

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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No.: ICC-01/04-01/06

Date: 8 May 2009

TRIAL CHAMBER I

Before: Judge Adrian Fulford, Presiding Judge
Judge Elizabeth Odio Benito
Judge René Blattmann

*SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO IN THE CASE
OF THE PROSECUTOR v. THOMAS LUBANGA DYILO*

Public

**Order issuing public redacted annexes to the Decisions on the applications
by victims to participate in the proceedings of 15 and 18 December 2008**

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

The Office of the Prosecutor

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Ms Fatou Bensouda

Counsel for the Defence

Ms Catherine Mabile
Mr Jean-Marie Biju Duval

Legal Representatives of the Victims

Mr Luc Walley
Mr Franck Mulenda
Ms Carine Bapita Buyangandu
Mr Joseph Keta Orwinyo
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Mr Paul Kabongo Tshibangu
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Legal Representatives of the Applicants

Unrepresented Victims

Unrepresented Applicants for Participation/Reparation

The Office of Public Counsel for Victims

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States Representatives

Amicus Curiae

REGISTRY

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Ms Silvana Arbia

Defence Support Section

Victims and Witnesses Unit

Mr Simo Vaatainen

Detention Section

Victims Participation and Reparations Section

Ms Fiona McKay

Other

1. On 15 December 2008, the Chamber issued the "Decision on the applications by victims to participate in the proceedings", which, *inter alia*, granted status to participate in the proceedings to 91 applicants.¹ The Chamber indicated that the annex analysing each application and relevant submissions on a case-by-case basis would be issued separately in due course.² The confidential *ex parte* and confidential versions of the annexes to this decision were issued on 19 December 2008,³ and the Chamber again indicated that a public redacted version of the annex would be issued in due course.⁴

2. On 13 January 2009, the Chamber issued a "Corrigendum to 'Decision on the applications by victims to participate in the proceedings'", which set out that the application to participate in the proceedings of victim a/0246/06 has been erroneously treated as incomplete, and the application was granted.⁵ The Chamber issued revised confidential *ex parte*, confidential and public versions of the annex for this applicant on 24 February 2009.⁶

3. The Chamber issued a separate "Decision on the applications by 3 victims to participate in the proceedings" on 18 December 2009, which granted the application to participate in the proceedings of 1 applicant and in which it indicated that the annex containing the case-by-case analysis of the

¹ Decision on the applications by victims to participate in the proceedings, 15 December 2008, ICC-01/04-01/06-1556.

² Decision on the applications by victims to participate in the proceedings, 15 December 2008, ICC-01/04-01/06-1556, paragraph 51.

³ Order issuing Annexes to the "Decision on the applications by victims to participate in the proceedings" of 15 December 2008, 19 December 2008, ICC-01/04-01/06-1563 with Confidential *Ex parte* Registry only Annex A1, ICC-01/04-01/06-1563-Conf-Exp-AnxA1, and Confidential Annex A2, ICC-01/04-01/06-1563-Conf-AnxA2.

⁴ Order issuing Annexes to the "Decision on the applications by victims to participate in the proceedings" of 15 December 2008, 19 December 2008, ICC-01/04-01/06-1563, paragraph 5.

⁵ ICC-01/04-01/06-1556-Corr, paragraph 2.

⁶ Decision issuing redacted and corrected versions of annex concerning applicant a/0246/06, 24 February 2009, ICC-01/04-01/06-1724 with confidential *ex parte* Registry only Annex 1, ICC-01/04-01/06-1724-Conf-Exp-Anx1, Confidential Annex 2, ICC-01/04-01/06-1724-Conf-Anx2, and public Annex 3, ICC-01/04-01/06-1724-Anx3. The section of Annex A1 attached to this Order which concerns a/0246/06 is therefore redacted in its entirety as the correct public version has been issued.

applications and relevant submissions would be issued in due course.⁷ The full confidential *ex parte* and confidential versions of the annex to this decision were issued on 19 December 2008,⁸ and a public redacted version of the annex is attached hereto.⁹ In accordance with the decisions to date, 93 victims are currently participating in the proceedings.

4. The Registry's Victims Participation and Reparations Section was requested to review the annexes of the decisions and make redactions that reflect those previously included in the applications transmitted to the parties so that a public redacted version of the annexes may be issued. The Chamber has reviewed the VPRS's proposals.¹⁰
5. The Chamber hereby issues:
 - a) a public redacted version of Annex A to the "Decision on the applications by victims to participate in the proceedings" of 15 December 2008 (attached as A1); and,
 - b) a public redacted version of Annex A to "Decision on the applications by 3 victims to participate in the proceedings" of 18 December 2008 (attached as A2).

⁷ Decision on the applications by 3 victims to participate in the proceedings, 18 December 2008, ICC-01/04-01/06-1562, paragraph 10.

⁸ Order issuing Annexes to the "Decision on the applications by 3 victims to participate in the proceedings" of 18 December 2008, 19 December 2008, ICC-01/04-01/06-1564 with Confidential *ex parte* Registry only Annex A1, ICC-01/04-01/06-1564-Conf-Exp-AnxA1, and Confidential Annex A2, ICC-01/04-01/06-1564-Conf-AnxA2.

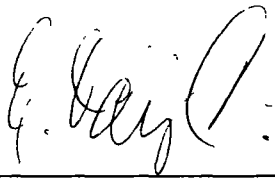
⁹ Order issuing Annexes to the "Decision on the applications by 3 victims to participate in the proceedings" of 18 December 2008, 19 December 2008, ICC-01/04-01/06-1564, paragraph 5.

¹⁰ Email communications from the Trial Chamber to the VPRS through the Legal Adviser to the Trial Division and from the VPRS to the Trial Chamber through the Legal Adviser to the Trial Division on 15 and 16 December 2008, 9, 23, 26 and 27 February, 9 April 2009.

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



Judge Adrian Fulford



Judge Elizabeth Odio Benito



Judge René Blattmann

Dated this 8 May 2009

At The Hague, The Netherlands

PUBLIC ANNEX A1

ANNEX A
Confidential ex parte, Registry only

**ANALYSIS OF VICTIMS APPLICATIONS
SORTED BY GROUPS**

GROUP 1: STATUS GRANTED.....	2
Group 1(a): Applicants currently participating in the proceedings	3
Group 1(b): Other applications appearing to meet the criteria for participation in the proceedings.....	13
Group 1(c): Applicants who do not share kinship with the person acting on their behalf (but where the applicant consents)	55
Group 1(d): Applicants who were children when the application was originally filed but who are now adults, or are close thereto.....	98
Group 1(e): Applications where the applicant's date of birth is uncertain or the demobilisation date is in issue.....	128
Group 1(f): Applications where there are some inconsistencies within the documents.....	200
Group 1(g): Applicants who are still under 18 where the application has not been made by a person acting on their behalf	223
Group 1(h): Other.....	228
GROUP 2: STATUS REJECTED	234
Group 2(a): Applications where the forms are incomplete	235
Application lacks ID	235
Application lacks proof of relationship and consent.....	246
Date of birth unknown.....	260
Group 2(b): Incidents outside the timeframe of the charges or applicants older than 15 at the time of their alleged recruitment	267

GROUP 1: STATUS GRANTED

Group 1(a): Applicants currently participating in the proceedings

Applicant a/0003/06 [Annex 3]

The means of identification

The applicant has provided the Chamber with an election card, and an old identity card that certifies the identities and date of birth of his ■ children, among them two sons who were allegedly killed in the circumstances set out below.¹

The claim to victim status

Two of the applicant's sons were allegedly killed by the UPC in 2003. He states that one of them was recruited by the UPC in ■ 2003, when he was ■ years old, and he was killed by the UPC ■. Another son was killed by the UPC during combat, although there is no indication that he had been recruited by that organisation. The applicant states that he has suffered moral and psychological harm resulting from his sons' recruitment and death.²

The phases of the proceedings

The applicant submits he has an interest in participating in all phases of the proceedings and he has an interest in setting out what happened to him and his family.³

The observations of the defence

In its observations the defence argues that although the applicant alleges he is the father of two children who have been killed, he makes no reference to their recruitment as child soldiers, and as such, his application to participate should be rejected.⁴

The observations of the prosecution

The prosecution submit the applicant should be granted status to participate in the trial since he fulfils all the necessary criteria.⁵

The observations of the victim's legal representative

The legal representatives submit in their reply that he has set out that one of his sons was recruited as a child soldier and thus there is a direct link with the charges brought against the accused.⁶

¹ Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 4-5 and Annex 3.

² First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 4-5 and Annex 3.

³ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 4-5 and Annex 3.

⁴ Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008, 10 June 2008, ICC-01/04-01/06-1388, page 10.

⁵ Prosecution's Observations on 105 Redacted Applications for Victim Participation to the Case, 9 June 2008, ICC-01/04-01/06-1386, paragraph 23.

Legal representation

The applicant has been represented thus far by Mr Luc Walley and Mr Franck Mulenda.⁷

The Registry has temporarily declared that the applicant is totally indigent.⁸

The Chamber's analysis and conclusions

The Trial Chamber notes that Pre-Trial Chamber I granted the applicant status to participate as a victim in the case.⁹ The applicant has participated in the proceedings before the Trial Chamber thus far.¹⁰ Furthermore, the Appeals Chamber has granted the applicant the right to participate in interlocutory appeals in this case.¹¹

The Chamber considers that the documents provided assist in demonstrating the identity of the applicant in accordance with the Trial Chamber's Decision on victims' participation. The documents and the other material indicate that one of his sons (the son allegedly recruited and killed) was approximately [REDACTED] years old during the material events, whereas the other son was approximately [REDACTED].¹²

In those circumstances, the Trial Chamber determines that the applicant has given sufficient evidence to establish, *prima facie*, that he is a victim under Rule 85(a) of the Rules, as the Chamber has been provided with information that leads it to conclude that the applicant suffered personal harm as a result of crimes confirmed against the accused, namely the alleged conscription and/or enlistment and/or use of one of his sons by the UPC when he was approximately [REDACTED] years old to participate actively in the hostilities, between September 2002 and 13 August 2003.¹³

Applicant a/0105/06 [Annex 10]

⁶ Réponses aux observations du Procureur et de la défense sur des demandes de participation à la procédure, 12 June 2008, ICC-01/04-01/06-1394-Corr, paragraphs 6-7 ; Observations sur les demandes de participation des victimes, 28 November 2008, ICC-01/04-01/06-1511, paragraphs 13-14.

⁷ Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 4-5 and Annex 3.

⁸ Décision du Greffier sur l'indigence des victimes a/0001/06, a/0002/06 et a/0003/06, 9 June 2008, ICC-01/04-01/06-1383.

⁹ Décision sur les demandes de participation à la procédure a/0001/06, a/0002/06 et a/0003/06 dans le cadre de l'affaire Le Procureur c. Thomas Lubanga Dyilo et de l'enquête en République Démocratique du Congo, 28 July 2006, ICC-01/04-01/06-228, page 16.

¹⁰ Decision on victims' participation, 18 January 2008, ICC-01/04-01/06-1119, paragraph 112.

¹¹ Judgment on the appeal of Mr Thomas Lubanga Dyilo against the decision of Pre-Trial Chamber I entitled 'Décision sur la demande de mise en liberté provisoire de Thomas Lubanga Dyilo', (ICC-01/04-01/06-824 OA7), paragraph 43; Decision, *in limine*, on Victim Participation in the appeals of the Prosecutor and the Defence against Trial Chamber I's Decision entitled "Decision on Victims' Participation, 16 May 2008, ICC-01/04-01/06-1335 OA9 and OA 10, paragraph 1.

¹² For the purposes of the age of the applicant at the "time of the events", this should be understood as the initial moment of the child's alleged conscription, enlistment or use to participate actively in the hostilities.

¹³ Decision on victims' participation, 18 January 2008, ICC-01/04-01/06-1119, as confirmed, amended and reversed by the Appeals Chamber's 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.

The means of identification

The Chamber has been provided with the certificate of reunification and a family search and demobilisation certificate for the applicant, as well as the election card for the person acting on his behalf (his mother).¹⁴

The claim to victim status

The applicant states that he was recruited in 2002, when he was about [REDACTED] years old, first by the [REDACTED] and later by the UPC. While in the UPC the applicant served as a soldier and as a [REDACTED], and he stayed with them until [REDACTED] 2004. The mother of the applicant, who is acting on his behalf, states she has suffered psychological problems as a result of her son's recruitment.¹⁵

The phases of the proceedings

The applicant submits he has an interest in participating in all phases of the proceedings, save for any appeals.¹⁶

The observations of the defence

In its observations the defence argues that the applicant refers to having suffered from crimes other than those included in the charges brought against the accused as the applicant does not refer to the FPLC, and the dates mentioned in the application do not correspond to the charges.¹⁷

The observations of the prosecution

The prosecution submits the applicant should be granted status to participate in the trial as he fulfils all the necessary criteria.¹⁸

The observations of the victim's legal representative

The legal representative notes in her reply that the prosecution does not oppose this application. As regards the observations of the defence, the legal representative submits that the applicant, although originally recruited by the UPDF, was later recruited by the UPC, staying with them for one and half years within the time covered by the charges brought against the accused. The legal representative further notes that the applicant suffered moral and physical harm as a result of his recruitment by the UPC when he was younger than 15. The legal representative

¹⁴ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 18-19 and Annex 10.

¹⁵ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 18-19 and Annex 10.

¹⁶ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 18-19 and Annex 10.

¹⁷ Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008, 10 June 2008, ICC-01/04-01/06-1388, page 10.

