54.

<sup>3</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-01/04-01/07-974-Conf-Exp with confidential *ex parte* Annex.

<sup>4</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.

before Pre-Trial Chamber I ("the Pre-Trial Chamber") on 26 May 2008<sup>5</sup> and supplemented on 2 June 2008,<sup>6</sup> and on which no decision had yet been rendered. An additional report, on an applicant represented by the Office of Public Counsel for Victims, was filed on 8 April 2009.<sup>7</sup>

4. A second report was submitted to the Chamber on 21 April 2009, informing it of the receipt of 70 new applications for participation, duly completed in accordance with the criteria set out by the Chamber in the Decision of 26 February 2009.<sup>8</sup>
5. A third<sup>9</sup> and fourth<sup>10</sup> report were submitted to the Chamber on 4 and 8 May 2009 respectively. The Chamber was thereby informed of the receipt of 54 new applications for participation, of which 50 were complete,<sup>11</sup> and of a further 45 new applications, of which 37 were complete.<sup>12</sup> Of the 12 applications deemed to be incomplete, only 7 were subsequently completed and forwarded to the Chamber by the Registry on 29 May 2009.<sup>13</sup>
6. A fifth report was submitted to the Chamber on 20 May 2009, informing it of the receipt of 74 new applications for participation.<sup>14</sup>

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<sup>5</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>6</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.

<sup>7</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.

<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> 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>10</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>11</sup> ICC-01/04-01/07-1092-Conf-Exp, para. 4.

<sup>12</sup> ICC-01/04-01/07-1121-Conf-Exp, para. 5.

<sup>13</sup> Registry, "*Rapport sur les informations supplémentaires reçues sur les demandes de participation enregistrées avec les Troisième et Quatrième rapport du Greffe sur des demandes de participation de victimes*", 29 May 2009 ICC-01/04-01/07-1181-Conf-Exp.

<sup>14</sup> Registry, "*Cinquième rapport du Greffe sur des demandes de participation en application de la norme 86-5 du Règlement de la Cour*", 20 May 2009 ICC-01/04-01/07-1159-Conf-Exp.

7. In addition, on 4 May 2009 the Registry submitted a report to the Chamber on the 40 applications rejected by the Pre-Trial Chamber,<sup>15</sup> four of which involved proposed redactions of additional documentation provided subsequently by the applicants.<sup>16</sup>
8. Finally, on 18 June 2009, the Registry submitted a report to the Chamber on application for participation a/0114/08, together with proposed redactions.<sup>17</sup> That application, which was not included in the previous reports, was received on 30 May 2008 and the information contained therein was supplemented on 17 June 2008.<sup>18</sup>
9. On 4 May,<sup>19</sup> 12 May,<sup>20</sup> 19 May,<sup>21</sup> 12 June<sup>22</sup> and 19 June 2009<sup>23</sup> respectively, the Chamber ordered that the redacted versions of all applications for participation be disclosed to the parties with a view to obtaining their observations. However, five requests were not disclosed to the parties because they remained incomplete on 29 May 2009, the final day of the time limit set by the Chamber for the submission of duly completed applications for participation.<sup>24</sup>

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<sup>15</sup> Registry, “*Rapport du Greffe sur des demandes de participation rejetées par la Chambre préliminaire*”, 4 May 2009, ICC-01/04-01/07-1104-Conf-Exp; See also the corrigendum filed on 8 May 2009, ICC-01/04-01/07-1104-Conf-Exp-Corr.

<sup>16</sup> Registry, “*Dépôt de propositions d’expurgations de documents supplémentaires reçus sur des demandes de participation de victimes conformément à la décision ICC-01/04-01/07-933*”, 4 May 2009, ICC-01/04-01/07-1103-Conf-Exp; See also the corrigendum filed on 8 May 2009, ICC-01/04-01/07-1103-Conf-Exp-Corr.

<sup>17</sup> 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.

<sup>18</sup> *Ibid.*, para. 3.

<sup>19</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>20</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>21</sup> *Troisième décision invitant les parties à présenter leurs observations relatives aux demandes de participation (règle 89-1 du Règlement de procédure et de preuve)*, 19 May 2009, ICC-01/04-01/07-1151.

<sup>22</sup> *Quatrième décision invitant les parties à présenter leurs observations relatives aux demandes de participation (règle 89-1 du Règlement de procédure et de preuve)*, 12 June 2009, ICC-01/04-01/07-1206.

<sup>23</sup> *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)*, 19 June 2009, ICC-01/04-01/07-1224-Corr-tENG.

<sup>24</sup> *Troisième décision invitant les parties à présenter leurs observations relatives aux demandes de participation (règle 89-1 du Règlement de procédure et de preuve)*, 19 May 2009, ICC-01/04-01/07-1151, p. 7.

10. On 15 May,<sup>25</sup> 26 May,<sup>26</sup> 2 June<sup>27</sup> and 24 June 2009,<sup>28</sup> the Prosecutor submitted his observations on the 340 applications received.
11. The Defence for Mr Mathieu Ngudjolo for its part submitted its observations on 19 May 2009<sup>29</sup> and on 2<sup>30</sup> and 24 June 2009.<sup>31</sup> Observations by the Defence for Mr Germain Katanga were submitted on 19<sup>32</sup> and 26 May 2009<sup>33</sup> and on 2<sup>34</sup> and 24 June 2009.<sup>35</sup>

## II. Applicable law

12. In accordance with article 68(1) of the Statute, the Court shall take appropriate measures to protect, inter alia, the safety, physical and psychological well-being of victims. The Chamber must therefore adopt all necessary measures to ensure victims' protection, in particular in view of the existence of genuine security risks in the territory of the Democratic Republic of the Congo (DRC).

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<sup>25</sup> Office of the Prosecutor, "Prosecution's Observations on the Applications for Participation in the Proceedings of 97 Applicants", 15 May 2009, ICC-01/04-01/07-1139.

<sup>26</sup> Office of the Prosecutor, "Prosecution's Observations on the Applications for Participation in the Proceedings of 70 Applicants", 26 May 2009, ICC-01/04-01/07-1171.

<sup>27</sup> Office of the Prosecutor, "Prosecution's Observations on the Applications for Participation in the Proceedings of 87 Applicants", 2 June 2009, ICC-01/04-01/07-1186.

<sup>28</sup> Office of the Prosecutor, "Prosecution's Observations on the Applications for Participation in the Proceedings of 86 Applicants", 24 June 2009, ICC-01/04-01/07-1246.

<sup>29</sup> Defence for Mathieu Ngudjolo, "*Observations consolidées de la Défense de Mathieu Ngudjolo relatives à 167 demandes de participation de victimes candidates au statut de participants à la procédure (règle 89-1 du Règlement de procédure et de preuve)*", 19 May 2009, ICC-01/04-01/07-1150-Conf-Exp.

<sup>30</sup> Defence for Mathieu Ngudjolo, "*Observations de la Défense de Mathieu Ngudjolo relatives à 87 demandes de participation de victimes candidates au statut de participants à la procédure (règle 89-1 du Règlement de procédure et de preuve)*", 2 June 2009, ICC-01/04-01/07-1184-Conf-Exp.

<sup>31</sup> Defence for Mathieu Ngudjolo, "*Observations consolidées de la Défense de Mathieu Ngudjolo relatives aux demandes de participation de victimes candidates au statut de participants à la procédure reçues pendant la période allant du 15 au 19 juin 2009 (règle 89-1 du Règlement de procédure et de preuve)*", 24 June 2009, ICC-01/04-01/07-1241-Conf-Exp.

<sup>32</sup> Defence for Germain Katanga, "Defence Observations on the 97 applications for participation as victims", 19 May 2009, ICC-01/04-01/07-1152-Conf.

<sup>33</sup> Defence for Germain Katanga, "Defence Observations on the 70 applications for participation as victims", 26 May 2009, ICC-01/04-01/07-1170-Conf.

<sup>34</sup> Defence for Germain Katanga, "Defence Observations on the 87 applications for participation as victims", 2 June 2009, ICC-01/04-01/07-1187-Conf.

<sup>35</sup> Defence for Germain Katanga, "Defence Observations on the applications for participation as victims notified in June 2009", 24 June 2009, ICC-01/04-01/07-1245-Conf.

