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No.: **ICC-01/04-01/07**
Date: **23 November 2009**

TRIAL CHAMBER II

Before: Judge Bruno Cotte, Presiding Judge
Judge Fatoumata Dembele Diarra
Judge Christine Van den Wyngaert

**SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO
IN THE CASE OF
THE PROSECUTOR
*v. GERMAIN KATANGA AND MATHIEU NGUDJOLO CHUI***

**URGENT
Public Document**

**Operative Part of the Second Decision on the Applications by Victims for
Participation in the Proceedings**

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

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Ms Fiona McKay

TRIAL CHAMBER II of the International Criminal Court (“the Chamber” and “the Court” respectively) hereby issues the operative part of its second decision on the applications by victims for participation in the proceedings (“the Decision”), rendered 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.

1. In accordance with the procedure set out in the decision rendered by the Chamber on 26 February 2009,¹ the Victims Participation and Reparations Section (“the VPRS”) transmitted to the Chamber a number of reports,² to which were appended the applications for participation.
2. On 31 July 2009, the Chamber issued the operative part of the decision on the 345 applications for participation, granting the status of victim participating in the proceedings to 288 applicants. Further, it requested additional information from 45 applicants, denied five others leave to participate and decided to join

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

² Registry, “Filing of proposed redactions on victim’s 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; 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; 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; 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; Registry, “*Rapport sur les informations supplémentaires reçues sur les demandes de participation enregistrées avec les Troisième et Quatrième rapports du Greffe sur des demandes de participation de victimes*”, 29 May 2009, ICC-01/04-01/07-1181-Conf-Exp; 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; 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; 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; “*Deuxième Rapport du Greffe sur les informations supplémentaires reçues sur les demandes de participation*”, 17 July 2009, ICC-01/04-01/07-1311-Conf-Exp; “*Troisième Rapport du Greffe sur les informations supplémentaires reçues sur les demandes de participation*”, 24 August 2009, ICC-01/04-01/07-1421-Conf-Exp; “*Rapport du Greffe sur les informations supplémentaires reçues relativement aux demandes de participation incomplètes et au décès de deux victimes, et sur deux nouvelles demandes de participation*”, 15 October 2009, ICC-01/04-01/07-1534-Conf-Exp.

the applications of seven applicants to those of victims already authorised to participate.³

3. The Chamber ordered the disclosure to the parties of the redacted versions of all of the applications for participation, as well as the supplementary documents submitted, in order to obtain their observations. Thus, the parties were transmitted four duly completed applications, additional information regarding 33 applicants, as well as supplementary documents relating to the deaths of two victims already authorised to participate in the proceedings. The Chamber further notes that ten applicants did not provide the supplementary documents which it had requested.⁴
4. In summary, 45 applicants are also seeking the status of victim authorised to participate in the proceedings in the present case. Furthermore, the heirs of the two deceased victims mentioned above are seeking leave in turn to pursue the action undertaken by their close family members and to participate on their behalf in the proceedings before the Court. The Chamber will rule on all of these 47 applications.
5. The Prosecutor filed his observations on the applications for participation on 15⁵ and 26 May 2009,⁶ 27 and 24 June 2009,⁸ and 9 November 2009.⁹

³ *"Dispositif de la décision relative aux 345 demandes de participation de victimes à la procédure"*, 31 July 2009, ICC-01/04-01/07-1347; *"Corrigendum du dispositif de la décision relative aux 345 demandes de participation de victimes à la procédure"*, 5 August 2009, ICC-01/04-01/07-1347-Corr.

⁴ The Chamber notes that Applicants a/0284/09 and a/0291/09 have not provided proof of their identities, and for that reason the Chamber has decided not to disclose their applications to the parties for their observations. See ICC-01/04-01/07-1567, p. 7.

⁵ 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.

⁶ 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.

⁷ 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.

⁸ 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.

6. The Defence team for Mathieu Ngudjolo filed its own observations on 19 May 2009,¹⁰ 2¹¹ and 24 June 2009,¹² and 9 November 2009.¹³ The observations of the Defence for Germain Katanga were filed on 19¹⁴ and 26 May 2009,¹⁵ 2¹⁶ and 24 June 2009,¹⁷ and 9 November 2009.¹⁸
7. The Chamber will provide the grounds for its Decision at a later date. It will include an annex setting out its analysis of each application.
8. In its Decision, the Chamber has sought to apply the provisions of rule 85(a) and (b) of the Rules as well as the criteria defined by the Appeals Chamber,¹⁹ namely: i) that the applicant must be a natural or legal person; ii) that he or she must have suffered harm; iii) that the crime from which the harm resulted must fall within the jurisdiction of the Court and appear in the decision on the

⁹ Office of the Prosecutor, "Prosecution's Observations on the Applications for Participation in the Proceedings of Applicants a/0285/09, a/0286/09, a/0297/09 and a/0452/09 and on Additional Documents Provided by Applicants", 9 November 2009, ICC-01/04-01/07-1611.