¹⁸ Prosecution's Observations on 105 Redacted Applications for Victim Participation to the Case, 9 June 2008, ICC-01/04-01/06-1386, paragraph 23

reminds the Chamber that the applicant has already participated in these proceedings.¹⁹

Legal representation

The applicant has been represented thus far by Ms Carine Bapita Buyangandu.

The Chamber's analysis and conclusions

The Trial Chamber observes that Pre-Trial Chamber I granted the applicant status to participate as a victim in the case.²⁰ The applicant has participated in the proceedings before the Trial Chamber thus far.²¹ Furthermore, the Appeals Chamber granted the applicant the right to participate in interlocutory appeals.²²

The Trial Chamber notes that the applicant has applied to participate in the DRC Situation. In its decision of 31 January 2008, the Pre-Trial Chamber determined that the applicant should be granted the status of victim in the DRC situation given that he had been granted the status to participate in the Case of The Prosecutor v. Thomas Lubanga Dyilo.²³

The Chamber considers that the documents and the other material provided prove, *prima facie*, the identity of the applicant and the person acting on his behalf, in accordance with the Trial Chamber's Decision on victims' participation. They establish that the applicant was between [REDACTED] years old during the material events, and the family search certificate demonstrates the kinship between the applicant and the person acting on his behalf.

In those circumstances, the Trial Chamber determines that the applicant has given sufficient evidence to establish, *prima facie*, that he is a victim under Rule 85(a) of the Rules, as the Chamber has been provided with enough information to conclude that the applicant suffered personal harm as a result of the commission of crimes

¹⁹ Réponse des demandeurs a/0105/06, a/0231/06, a/0232/06, a/0233/06, a/0242/06, a/0243/06, a/0244/06, a/0245/06, a/0246/06, a/0247/06, a/0248/06, a/0249/06, a/0250/06, a/0001/07, a/0002/07, a/0003/07, a/0004/07, a/0005/07, a/0006/07, a/0251/07, a/0253/07 et a/0254/07 aux observations du Procureur et de la Défense quant à leur demande de participation à la procédure dans l'affaire Le Procureur contre Thomas Lubanga, 28 November 2008, ICC-01/04-01/06-1514, paragraphs 7, 11-14, 25.

²⁰ Décision sur les demandes de participation à la procédure a/0004/06 à a/0009/06, a/0016/06 à a/0063/06, a/0071/06 à a/0080/06 et a/0105/06 dans le cadre de l'affaire le Procureur c. Thomas Lubanga Dyilo, 20 October 2006, ICC-01/04-01/06-601, page 12.

²¹ Decision on victims' participation, 18 January 2008, ICC-01/04-01/06-1119, paragraph 112.

²² Judgment on the appeal of Mr Thomas Lubanga Dyilo against the decision of Pre-Trial Chamber I entitled "Décision sur la demande de mise en liberté provisoire de Thomas Lubanga Dyilo", (ICC-01/04-01/06-824 OA7), paragraph 43; Decision, *in limine*, on Victim Participation in the appeals of the Prosecutor and the Defence against Trial Chamber I's Decision entitled "Decision on Victims' Participation, 16 May 2008, ICC-01/04-01/06-1335 OA9 and OA 10, paragraph 1.

²³ Corrigendum à la "Décision sur les demandes de participation à la procédure déposées dans le cadre de l'enquête en République démocratique du Congo par a/0004/06 à a/0009/06, a/0016/06 à a/0063/06, a/0071/06 à a/0080/06 et a/0105/06 à a/0110/06, a/0188/06, a/0128/06 à a/0162/06, a/0199/06, a/0203/06, a/0209/06, a/0214/06, a/0220/06 à a/0222/06, a/0224/06, a/0227/06 à a/0230/06, a/0234/06 à a/0236/06, a/0240/06, a/0225/06, a/0226/06, a/0231/06 à a/0233/06, a/0237/06 à a/0239/06 et a/0241/06 à a/0250/06", ICC-01/04-423-Corr, 31 January 2008, paragraph 107.

included in the charges brought against the accused, namely alleged enlistment and/or conscription and/or use to participate actively in the hostilities by the UPC between September 2002 and 13 August 2003.²⁴

However, the Chamber also notes that his mother, who is acting on behalf of the victim, alleges she suffered psychological harm as a result of her son's recruitment. The Trial Chamber therefore refers to the Registry the issue of whether the applicant's mother wishes to participate on her own behalf for the personal harm she allegedly suffered.

Applicant a/0001/06 [Annex 29]

The means of identification

The Chamber has been provided with the applicant's election card and identity card, the identity card of her late husband, a demobilisation certificate of one of her sons and a birth certificate of her late son, as well as a photograph of two of her sons.²⁵

The claim to victim status

The applicant states that her husband died of ██████████ during a UPC action in 2002, and that in ██████████ 2002 one of her sons was killed by another armed group. The applicant sets out that in ██████████ 2002 her two other sons, aged █ and █, were recruited by the UPC. She suggests they did so voluntarily because of the death of their father and brother. One of them was a ██████████ and the other worked as a ██████████; they were both with the UPC until ██████████ 2003, when they were demobilised and reunited with their family. As a result of their recruitment, the applicant states that their education was interrupted and she suffered moral and physical harm and violations of her fundamental rights.²⁶

The phases of the proceedings

The applicant submits she has an interest in participating in all phases of the proceedings.²⁷

The observations of the defence

The defence did not refer to the applicant in its observations.²⁸

The observations of the prosecution

²⁴ Decision on victims' participation, 18 January 2008, ICC-01/04-01/06-1119, as confirmed, amended and reversed by the Appeals Chamber's 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.

²⁵ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 57-58 and Annex 29.

²⁶ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 57-58 and Annex 29.

²⁷ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 57-58 and Annex 29.

²⁸ Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008, 10 June 2008, ICC-01/04-01/06-1388.

The prosecution submits the applicant should be granted status to participate in the trial as she fulfils all the necessary criteria.²⁹

The observations of the victim's legal representative

The legal representatives submit in their reply to the parties' observations that the applicant should be granted victim status.³⁰

Legal representation

The applicant has been represented thus far by Mr Luc Walley and Mr Franck Mulenda.

The Registry has temporarily declared that the applicant is totally indigent.³¹

The Chamber's analysis and conclusions

The Trial Chamber notes that Pre-Trial Chamber I granted the applicant status to participate as a victim in this case³² and the applicant has participated in the proceedings before the Trial Chamber thus far.³³ Furthermore, the Appeals Chamber granted the applicant the right to participate in interlocutory appeals in this case.³⁴

The Chamber considers that the documents and the other material provided prove, *prima facie*, the identity of the applicant in accordance with the Trial Chamber's Decision on victims' participation. The Chamber has taken into account the fact that none of these documents indicate that the relevant children were under the age of 15 during the material events. However, the demobilisation certificate of her son, [REDACTED], attests that he was under the age of 18 at the time of demobilisation, and in a declaration of the applicant (carrying her fingerprint), she declares that her sons were born in [REDACTED] and [REDACTED]. The overall picture provided by the applicant to the Chamber affords a sufficiently reliable indication of the approximate age of the applicant's children. Consequently, the Trial Chamber considers that the documents submitted, along with the applicant's own account, prove, *prima facie*, that the two sons in question were under the age of 15 at the time of their alleged recruitment by the UPC.

²⁹ Prosecution's Observations on 105 Redacted Applications for Victim Participation to the Case, 9 June 2008, ICC-01/04-01/06-1386, paragraph 23.

³⁰ Réponses aux observations du Procureur et de la défense sur des demandes de participation à la procédure, 12 June 2008, ICC-01/04-01/06-1394-Corr ; Observations sur les demandes de participation des victimes, 28 November 2008, ICC-01/04-01/06-1511-Corr, paragraph 13.

³¹ Décision du Greffier sur l'indigence des victimes a/0001/06, a/0002/06 et a/0003/06, 9 June 2008, ICC-01/04-01/06-1383.

³² Décision sur les demandes de participation à la procédure a/0001/06, a/0002/06 et a/0003/06 dans le cadre de l'affaire Le Procureur c. Thomas Lubanga Dyilo et de l'enquête en République Démocratique du Congo, 28 July 2006, ICC-01/04-01/06-228, page 16.

³³ Decision on victims' participation, 18 January 2008, ICC-01/04-01/06-1119, paragraph 112.

³⁴ Judgment on the appeal of Mr Thomas Lubanga Dyilo against the decision of Pre-Trial Chamber I entitled 'Décision sur la demande de mise en liberté provisoire de Thomas Lubanga Dyilo', (ICC-01/04-01/06-824 OA7), paragraph 43; Decision, *in limine*, on Victim Participation in the appeals of the Prosecutor and the Defence against Trial Chamber I's Decision entitled "Decision on Victims' Participation, 16 May 2008, ICC-01/04-01/06-1335 OA9 and OA 10, paragraph 1

The Trial Chamber therefore determines that the applicant has given sufficient evidence to establish, *prima facie*, that she is a victim under Rule 85(a) of the Rules, as the Chamber has been provided with enough information to conclude that the applicant suffered personal harm as a result of crimes included in the charges brought against the accused, namely the alleged conscription and/or enlistment and/or use to participate actively in the hostilities of her two sons by the UPC between September 2002 and 13 August 2003.³⁵

Applicant a/0002/06 [Annex 102]

The means of identification

Although the applicant has not provided any identification document in his initial application, the Chamber has been provided with the election card for the person acting on his behalf. The present position, therefore, is that no identification document of the applicant and no proof of the relationship between the applicant and the person acting on his behalf (his father) have been submitted to the Chamber.³⁶

The legal representative of the applicant has set out in a supplementary declaration that the applicant and the person acting on his behalf (who also allegedly suffered harm) [REDACTED]

[REDACTED]. The legal representative states that it is impossible to find an identification document for the applicant [REDACTED]

[REDACTED].³⁷

The claim to victim status

The applicant states that in [REDACTED] 2001 he was recruited by the UPC militia when he was [REDACTED] years old. He suggests he was used as [REDACTED], [REDACTED]. As a result, the applicant claims his schooling was disrupted and he suffered psychological and

³⁵ Decision on victims' participation, 18 January 2008, ICC-01/04-01/06-1119, as confirmed, amended and reversed by the Appeals Chamber's 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

³⁶ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 208-209 and Annex 102; Report on supplementary information received and missing information concerning the applications for participation dealt with in the "First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court" dated 11 April 2008 (ICC-01/04-01/06-1275), 6 June 2008, ICC-01/04-01/06-1380-Conf, Annex 1.

³⁷ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 208-209 and Annex 102; Report on supplementary information received and missing information concerning the applications for participation dealt with in the "First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court" dated 11 April 2008 (ICC-01/04-01/06-1275), 6 June 2008, ICC-01/04-01/06-1380-Conf, Annex 1.

physical harm. His father, who is acting on his behalf, sets out that the entire family suffered as a consequence of his son's recruitment.³⁸

In the supplementary declaration provided to the Chamber, the applicant's father states that in addition to his son's recruitment, his wife and other son were assassinated, their house and belongings were set on fire and their [REDACTED] was plundered. The applicant clarified that these events occurred between 2000 and 2003.³⁹

The phases of the proceedings

This section has not been completed on the original form, although the VPRS report indicates that the victim is interested in participating in all phases of the proceedings.⁴⁰

The observations of the defence

The defence made no observations as regards the applicant.⁴¹

The observations of the prosecution

The prosecution submits the applicant should be granted status to participate in the trial against Thomas Lubanga Dyilo as he fulfils all the necessary criteria.⁴² In a further submission, the prosecution submits that the Victims and Witnesses Unit should be in a position to assist the legal representative in obtaining the necessary documentation.⁴³

The observations of the victim's legal representative

The legal representatives a/0002/06 submit in their reply to the parties' observations that the applicant should be allowed to participate in the trial against the accused.⁴⁴

Legal representation

³⁸ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 208-209 and Annex 102.

³⁹ Report on supplementary information received and missing information concerning the applications for participation dealt with in the "First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court" dated 11 April 2008 (ICC-01/04-01/06-1275), 6 June 2008, ICC-01/04-01/06-1380-Conf, Annex 1.

⁴⁰ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, page 209 and Annex 102.

⁴¹ Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008, 10 June 2008, ICC-01/04-01/06-1388.

⁴² Prosecution's Observations on 105 Redacted Applications for Victim Participation to the Case, 9 June 2008, ICC-01/04-01/06-1386, paragraph 23.

⁴³ Prosecution's Observations on supplementary information for victim applications a/0002/06, a/0047/06, a/0048/06, a/0051/06, a/0052/06, a/0077/06, a/0221/06, a/0224/06, a/0225/06, a/0227/06, a/0229/06, a/0230/06, a/0236/06, a/0237/06, a/0238/06, a/0239/06, a/0240/06, a/0243/06, a/0055/07, a/0056/07, a/0057/07, a/0058/07, a/0060/07, a/0155/07, a/0156/07, a/0172/07, a/0187/07, a/0007/08, ICC-01/04-01/06-1540-Conf, paragraph 14

⁴⁴ Réponses aux observations du Procureur et de la défense sur des demandes de participation à la procédure, 12 June 2008, ICC-01/04-01/06-1394-Corr ; Observations sur les demandes de participation des victimes, 28 November 2008, ICC-01/04-01/06-1511, paragraph 13.