13. Under article 68(3) of the Statute, “[w]here the personal interests of the victims are affected, the Court shall permit their views and concerns to be presented and considered at stages of the proceedings determined to be appropriate by the Court and in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.”
14. Rule 85(a) of the Rules provides: “‘Victims’ means natural persons who have suffered harm as a result of the commission of any crime within the jurisdiction of the Court”. Furthermore, rule 85(b) of the Rules adds that this term also includes any “organizations or institutions that have sustained direct harm to any of their property which is dedicated to religion, education [...] and other places and objects for humanitarian purposes.”
15. According to the general principle set out in rule 86 of the Rules, the Chamber shall take into account the needs of all victims and witnesses in accordance with article 68, “in particular, children, elderly persons, persons with disabilities and victims of sexual or gender violence.”
16. Rule 89 of the Rules states, in paragraph 2, that the Chamber may reject the application if it considers that the criteria set forth in rule 85 of the Rules and article 68(3) of the Statute are not otherwise fulfilled.<sup>36</sup> Paragraph 3 of rule 89 further states that an application may also be made by a person acting with the consent of the victim, or a person acting on behalf of a victim, in the case of a victim who is a child, or, when necessary, a victim who is disabled.<sup>37</sup> Finally, pursuant to paragraph 4, where there are a number of applications, the Chamber may consider the applications in such a manner as to ensure the effectiveness of the proceedings and may issue one decision.<sup>38</sup>

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<sup>36</sup> Rule 89(2) of the Rules.

<sup>37</sup> Rule 89(3) of the Rules.

<sup>38</sup> Rule 89(4) of the Rules.

### III. The Chamber's analysis

17. The Chamber recalls that the Pre-Trial Chamber decided to grant the status of victim to 57 applicants during the Pre-Trial phase<sup>39</sup> and to reject a number of applications for participation deemed to be incomplete. Under the Decision of 26 February 2009, the Chamber took the view that it need not rule again on the participation of victims accepted by the Pre-Trial Chamber. However, regarding the applications dismissed by the latter, the Chamber asked the Registry to transmit these applications to it again, once they had been duly completed.<sup>40</sup>
18. The Registry ultimately submitted 345 applications for participation to the Chamber, five of which, as stated above, have not yet been disclosed to the parties,<sup>41</sup> and on which the Chamber will rule at a later date.
19. The parties submitted observations on the redacted versions of the 340 applications, which the Chamber took into consideration when examining each application. It will first respond to the general comments which have been made before examining the more specific observations submitted by the parties. Finally, it will rule as soon possible on the issue of the procedural rights enjoyed by the victims (including anonymous victims). A case-by-case analysis of the applications for participation is appended hereto and should be read in conjunction with the present Decision. That annex will deal only with specific comments submitted by the parties in respect of individual applications for participation. Observations by the parties which may be treated as generally applicable to all applications will be addressed in this Decision.

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<sup>39</sup> Pre-Trial Chamber I, *Decision on the Applications for Participation in the Proceedings of Applicants a/0327/07 to a/0337/07 and a/0001/08*, 2 April 2008, ICC-01/04-01/07-357, pp. 9 to 11; *Decision on the Application for Participation of Witness 166*, 23 June 2008, ICC-01/04-01/07-632, para. 9; *Public Redacted Version of the 'Decision on the 97 Applications for Participation at the Pre-Trial Stage of the Case'*, 10 June 2008, ICC-01/04-01/07-579 ("the Decision of 10 June 2008"), paras. 69 to 129.

<sup>40</sup> Decision of 26 February 2009, paras. 13 and 14.

<sup>41</sup> See *supra*, para. 9.



**A. Examination by the Chamber of general observations raised by the parties**

20. In their observations the Parties made a number of general comments or criticisms which may be summarised as follows.
21. The procedure applied for redactions has been criticised by the two Defence teams; they consider the forms to have been unnecessarily heavily redacted.<sup>42</sup> The Defence for Mathieu Ngudjolo describes the redactions as “[TRANSLATION] unnecessary and incoherent”, which in its opinion deprives it of the possibility of carrying out checks on the identities of applicants and of determining whether or not the requisite conditions for the grant of the status of victim permitted to participate in the proceedings are in fact met.<sup>43</sup>
22. The Defence for Germain Katanga, like that for Mathieu Ngudjolo, further considers that the identities of applicants who do not wish to remain anonymous to the Defence must be disclosed.<sup>44</sup>
23. The Prosecution for its part draws the attention of the Chamber to the fact that certain applicants have not submitted a copy of a legal representation agreement.<sup>45</sup>
24. First, as far as the redactions are concerned, the Chamber would recall that it approved these whilst being fully aware that the measures taken to protect the safety, physical and psychological well-being, dignity and privacy of victims must be neither prejudicial to the defence nor inconsistent with its rights. The checks on the information to be redacted in each application for participation were carried out in full compliance with the Decision of 26 February 2009.<sup>46</sup> In this regard the Chamber would refer to its decision at the

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<sup>42</sup> ICC-01/04-01/07-1150-Conf-Exp, paras. 9 and 15; ICC-01/04-01/07-1241-Conf-Exp, paras. 6 and 17; ICC-01/04-01/07-1152-Conf, para. 3; ICC-01/04-01/07-1170-Conf, para. 3.

<sup>43</sup> ICC-01/04-01/07-1150-Conf-Exp, paras. 9 and 15; ICC-01/04-01/07-1241-Conf-Exp, paras. 6 and 17.

<sup>44</sup> ICC-01/04-01/07-1152-Conf, para. 2; ICC-01/04-01/07-1170-Conf, para. 2; ICC-01/04-01/07-1184-Conf-Exp, para. 21; ICC-01/04-01/07-1187-Conf, para. 2; ICC-01/04-01/07-1241-Conf-Exp, para. 18; ICC-01/04-01/07-1245-Conf, para. 2.

<sup>45</sup> ICC-01/04-01/07-1139, para. 13 ; ICC-01/04-01/07-1171, para. 12; ICC-01/04-01/07-1246, para. 18.

<sup>46</sup> ICC-01/04-01/07-933-tENG, paras. 49 and 51.

time of disclosure to the parties of the redacted versions of the applications for participation.<sup>47</sup>

25. It was on the basis of the unredacted versions of the applications for participation that the Chamber analysed the information regarding the identities of applicants, or of those acting on their behalf, in order to determine whether those identities, together with any other information required in order to determine whether they could be granted victim status, met the criteria and conditions set out in the Decision of 26 February 2009.
26. Next, regarding the disclosure of the identities of applicants, the Chamber considers that disclosure to the parties of the identities of those who do not wish to remain anonymous presupposes that they are first granted victim status under the present Decision; the Chamber will then have to rule on this issue at a later date.
27. Finally, the Chamber would point out to the Prosecutor that stating in section G of the participation form the name of a legal representative with the requisite qualifications under rule 90(6) of the Rules is equivalent to appointing that counsel; victims are not required to produce a legal representation agreement, and this will remain the case until the system for common legal representation is finalised.<sup>48</sup> The Chamber would also recall that, in the absence of a legal representative, the Office of Public Counsel for Victims shall be provisionally appointed.<sup>49</sup>

**B. Examination by the Chamber of the specific observations raised by the parties**

28. The Defence teams are of the view that applications for participation which lack adequate proof of the identity of the applicants, or which show

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<sup>47</sup> ICC-01/04-01/07-1094, paras. 4 to 7; ICC-01/04-01/07-1129, paras. 5 to 7; ICC-01/04-01/07-1151, paras. 6 to 8; ICC-01/04-01/07-1206, paras. 11 to 13; ICC-01/04-01/07-1224-Corr, paras. 6 and 7.

<sup>48</sup> *Order on the organization of common legal representation of victims*, 22 July 2009, ICC-01/04-01/07-1328.