¹⁰ 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.

¹¹ 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.

¹² 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.

¹³ Defence for Mathieu Ngudjolo, "*Observations consolidées de la Défense de Mathieu Ngudjolo relatives à 40 demandes de participation de victimes candidates au statut de participants à la procédure (Règle 89-1 du Règlement de procédure et de preuve)*", 9 November 2009, ICC-01/04-01/07-1615-Conf-Exp.

¹⁴ Defence for Germain Katanga, "Defence Observations on the 97 applications for participation as victims", 19 May 2009, ICC-01/04-01/07-1152-Conf.

¹⁵ Defence for Germain Katanga, "Defence Observations on the 70 applications for participation as victims", 26 May 2009, ICC-01/04-01/07-1170-Conf.

¹⁶ Defence for Germain Katanga, "Defence Observations on the 87 applications for participation as victims", 2 June 2009, ICC-01/04-01/07-1187-Conf.

¹⁷ 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.

¹⁸ Defence for Germain Katanga, "Defence Observations on the Applications for Participation as Victims and Additional Information Disclosed on 29 October 2009", 9 November 2009, ICC-01/04-01/07-1616.

¹⁹ ICC-01/04-01/06-1432, paras. 61 to 65.

confirmation of charges; and iv) that there must be a causal link between the harm suffered and the crime.

9. The Chamber, having regard to the observations submitted by the parties, hereby decides:

- to grant the status of victim participating in the proceedings to fourteen (14) applicants;
- not to grant victim status to twenty-four (24) applicants;
- to request additional information from seven (7) applicants, who will accordingly be the subject of a future decision by the Chamber;
- to grant the person authorised by the family of one of the deceased victims leave to participate in the present proceedings on behalf of that victim; and
- to request additional information from the person seeking to participate in the present proceedings on behalf of the other deceased victim.

8. All of the additional information mentioned above will be the subject of a future decision by the Chamber.

FOR THE REASONS which will be provided at a later date, the Chamber,

GRANTS the status of victim participating in the proceedings to the fourteen (14) applicants a/0054/08, a/0520/08, a/0211/09, a/0216/09, a/0266/09, a/0277/09, a/0285/09, a/0286/09, a/0297/09, a/0310/09, a/0361/09, a/0389/09, a/0391/09 and a/0393/09;

REFUSES to grant the status of victim participating in the proceedings to the twenty-four (24) applicants a/0140/08, a/0141/08, 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/0202/09,

a/0205/09, a/0268/09, a/0293/09, a/0304/09, a/0335/09, a/0340/09, a/0341/09, a/0342/09, a/0349/09, a/0350/09 and a/0392/09;

ORDERS the Registry to contact the Legal Representatives of the seven (7) applicants mentioned below as soon as possible in order to obtain the following additional information:

- from Applicant a/0114/08, clarification regarding the exact date of the Bogoro attack which the applicant mentions;
- from the two Applicants a/0160/09 and a/0161/09, a document proving their identities;
- from Applicant a/0215/09, confirmation of his or her application for participation by appending a signature or identifiable fingerprint;
- from Applicant a/0267/09, clarification regarding the exact date of the Bogoro attack which the applicant mentions;
- from Applicant a/0390/09, clarification regarding the exact date of the Bogoro attack which the applicant mentions and any document attesting the consent which the applicant gave to the person who presented the application;
- from Applicant a/0452/09, clarification regarding the exact date of the Bogoro attack which the applicant mentions, as well as any information which establishes the applicant's identity and family relationship with the person who is acting on his or her behalf;

GRANTS LEAVE to the person authorised by the family of the deceased Victim a/0207/08 to participate in the present proceedings on the victim's behalf;

DECIDES to request additional details from the person seeking to participate in the present proceedings on behalf of the deceased Victim a/0120/09; and

DECIDES that the additional details requested above must be transmitted to the Chamber by 4.00 p.m. on 11 January 2010.

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

[signed]
Judge Bruno Cotte
Presiding Judge

[signed]
Judge Fatoumata Dembele Diarra

[signed]
Judge Christine Van den Wyngaert

Dated this 23 November 2009,
At The Hague, The Netherlands