The applicant has been represented thus far by Mr Luc Walley and Mr Franck Mulenda.⁴⁵

The Registry has temporarily declared that the applicant is totally indigent.⁴⁶

The Chamber's analysis and conclusions

The Trial Chamber notes that Pre-Trial Chamber I granted the applicant status to participate as a victim.⁴⁷ The applicant has also participated in the proceedings before the Trial Chamber to date.⁴⁸ Furthermore, the Appeals Chamber granted the applicant the right to participate in interlocutory appeals in this case.⁴⁹



In addition, the defence and the prosecution, who have in their possession the non-redacted statements of the applicant and the person acting on his behalf, have not opposed the applicant being granted status to participate in the proceedings. The Trial Chamber also notes that in an e-mail addressed to the Legal Adviser of the Trial Chamber on 1 June 2008, the legal representative of the applicant stated that his client agreed that his identity should be disclosed in full to the defence. The full, non-redacted version of the application was transmitted to the parties on 28 November 2008.⁵¹

In light of the above, the Trial Chamber considers that the applicant has given sufficient evidence to establish, *prima facie*, that he is a victim under Rule 85(a) of the Rules, as the Chamber has been provided with enough information to conclude that the applicant suffered personal harm as a result of the commission of crimes included in the charges brought against the accused, namely his alleged enlistment

⁴⁵ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, page 209 and Annex 102.

⁴⁶ Décision du Greffier sur l'indigence des victimes a/0001/06, a/0002/06 et a/0003/06, 9 June 2008, ICC-01/04-01/06-1383.

⁴⁷ Décision sur les demandes de participation à la procédure a/0001/06, a/0002/06 et a/0003/06 dans le cadre de l'affaire Le Procureur c. Thomas Lubanga Dyilo et de l'enquête en République Démocratique du Congo, 28 July 2006, ICC-01/04-01/06-228, page 16

⁴⁸ Decision on victims' participation, 18 January 2008, ICC-01/04-01/06-1119, paragraph 112.

⁴⁹ Judgment on the appeal of Mr Thomas Lubanga Dyilo against the decision of Pre-Trial Chamber I entitled 'Décision sur la demande de mise en liberté provisoire de Thomas Lubanga Dyilo', (ICC-01/04-01/06-824 OA7), paragraph 43; Decision, *in limine*, on Victim Participation in the appeals of the Prosecutor and the Defence against Trial Chamber I's Decision entitled "Decision on Victims' Participation, 16 May 2008, ICC-01/04-01/06-1335 OA9 and OA 10, paragraph 1.

⁵⁰ WWW-0299 and WWW-0298.

⁵¹ Transmission of the unredacted version of application a/0002/06 for participation in the proceedings in implementation of the Oral Decision of 25 November 2008, 28 November 2008, ICC-01/04-01/06-1518.

and/or conscription and/or use to participate actively in the hostilities by the UPC between September 2002 and 13 August 2003.⁵²

The Trial Chamber observes that the person acting on behalf of the applicant (his father) alleges he suffered harm as a result of the above crimes. The Trial Chamber therefore refers to the Registry the issue of whether the applicant's father wishes to participate on his own behalf for the personal harm he allegedly suffered.

⁵² Decision on victims' participation, 18 January 2008, ICC-01/04-01/06-1119, as confirmed, amended and reversed by the Appeals Chamber's 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.

Group 1(b): Other applications appearing to meet the criteria for participation in the proceedings

Applicant a/0050/06 [Annex 7]

The means of identification

The Chamber has been provided with the birth certificate and demobilisation certificate for the applicant and the identity card and election card for the person acting on her behalf.⁵³ The applicant has consented to this person so acting.⁵⁴

The claim to victim status

The applicant states that in [REDACTED] 2003 she was recruited by the UPC, at the age [REDACTED]. She was trained for [REDACTED] weeks and later became a [REDACTED]. The applicant suggests that she participated in hostilities; she killed people and burned houses; and she engaged in general destruction. During these events the applicant alleges she suffered from inhumane and degrading treatment and torture, and she was [REDACTED]. The applicant states that she managed to escape in [REDACTED] 2003.⁵⁵

The phases of the proceedings

The applicant submits she has an interest in participating in all phases of the proceedings.⁵⁶

The observations of the defence

The defence has made no observations as regards the applicant.⁵⁷

The observations of the prosecution

The prosecution submits the applicant should be granted status to participate in the trial against Thomas Lubanga Dyilo as she fulfils all the necessary criteria. However, the prosecution submits the status of the applicant as a victim should not detract from the applicant's pre-existing status as prosecution witness.⁵⁸

Legal representative observations

The legal representatives a/0050/06 submit in their reply that this applicant meets the criteria set out in Rule 85 of the Rules, since she has suffered personal harm as a result of the events described in her application, and thus there is a direct link with

⁵³ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 12-13 and Annex 7.

⁵⁴ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 7, page 16.

⁵⁵ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 12-13 and Annex 7.

⁵⁶ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 12-13 and Annex 7.

⁵⁷ Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008, 10 June 2008, ICC-01/04-01/06-1388

⁵⁸ Prosecution's Observations on 105 Redacted Applications for Victim Participation to the Case, 9 June 2008, ICC-01/04-01/06-1386, paragraph 24.

the charges brought against the accused. Also, The legal representatives submit that her participation in the proceedings is not prejudicial or inconsistent with the rights of the accused and a fair and impartial trial. It is suggested that the applicant meets the criteria set out in article 68(3) of the Statute, and she should be granted the status of victim in the present case, along with the right to participate in the proceedings.⁵⁹

Legal representation

The applicant has no legal representative and has been represented by the OPCV during the application procedure.

The Chamber's analysis and conclusions

The Trial Chamber notes that Pre-Trial Chamber I determined that the applicant was a victim of the case but deemed that her participation was not appropriate at the time of the confirmation hearing.⁶⁰

The applicant has also applied to participate in the DRC situation and her application was provided to Pre-Trial Chamber I. However, in its decision of 31 January 2008, the Pre-Trial Chamber determined it would not resolve the applicant's status, stating that since the application was also pending before the Trial Chamber, the applicant's recognition as a victim in the "case" would automatically result in her recognition in the "situation".⁶¹ In a more recent decision of 3 July 2008, the Pre-Trial Chamber considered that the application was incomplete since the applicant was a minor at the time the application was made and it did not include the consent of the applicant's next-of-kin or legal guardian for an application to be made on her behalf.⁶²

The Chamber considers that the documents and the other material provided prove, *prima facie*, the identity of the applicant and the person acting on her behalf in accordance with the Trial Chamber's Decision on victims' participation. They prove, *prima facie*, that the applicant was [REDACTED] years old during the material events.

⁵⁹ Observations du BPCV en tant que représentant légal des demandeurs a/0004/06, a/0047/06 à a/0052/06, a/0077/06, a/0078/06 et a/0240/06, sur leurs demandes de participation dans le cadre de l'affaire *Le Procureur c Thomas Lubanga Dyilo*, 28 November 2008, ICC-01/04-01/06-1510, paragraphes 25-27

⁶⁰ Décision sur les demandes de participation à la procédure a/0004/06 à a/0009/06, a/0016/06 à a/0063/06, a/0071/06 à a/0080/06 et a/0105/06 dans le cadre de l'affaire le Procureur c. Thomas Lubanga Dyilo, 20 October 2006, ICC-01/04-01/06-601, pages 10-11.

⁶¹ Corrigendum à la "Décision sur les demandes de participation à la procédure déposées dans le cadre de l'enquête en République démocratique du Congo par a/0004/06 à a/0009/06, a/0016/06 à a/0063/06, a/0071/06 à a/0080/06 et a/0105/06 à a/0110/06, a/0188/06, a/0128/06 à a/0162/06, a/0199/06, a/0203/06, a/0209/06, a/0214/06, a/0220/06 à a/0222/06, a/0224/06, a/0227/06 à a/0230/06, a/0234/06 à a/0236/06, a/0240/06, a/0225/06, a/0226/06, a/0231/06 à a/0233/06, a/0237/06 à a/0239/06 et a/0241/06 à a/0250/06", ICC-01/04-423-Corr, 31 January 2008, paragraph 144.

⁶² Decision on the applications for participation file din connection with the investigation in the Democratic Republic of Congo by Applicants a/0047/06 to a/0052/06, a/163/06 to a/0187/06, a/0221/06, a/0226/06, a/0231/06 to a/0233/06, a/0237/06 to a/0239/06, and a/0241 to a/0250/06, 3 July 2008, ICC-01/04-505, paragraph 31.

The Chamber notes that the applicant was [REDACTED] years old at the time the application was completed. [REDACTED]

The Trial Chamber determines that the applicant has given sufficient evidence to establish, *prima facie*, that she is a victim under Rule 85(a) of the Rules, as the Chamber has been provided with enough information to establish that the applicant suffered personal harm as a result of the commission of crimes included in the charges brought against the accused, namely her alleged enlistment and/or conscription and/or use to participate actively in the hostilities by the UPC between September 2002 and 13 August 2003.⁶³

The Chamber has taken account of the fact that the applicant was [REDACTED] when the application was filed. Although this is not an impediment to granting the application, the Chamber instructs the VPRS to enquire of the applicant whether she wishes to participate on her own behalf or through the person acting on her behalf.

Applicant a/0172/07 [Annex 63]

The means of identification

The Trial Chamber has been provided with a demobilisation certificate for the applicant. In addition the applicant has submitted an election card for the person acting on his behalf. No proof of their relationship has been provided to the Chamber.⁶⁴ In a subsequent filing, the Chamber was provided with a supplementary declaration signed by the applicant (who is now an adult), stating that he wishes to participate on his own behalf.⁶⁵

The claim to victim status

The applicant states that in [REDACTED] 2002 he was recruited by the UPC when he was [REDACTED] years old. The applicant was given military training and learnt to use firearms. The applicant was posted in [REDACTED] in order to defend the [REDACTED] and to participate in hostilities against the FNI. In 2004 the applicant returned to his family. As a result of his recruitment, the applicant's schooling was interrupted, and he has [REDACTED] problems following his use of firearms. The applicant suffered moral harm and serious violations of his fundamental rights.⁶⁶

⁶³ Decision on victims' participation, 18 January 2008, ICC-01/04-01/06-1119, as confirmed, amended and reversed by the Appeals Chamber's 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.

⁶⁴ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 125-126 and Annex 63.

⁶⁵ Second report on supplementary information concerning application for participation filed with the "First Report to Trial Chamber I on Victims' Applications under Regulation 86(5) of the Regulations of the Court", dated 11 April 2008 (ICC-01/04-01/06-1275-Conf-Exp), 21 November 2008, page 6 and Anx7.

⁶⁶ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 125-126 and Annex 63.

The phases of the proceedings

The applicant submits he has an interest in participating in all phases of the proceedings.⁶⁷

The observations of the defence

The defence originally made no observations as regards the applicant.⁶⁸ However, in a later filing, the defence points out that the applicant suggested in his first application that he was abducted in July 2002, whilst in a supplementary application he stated that he was recruited in early 2003. As a result, the defence submits that the information provided by applicant is uncertain and contradictory and the application does not meet the requirements of Rule 85 of the Rules. Accordingly, the defence contends the application should be rejected.⁶⁹

The observations of the prosecution

The prosecution submits that this applicant meets, *prima facie*, the necessary requirements for victim participation. In the submission of the prosecution, the application forms and the further information received by the Registry suggest that this applicant was under the age of 15 at the time of his enlistment, conscription or use by the armed forces of the UPC during the relevant time frame. The Prosecutor therefore supports this application.⁷⁰ The prosecution submits that the information provided supports the contention that the applicant was under the age of 15 at the time of relevant events.⁷¹ The prosecution additionally submits that since the applicant has now attained his majority, he no longer requires the consent of a legal guardian to participate and he may act on his own behalf.⁷²

The observations of the victim's legal representative

The legal representatives a/0172/07 submit in their reply that any contradictions or possible inaccuracies in the application, for instance as to when certain events

⁶⁷ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 125-126 and Annex 63.

⁶⁸ Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008, 10 June 2008, ICC-01/04-01/06-1388.

⁶⁹ Observations de la Défense sur les 15 demandes de participation à la procédure et les 30 demandes de participation complémentaires communiquées le 27 novembre 2008 ; Réponse de la Défense aux observations des représentants légaux relatives aux 105 demandes de participation communiquées le 20 mai 2008 , et Observations de la Défense relatives aux victimes indirectes, 5 December 2008, ICC-01/04-01/06-1536, paragraph 26, 46.

⁷⁰ Prosecution's Observations on 105 Redacted Applications for Victim Participation to the Case, 9 June 2008, ICC-01/04-01/06-1386, paragraph 27, pages 14-15.

⁷¹ Prosecution's Observations on supplementary information for victim applications a/0002/06, a/0047/06, a/0048/06, a/0051/06, a/0052/06, a/0077/06, a/0221/06, a/0224/06, a/0225/06, a/0227/06, a/0229/06, a/0230/06, a/0236/06, a/0237/06, a/0238/06, a/0239/06, a/0240/06, a/0243/06, a/0055/07, a/0056/07, a/0057/07, a/0058/07, a/0060/07, a/0155/07, a/0156/07, a/0172/07, a/0187/07, a/0007/08, ICC-01/04-01/06-1540-Conf, paragraph 27.