<sup>49</sup> ICC-01/04-01/07-933-tENG, para. 45.

inconsistencies, must be dismissed.<sup>50</sup> They consider that the same should apply to applications which are not accompanied by certificates of death or evidence of family relationship,<sup>51</sup> as well as to those which include documents signed [REDACTED]<sup>52</sup> and those from persons—particularly from illiterate individuals—who are liable to have been influenced by the intermediaries who assisted them in drafting their applications for participation.<sup>53</sup>

29. The Defence for Germain Katanga further contends that applications submitted on behalf of deceased persons should also be rejected, given that, in its view, the approach adopted by the Appeals Chamber on this point requires the harm suffered by the applicants to be necessarily personal harm.<sup>54</sup>
30. For its part, the Prosecutor is of the view that most of the applicants meet the requisite criteria to be granted victim status in accordance with rule 85(a) of the Rules. In his view, only one applicant, out of the 340 submitted, should not be granted said status and two others should be required to produce additional documentation.<sup>55</sup> However, he wishes to draw the attention of the Chamber to the fact that certain applicants have not provided death certificates for persons whom they claim to have lost and/or any evidence of family relationship with the deceased person.<sup>56</sup>

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<sup>50</sup> ICC-01/04-01/07-1150-Conf-Exp, para. 21; ICC-01/04-01/07-1184-Conf-Exp, paras. 18 to 21; ICC-01/04-01/07-1241-Conf-Exp., paras. 20 to 25; ICC-01/04-01/07-1245-Conf, para. 8.

<sup>51</sup> ICC-01/04-01/07-1150-Conf-Exp, para. 23; ICC-01/04-01/07-1184-Conf-Exp, para. 22; ICC-01/04-01/07-1241-Conf-Exp., para. 28; ICC-01/04-01/07-1152-Conf, para. 12; ICC-01/04-01/07-1170-Conf, para. 10; ICC-01/04-01/07-1187-Conf, para. 10; ICC-01/04-01/07-1245-Conf, para. 15.

<sup>52</sup> ICC-01/04-01/07-1150-Conf-Exp, paras. 28 and 34; ICC-01/04-01/07-1184-Conf-Exp, paras. 23, 30 and 31; ICC-01/04-01/07-1241-Conf-Exp., para. 30; ICC-01/04-01/07-1170-Conf, para. 15; ICC-01/04-01/07-1187-Conf, para. 13; ICC-01/04-01/07-1245-Conf, para. 19.

<sup>53</sup> ICC-01/04-01/07-1150-Conf-Exp, paras. 27 and 47; ICC-01/04-01/07-1152-Conf, paras. 14 and 15; ICC-01/04-01/07-1170-Conf, paras. 13 and 14; ICC-01/04-01/07-1245-Conf, para. 18.

<sup>54</sup> ICC-01/04-01/07-1152-Conf, para. 10; ICC-01/04-01/07-1170-Conf, para. 9.

<sup>55</sup> ICC-01/04-01/07-1139, para. 14; ICC-01/04-01/07-1186, para. 14; ICC-01/04-01/07-1246, para. 14.

<sup>56</sup> ICC-01/04-01/07-1139, para. 8; ICC-01/04-01/07-1171, para. 8; ICC-01/04-01/07-1186, para. 9, ICC-01/04-01/07-1246, para. 9.

*i) Documents establishing the applicant's identity*

31. The Defence for Mathieu Ngudjolo asserts that certain applicants have failed to provide any valid proof of their identity or have submitted documents which are inconsistent with the information in their application.<sup>57</sup> In this regard it recalls that the Pre-Trial Chamber held that application a/0111/08 was incomplete because the first name as given on one of the pages of the application form for participation differed from that on the applicant's voter registration card.<sup>58</sup> The Chamber would, however, point out that in reality what Pre-Trial Chamber I held at the time was that the application was incomplete primarily because it had not been signed.<sup>59</sup>
32. The Chamber recalls that, when examining each application, it took into account the inconsistencies in some of the forms before deciding whether or not the application in question should be dismissed.<sup>60</sup> As stated in its Decision of 26 February 2009, only a blatant contradiction between the information in an application for participation and that appearing in the documents in support thereof can justify a decision to dismiss the application.<sup>61</sup> Hence it will accept the applications submitted to it if the differences noted do not call into question the credibility of the information provided by the applicants regarding their identity. This will be the case, for example, where there is a minor difference between the spelling of the surname and that of the first name.
33. The Chamber recalls that in paragraph 30 of the Decision of 26 February 2009 it listed the documents that it was willing to accept in order to establish the identity of applicants.<sup>62</sup> In the event of discrepancies between the information contained in the application form and that in the document used to prove the

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<sup>57</sup> ICC-01/04-01/07-1150-Conf-Exp, para. 21; ICC-01/04-01/07-1184-Conf-Exp, paras. 18 to 21.

<sup>58</sup> ICC-01/04-01/07-1150-Conf-Exp, para. 22; ICC-01/04-01/07-1184-Conf-Exp, para. 20.

<sup>59</sup> ICC-01/04-01/07-578-Conf, para. 57.

<sup>60</sup> See the analysis appended to this Decision.

<sup>61</sup> ICC-01/04-01/07-933-tENG, para. 34.

<sup>62</sup> *Ibid.*, para. 30.

identity of the applicant, it has generally accepted the information stated in the latter, with the exception of certain specific cases, which are expressly noted in the annexes. Where the applicant or person acting on his or her behalf has supplied certificates, such as a certificate of habitation or of care, a death certificate or certificate of family relationship, the Chamber has ruled that these are sufficient at this stage to establish the identity of the applicant if they have been issued by a civil registry officer, or signed by two credible witnesses.

*ii) Proof supplied by a death certificate or certificate of family relationship and the probative value thereof*

34. A number of applicants allege that they have suffered harm as a result of the death of one or more family members. In this regard, the Defence for the two accused maintain that several of their number either submit no documentation in support of their application or submit a death certificate which is not accompanied by any documentation proving their family relationship with the person or persons they claim to have lost.<sup>63</sup> The Defence for Mr Mathieu Ngudjolo adds that it is in fact possible to provide this type of document, as is evidenced by the fact that some applicants have provided death certificates issued by civil registry offices, which proves that these services function effectively.<sup>64</sup>
35. The Prosecution for its part, as recalled above in paragraph 30, notes that several applicants have failed to provide death certificates and/or documents showing their family relationship with the deceased person(s).<sup>65</sup>

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<sup>63</sup> ICC-01/04-01/07-1150-Conf-Exp, paras. 23 to 25; ICC-01/04-01/07-1152-Conf, paras. 11 and 12, ICC-01/04-01/07-1170-Conf, paras. 10 and 11; ICC-01/04-01/07-1184, paras. 22 and 23; ICC-01/04-01/07-1187-Conf, paras. 10 and 11; ICC-01/04-01/07-1241, paras. 27 to 33; ICC-01/04-01/07-1245-Conf, paras. 15 and 16.

<sup>64</sup> ICC-01/04-01/07-1150-Conf-Exp, para. 30.

<sup>65</sup> ICC-01/04-01/07-1139, para. 8; ICC-01/04-01/07-1171, para. 8; ICC-01/04-01/07-1186, para. 9; ICC-01/04-01/07-1245, para. 9.

36. The Chamber notes that most applicants who live in the Bogoro region provide death certificates and documents proving family relationships which are written and signed by heads of *groupements* and/or *collectivités*. It notes furthermore that a number of applicants attach to their applications for participation certificates issued by a civil registry office or signed by two credible witnesses. Others, however, fail to provide any documents of this nature.
37. In line with the position adopted by the Appeals Chamber,<sup>66</sup> the Chamber considers that, when an applicant alleges that he or she has suffered mental harm following the loss of a member of his or her family, the identity of that family member and the relationship between him or her and the applicant must be established. In this regard, the Chamber will rely on the death certificate or evidence of family relationship produced to it, but also on any other document or information which allows it at this stage to satisfy itself that the statements in the applications for participation are true.
38. Thus the Chamber is of the view that it is not possible to ignore the difficulties encountered by applicants living in Ituri in providing documents proving the death of a family member or their family relationship with that person. It therefore considers that the submission of a certificate signed by two credible witnesses is sufficient, at this stage in the proceedings, to establish the death of a person or that individual's family relationship with the applicant. In this regard, it recalls that, in order to assess the credibility of witnesses who signed these declarations, it "will take into consideration, non-cumulatively, factors such as the nature and length of the relationship of those "witnesses with the applicant, or their standing in the community."<sup>67</sup>

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<sup>66</sup> Appeals Chamber, *Judgment on the appeals of the Defence against the decisions entitled 'Decision on victims' applications for participation a/0010/06, a/0064/06 to a/0070/06, a/0081/06, a/0082/06, a/0084/06 to a/0089/06, a/0091/06 to a/0097/06, a/0099/06, a/0100/06, a/0102/06 to a/0104/06, a/0111/06, a/0113/06 to a/0117/06, a/0120/06, a/0121/06 and a/0123/06 to a/0127/06' of Pre-Trial Chamber II*, 23 February 2009, ICC-02/04-179, paras. 36 and 38.

<sup>67</sup> ICC-01/04-01/07-933-tENG, para. 31.

39. In the absence of a death certificate or a certificate establishing the family relationship between the applicant and the deceased person, the Chamber has analysed all of the factual information available to it in order to determine its value and relevance.

*iii) Possible influence of intermediaries and legal representatives on the facts stated by the applicants*

40. The Defence for Mathieu Ngudjolo raises the question of the role of intermediaries who assist applicants in filling out the application forms for participation. It suggests that “[TRANSLATION] some of these certificates could well have been produced by the intermediaries themselves.”<sup>68</sup>

41. The Defence team for Germain Katanga for its part asserts that there are close similarities in the descriptions of events given by applicants, and it contends that a number of them could have been influenced by intermediaries in their descriptions of the facts. It points out, moreover, that applicants who claim to be illiterate nonetheless provide annotated maps of Bogoro showing the precise location of the alleged events.<sup>69</sup>

42. The Chamber notes that no provision of the Court’s statute, or of its rules and regulations, requires applications for participation to be completed by the applicants themselves. Furthermore, it accepts that the role of intermediaries in completing the application forms for participation is important, in that they provide persons who may be illiterate with explanations about the content of a form which is long, and complicated in places by the use of legal terms, and may indeed help them to produce a sketch describing the location where the events occurred. At this stage in the proceedings the Chamber has assessed the veracity of the facts reported by applicants by conducting a prima facie analysis of their consistency, and their relation to the charges confirmed by the Pre-Trial Chamber. In the Chamber’s view, the fact that one statement is

<sup>68</sup> ICC-01/04-01/07-1150-Conf-Exp, para. 27.

<sup>69</sup> ICC-01/04-01/07-1152-Conf, paras. 14 and 15; ICC-01/04-01/07-1170-Conf, paras. 13 and 14; ICC-01/04-01/07-1245-Conf, paras 17 and 18.

similar to others is not in itself sufficient to affect its credibility, but means that the statement needs to be scrutinised in light of the other information contained in the application for participation.

43. Being concerned, however, to give due weight to the Defence observations, the Chamber calls on the Registry to remind intermediaries that their role is restricted to explaining to applicants any terms which they may not understand and assisting them in drafting their application. They should not, however, exert any influence whatsoever on the actual content of statements, in particular in respect of anything relating to the nature of the alleged crimes or the harm suffered.

*iv) Witness 166 [REDACTED]*

44. The Defence teams for Mathieu Ngudjolo<sup>70</sup> and Germain Katanga<sup>71</sup> challenge the credibility of witness 166 [REDACTED].<sup>72</sup>
45. The Chamber notes that witness 166 appears on the list of Prosecution witnesses,<sup>73</sup> and that that he submitted his application for participation as victim after being interviewed by the Prosecution.<sup>74</sup> His status was debated at length during the confirmation hearing<sup>75</sup> and was the subject of a decision rendered by the Pre-Trial Chamber, which granted him the dual status of victim and witness whilst at the same time restricting his participation and

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<sup>70</sup> ICC-01/04-01/07-1150-Conf-Exp, paras. 34 and 36; ICC-01/04-01/07-1184-Conf-Exp, paras. 30 and 31; ICC-01/04-01/07-1241-Conf-Exp, paras. 29 and 30.

<sup>71</sup> ICC-01/04-01/07-1170-Conf, para 15; ICC-01/04-01/07-1187-Conf, para 13; ICC-01/04-01/07-1245-Conf, para. 19.

<sup>72</sup> ICC-01/04-01/07-1150-Conf-Exp, para. 34; ICC-01/04-01/07-1170-Conf, para. 15; ICC-01/04-01/07-1184-Conf-Exp, para. 30; ICC-01/04-01/07-1187-Conf, para. 13; ICC-01/04-01/07-1245-Conf, para. 19.

<sup>73</sup> The Prosecutor, "Prosecution's order of witnesses it intends to call at trial", 14 August 2009, ICC-01/04-01/07-1378-Conf-Exp-AnxB, p. 5.

<sup>74</sup> Pre-Trial Chamber I, *Decision on the application for participation of witness 166*, 23 June 2008, ICC-01/04-01/07-632, para. 12. Witness 166 gave his statement on 17, 18 and 19 February 2007, DRC-OTP-1007-0002. The application for participation is dated 7 November 2007, ICC-01/04-01/07-510-Conf-Exp-Anx 93.

<sup>75</sup> Pre-Trial Chamber, *Decision on the confirmation of charges*, 30 September 2008, ICC-01/04-01/07-717, paras. 200-209.



granting him the same procedural rights as those afforded to anonymous victims.<sup>76</sup>

46. [REDACTED].<sup>77</sup>

47. [REDACTED].

48. The Chamber is aware of this witness' special situation. [REDACTED]. Furthermore, the Chamber notes the fact that he is alleged not to have been present in Bogoro on the day of the events, even though certain applicants state in their application forms that he was there. Any error by applicants in this regard is once again not sufficient to call into question the account or the veracity of the events they describe, and the Chamber cannot regard this as a decisive reason justifying the rejection of an application for participation. It should also be emphasised that none of the applications for participation show that witness 166 intervened as an intermediary assisting applicants in completing their application forms. The Chamber can only note that his potential influence on the narration of the facts by the applicant victims has not been proved.

*v) Applications submitted on behalf of deceased persons*

49. In the present case, several applicants are seeking to participate in the proceedings on behalf of persons who died following the attack on Bogoro of 24 February 2003. They also claim personal harm consequent on the death of persons close to them.

50. In the Decision of 26 February 2009,<sup>78</sup> after recalling the relevant provisions of the Statute and the Rules, namely article 68(3) of the Statute and rule 89(3) of the Rules, as well as the Court's jurisprudence regarding the issue of applications for participation submitted on behalf of a deceased person, the

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<sup>76</sup> Pre-Trial Chamber, *Decision on the application for participation of witness 166*, 23 June 2008, ICC-01/04-01/07-632.

<sup>77</sup> ICC-01/04-01/07-933-tENG, paras. 30 and 31; ICC-01/04-01/06-1119, para. 88.

<sup>78</sup> ICC-01/04-01/07-933-tENG, para. 41

Chamber noted the differing positions adopted by two of the Court's Chambers.<sup>79</sup> It accordingly decided to rule on this issue at a later date.<sup>80</sup> It will now address this point.