⁷² Prosecution's Observations on supplementary information for victim applications a/0002/06, a/0047/06, a/0048/06, a/0051/06, a/0052/06, a/0077/06, a/0221/06, a/0224/06, a/0225/06, a/0227/06, a/0229/06, a/0230/06, a/0236/06, a/0237/06, a/0238/06, a/0239/06, a/0240/06, a/0243/06, a/0055/07, a/0056/07, a/0057/07, a/0058/07, a/0060/07, a/0155/07, a/0156/07, a/0172/07, a/0187/07, a/0007/08, ICC-01/04-01/06-1540-Conf, paragraph 23.

occurred, are due to the ongoing difficult situation in his country, along with the extreme difficulties experienced in obtaining the documents that are needed to support the application.⁷³ The legal representatives also submit that the applicant has given sufficient information to demonstrate that he has suffered harm directly linked with the charges brought against the accused, and therefore the applicant should be granted the status of victim and admitted as a participant in the proceedings.⁷⁴

Legal representation

The applicant has been represented thus far by Ms Joseph Keta Orwinyo and Mr Jean Louis Gilissen.⁷⁵

The Chamber's analysis and conclusions:

This application was not before Pre-Trial Chamber I.

The Chamber considers that the documents and overall information provided prove, *prima facie*, the identity of the applicant in accordance with the Trial Chamber's Decision on victims' participation. The Chamber considers that the demobilisation certificate proves, *prima facie*, that the applicant was under 18 years of age at the time when it was issued, in ██████ 2005.⁷⁶ The applicant has stated precisely and unequivocally in his application and in the supplementary declaration provided to the Chamber that he was born ██████ 1989 and that he was approximately ██████ years old at the relevant time.⁷⁷ Thus, the Chamber considers that it has been provided with enough information to determine, *prima facie*, that the applicant was under the age of 15 during material events.

The Trial Chamber thus determines that the applicant has given sufficient evidence to establish, *prima facie*, that he is a victim under Rule 85(a) of the Rules, as the Chamber has been provided with enough information to conclude that the applicant suffered personal harm as a result of crimes included in the charges brought against the accused, namely his alleged enlistment and/or conscription and/or use to

⁷³ Réponse aux "Prosecution's Observations on 105 Applications for Victim Participation to the Case" du 9 juin 2008 et aux « Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008 » du 10 juin 2008, 28 November, ICC-01/04-01/06/1522, paragraph 22, page 15.

⁷⁴ Réponse aux "Prosecution's Observations on 105 Applications for Victim Participation to the Case" du 9 juin 2008 et aux « Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008 » du 10 juin 2008, 28 November, ICC-01/04-01/06/1522, paragraph 25, page 15.

⁷⁵ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 125-126 and Annex 63; Second report on supplementary information concerning application for participation filed with the "First Report to Trial Chamber I on Victims' Applications under Regulation 86(5) of the Regulations of the Court", dated 11 April 2008 (ICC-01/04-01/06-1275-Conf-Exp), 21 November 2008, page 6 and Anx7.

⁷⁶ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, Annex 63, page 18.

⁷⁷ Second report on supplementary information concerning application for participation filed with the "First Report to Trial Chamber I on Victims' Applications under Regulation 86(5) of the Regulations of the Court", dated 11 April 2008 (ICC-01/04-01/06-1275-Conf-Exp), 21 November 2008, page 6 and Anx7.

participate actively in the hostilities by the UPC between September 2002 and 13 August 2003.⁷⁸

Applicant a/0078/06 [Annex 9]

The means of identification

The Chamber has been provided with the birth certificate of the applicant and a statement of the victim's father setting out the material facts. The latter is signed by [REDACTED] (who has supplied a copy of her passport). However, the applicant is acting on her own behalf.⁷⁹

The claim to victim status

The applicant states that she was abducted (enlevé) in [REDACTED] 2002 by the UPC when she was [REDACTED] years old. She describes that she received military training, and was raped, drugged, and subjected to sexual slavery. She sets out that she was used as [REDACTED] and to participate in hostilities. She was finally reunited with her family in [REDACTED] 2003. As a result of her recruitment she experiences psychological trauma, hypertension and nightmares. She also suffers from aches in her [REDACTED] and she suffers from [REDACTED]. Her recruitment interrupted her education and has forced her to live clandestinely.⁸⁰ Additional information was submitted to the Chamber by the Office of Public Counsel for Victims in support of the application.⁸¹

The phases of the proceedings

The applicant submits she has an interest in participating in all phases of the proceedings.⁸²

The observations of the defence

In its observations the defence argues that there are contradictions between the two applications, since the applicant alleges in one document that her recruitment took place in August 2003 and in another document that it was in August 2002. In the submission of the defence these contradictions cast serious doubts over the honesty and precision of the applicant's claims. The defence also relies on the fact that the application to participate was rejected by Pre-Trial Chamber I.⁸³

⁷⁸ Decision on victims' participation, 18 January 2008, ICC-01/04-01/06-1119, as confirmed, amended and reversed by the Appeals Chamber's 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.

⁷⁹ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 16-17 and Annex 9.

⁸⁰ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 16-17 and Annex 9.

⁸¹ Filing of two memoranda concerning the application for participation of victim a/0078/06 with two annexes *ex parte* only available to the OPCV and the Applicant, ICC-01/04-01/06-1288-Conf-Exp and Annexes, 22 April 2008.

⁸² First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 16-17 and Annex 9.

⁸³ Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008, 10 June 2008, ICC-01/04-01/06-1388, pages 4, 5 and 11.

The observations of the prosecution

The prosecution submits that although the application was rejected by Pre-Trial Chamber I, this was due to a mistake in the original application which has now been rectified. The prosecution thus suggests that the applicant should be granted victim status.⁸⁴

The observations of the victim's legal representative

The legal representatives submit in their reply that under Rule 89(2) of the Rules a victim whose application has been rejected may file a fresh application later in the proceedings. Thus, nothing in the Statute prevents a victim, whose application has been rejected by the Pre-Trial Chamber, from submitting a fresh application or supplementing his or her original application with additional information.⁸⁵

The OPCV, which is currently acting as the legal representative for the applicant, submits in its reply that the contradictions raised by the defence regarding this victim have been clarified by the supplementary information furnished by the applicant, in which it is set out that she was born in March 1989 and conscripted in August 2002. In the circumstances, it is submitted that her application meets the criteria set out in Article 68(3) of the Statute and Rule 85(a) of the Rules, and she merits being granted the status of victim, along with the right to participate in the proceedings.⁸⁶

Legal representation

The applicant was formerly represented by Mr Luc Walleyne and Mr Franck Mulenda. However, the applicant withdrew the mandate of the legal representatives,⁸⁷ and the Trial Chamber appointed the OPCV to act as the legal representative of the applicant.⁸⁸

The Chamber's analysis and conclusions

The Trial Chamber observes that the applicant applied to participate in the DRC situation and as a result the application was provided to Pre-Trial Chamber I. In its decision of 31 January 2008, Pre-Trial Chamber decided that the application was incomplete since the Chamber had not been provided with the identification

⁸⁴ Prosecution's Observations on 105 Redacted Applications for Victim Participation to the Case, 9 June 2008, ICC-01/04-01/06-1386, paragraphs 25 and 39.

⁸⁵ Observations du BPCV en tant que représentant légal des demandeurs a/0004/06, a/0047/06 à a/0052/06, a/0077/06, a/0078/06 et a/0240/06, sur leurs demandes de participation dans le cadre de l'affaire *Le Procureur c Thomas Lubanga Dyilo*, 28 November 2008, ICC-01/04-01/06-1510, paragraph 22.

⁸⁶ Observations du BPCV en tant que représentant légal des demandeurs a/0004/06, a/0047/06 à a/0052/06, a/0077/06, a/0078/06 et a/0240/06, sur leurs demandes de participation dans le cadre de l'affaire *Le Procureur c Thomas Lubanga Dyilo*, 28 November 2008, ICC-01/04-01/06-1510, paragraphs 34-35.

⁸⁷ Retrait de la représentation légale, ICC-01/04-01/06-1397, 13 June 2008.

⁸⁸ Transcript of status conference of 25 November 2008, ICC-01/04-01/06-T-99-ENG ET, page 41, line 15-23; Désignation du Bureau du conseil public pour les victimes pour la représentation légale du demandeur a/0078/06, 27 November 2008, ICC-01/04-01/06-1520.

document of the applicant or the person acting on her behalf.⁸⁹ Pre-Trial Chamber I set out that the applicant had not provided sufficient evidence to show that there are reasonable grounds to believe that the harm she suffered is directly linked to the crimes set out in the warrant of arrest against Thomas Lubanga Dyilo, or that she suffered harm in intervening to assist direct victims in the case or to prevent their victimisation as a result of the commission of these crimes.⁹⁰

The Trial Chamber accepts the prosecution's submission that the decision of the Pre-Trial Chamber was, in all likelihood, the result of mistakes in the original application that have now, seemingly, been rectified by further information more recently provided. The Trial Chamber considers that the documents and the other material now prove, *prima facie*, the identity of the applicant in accordance with the Trial Chamber's Decision on victims' participation and that the applicant was ■ years old during the material events.

The Trial Chamber thus determines that the applicant has given sufficient evidence to establish, *prima facie*, that she is a victim under Rule 85(a) of the Rules, since the Chamber has been provided with enough information to prove that the applicant suffered personal harm as a result of the commission of crimes included in the charges brought against the accused, namely her alleged enlistment and/or conscription and/or use to participate actively in the hostilities by the UPC between September 2002 and 13 August 2003.⁹¹

Applicant a/0237/06 [Annex 13]

The means of identification

The Chamber has been provided with the school identity card for the applicant and a declaration setting out the relationship between the applicant and the person acting on his behalf, signed by two witnesses. The Chamber has been provided with the identity certificate, guardianship letter and election card for the person acting on his behalf.⁹²

The claim to victim status

⁸⁹ Corrigendum à la "Décision sur les demandes de participation à la procédure déposées dans le cadre de l'enquête en République démocratique du Congo par a/0004/06 à a/0009/06, a/0016/06 à a/0063/06, a/0071/06 à a/0080/06 et a/0105/06 à a/0110/06, a/0188/06, a/0128/06 à a/0162/06, a/0199/06, a/0203/06, a/0209/06, a/0214/06, a/0220/06 à a/0222/06, a/0224/06, a/0227/06 à a/0230/06, a/0234/06 à a/0236/06, a/0240/06, a/0225/06, a/0226/06, a/0231/06 à a/0233/06, a/0237/06 à a/0239/06 et a/0241/06 à a/0250/06", ICC-01/04-423-Corr, 31 January 2008, paragraph 22.

⁹⁰ Décision sur les demandes de participation à la procédure a/0004/06 à a/0009/06, a/0016/06 à a/0063/06, a/0071/06 à a/0080/06 et a/0105/06 dans le cadre de l'affaire le Procureur c. Thomas Lubanga Dyilo, 20 October 2006, ICC-01/04-01/06-601, pages 9-10 and 13.

⁹¹ Decision on victims' participation, 18 January 2008, ICC-01/04-01/06-1119, as confirmed, amended and reversed by the Appeals Chamber's 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.

⁹² First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 24-25 and Annex 13.

The applicant states that he was recruited by the UPC in █████ 2002 when he was █████ years old. He was forced to fight, kill, and loot. He was physically mistreated and subjected to “fetichisme”; he used drugs; and he experiences █████ and pains in his █████ as a result. He endured torture, and degrading and inhumane treatment.⁹³ The applicant suggests he suffered from moral and physical harm as well as violations of his fundamental rights.

The phases of the proceedings

The applicant submits he has an interest in participating in all phases of the proceedings.⁹⁴

The observations of the defence

The defence did not originally make any submission as regards this applicant.⁹⁵ However, in a more recent filing, defence submits that the applicant has latterly given a different date of birth from that indicated in his initial application, and as a result, the application does not meet the requirements of Rule 85. Accordingly, it is suggested the application should be rejected.⁹⁶

The observations of the prosecution

The prosecution argues the applicant meets, *prima facie*, the necessary requirements for victim participation.⁹⁷ The prosecution submits that the information provided supports the contention that the applicant was under the age of 15 at the time of the relevant events.⁹⁸

The observations of the victim’s legal representative

The legal representatives submit in their reply that the applicant has set out that he was recruited by the FPLC as a child soldier when he was under 15 years old, and thus there is direct link with the charges brought against the accused. In the circumstances, it is submitted that the applicant should be granted the status of victim and admitted as a participant in the proceedings.⁹⁹

⁹³ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 24-25 and Annex 13.

⁹⁴ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 24-25 and Annex 13.

⁹⁵ Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008, 10 June 2008, ICC-01/04-01/06-1388.

⁹⁶ Observations de la Défense sur les 15 demandes de participation à la procédure et les 30 demandes de participation complémentaires communiquées le 27 novembre 2008 ; Réponse de la Défense aux observations des représentants légaux relatives aux 105 demandes de participation communiquées le 20 mai 2008 ; et Observations de la Défense relatives aux victimes indirectes, 5 December 2008, ICC-01/04-01/06-1536, paragraph 26.

⁹⁷ Prosecution's Observations on 105 Redacted Applications for Victim Participation to the Case, 9 June 2008, ICC-01/04-01/06-1386, paragraph 27.

⁹⁸ Prosecution's Observations on supplementary information for victim applications a/0002/06, a/0047/06, a/0048/06, a/0051/06, a/0052/06, a/0077/06, a/0221/06, a/0224/06, a/0225/06, a/0227/06, a/0229/06, a/0230/06, a/0236/06, a/0237/06, a/0238/06, a/0239/06, a/0240/06, a/0243/06, a/0055/07, a/0056/07, a/0057/07, a/0058/07, a/0060/07, a/0155/07, a/0156/07, a/0172/07, a/0187/07, a/0007/08, ICC-01/04-01/06-1540-Conf, paragraph 27.