51. The Chamber recalls the position of the Appeals Chamber, whereby "the notion of victim necessarily implies the existence of personal harm but does not necessarily imply the existence of direct harm."<sup>81</sup> Consequently, the relatives of the deceased person, as indirect victims, may claim to have suffered harm as a result of the harm suffered by the deceased as the direct victim,<sup>82</sup> and may thus submit an application for participation on the sole ground of the mental and/or material harm they themselves have suffered.
52. As the law applicable to the Court currently stands, there is no provision in its Statute or other governing texts that permits an application for participation to be submitted on behalf of a deceased person. Rule 89(3) of the Rules does, however, provide expressly for the possibility of a person acting on behalf of a child or a person who is disabled to allow them to express their views and concerns.
53. The Chamber is compelled to conclude that, whilst the work of the Preparatory Commission for the ICC was in progress, and in particular whilst

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<sup>79</sup> See paragraph 41 of the Decision of 26 February 2009, which refers to the decision of Pre-Trial Chamber I of 10 June 2008, para. 62, which quotes the Corrigendum to the *Decision on the Applications for Participation Filed in Connection with the Investigation in the Democratic Republic of the Congo*, ICC-01/04-423-Corr-tENG, 31 January 2008, paras. 23 to 25; See also, Pre-Trial Chamber I, *Corrigendum to Decision on the Applications for Participation in the Proceedings of Applicants a/0011/06 to a/0015/06, a/0021/07, a/0023/07 to a/0033/07 and a/0035/07 to a/0038/07*, ICC-02/05-111, 14 December 2007, paras. 35 and 36; Pre-Trial Chamber I, *Decision on the applications for participation filed in connection with the investigation in the Democratic Republic of Congo by Applicants a/0047/06 to a/0052/06, a/0163/06 to a/0187/06, a/0221/06, a/0225/06, a/0226/06, a/0231/06 to a/0233/06, a/0237/06 to a/0239/06 and a/0241/06 to a/0250/06*, ICC-01/04-505, 3 July 2008, para. 23; Pre-Trial Chamber III, *Fourth Decision on Victims' Participation*, 12 December 2008, ICC-01/05-01/08-320, paras. 44 and 47.

<sup>80</sup> ICC-01/04-01/07-933-tENG, para. 42.

<sup>81</sup> Appeals Chamber, *Judgment on the Appeals of The Prosecutor and The Defence against Trial Chamber I's Decision on Victims' Participation of 18 January 2008*, 11 July 2008, ICC-01/04-01/06-1432, para. 38.

<sup>82</sup> Regarding the distinction between direct and indirect victims, see for example Trial Chamber I, *Redacted version of 'Decision on indirect victims'*, 8 April 2009, ICC-01/04-01/06-1813, para. 44.

the draft Rules were being prepared,<sup>83</sup> the issue of participation by deceased victims was never addressed. Only the issue of the participation of minors or disabled persons<sup>84</sup> was discussed, which ultimately resulted in the adoption of the aforementioned rule 89(3). It is therefore impossible to draw any conclusion as to what exactly the States Parties had in mind regarding the issue of deceased victims.

54. Furthermore, rule 89(3) of the Rules makes provision for action either on behalf of one of the two categories of persons mentioned therein, which thus do not include deceased persons, or with the consent of the victim. Such consent, unless the deceased thought to give express consent while still alive, will in most cases prove to be impossible to establish. In any event, said consent will be impossible to prove when the person died during an attack, as will often be the case. Finally, the Chamber should not underestimate the fact that a person acting on behalf of a deceased person cannot be in a position to convey the views and concerns of the deceased accurately, in the sense of article 68(3) of the Statute.
55. The Chamber considers, moreover, that the jurisprudence of the Inter-American Court of Human Rights, on which one Chamber of the Court based its ruling in accepting the participation of the successors of the deceased,<sup>85</sup> would appear difficult to transpose to the present case, given that the Rome Statute draws a clear distinction between the phase of participation in the proceedings and the reparations phase, once an accused has been found guilty, with the former not being a precondition for the latter.<sup>86</sup>

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<sup>83</sup> Preparatory Commission for the International Criminal Court, Working Group on Rules of Procedure and Evidence, Rules A to C, PCNICC/1999/WGRPE/INF/1, 6 July 1999; Document PCNICC/1999/WGRPE/RT.5/Rev.1 proposed by the Coordinator on the Rules of Procedure and Evidence; Proceedings of the Preparatory Commission at its 2<sup>nd</sup> session (26 July-13 August 1999), PCNICC/2000/L.4/Rev.1, 18 September 1999, pp. 45 to 47.

<sup>84</sup> Preparatory Commission for the International Criminal Court, Annex II, Rules of Procedure and Evidence, PCNICC/2000/L.1/Rev.1/Add.I, 10 April 2000, p. 66.

<sup>85</sup> ICC-01/05-01/08-320, para. 44 and 45.

<sup>86</sup> See in this regard the partly dissenting opinion of Judge Georghios M. Pikis, ICC-01/04-01/06-1432, para. 18.

56. The Chamber accordingly holds that a relative of a deceased person can only submit an application for participation in his or her own name, by invoking any mental and/or material harm suffered personally as a result of the death of said person.

**C. Examination of the applications for participation**

57. The Chamber has applied the provisions of rule 85(a) and (b) of the Rules together with the criteria defined by the Appeals Chamber.<sup>87</sup> Thus it has satisfied itself: (i) that the applicant is a natural or legal person; (ii) that the applicant suffered harm; (iii) that harm was suffered as the result of the commission of a crime within the jurisdiction of the Court and which appeared in the *Decision on the confirmation of charges*; and (iv) that there was a causal link between the harm suffered and the crime. The Chamber has further taken the view that applicants are required to establish that these four criteria have been met *prima facie*, without any need for it to conduct an in-depth assessment of the credibility of their statements.

58. It has examined on a case-by-case basis the 340 applications for participation submitted, taking into consideration the observations of the parties, in order to determine which applicants can be granted the status of victims participating in the proceedings.

59. The Chamber points out that a large number of applicants allege harm suffered as a result of the death of a relative and support their application for participation by emphasising that they have suffered material harm as a result of the pillaging of their property, in particular animals, miscellaneous movables and agricultural produce.

60. It has divided the applicants into 10 groups on the basis of the objections raised. Then, in an Annex appended to this Decision, it has analysed each

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<sup>87</sup> ICC-01/04-01/06-1432, paras. 61 to 65.

application individually in order to determine whether the criteria set out in paragraph 57 are met.

*i) Applicants whose proof of identity has been called into question*

61. This category includes in particular the following 32 applicants: a/0147/08, a/0148/08, a/0153/08, a/0166/08, a/0180/08, a/0530/08, a/0534/08, a/0535/08, a/0538/08, a/0005/09, a/0006/09, a/0008/09, a/0013/09, a/0014/09, a/0068/09, a/00072/09, a/0159/09, a/0160/09, a/0161/09, a/0162/09, a/0210/09, a/0257/09, a/0266/09, a/0310/09, a/0323/09, a/0335/09, a/0363/09, a/0389/09, a/0391/09, a/0392/09, a/0393/09 and a/0395/09.
62. The Chamber considers that, with the exception of the nine applicants a/0160/09, a/0161/09, a/0310/09, a/0335/09, a/0363/09, a/0389/09, a/0391/09, a/0392/09 and a/0393/09, all have supplied the necessary documents to enable their identity to be established in accordance with the list set out in paragraph 30 of the Decision of 26 February 2009.<sup>88</sup>
63. It notes, furthermore, that the information regarding the name of the father of applicant a/0310/09 provided on the form does not appear to match that in the death certificate, casting doubt on his identity.
64. The Chamber accordingly invites the Registry to contact the legal representatives of the nine applicants a/0160/09, a/0161/09, a/0310/09, a/0335/09, a/0363/09, a/0389/09, a/0391/09, a/0392/09 and a/0393/09 in order to ask them to provide the Chamber with the necessary information to establish their identities.
65. The Chamber notes that the five applicants a/0284/09, a/0285/09, a/0286/09, a/0291/09 and a/0297/09 have failed to provide any documents enabling their identities to be established, as a result of which their applications were not forwarded to the parties.

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<sup>88</sup> ICC-01/04-01/07-933-tENG, para. 30.

66. Finally, it notes the Registry's Report of 17 July 2009<sup>89</sup> on the additional information provided by certain of the applicants, in particular a/0277/09, a/0285/09, a/0286/09, a/0361/09, a/0391/09 and a/0393/09. These documents will be forwarded to the parties for their observations, and the Chamber will also rule thereon at a later date.

*ii) Applicants who have failed to supply a death certificate and/or certificate of family relationship and applicants for whom the probative value of these certificates is disputed*

67. The category of applicants who have failed to provide a death certificate and/or certificate of family relationship includes in particular the following 135 applicants: a/0142/08, a/0143/08, a/0144/08, a/0145/08, a/0146/08, a/0147/08, a/0148/08, a/0151/08, a/0153/08, a/0154/08, a/0155/08, a/0156/08, a/0157/08, a/0158/08, a/0159/08, a/0160/08, a/0161/08, a/0163/08, a/0165/08, a/0167/08, a/0168/08, a/0169/08, a/0173/08, a/0175/08, a/0176/08, a/0178/08, a/0180/08, a/0197/08, a/0199/08, a/0201/08, a/0205/08, a/0207/08, a/0210/08, a/0212/08, a/0213/08, a/0214/08, a/0215/08, a/0216/08, a/0281/08, a/0282/08, a/0397/08, a/0398/08, a/0399/08, a/0400/08, a/0401/08, a/0402/08, a/0524/08, a/0527/08, a/0528/08, a/0531/08, a/0536/08, a/0156/09, a/0157/09, a/0159/09, a/0163/09, a/0164/09, a/0165/09, a/0206/09, a/0207/09, a/0208/09, a/0209/09, a/0212/09, a/0213/09, a/0214/09, a/0215/09, a/0218/09, a/0219/09, a/0220/09, a/0224/09, a/0225/09, a/0229/09, a/0231/09, a/0232/09, a/0250/09, a/0251/09, a/0252/09, a/0253/09, a/0255/09, a/0256/09, a/0257/09, a/0278/09, a/0280/09, a/0281/09, a/0282/09, a/0283/09, a/0288/09, a/0317/09, a/0318/09, a/0319/09, a/0320/09, a/0321/09, a/0322/09, a/0324/09, a/0325/09, a/0326/09, a/0327/09, a/0328/09, a/0329/09, a/0330/09, a/0331/09, a/0332/09, a/0333/09, a/0334/09, a/0336/09, a/0337/09, a/0356/09, a/0359/09, a/0360/09, a/0361/09, a/0364/09, a/0365/09,

<sup>89</sup> Registry, "Deuxième Rapport sur les informations supplémentaires reçues sur les demandes de participation", 17 July 2009, ICC-01/04-01/07-1311-Conf-Exp.

a/0366/09, a/0367/09, a/0368/09, a/0369/09, a/0370/09, a/0371/09, a/0373/09, a/0374/09, a/0375/09, a/0376/09, a/0377/09, a/0378/09, a/0379/09, a/0380/09, a/0381/09, a/0382/09, a/0383/09. a/0384/09, a/0385/09, a/0386/09, a/0387/09, a/0389/09, a/0393/09 and a/0395/09.

68. The following 106 applicants, in particular, fall within the category of applicants for whom the probative value of death certificates and/or certificates of family relationship has been challenged: a/0040/08, a/0041/08, a/0042/08, a/0091/08, a/0102/08, a/0162/08, a/0164/08, a/0165/08, a/0166/08, a/0172/08, a/0179/08, a/0217/08, a/0218/08, a/0219/08, a/0220/08, a/0221/08, a/0222/08, a/0223/08, a/0225/08, a/0226/08, a/0227/08, a/0228/08, a/0229/08, a/0230/08, a/0231/08, a/0529/08, a/0534/08, a/0535/08, a/0539/08, a/0067/09, a/0068/09, a/0069/09, a/0070/09, a/0071/09, a/0072/09, a/0073/09, a/0075/09, a/0076/09, a/0077/09, a/0078/09, a/0079/09, a/0080/09, a/0081/09, a/0083/09, a/0084/09, a/0085/09, a/0086/09, a/0112/09, a/0113/09, a/0114/09, a/0115/09, a/0116/09, a/0117/09, a/0118/09, a/0119/09, a/0120/09, a/0122/09, a/0124/09, a/0125/09, a/0126/09, a/0127/09, a/0128/09, a/0158/09, a/0159/09, a/0202/09, a/0203/09, a/0205/09, a/0233/09, a/0293/09, a/0294/09, a/0295/09, a/0296/09, a/0298/09, a/0299/09, a/0301/09, a/0302/09, a/0303/09, a/0304/09, a/0305/09, a/0306/09, a/0307/09, a/0308/09, a/0309/09, a/0311/09, a/0313/09, a/0315/09, a/0338/09, a/0339/09, a/0340/09, a/0341/09, a/0342/09, a/0343/09, a/0345/09, a/0346/09, a/0347/09, a/0348/09, a/0349/09, a/0350/09, a/0351/09, a/0352/09, a/0353/09, a/0354/09, a/0355/09, a/0363/09/ a/0390/09 and a/0392/09.
69. In the Decision of 26 February 2009, the Chamber specified the conditions which needed to be met for an application for participation to be considered complete. It notes that the applicants mentioned in the first category and listed in paragraph 67 have submitted applications in their own names and claim to have suffered harm themselves. As regards these applicants, the Chamber refers back to paragraph 39 of the present Decision.

70. With regard to the applicants listed in paragraph 68, the Chamber would recall that, in accordance with what it stated in paragraph 39 of the present Decision, the fact that no death certificate or certificate of family relationship has been supplied, or that such documents may lack authenticity, is not sufficient to affect the validity of an application for participation, and that in these cases the information supplied by the applicants is sufficient, *prima facie*, to establish that they have suffered mental and/or material harm as a result of the alleged loss.

*iii) Applicants for whom there is alleged to be no causal link between the alleged harm and the crimes for which the accused are being prosecuted*

71. This category includes in particular the following 62 applicants: a/0040/08, a/0041/08, a/0042/08, a/0053/08, a/0091/08, a/0098/08, a/0102/08, a/0114/08, a/0136/08, a/0140/08, a/0141/08, a/0142/08, a/0143/08, a/0144/08, a/0145/08, a/0146/08, a/0148/08, a/0150/08, a/0151/08, a/0152/08, a/0202/08, a/0520/08, a/0528/08, a/0529/08, a/0530/08, a/0531/08, a/0533/08, a/0535/08, a/0536/08, a/0537/08, a/0538/08, a/0539/08, a/0540/08, a/0071/09, a/0082/09, a/0156/09, a/0157/09, a/0163/09, a/0197/08, a/0202/09, a/0205/09, a/0266/09, a/0267/09, a/0273/09, a/0293/09, a/0304/09, a/0307/09, a/0314/09, a/0315/09, a/0316/09, a/0335/09, a/0340/09, a/0341/09, a/0342/09, a/0349/09, a/0350/09, a/0360/09, a/0363/09, a/0386/09, a/0387/09, a/0390/09 and a/0392/09.

72. The Defence teams for Mathieu Ngudjolo<sup>90</sup> and Germain Katanga<sup>91</sup> note that some applications mention a date other than that of 24 February 2003 and the name of a *localité* other than Bogoro to describe the place where the crimes were committed. They therefore submit that these applications must be declared inadmissible.

<sup>90</sup> ICC-01/04-01/07-1150-Conf-Exp, para. 37; ICC-01/04-01/07-1184-Conf-Exp, para. 33; ICC-01/04-01/07-1241-Conf-Exp, para. 34.

<sup>91</sup> ICC-01/04-01/07-1152-Conf-Exp, paras 8 and 9; ICC-01/04-01/07-1170-Conf, para. 8; ICC-01/04-01/07-1187-Conf, paras 8 and 9; ICC-01/04-01/07-1245-Conf, para 9 and 10.



73. The Chamber notes that certain applicants do indeed describe events which allegedly took place outside Bogoro, and specifically in Nyakeru *localité*. [REDACTED].<sup>92</sup>
74. The Chamber considers it vital to define the territorial limits within which the crimes accepted in the *Decision on the confirmation of charges* were committed. It takes the view that, although the area in question must primarily be considered to cover the immediate periphery of the village of Bogoro, geographical areas located in the neighbouring areas should not be systematically excluded.
75. The Chamber notes in this regard that the 22 applicants a/0140/08, a/0528/08, a/0529/08, a/0530/08, a/0531/08, a/0535/08, a/0536/08, a/0537/08, a/0538/08, a/0539/08, a/0202/09, a/0205/09, a/0266/09, a/0267/09, a/0293/09, a/0304/09, a/0340/09, a/0341/09, a/0342/09, a/0349/09 and a/0350/09 allege that the events which caused them harm took place in Nyakeru, a *localité* which they put at a distance of between seven and twelve kilometres from the centre of Bogoro. Applicants a/0141/08 and a/0392/09 for their part state that the events took place in the *localités* of Nyakeberu [REDACTED]. Some of these applicants submit in support of their application either a certificate of habitation, showing that their home was in Bogoro at the time of the attack, or a death certificate stating that one of their relatives was killed in the attack on Bogoro on 24 February 2003. Finally, applicant a/0335/09 indicates that the events took place [REDACTED], Bogoro.
76. In order to be able to determine whether or not these applicants may be granted victim status, the Chamber therefore calls upon the Registry to contact their respective legal representatives in order to obtain additional information on the exact location of the attack of which they claim to have been victims, together with a map showing the exact distance between Bogoro and the places mentioned.