⁹⁹ Réponse aux "Prosecution's Observations on 105 Applications for Victim Participation to the Case" du 9 juin 2008 et aux « Observations de la Défense sur les 105 demandes de participation à la

Legal representation

The applicant has been represented thus far by Mr Joseph Keta Orwinyo and Mr Jean Louis Gilissen.

The Chamber's analysis and conclusions

The Trial Chamber notes that the applicant applied to participate in the DRC situation and that as a result the application was provided to Pre-Trial Chamber I. In its decision of 31 January 2008, the Pre-Trial Chamber declined to determine the applicant's status as victim, stating that since the application was pending before the Trial Chamber, his recognition as victim in the "case" would automatically result in his recognition in the "situation".¹⁰⁰ In a recent decision on 3 July 2008, the Pre-Trial Chamber concluded that since the applicant had not presented any identification document, the application was incomplete.¹⁰¹

The Trial Chamber, however, considers that the overall material provided by the applicant provides a sufficiently reliable indication of his age and identity, in accordance with the Trial Chamber's Decision on victims' participation. In particular, the Chamber accepts that the documents and the other material prove, *prima facie*, that the applicant was ■ years old during the material events, together with the kinship between the applicant and the person acting on his behalf, and the latter's identity.

Therefore, the Trial Chamber determines that the applicant has given sufficient evidence to establish, *prima facie*, that he is a victim under Rule 85(a) of the Rules, as the Chamber has been provided with enough information to conclude that the applicant suffered personal harm as a result of the commission of crimes included in the charges brought against the accused, namely his alleged enlistment and/or conscription and/or use to participate actively in the hostilities by the UPC between September 2002 and 13 August 2003.¹⁰²

procédure communiquées le 20 mai 2008 »du 10 juin 2008, 28 November, ICC-01/04-01/06/1522, paragraph 25, page 11.

¹⁰⁰ Corrigendum à la "Décision sur les demandes de participation à la procédure déposées dans le cadre de l'enquête en République démocratique du Congo par a/0004/06 à a/0009/06, a/0016/06 à a/0063/06, a/0071/06 à a/0080/06 et a/0105/06 à a/0110/06, a/0188/06, a/0128/06 à a/0162/06, a/0199/06, a/0203/06, a/0209/06, a/0214/06, a/0220/06 à a/0222/06, a/0224/06, a/0227/06 à a/0230/06, a/0234/06 à a/0236/06, a/0240/06, a/0225/06, a/0226/06, a/0231/06 à a/0233/06, a/0237/06 à a/0239/06 et a/0241/06 à a/0250/06", ICC-01/04-423-Corr, 31 January 2008, paragraph 144.

¹⁰¹ Decision on the applications for participation file in connection with the investigation in the Democratic Republic of Congo by Applicants a/0047/06 to a/0052/06, a/163/06 to a/0187/06, a/0221/06, a/0226/06, a/0231/06 to a/0233/06, a/0237/06 to a/0239/06, and a/0241 to a/0250/06, 3 July 2008, ICC-01/04-505, paragraph 32

¹⁰² Decision on victims' participation, 18 January 2008, ICC-01/04-01/06-1119, as confirmed, amended and reversed by the Appeals Chamber's 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.

Applicant a/0238/06 [Annex 14]**The means of identification**

The Chamber has been provided with the school identity card for the applicant and a declaration stating the relationship between the applicant and the person acting on his behalf signed by two witnesses. The applicant has provided the identity certificate, guardianship letter and election card for the person acting on his behalf.¹⁰³

The claim to victim status

The applicant states that he was recruited in █████ 2002 by the UPC when he was █████ years old. He escaped but was later re-recruited in █████ 2003. He was forced to fight, kill and use drugs, and he was subjected to “fetichisme”. He was tortured. The applicant states that he suffers from anxiety attacks, psychological trauma and headaches. He has pain in his █████ and in his █████. He also experienced delay in his schooling. The applicant suggests that he suffered moral and physical harm and violations of his fundamental rights.¹⁰⁴

The phases of the proceedings

The applicant submits he has an interest in participating in all phases of the proceedings.¹⁰⁵

The observations of the defence

In its observations the defence argue that the application contains many contradictions as regards the dates of events, particularly since the applicant referred to certain events in July 2003 in his initial application and thereafter, in his additional application, he suggested the same events occurred between July 2002 and May 2003.¹⁰⁶ Similarly, the defence submits that although the applicant alleged in his first application that he was abducted between late 2002 and March 2003, in his additional application he stated that he was recruited in July 2003. In a third application, the applicant states that he was recruited twice: first in July 2002 and then in January 2003. As a result, the Defence argues that the information provided by this applicant is uncertain and contradictory and it does not meet the requirements of Rule 85. Accordingly, it is suggested the application should be rejected.¹⁰⁷

¹⁰³ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 26-27 and Annex 14. See also Second Report on supplementary information, ICC-01/04-01/06-1503-Conf-Exp, 21 November 2008, page 8 and Anx17.

¹⁰⁴ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 26-27 and Annex 14.

¹⁰⁵ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 26-27 and Annex 14.

¹⁰⁶ Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008, 10 June 2008, ICC-01/04-01/06-1388, page 11.

¹⁰⁷ Observations de la Défense sur les 15 demandes de participation à la procédure et les 30 demandes de participation complémentaires communiquées le 27 novembre 2008 ; Réponse de la Défense aux observations des représentants légaux relatives aux 105 demandes de participation communiquées le 20

The observations of the prosecution

The prosecution submits that the applicant meets, *prima facie*, the necessary requirements for victims' participation.¹⁰⁸ The prosecution contends that the information provided supports the suggestion that the applicant was under the age of 15 during the material events.¹⁰⁹

The observations of the victim's legal representative

The legal representatives a/0238/06 submit in their reply that since the applicant has set out that he was recruited for the FPLC as a child soldier, when he was under 15 years old, there is direct link with the charges brought against the accused. Therefore, it is submitted the applicant should be granted the status of victim and admitted as a participant in the proceedings in the case.¹¹⁰

Legal representation

The applicant has been represented thus far by Mr Joseph Keta and Mr Jean Louis Gilissen.¹¹¹

The Chamber's analysis and conclusions

The Trial Chamber notes that the applicant has also applied to participate in the DRC situation and that as a result the application has been provided to Pre-Trial Chamber I. In its decision of 31 January 2008, the Pre-Trial Chamber determined it would not decide on the applicant's status, stating that since the application was pending before the Trial Chamber, his recognition as a victim in the "case" would automatically result in his recognition in the "situation".¹¹² In a further decision the Pre-Trial

mai 2008 ; et Observations de la Défense relatives aux victimes indirectes, 5 December 2008, ICC-01/04-01/06-1536, paragraph 26, 46.

¹⁰⁸ Prosecution's Observations on 105 Redacted Applications for Victim Participation to the Case, 9 June 2008, ICC-01/04-01/06-1386, paragraph 27.

¹⁰⁹ Prosecution's Observations on supplementary information for victim applications a/0002/06, a/0047/06, a/0048/06, a/0051/06, a/0052/06, a/0077/06, a/0221/06, a/0224/06, a/0225/06, a/0227/06, a/0229/06, a/0230/06, a/0236/06, a/0237/06, a/0238/06, a/0239/06, a/0240/06, a/0243/06, a/0055/07, a/0056/07, a/0057/07, a/0058/07, a/0060/07, a/0155/07, a/0156/07, a/0172/07, a/0187/07, a/0007/08, ICC-01/04-01/06-1540-Conf, paragraph 27.

¹¹⁰ Réponse aux "Prosecution's Observations on 105 Applications for Victim Participation to the Case" du 9 juin 2008 et aux « Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008 » du 10 juin 2008, 28 November, ICC-01/04-01/06/1522, paragraph 25, page 11.

¹¹¹ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 26-27 and Annex 14. See also Second Report on supplementary information, ICC-01/04-01/06-1503-Conf-Exp, 21 November 2008, page 8 and Anx17.

¹¹² Corrigendum à la "Décision sur les demandes de participation à la procédure déposées dans le cadre de l'enquête en République démocratique du Congo par a/0004/06 à a/0009/06, a/0016/06 à a/0063/06, a/0071/06 à a/0080/06 et a/0105/06 à a/0110/06, a/0188/06, a/0128/06 à a/0162/06, a/0199/06, a/0203/06, a/0209/06, a/0214/06, a/0220/06 à a/0222/06, a/0224/06, a/0227/06 à a/0230/06, a/0234/06 à a/0236/06, a/0240/06, a/0225/06, a/0226/06, a/0231/06 à a/0233/06, a/0237/06 à a/0239/06 et a/0241/06 à a/0250/06", ICC-01/04-423-Corr, 31 January 2008, paragraph 144.

Chamber concluded that since the applicant had not presented any identification document, the application was incomplete.¹¹³

The Trial Chamber has carefully reviewed the application as well as the two additional declarations submitted by the applicant. The applicant has explained that he was recruited twice, and was generally involved in hostilities in 2002 and 2003. In his later declarations he has set out the full extent of his alleged involvement in these events.¹¹⁴

In the Trial Chamber's estimation, the apparent contradictions, subsequently addressed, do not, *ipso facto*, destroy the credibility of this application, since it is a credible explanation that his original application did not contain the full extent of his relevant history.

In all the circumstances, the Trial Chamber considers that the material presented by the applicant provides a sufficiently reliable indication of the identity of the applicant, and the identity for the person acting on his behalf, in accordance with the Trial Chamber's Decision on victims' participation. The Chamber considers that the documents and the other material prove, *prima facie*, that the applicant was ■ years old during the material events, along with the kinship between the applicant and the person acting on his behalf.

The Trial Chamber determines that the applicant has given sufficient evidence to establish, *prima facie*, that he is a victim under Rule 85(a) of the Rules, as the Chamber has been provided with enough information to conclude that the applicant suffered personal harm as a result of crimes included in the charges brought against the accused, namely his alleged enlistment and/or conscription and/or use to participate actively in the hostilities by the UPC between September 2002 and 13 August 2003.¹¹⁵

Applicant a/0002/07 [Annex 17]

The means of identification

The Chamber has been provided with a demobilisation certificate, a family reunification certificate and certificate of former child soldier (EAFGA) for the applicant, as well as with the identity card and electoral card for the person acting on his behalf.¹¹⁶

¹¹³ Decision on the applications for participation file in connection with the investigation in the Democratic Republic of Congo by Applicants a/0047/06 to a/0052/06, a/163/06 to a/0187/06, a/0221/06, a/0226/06, a/0231/06 to a/0233/06, a/0237/06 to a/0239/06, and a/0241 to a/0250/06, 3 July 2008, ICC-01/04-505, paragraph 32.

¹¹⁴ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 14, pages 9, 19, 20, 26

¹¹⁵ Decision on victims' participation, 18 January 2008, ICC-01/04-01/06-1119, as confirmed, amended and reversed by the Appeals Chamber's 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.

¹¹⁶ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 32-33 and Annex 17.

The claim to victim status

The applicant states that in [REDACTED] 2002 he was recruited by the UPC when he was [REDACTED] years old. He served as a "soldier" and was demobilised in [REDACTED] 2004, when he was reunited with his older brother. As a result of these events, he lost his opportunity to study. The applicant refers in his account to victim a/0001/07. He states that he suffered moral harm and violations of his fundamental rights.¹¹⁷

The phases of the proceedings

The applicant submits he has an interest in participating in all phases of the proceedings, save for appeals.¹¹⁸

The observations of the defence

The defence did not refer to the applicant in its observations.¹¹⁹

The observations of the prosecution

The prosecution submits that the applicant meets, *prima facie*, the necessary requirements for victim participation.¹²⁰

The observations of the victim's legal representative

The legal representative notes in her reply that the prosecution did not oppose the participation of the applicant. The legal representative requests that the applicant is granted status to participate in the proceedings.¹²¹

Legal representation

The applicant has been represented thus far by Ms Carine Bapita Buyangandu.

The Chamber's analysis and conclusions

The Chamber considers that the documents and the other material prove, *prima facie*, the identity of the applicant and the person acting on his behalf (his brother) in accordance with the Trial Chamber's Decision on victims' participation, and that the applicant was [REDACTED] years old during the material events.

The Trial Chamber determines that the applicant has given sufficient evidence to establish, *prima facie*, that he is a victim under Rule 85(a) of the Rules, as the Chamber has been provided with enough information to conclude that the applicant suffered

¹¹⁷ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 32-33 and Annex 17.

¹¹⁸ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 32-33 and Annex 17.

¹¹⁹ Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008, 10 June 2008, ICC-01/04-01/06-1388.

¹²⁰ Prosecution's Observations on 105 Redacted Applications for Victim Participation to the Case, 9 June 2008, ICC-01/04-01/06-1386, paragraph 27.