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<sup>92</sup> ICC-01/04-01/07-578-Conf, para. 83.

77. The Chamber further notes that the three applicants a/0150/08, a/0151/08 and a/0152/08 claim to have suffered harm as a result of crimes allegedly committed during an attack on the village of Bogoro between 15 and 17 March 2003, while applicant a/0157/09 refers to harm allegedly suffered on 18 July 2003 in Nyakeru. Finally, it observes that applicant a/0520/08 pleads harm allegedly caused by UPC troops in May 2003 or thereabouts, in a location other than the village of Bogoro.
78. Being seized of facts which took place on 24 February 2003 in Bogoro, the Chamber accordingly finds that applicants a/0150/08, a/0151/08, a/0152/08 and a/0157/09 have not provided evidence which *prima facie* establishes the existence of a link between the physical, mental and/or material harm allegedly suffered and the commission of crimes corresponding to the charges confirmed by the Pre-Trial Chamber. It is therefore unable to grant them victim status in the current proceedings.
79. With regard to applicant a/0520/08, the Chamber notes that the information supplied has failed to provide it with any information about the location of the attack, the harm allegedly suffered and the identity of those who inflicted said harm. It therefore requires that applicant to produce a signed statement providing this information.
80. As far as the four applicants a/0040/08, a/0041/08, a/0042/08 and a/0091/08 are concerned, the Chamber notes that their applications have been submitted by one and the same person acting on their behalf, who, when stating the date of the facts, indicates 24 February and 24 March 2003. Having endeavoured to examine all of the information in its possession and having been made aware of the additional information provided by the legal representatives, the Chamber considers that the date of 24 March 2003 as indicated is a mistake, and that this should read 24 February 2003.
81. With regard to applicant a/0360/09, the Chamber notes a discrepancy between the date on page 4 of the form and that given on page 9. However, it considers

that once again all the information provided by the applicant impels the conclusion that the events referred to were indeed those of 24 February 2003.

82. The Chamber notes that the seven applicants a/0114/08, a/0142/08, a/0143/08, a/0197/08, a/0202/08, a/0314/09 and a/0316/09 do not expressly mention the date of 24 February 2003, but refer only to the month of February 2003. However, it is of the view that the facts alleged do in fact correspond to those accepted in the *Decision on the confirmation of charges*.<sup>93</sup>
83. Finally, for the reasons set out in the annex appended to the present Decision, the Chamber finds that the 21 applicants a/0136/08, a/0143/08, a/0144/08, a/0145/08, a/0146/08, a/0148/08, a/0202/08, a/0540/08, a/0071/09, a/0082/09, a/0156/09, a/0163/09, a/0273/09, a/0307/09, a/0314/09, a/0315/09, a/0316/09, a/0360/09, a/0363/09, a/0386/09 and a/0387/09 have furnished sufficient evidence to establish a prima facie link between the physical, mental and/or material harm suffered and the commission of the crimes contained in the charges confirmed by the Pre-Trial Chamber.

*iv) Applicants acting on behalf of deceased persons*

84. The twelve applicants a/0040/08, a/0041/08, a/0042/08, a/0053/08, a/0091/08, a/0098/08, a/0102/08, a/0529/08, a/0530/08, a/0534/08, a/0535/08 and a/0539/08 have submitted applications on behalf of deceased persons.
85. The situation of the four applicants a/0529/08, a/0530/08, a/0535/08 and a/0539/08 has already been analysed in paragraph 75 above.
86. The Chamber recalls that a deceased person cannot be authorised to participate in the proceedings, but that his or her relatives may submit an application for participation if they allege that they have personally suffered mental or material harm as a result of the death of said person.

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<sup>93</sup>ICC-01/04-01/07-717, paras. 224 to 227.

87. With regard, specifically, to the four applications a/0040/08, a/0041/08, a/0042/08 and a/0091/08, the Chamber considers that the applicant acting on behalf of his or her deceased siblings has produced evidence which prima facie proves the existence of mental harm linked to the death of his or her family members as a result of the crimes committed during the attack on Bogoro on 24 February 2003. It considers that this individual fulfils the requirements of rule 85(a) of the Rules and may be granted victim status. It has allocated a single number in place of the four above-mentioned numbers and will henceforth refer to this applicant as number a/0040/08.
88. The Chamber notes that the persons acting here on behalf of the four deceased applicants a/0053/08, a/0098/08, a/0102/08 and a/0534/08 have already been given leave by the Pre-Trial Chamber to participate in the proceedings in their own names, under numbers a/0056/08, a/0100/08, a/0103/08 and a/0101/08 respectively. The Chamber further notes that the harm presently alleged on behalf of the first three applicants is the same as that described in the applications for participation submitted to the Pre-Trial Chamber.
89. Given that the persons acting on behalf of these applicants have already been permitted to participate in the current proceedings on account of the same harm, the Chamber is of the view that applications a/0053/08, a/0098/08, a/0102/08 and a/0534/08 must be joined to applications a/0056/08, a/0100/08, a/0103/08 and a/0101/08, and that they should in future be referred to by the numbers initially allocated by the Registry.

*v) Applications rejected by the Pre-Trial Chamber*

90. The Registry has submitted a report to the Chamber on the 40 applications for participation which were dismissed by the Pre-Trial Chamber,<sup>94</sup> and explained that only four of them included supplementary documentation.<sup>95</sup> The

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<sup>94</sup> ICC-01/04-01/07-1104-Conf-Exp-Corr.

<sup>95</sup> ICC-01/04-01/07-1103-Conf-Exp-Corr.

Chamber considers that submitting this documentation is equivalent to filing a new, duly completed application which meets the criteria of the Decision of 26 February 2009,<sup>96</sup> and it will therefore confine its examination to these four applications only, and has no option but to dismiss the 36 others.

91. In the Chamber's view, the additional information supplied by applicants a/0010/08, a/0111/08 and a/0012/08 constitutes prima facie evidence of their status as victims within the meaning of rule 85(a) of the Rules by reason of the physical, mental or material harm suffered as a result of the crimes allegedly committed during the attack on Bogoro on 24 February 2003.
92. However, the Chamber considers that the additional documents supplied by applicant a/0014/08 do not resolve the blatant contradictions in the statements provided by this applicant. It accordingly finds that said applicant cannot be permitted to participate in the proceedings in the present case.

*vi) Applicants acting on behalf of a legal person*

93. The two applicants a/0533/08 and a/0268/09 have submitted applications on behalf of two primary schools located close to Bogoro.
94. The Chamber notes that applicant a/0268/08 died after submitting an application for participation, and that it has no supporting evidence for this individual's status as authorised representative of the primary school for which the applicant claimed to be acting.
95. Application a/0533/08 for its part involves a primary school which appears to be beyond the immediate periphery of Bogoro, as referred to in paragraph 74 of the present Decision. Moreover, the information supplied by the applicant was not sufficient to enable the Chamber to determine whether or not this person was entitled to act on behalf of that school.

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<sup>96</sup> ICC-01/04-01/07-933-tENG, para. 14.

96. In order to enable it to rule on applications a/0533/08 and a/0268/09 in full possession of the facts, the Chamber would like the first of these two applicants (a/0533/08) to provide it with information enabling it to satisfy itself that this person has the authority to act on behalf of the entity concerned, as well as information on the exact location of the school in relation to Bogoro, if possible by providing a map. As far as the second applicant is concerned (a/0268/09), the Chamber needs to establish whether another person intends to act on behalf of the school in question and, if so, it must have further information regarding the exact location of the school in relation to Bogoro, again by means of a map if possible.