¹²¹ Réponse des demandeurs a/0105/06, a/0231/06, a/0232/06, a/0233/06, a/0242/06, a/0243/06, a/0244/06, a/0245/06, a/0246/06, a/0247/06, a/0248/06, a/0249/06, a/0250/06, a/0001/07, a/0002/07, a/0003/07, a/0004/07, a/0005/07, a/0006/07, a/0251/07, a/0253/07 et a/0254/07 aux observations du Procureur et de la Défense quant à leur demande de participation à la procédure dans l'affaire Le Procureur contre Thomas Lubanga, 28 November 2008, ICC-01/04-01/06-1514, paragraphs 7, 25.

personal harm as a result of crimes included in the charges brought against the accused, namely his alleged enlistment and/or conscription and/or use to participate actively in the hostilities by the UPC between September 2002 and 13 August 2003.¹²²

Applicant a/0054/07 [Annex 19]

The means of identification

The Chamber has been provided with a birth certificate, a school identity card, a demobilisation certificate, a family reunification certificate and a certificate of former child soldier (EAFGA) of the applicant, as well as an election card, a guardianship certificate and a declaration stating the relationship with the person acting on his behalf.¹²³

The claim to victim status

The applicant states that in 2003 he was recruited by the UPC when he was ■ years old. This was witnessed by three UNICEF workers. He sets out that he was first used as ■, and later he was trained to use weapons and to steal. He was tortured during his training. He participated in hostilities in ■ 2003 and was injured, but escaped later in ■ 2003. He was demobilised in ■ 2004. He did not find his family, although he was reunited with an uncle, who is acting on his behalf. As a result of his recruitment his education was interrupted, he has experienced psychological problems, and he has feelings of vengeance and violence. He has suffered moral and physical harm and violations of his fundamental rights.¹²⁴

The phases of the proceedings

The applicant submits he has an interest in participating in all phases of the proceedings, save for appeals.¹²⁵

The observations of the defence

The defence did not refer to the applicant in its original observations.¹²⁶ The defence submits in a further filing that the applicant has given a different date of birth from that stated in his initial application, and as a result, the application does not meet the requirements of Rule 85. Accordingly, it is suggested the application should be rejected..¹²⁷

¹²² Decision on victims' participation, 18 January 2008, ICC-01/04-01/06-1119, as confirmed, amended and reversed by the Appeals Chamber's 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.

¹²³ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 36-37 and Annex 19

¹²⁴ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 36-37 and Annex 19.

¹²⁵ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 36-37 and Annex 19.

¹²⁶ Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008, 10 June 2008, ICC-01/04-01/06-1388.

¹²⁷ Observations de la Défense sur les 15 demandes de participation à la procédure et les 30 demandes de participation complémentaires communiquées le 27 novembre 2008 ; Réponse de la Défense aux

The observations of the prosecution

The prosecution submits that the applicant meets, *prima facie*, the necessary requirements for victim participation.¹²⁸

The observations of the victim's legal representative

The legal representatives note in their reply that the applicant has set out that he was recruited for the FPLC as a child soldier when he was under 15 years old and thus there is direct link with the charges brought against the accused. Therefore, it is submitted the applicant should be granted the status of victim and admitted as a participant in the proceedings.¹²⁹

Legal representation

The applicant has been represented thus far by Mr Joseph Keta Orwinyo and Mr Jean Louis Gilissen.

The Chamber's analysis and conclusions

The Chamber considers that the documents and the other material provided prove, *prima facie*, the identity of the applicant and the person acting on his behalf in accordance with the Trial Chamber's Decision on victims' participation, that the applicant was ■ years old during the material events, and the kinship between the applicant and the person acting on his behalf.

The Trial Chamber determines that the applicant has given sufficient evidence to establish, *prima facie*, that he is a victim under Rule 85(a) of the Rules, as the Chamber has been provided with enough information to conclude that the applicant suffered personal harm as a result of crimes included in the charges brought against the accused, namely his alleged enlistment and/or conscription and/or use to participate actively in the hostilities by the UPC between September 2002 and 13 August 2003.¹³⁰

Applicant a/0056/07 [Annex 20]

The means of identification

observations des représentants légaux relatives aux 105 demandes de participation communiquées le 20 mai 2008 , et Observations de la Défense relatives aux victimes indirectes, 5 December 2008, ICC-01/04-01/06-1536, paragraph 26

¹²⁸ Prosecution's Observations on 105 Redacted Applications for Victim Participation to the Case, 9 June 2008, ICC-01/04-01/06-1386, paragraph 27.

¹²⁹ Réponse aux "Prosecution's Observations on 105 Applications for Victim Participation to the Case" du 9 juin 2008 et aux « Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008 » du 10 juin 2008, 28 November, ICC-01/04-01/06/1522, paragraph 25, page 12.

¹³⁰ Decision on victims' participation, 18 January 2008, ICC-01/04-01/06-1119, as confirmed, amended and reversed by the Appeals Chamber's 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.

The Chamber has been provided with the school identity card for the applicant, the election card for the person acting on his behalf and a declaration setting out the relationship between the applicant and the person acting on his behalf, signed by two witnesses.¹³¹

The claim to victim status

The applicant states that in [REDACTED] 2002 he was recruited when he was [REDACTED] years old; he was trained; and he became [REDACTED]. He [REDACTED], served as [REDACTED] and carried ammunition. He was forced to commit acts of torture, extortion and rape. He was injured in his [REDACTED], escaped and later was demobilised. He states that he suffers from physical pain [REDACTED] and in his back. He suggests that the acts he committed and what he suffered have traumatised him and severely affected his schooling. He endured moral, physical and material harm and violations of his fundamental rights.¹³²

The phases of the proceedings

The applicant submits he has an interest in participating in all phases of the proceedings.¹³³

The observations of the defence

The defence did not refer to the applicant in its original observations.¹³⁴ The defence submits in a further filing that the applicant has mentioned a different date of birth to that indicated in his initial application, and as a result, the application does not meet the requirements of Rule 85 of the Rules. In the circumstances, it is submitted the application should be rejected.¹³⁵

The observations of the prosecution

The prosecution submits that the applicant meets, *prima facie*, the necessary requirements for victim participation.¹³⁶ The prosecution contends that the information provided supports the suggestion that the applicant was under the age of 15 during the material events.¹³⁷

¹³¹ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 38-39 and Annex 20.

¹³² First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 38-39 and Annex 20.

¹³³ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 38-39 and Annex 20.

¹³⁴ Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008, 10 June 2008, ICC-01/04-01/06-1388.

¹³⁵ Observations de la Défense sur les 15 demandes de participation à la procédure et les 30 demandes de participation complémentaires communiquées le 27 novembre 2008 ; Réponse de la Défense aux observations des représentants légaux relatives aux 105 demandes de participation communiquées le 20 mai 2008 ; et Observations de la Défense relatives aux victimes indirectes, 5 December 2008, ICC-01/04-01/06-1536, paragraph 26.

¹³⁶ Prosecution's Observations on 105 Redacted Applications for Victim Participation to the Case, 9 June 2008, ICC-01/04-01/06-1386, paragraph 27.

¹³⁷ Prosecution's Observations on supplementary information for victim applications a/0002/06, a/0047/06, a/0048/06, a/0051/06, a/0052/06, a/0077/06, a/0221/06, a/0224/06, a/0225/06, a/0227/06, a/0229/06, a/0230/06, a/0236/06, a/0237/06, a/0238/06, a/0239/06, a/0240/06, a/0243/06, a/0055/07,

The observations of the victim's legal representative

The legal representatives submit in their reply that since the applicant has set out that he was recruited for the FPLC as a child soldier when he was under 15 years old, there is direct link with the charges brought against the accused. Therefore, it is submitted that the applicant should be granted the status of victim and admitted as a participant in the proceedings.¹³⁸

Legal representation

The applicant has been represented thus far by Mr Joseph Keta Orwinyo and Mr Jean Louis Gilissen.¹³⁹

The Chamber's analysis and conclusions

The Chamber considers that the documents and the other material provided prove, *prima facie*, the identity of the applicant and the person acting on his behalf in accordance with the Trial Chamber's Decision on victims' participation. They also prove, *prima facie*, the applicant was approximately ■ years old during the material events, along with the kinship between the applicant and the person acting on his behalf.

The Trial Chamber determines that the applicant has given sufficient evidence to establish, *prima facie*, that he is a victim under Rule 85(a) of the Rules, as the Chamber has been provided with enough information to conclude that the applicant suffered personal harm as a result of crimes included in the charges brought against the accused, namely his alleged enlistment and/or conscription and/or use to participate actively in the hostilities by the UPC between September 2002 and 13 August 2003.¹⁴⁰

Applicant a/0060/07 [Annex 22]

The means of identification

The Chamber has been provided with the school identity card for the applicant, an election card for the person acting on his behalf and a declaration stating the

a/0056/07, a/0057/07, a/0058/07, a/0060/07, a/0155/07, a/0156/07, a/0172/07, a/0187/07, a/0007/08, ICC-01/04-01/06-1540-Conf, paragraph 27.

¹³⁸ Réponse aux "Prosecution's Observations on 105 Applications for Victim Participation to the Case" du 9 juin 2008 et aux « Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008 » du 10 juin 2008, 28 November, ICC-01/04-01/06/1522, paragraph 25, page 12

¹³⁹ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 38-39 and Annex 20. See also Second Report on supplementary information, ICC-01/04-01/06-1503-Conf-Exp, 21 November 2008, page 8 and Anx19.

¹⁴⁰ Decision on victims' participation, 18 January 2008, ICC-01/04-01/06-1119, as confirmed, amended and reversed by the Appeals Chamber's 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

relationship between the applicant and the person acting on his behalf, signed by two witnesses.¹⁴¹

The claim to victim status

The applicant states that in [REDACTED] 2002, when he was [REDACTED] years old, he was enrolled by the UPC. He was trained, and later served as [REDACTED] officer. He was beaten and deprived of food; he participated in hostilities in [REDACTED] 2002 and again in [REDACTED] 2003; he served as a [REDACTED] during combat; and he was involved in the preparations for an attack in [REDACTED] in [REDACTED] 2003. The applicant describes that later he became sick and was allowed to leave the UPC. Currently he suffers from psychological problems and depression, and his education was severely affected as a result of these events. He also states that he has become violent and suffered moral, physical and material harm, along with violations of his fundamental rights. The applicant refers to acts of torture, extortion and killings without specifying if he was a perpetrator, witness or victim.¹⁴²

The phases of the proceedings

The applicant submits he has an interest in participating in all phases of the proceedings.¹⁴³

The observations of the defence

The defence did not refer to the applicant in its original observations.¹⁴⁴ The defence submits in a further filing that the applicant has mentioned a different date of birth from that indicated in his initial application, and as a result, the application does not meet the requirements of Rule 85 of the Rules. Therefore, it is submitted the application should be rejected.¹⁴⁵

The observations of the prosecution

¹⁴¹ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 42-43 and Annex 22; Corrigendum à la demande de participation a/0060/07 enregistrée ICC-01/04-01/06-1275-Conf-Exp-Anx22, ICC-01/04-01/06-1317-Conf-Exp and Conf-Exp-Anx, 9 May 2008.

¹⁴² First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 42-43 and Annex 22; Corrigendum à la demande de participation a/0060/07 enregistrée ICC-01/04-01/06-1275-Conf-Exp-Anx22, ICC-01/04-01/06-1317-Conf-Exp and Conf-Exp-Anx, 9 May 2008

¹⁴³ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 42-43 and Annex 22; Corrigendum à la demande de participation a/0060/07 enregistrée ICC-01/04-01/06-1275-Conf-Exp-Anx22, ICC-01/04-01/06-1317-Conf-Exp and Conf-Exp-Anx, 9 May 2008.

¹⁴⁴ Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008, 10 June 2008, ICC-01/04-01/06-1388

¹⁴⁵ Observations de la Défense sur les 15 demandes de participation à la procédure et les 30 demandes de participation complémentaires communiquées le 27 novembre 2008 ; Réponse de la Défense aux observations des représentants légaux relatives aux 105 demandes de participation communiquées le 20 mai 2008 ; et Observations de la Défense relatives aux victimes indirectes, 5 December 2008, ICC-01/04-01/06-1536, paragraph 26.

The prosecution submits that the applicant meets, *prima facie*, the necessary requirements for victim participation.¹⁴⁶ The prosecution contends that the information provided supports the suggestion that the applicant was under the age of 15 during the material events.¹⁴⁷

The observations of the victim's legal representative

The legal representatives submit in their reply that given the applicant has set out that he was recruited for the FPLC as a child soldier when he was under 15 years old, there is a direct link with the charges brought against the accused. Therefore, it is submitted the applicant should be granted the status of victim and admitted as a participant in the proceedings.¹⁴⁸

Legal representation

The applicant has been represented thus far by Mr Joseph Keta Orwinyo and Mr Jean Louis Gilissen.¹⁴⁹

The Chamber's analysis and conclusions

The Chamber considers that the documents and the other material provided prove, *prima facie*, the identity of the applicant and the person acting on his behalf in accordance with the Trial Chamber's Decision on victims' participation. They prove, *prima facie*, the applicant was ■ years old during the material events, along with the kinship between the applicant and the person acting on his behalf.

The Trial Chamber determines that the applicant has given sufficient evidence to establish, *prima facie*, that he is a victim under Rule 85(a) of the Rules, as the Chamber has been provided with enough information to establish that the applicant suffered personal harm as a result of crimes included in the charges brought against the accused, namely his alleged enlistment and/or conscription and/or use to participate actively in the hostilities by the UPC between September 2002 and 13 August 2003.¹⁵⁰

¹⁴⁶ Prosecution's Observations on 105 Redacted Applications for Victim Participation to the Case, 9 June 2008, ICC-01/04-01/06-1386, paragraph 27.

¹⁴⁷ Prosecution's Observations on supplementary information for victim applications a/0002/06, a/0047/06, a/0048/06, a/0051/06, a/0052/06, a/0077/06, a/0221/06, a/0224/06, a/0225/06, a/0227/06, a/0229/06, a/0230/06, a/0236/06, a/0237/06, a/0238/06, a/0239/06, a/0240/06, a/0243/06, a/0055/07, a/0056/07, a/0057/07, a/0058/07, a/0060/07, a/0155/07, a/0156/07, a/0172/07, a/0187/07, a/0007/08, ICC-01/04-01/06-1540-Conf, paragraph 27

¹⁴⁸ Réponse aux "Prosecution's Observations on 105 Applications for Victim Participation to the Case" du 9 juin 2008 et aux « Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008 » du 10 juin 2008, 28 November, ICC-01/04-01/06/1522, paragraph 25, page 13

¹⁴⁹ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 42-43 and Annex 22. See also Second Report on supplementary information, ICC-01/04-01/06-1503-Conf-Exp, 21 November 2008, page 8 and Anx20.

¹⁵⁰ Decision on victims' participation, 18 January 2008, ICC-01/04-01/06-1119, as confirmed, amended and reversed by the Appeals Chamber's 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.

Applicant a/0156/07 [Annex 25]**The means of identification**

The Chamber has been provided with a photo of the applicant and a school certificate with his grades for 2007, an election card for the person acting on his behalf (his mother) and a declaration confirming their relationship.¹⁵¹

The claim to victim status

The applicant states that he was recruited by the UPC in ■■■ 2003 when he was ■■■ years old, and that he participated in combat and killing. He suggests he was demobilised when the French army arrived, although he has not provided a specific date for this. He states that family members were killed during the armed conflict, and as a result he suffers from psychological problems, moral and material harm and his fundamental rights were violated.¹⁵²

Phases of proceedings

The applicant submits he has an interest in participating in all phases of the proceedings.¹⁵³

The observations of the defence

The defence did not refer to the applicant in its original observations.¹⁵⁴ In a further filing the defence submits that the application contains inconsistencies between the names on the identity card and those listed by the applicant's guardian in the application form. As a result, the defence submits that the information provided by this applicant is uncertain and contradictory and it does not meet the requirements of Rule 85. In the circumstances, it is submitted that the application should be rejected.¹⁵⁵

The observations of the prosecution

¹⁵¹ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 48-49 and Annex 25. See also Second Report on supplementary information, ICC-01/04-01/06-1503-Conf-Exp, 21 November 2008, page 9 and Anx22

¹⁵² First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 48-49 and Annex 25.

¹⁵³ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 48-49 and Annex 25.

¹⁵⁴ Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008, 10 June 2008, ICC-01/04-01/06-1388.

¹⁵⁵ Observations de la Défense sur les 15 demandes de participation à la procédure et les 30 demandes de participation complémentaires communiquées le 27 novembre 2008 ; Réponse de la Défense aux observations des représentants légaux relatives aux 105 demandes de participation communiquées le 20 mai 2008 ; et Observations de la Défense relatives aux victimes indirectes, 5 December 2008, ICC-01/04-01/06-1536, paragraph 46.

The prosecution originally submitted that the applicant meets, *prima facie*, the necessary requirements for victim participation.¹⁵⁶ This contention was confirmed in a subsequent filing.¹⁵⁷

The observations of the victim's legal representative

The legal representatives a/0156/07 submit that the applicant should be granted status of victim and admitted as a participant in the proceedings.¹⁵⁸

Legal representation

The applicant was originally represented by the OCPV. Later, the Trial Chamber was informed that the applicant wished to appoint Mr Hervé Diakese as his legal representative. However, the mother of the applicant, who is acting on his behalf, indicated a preference for the OPCV to continue to represent her son.¹⁵⁹ The Trial Chamber has decided that the legal representative, during the application process, should be Mr Hervé Diakese, given that that is the wish of the applicant, who currently is 16 years old.¹⁶⁰

The Chamber's analysis and conclusions

The Chamber considers that the documents and the other material provided prove, *prima facie*, the identity of the applicant and the person acting on his behalf in accordance with the Trial Chamber's Decision on victims' participation. They prove, *prima facie*, the applicant was ■ years old during the material events, along with the kinship between the applicant and the person acting on his behalf.

The Trial Chamber determines that the applicant has provided sufficient evidence to establish, *prima facie*, that he is a victim under Rule 85(a) of the Rules, as the Chamber has been provided with enough information to establish that the applicant suffered personal harm as a result of crimes included in the charges brought against the accused, namely his alleged enlistment and/or conscription and/or use to participate actively in the hostilities by the UPC between September 2002 and 13 August 2003.¹⁶¹

¹⁵⁶ Prosecution's Observations on 105 Redacted Applications for Victim Participation to the Case, 9 June 2008, ICC-01/04-01/06-1386, paragraph 27.

¹⁵⁷ Prosecution's Observations on supplementary information for victim applications a/0002/06, a/0047/06, a/0048/06, a/0051/06, a/0052/06, a/0077/06, a/0221/06, a/0224/06, a/0225/06, a/0227/06, a/0229/06, a/0230/06, a/0236/06, a/0237/06, a/0238/06, a/0239/06, a/0240/06, a/0243/06, a/0055/07, a/0056/07, a/0057/07, a/0058/07, a/0060/07, a/0155/07, a/0156/07, a/0172/07, a/0187/07, a/0007/08, ICC-01/04-01/06-1540-Conf, paragraphs 26 and 27.

¹⁵⁸ Réponse des demandeurs a/0155/07 et a/0157/07 aux observations du Procureur et de la Défense quant à leur demande de participation à la procédure dans l'affaire Le Procureur contre Thomas Lubanga, 28 November 2008, ICC-01/04-01/06-1515, page 3.

¹⁵⁹ Second Report on supplementary information, ICC-01/04-01/06-1503-Conf-Exp, 21 November 2008, page 9 and Anx22.

¹⁶⁰ Transcript of status conference of 25 November 2008, ICC-01/04-01/06-T-99-ENG ET, page 13, line 18, to page 14, line 8.

¹⁶¹ Decision on victims' participation, 18 January 2008, ICC-01/04-01/06-1119, as confirmed, amended and reversed by the Appeals Chamber's 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

Applicant a/0007/08 [Annex 27]**The means of identification**

The Chamber has been provided with the applicant's school identity card (school year 2002-2003) and a school certificate with grades (school year 2006-2007).¹⁶² In an additional filing a photocopy of the school identity card for 2005 was provided.¹⁶³

The claim to victim status

The applicant originally stated that between [REDACTED] 2002 and [REDACTED] 2003, when she was [REDACTED], together with [REDACTED] she was recruited by the UPC, although in a later statement, the applicant set out that she was recruited on [REDACTED] 2003.¹⁶⁴ [REDACTED] raped her continuously and forced her into sexual slavery: she became the "wife" of [REDACTED]. Furthermore, she was compelled to wear a military uniform and to fight against the Lendus. Later, she was liberated, although she gives no specific date for this. She suffers from physical afflictions as a result of losing her virginity and contracting sexually transmitted diseases, as well as hypertension, moral and physical harm. Her fundamental rights were violated. She was in the hospital in [REDACTED] for [REDACTED] months.¹⁶⁵

The phases of the proceedings

The applicant submits she has an interest in participating in all phases of the proceedings.¹⁶⁶

The observations of the defence

The defence did not refer to the applicant in its observations.¹⁶⁷

The observations of the prosecution

The prosecution originally submitted that the applicant meets, *prima facie*, the necessary requirements for victim participation,¹⁶⁸ and this was confirmed in a later filing.¹⁶⁹

¹⁶² First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 52-53 and Annex 27.

¹⁶³ Report on supplementary information received and missing information concerning the applications for participation dealt with in the "First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court" dated 11 April 2008 (ICC-01/04-01/06-1275), 6 June 2008, ICC-01/04-01/06-1380-Conf, Annex 8

¹⁶⁴ Report on supplementary information received and missing information concerning the applications for participation dealt with in the "First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court" dated 11 April 2008 (ICC-01/04-01/06-1275), 6 June 2008, ICC-01/04-01/06-1380-Conf, Annex 8.

¹⁶⁵ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 52-53 and Annex 27.

¹⁶⁶ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 52-53 and Annex 27.

¹⁶⁷ Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008, 10 June 2008, ICC-01/04-01/06-1388.

¹⁶⁸ Prosecution's Observations on 105 Redacted Applications for Victim Participation to the Case, 9 June 2008, ICC-01/04-01/06-1386, paragraph 26.

The observations of the victim's legal representative

The legal representatives submit in their reply that since the defence and the prosecution do not oppose this application, the applicant should be granted the status of victim and admitted as a participant in the proceedings.¹⁷⁰

Legal representation

The applicant has been represented thus far by Mr Franck Mulenda and Mr Luc Walley. n.

The Chamber's analysis and conclusions

The Chamber considers that the documents and the other material provided prove, *prima facie*, the identity of the applicant in accordance with the Trial Chamber's Decision on victims' participation. They prove, *prima facie*, that the applicant was ■ years old during the material events.

The Trial Chamber determines that the applicant has given sufficient evidence to establish, *prima facie*, that she is a victim under Rule 85(a) of the Rules, as the Chamber has been provided with enough information to conclude that the applicant suffered personal harm as a result of crimes included in the charges brought against the accused, namely her alleged enlistment and/or conscription and/or use to participate actively in the hostilities by the UPC between September 2002 and 13 August 2003.¹⁷¹

Applicant a/0244/06 [Annex 31]

The means of identification

The Trial Chamber has been provided with a certificate of former child soldier (EAFGA), a certificate of reunification, a family history card, and a certificate of demobilisation of the applicant, along with the election card for the person acting on his behalf.¹⁷²

The claim to victim status

The applicant indicates that he was recruited by the UPC in ■ 2003 at the age of ■. He states that he was used to ■. Later that year he was taken as a

¹⁶⁹ Prosecution's Observations on supplementary information for victim applications a/0002/06, a/0047/06, a/0048/06, a/0051/06, a/0052/06, a/0077/06, a/0221/06, a/0224/06, a/0225/06, a/0227/06, a/0229/06, a/0230/06, a/0236/06, a/0237/06, a/0238/06, a/0239/06, a/0240/06, a/0243/06, a/0055/07, a/0056/07, a/0057/07, a/0058/07, a/0060/07, a/0155/07, a/0156/07, a/0172/07, a/0187/07, a/0007/08, ICC-01/04-01/06-1540-Conf, paragraph 30.

¹⁷⁰ Observations sur les demandes de participation des victimes, 28 November 2008, ICC-01/04-01/06-1511, paragraph 15.

¹⁷¹ Decision on victims' participation, 18 January 2008, ICC-01/04-01/06-1119, as confirmed, amended and reversed by the Appeals Chamber's 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.

¹⁷² First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 61-62 and Annex 31.

recruit to █████, where he stayed for █████ months. He states he was subjected to slavery. He claims to have suffered psychological harm and serious violations of his fundamental rights. In addition, his education has been interrupted.¹⁷³

The phases of the proceedings

The applicant submits he has an interest in participating in all phases of the proceedings.¹⁷⁴

The observations of the defence

The defence did not refer to the applicant in its observations.¹⁷⁵

The observations of the prosecution

The prosecution submits the applicant was under the age of 15 at the time of his enlistment, conscription or use by the armed forces of the UPC during the period relevant to the charges brought against Thomas Lubanga, and thus the applicant should be permitted to participate in the proceedings.¹⁷⁶

The observations of the victim's legal representative

The legal representative observes in her reply that the prosecution does not oppose the participation of the applicant. The legal representative requests that the applicant is granted status to participate in the proceedings.¹⁷⁷

Legal representation

This applicant has been represented thus far by Ms Carine Bapita Bayangandu.¹⁷⁸

The Chamber's analysis and conclusions

The Trial Chamber notes that the applicant also applied to participate in the DRC situation and that as a result the application was provided to Pre-Trial Chamber I. However, in its decision of 31 January 2008, the Pre-Trial Chamber determined it would not resolve the applicant's status, since this application was pending before the Trial Chamber and the applicant's recognition as a victim in the "case" would automatically result in his recognition in the "situation".¹⁷⁹ In a more recent decision

¹⁷³ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 61-62 and Annex 31.

¹⁷⁴ First Report to Trial Chamber I on Victims' Applications under Regulation 86 5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 61-62 and Annex 31

¹⁷⁵ Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008, 10 June 2008, ICC-01/04-01/06-1388.

¹⁷⁶ Prosecution's Observations on 105 Redacted Applications for Victim Participation to the Case, 9 June 2008, ICC-01/04-01/06-1386, paragraph 27.

¹⁷⁷ Réponse des demandeurs a/0105/06, a/0231/06, a/0232/06, a/0233/06, a/0242/06, a/0243/06, a/0244/06, a/0245/06, a/0246/06, a/0247/06, a/0248/06, a/0249/06, a/0250/06, a/0001/07, a/0002/07, a/0003/07, a/0004/07, a/0005/07, a/0006/07, a/0251/07, a/0253/07 et a/0254/07 aux observations du Procureur et de la Défense quant à leur demande de participation à la procédure dans l'affaire Le Procureur contre Thomas Lubanga, 28 November 2008, ICC-01/04-01/06-1514, paragraphs 7, 25

¹⁷⁸ ICC-01/04-01/06-1275-Conf-Exp-Anx31, 14 April 2008, p. 13.

¹⁷⁹ Corrigendum à la "Décision sur les demandes de participation à la procédure déposées dans le cadre de l'enquête en République démocratique du Congo par a/0004/06 à a/0009/06, a/0016/06 à

of 3 July 2008, the Pre-Trial Chamber concluded that the application was incomplete as the first names appearing on the proof of identity did not match the names appearing on Part A of the application form.¹⁸⁰

The Chamber considers that the documents and the other information provided, viewed globally, prove, *prima facie*, the identity of the applicant and the person acting on his behalf, in accordance with the Trial Chamber's Decision on victims' participation. Although there are different spellings of the applicant's names, bearing in mind the totality of the information the Trial Chamber considers that these differences may credibly be due to typographical errors and generally there is sufficient proof as to the identity of the applicant. The Chamber considers that the documents and the other material prove, *prima facie*, that the applicant was approximately [REDACTED] years old during the material events, along with the kinship between the applicant and the person acting on his behalf.