*vii) Applications submitted by minors or disabled persons*

97. The four applicants a/0114/08, a/0136/08, a/0277/09 and a/0363/09 were minors when they submitted their applications for participation. The two applicants a/0361/09 and a/0390/09 were adults and reportedly suffer from disabilities and difficulties such that they are unable to submit their own applications for participation.

98. The Chamber recalls that, as far as minors are concerned, the provisions of rule 89(3) of the Rules do not exclude the possibility of a minor submitting an application for participation in the proceedings as victim on his or her own initiative. In the Decision of 26 February 2009, the Chamber held that minors and disabled persons were capable of submitting their own applications for participation and that proof of legal guardianship could be provided by two credible witnesses.<sup>97</sup> It will nonetheless assess the admissibility of such applications on a case-by-case basis, in accordance with the information gathered specifically by the Registry in relation to the minor's maturity and powers of discernment.<sup>98</sup>

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<sup>97</sup>ICC-01/04-01/07-933-tENG, paras. 39 and 40.

<sup>98</sup> *Ibid.*, para. 39.

99. In this regard the Chamber notes that the documents submitted by applicant a/0136/08 in support of the application establish the identity of the minor and that of the person acting on his or her behalf. It notes that evidence has been supplied that the minor is being cared for by others.
100. The Chamber further notes that additional information has been supplied by the Registry regarding applicants a/0277/09 and a/0361/09. It also notes that applicant a/0114/08 has not provided any identity documents and that the information currently available to the Chamber is not sufficient to enable it to determine whether this applicant is mature enough or has the necessary powers of discernment to enable him or her to submit an application directly, without being represented by an adult acting on his or her behalf.
101. Finally, with regard to applicant a/0390/09, the Chamber notes that this individual has not submitted the necessary information to enable the Chamber to rule on the extent of his or her disability; nor has the applicant made it clear whether or not he or she has given consent to the person acting on his or her behalf.
102. The Chamber therefore asks the Registry to contact the legal representatives of applicants a/0114/08, a/0277/09, a/0361/09 and a/0390/09 with a view to obtaining from them the additional information required to complete their applications.
103. Finally, the Chamber finds that applicant a/0136/08 has provided prima facie evidence of his or her status as a victim within the meaning of rule 85(a) of the Rules by reason of the mental and material injury allegedly suffered as a result of the crimes committed during the attack on Bogoro on 24 February 2003.

*viii) Unsigned applications*

104. The Chamber notes that the three applicants a/0211/09, a/0215/09 and a/0216/09 did not sign the last page of the application form; nor did they

initial or fingerprint the other pages of the form; the fingerprints on the pages are not identifiable.

105. The Chamber recalls that the criteria used to assess whether an application is complete or not, as set out in paragraph 28 of its Decision of 26 February 2009, include the signature or thumbprint of the applicant, at the very least on the last page of the application.<sup>99</sup>
106. The Chamber is therefore of the view that, in order to complete their applications for participation, applicants a/0211/09, a/0215/09 and a/0216/09 must confirm their intention in writing by appending a signature or an identifiable thumbprint.

*ix) Applications submitted on the application form for reparations*

107. The seven applicants a/0217/08, a/0218/08, a/0219/08, a/0220/08, a/0314/09, a/0315/09 and a/0316/09 have submitted a form of application for reparations rather than an application form for participation. The additional information obtained at the Registry's request has, however, established that they wish to participate in the current proceedings. The parties for their part have not raised any objections.
108. The Chamber accordingly finds that these applicants have provided prima facie evidence of their status as victims within the meaning of rule 85(a) of the Rules by reason of the physical or mental harm or material harm suffered as a result of the crimes allegedly committed during the attack on Bogoro on 24 February 2003.

*x) Other applications which meet the criteria for the grant of victim status*

109. This category includes in particular the following 59 applicants: a/0170/08, a/0171/08, a/0174/08, a/0183/08, a/0186/08, a/0187/08, a/0188/08, a/0189/08, a/0190/08, a/0191/08, a/0192/08, a/0193/08, a/0194/08, a/0195/08, a/0196/08, a/0198/08, a/0203/08, a/0204/08, a/0206/08, a/0208/08, a/0224/08, a/0607/08,

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<sup>99</sup> ICC-01/04-01/07-933-tENG, para. 28(viii).



a/0001/09, a/0003/09, a/0007/09, a/0009/09, a/0010/09, a/0011/09, a/0012/09, a/0015/09, a/0016/09, a/0017/09, a/0018/09, a/0019/09, a/0020/09, a/0074/09, a/0123/09, a/0166/09, a/0167/09, a/0168/09, a/0169/09, a/0217/09, a/0221/09, a/0222/09, a/0223/09, a/0226/09, a/0227/09, a/0228/09, a/0230/09, a/0256/09, a/0270/09, a/0271/09, a/0274/09, a/0275/09, a/0276/09, a/0279/09, a/0290/09, a/0372/09 and a/0388/09.

110. The Chamber notes that the parties have not raised any objection to the participation of certain of these applicants. However, this is not the case for some of the others, who refer in their statements to the presence of witness 166 in Bogoro on the day of the attack.

111. For the reasons set out in the annex appended to this Decision, the Chamber finds that these applicants have provided prima facie evidence of their status as victims within the meaning of rule 85(a) of the Rules by reason of the physical, mental or material harm suffered as a result of the crimes committed during the attack on Bogoro on 24 February 2003.

#### **D. Conclusion**

112. The Chamber, having regard to the observations submitted by the parties,  
**DECIDES:**

- To grant the status of victim participating in the proceedings to 287 applicants;
- To grant said status to the person who has submitted four (4) different applications for participation pleading the direct harm suffered as result of the death of his or her family members;
- Not to grant victim status to five (5) applicants;

- To join four (4) new applications for participation to the applications already submitted by the same persons, who were given leave to participate by Pre-Trial Chamber I; and
- To request additional information from 40 applicants, who will accordingly be the subject of a future decision by the Chamber.

113. Judge Hans-Peter Kaul appends a Dissenting Opinion to this Decision.

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

\_\_\_\_\_ [signed] \_\_\_\_\_

**Judge Bruno Cotte**

**Presiding Judge**

\_\_\_\_\_ [signed] \_\_\_\_\_

**Judge Fatoumata Dembele Diarra**

\_\_\_\_\_ [signed] 23/9/09 \_\_\_\_\_

**Judge Hans-Peter Kaul**

Dated this 23 September 2009

At The Hague (the Netherlands)

## Partly Dissenting Opinion of Judge Hans-Peter Kaul

1. On 31 July 2009, Trial Chamber II issued the "Dispositif de la décision relative aux 345 demandes de participation de victimes à la procédure".<sup>1</sup> Today the Chamber formulates its motivations for its decision on the applications for participation of a large number of victims of the attack on Bogoro. I join the majority in all but one aspect of the decision.

2. With regard to the question of the participation by deceased persons, the majority is of the view that the interests of a deceased person cannot be represented in the proceedings. The majority admits that the relatives of a deceased person may participate in the proceedings by virtue of the harm they suffered, indirectly, because of the death of their next of kin, but they exclude the possibility that the deceased person may be represented in his or her proper name.

3. In this respect, I wish to recall that in the "Fourth Decision on Victims' Participation"<sup>2</sup> of Pre-Trial Chamber III, in the Situation in the Central African Republic, in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo, I*, acting as Single Judge, rendered a decision on this point, which runs contrary to that of the majority in the present case.

4. My opinion on the matter of participation of deceased persons has been set out at length and in appropriate detail in paragraphs 39 to 52 of the Fourth Decision on Victims' Participation.

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<sup>1</sup> ICC-01/04-01/07-1347-Corr.

<sup>2</sup> Pre-Trial Chamber III, *Situation in the Central African Republic, The Prosecutor v Jean-Pierre Bemba Gombo* "Fourth Decision on Victims' Participation", 12 December 2008, ICC-01/05-01/08-320.

5. For the reasons given in the aforementioned decision, I continue to be of the view that the successors of the deceased should have the right to represent the interests of the deceased person as well as their own; not only in the reparation phase of the proceedings, but also in the current phase.

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

[signed] 23/9/09

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**Judge Hans-Peter Kaul**

Dated this 23 September 2009

At The Hague, the Netherlands