The Trial Chamber determines that the applicant has given sufficient evidence to establish, *prima facie*, that he is a victim under Rule 85(a) of the Rules, as the Chamber has been provided with enough information to establish that the applicant suffered personal harm as a result of crimes included in the charges brought against the accused, namely his alleged enlistment and/or conscription and/or use to participate actively in the hostilities by the UPC between September 2002 and 13 August 2003.¹⁸¹

Applicant a/0249/06 [Annex 35]

The means of identification

The Chamber has been provided with a child demobilisation certificate and a reunification and reintegration form from [REDACTED] which relate to the applicant.¹⁸²

The claim to victim status

The applicant suggests he was recruited by the UPC in [REDACTED] 2002 at the age of [REDACTED] or [REDACTED], along with friends of his. He states that he was trained in [REDACTED] 2002, and participated, in [REDACTED] 2003, in hostilities between the UPC and Ugandans, as well as in battles in [REDACTED] in [REDACTED] 2003. He left the group on [REDACTED] 2003, when he found shelter with an NGO, and he is considered to be a deserter. He states there were

a/0063/06, a/0071/06 à a/0080/06 et a/0105/06 à a/0110/06, a/0188/06, a/0128/06 à a/0162/06, a/0199/06, a/0203/06, a/0209/06, a/0214/06, a/0220/06 à a/0222/06, a/0224/06, a/0227/06 à a/0230/06, a/0234/06 à a/0236/06, a/0240/06, a/0225/06, a/0226/06, a/0231/06 à a/0233/06, a/0237/06 à a/0239/06 et a/0241/06 à a/0250/06", ICC-01/04-423-Corr, 31 January 2008, paragraph 144.

¹⁸⁰ Decision on the applications for participation file in connection with the investigation in the Democratic Republic of Congo by Applicants a/0047/06 to a/0052/06, a/163/06 to a/0187/06, a/0221/06, a/0226/06, a/0231/06 to a/0233/06, a/0237/06 to a/0239/06, and a/0241 to a/0250/06, 3 July 2008, ICC-01/04-505, paragraph 34.

¹⁸¹ Decision on victims' participation, 18 January 2008, ICC-01/04-01/06-1119, as confirmed, amended and reversed by the Appeals Chamber's 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.

¹⁸² First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp. 14 April, 2008, Annex 2, pages 69-70 and Annex 35.

many more children with him in the armed group. The applicant alleges he suffered psychological harm and serious violations of his human rights.¹⁸³

Legal representation

This applicant has been represented thus far by Ms Carine Bapita Bayangandu.¹⁸⁴

The phases of the proceedings

The applicant submits he has an interest in participating in all phases of the proceedings.¹⁸⁵

The observations of the defence

The defence highlight that the applicant suggests that his recruitment was between April and July 2002, dates that are apparently confirmed by the documentation provided by Save the Children. However, in his application completed on 10 April 2008, the applicant claims he was demobilised in July 2003, without providing any further information to explain this contradiction.¹⁸⁶

The observations of the prosecution

The Prosecution submits that the applicant was under the age of 15 at the time of his enlistment, conscription, or use by the armed forces of the UPC during the period relevant to the charges brought against Thomas Lubanga, and thus he should be permitted to participate.¹⁸⁷

The observations of the victim's legal representative

The legal representative of the applicant observes in her reply that the prosecution does not oppose participation by the applicant. As regards the observations of the defence, the legal representative submits that the apparent contradiction in the application is due to a simple mistake, in that although it was suggested at one stage that the applicant was demobilised in July 2002, this occurred in July 2003, as established in the certificate provided by Save the Children and as set out in the application form. This latter date is supported in the narrative provided by the applicant that she was recruited in 2002 and participated in hostilities in March and May 2003, together with the reference made by the applicant to other victims (a/0004/07 and a/0247/06). The legal representative requests that in the circumstances the applicant is granted status to participate in the proceedings.¹⁸⁸

¹⁸³ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 69-70 and Annex 35.

¹⁸⁴ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 69-70 and Annex 35.

¹⁸⁵ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 69-70 and Annex 35.

¹⁸⁶ Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008, 10 June 2008, ICC-01/04-01/06-1388, p. 7.

¹⁸⁷ Prosecution's Observations on 105 Redacted Applications for Victim Participation to the Case, 9 June 2008, ICC-01/04-01/06-1386, paragraph 27.

¹⁸⁸ Réponse des demandeurs a/0105/06, a/0231/06, a/0232/06, a/0233/06, a/0242/06, a/0243/06, a/0244/06, a/0245/06, a/0246/06, a/0247/06, a/0248/06, a/0249/06, a/0250/06, a/0001/07, a/0002/07, a/0003/07, a/0004/07, a/0005/07, a/0006/07, a/0251/07, a/0253/07 et a/0254/07 aux observations du Procureur et de la Défense quant à leur demande de participation à la procédure dans l'affaire Le

The Chamber's analysis and conclusions

The Trial Chamber notes that the applicant also applied to participate in the DRC situation and that as a result the application was provided to Pre-Trial Chamber I. In its decision of 31 January 2008, the Pre-Trial Chamber determined it would not resolve the applicant's status, stating that since the application was also pending before the Trial Chamber, the applicant's recognition as a victim in the "case" would automatically result in his recognition in the "situation".¹⁸⁹

The Chamber considers that the documents and the other material provided prove, *prima facie*, the identity of the applicant in accordance with the Trial Chamber's Decision on victims' participation. The Chamber considers that they prove, *prima facie*, that the applicant was approximately ■■■ to ■■■ years old during the material events. Although there is an apparent contradiction as to the date of the applicant's date of demobilisation, the Chamber observes that in the victim's application form he sets out his involvement in hostilities between ■■■ 2002, and ■■■ 2003. In the circumstances, the Trial Chamber concludes, *prima facie*, that the applicant was in the UPC from ■■■ 2002 to ■■■ 2003, and the differences are credibly explained.¹⁹⁰

The Trial Chamber thus determines that the applicant has given sufficient evidence to establish, *prima facie*, that he is a victim under Rule 85(a) of the Rules, as the Chamber has been provided with enough information to establish that the applicant suffered personal harm as a result of crimes included in the charges brought against the accused, namely his alleged enlistment and/or conscription and/or use to participate actively in the hostilities by the UPC between September 2002 and 13 August 2003.¹⁹¹

Applicant a/0250/06 [Annex 36]

The means of identification

Procureur contre Thomas Lubanga, 28 November 2008, ICC-01/04-01/06-1514, paragraphs 7, 19-22, 25.

¹⁸⁹ Corrigendum à la "Décision sur les demandes de participation à la procédure déposées dans le cadre de l'enquête en République démocratique du Congo par a/0004/06 à a/0009/06, a/0016/06 à a/0063/06, a/0071/06 à a/0080/06 et a/0105/06 à a/0110/06, a/0188/06, a/0128/06 à a/0162/06, a/0199/06, a/0203/06, a/0209/06, a/0214/06, a/0220/06 à a/0222/06, a/0224/06, a/0227/06 à a/0230/06, a/0234/06 à a/0236/06, a/0240/06, a/0225/06, a/0226/06, a/0231/06 à a/0233/06, a/0237/06 à a/0239/06 et a/0241/06 à a/0250/06", ICC-01/04-423-Corr, 31 January 2008, paragraph 144.

¹⁹⁰ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 69-70 and Annex 35, pages 10-11.

¹⁹¹ Decision on victims' participation, 18 January 2008, ICC-01/04-01/06-1119, as confirmed, amended and reversed by the Appeals Chamber's 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.

The Chamber has been provided with the child demobilisation certificate of the applicant.¹⁹²

The claim to victim status

The applicant suggests he was recruited [REDACTED] 2002, at the age of [REDACTED], by the UPC, when he was forced to get into a pick-up truck with his friends and was taken to a training camp where he received military training, following which he was deployed. He states he was [REDACTED] and later acted as [REDACTED] [REDACTED]. He left the UPC after an event in [REDACTED]. The applicant, as a result of these events, has [REDACTED] problems; he lost many years of education; and he suffered physical harm following his military involvement, which included carrying ammunition.¹⁹³

The phases of the proceedings

The applicant submits he has an interest in participating in all phases of the proceedings.¹⁹⁴

The observations of the defence

The defence did not refer to the applicant in its observations.¹⁹⁵

The observations of the prosecution

The prosecution submits that the applicant was under the age of 15 at the time of enlistment, conscription, or use by the armed forces of the UPC during the period relevant to the charges brought against Thomas Lubanga, and thus he should be permitted to participate.¹⁹⁶

The observations of the victim's legal representative

The legal representative observes in her reply that the prosecution does not oppose participation by the applicant. The legal representative requests that the applicant is granted status to participate in the proceedings.¹⁹⁷

Legal representation

This applicant has been represented thus far by Ms Carine Bapita Bayangandu.¹⁹⁸

¹⁹² First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 71-72 and Annex 36.

¹⁹³ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 71-72 and Annex 36

¹⁹⁴ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 71-72 and Annex 36

¹⁹⁵ Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008, 10 June 2008, ICC-01/04-01/06-1388.

¹⁹⁶ Prosecution's Observations on 105 Redacted Applications for Victim Participation to the Case, 9 June 2008, ICC-01/04-01/06-1386, paragraph 27.

¹⁹⁷ Réponse des demandeurs a/0105/06, a/0231/06, a/0232/06, a/0233/06, a/0242/06, a/0243/06, a/0244/06, a/0245/06, a/0246/06, a/0247/06, a/0248/06, a/0249/06, a/0250/06, a/0001/07, a/0002/07, a/0003/07, a/0004/07, a/0005/07, a/0006/07, a/0251/07, a/0253/07 et a/0254/07 aux observations du Procureur et de la Défense quant à leur demande de participation à la procédure dans l'affaire Le Procureur contre Thomas Lubanga, 28 November 2008, ICC-01/04-01/06-1514, paragraphs 7, 25

The Chamber's analysis and conclusions

The Trial Chamber notes that the applicant has applied to participate in the DRC situation and that as a result the application was provided to Pre-Trial Chamber I. In its decision of 31 January 2008, the Pre-Trial Chamber determined it would not resolve the applicant's status, stating that since the application was also pending before the Trial Chamber, the applicant's recognition as a victim in the "case" would automatically result in his recognition in the "situation".¹⁹⁹

The Chamber considers that the documents and the other material provided prove, *prima facie*, the identity of the applicant in accordance with the Trial Chamber's Decision on victims' participation. The Chamber considers that they prove, *prima facie*, that the applicant was approximately [REDACTED] years old during the material events.

The Trial Chamber determines that the applicant has given sufficient evidence to establish, *prima facie*, that he is a victim under Rule 85(a) of the Rules, as the Chamber has been provided with enough information to conclude that the applicant suffered personal harm as a result of crimes included in the charges brought against the accused, namely his alleged enlistment and/or conscription and/or use to participate actively in the hostilities by the UPC between September 2002 and 13 August 2003.²⁰⁰

Applicant a/0229/06 [Annex 76]

The means of identification

The Chamber has been provided with a school identity card and the birth certificate for the applicant.²⁰¹

The claim to victim status

The applicant suggests that in 2003 he was recruited by the UPC when he was [REDACTED] years old. He was taken to a training camp, where he learnt to manipulate firearms; he was drugged and indoctrinated. He explains how he and his companions were used as carriers, cooks and scouts. In addition, the applicant had to carry very heavy

¹⁹⁸ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 71-72 and Annex 36.

¹⁹⁹ Corrigendum à la "Décision sur les demandes de participation à la procédure déposées dans le cadre de l'enquête en République démocratique du Congo par a/0004/06 à a/0009/06, a/0016/06 à a/0063/06, a/0071/06 à a/0080/06 et a/0105/06 à a/0110/06, a/0188/06, a/0128/06 à a/0162/06, a/0199/06, a/0203/06, a/0209/06, a/0214/06, a/0220/06 à a/0222/06, a/0224/06, a/0227/06 à a/0230/06, a/0234/06 à a/0236/06, a/0240/06, a/0225/06, a/0226/06, a/0231/06 à a/0233/06, a/0237/06 à a/0239/06 et a/0241/06 à a/0250/06", ICC-01/04-423-Corr, 31 January 2008, paragraph 144.

²⁰⁰ Decision on victims' participation, 18 January 2008, ICC-01/04-01/06-1119, as confirmed, amended and reversed by the Appeals Chamber's 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.

²⁰¹ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 152-153 and Annex 76. See also Second Report on supplementary information, ICC-01/04-01/06-1503-Conf-Exp, 21 November 2008, page 8. Anx14

loads and he was taught how to terrorize the population. These events affected his education and made him aggressive. The applicant says he suffered as a result of the drugs and the indoctrination, and he experiences pains in his [REDACTED]. Furthermore, the applicant suffered from the loud noise of the firearms, as well as physical and psychological torture. The applicant endured psychological harm and experienced serious violations of his fundamental rights.²⁰²

The phases of the proceedings

The applicant submits he has an interest in participating in all phases of the proceedings.²⁰³

The observations of the defence

The defence submits that this applicant should not be granted status to participate in the proceedings. The defence contends that the application includes significant contradictions which indicate that the credibility of the applicant and reliability of his application are in doubt. The defence submits that two dates of birth have been suggested, May 1988 and May 1989, and no document has been provided to support either of them.²⁰⁴ The defence highlights that the applicant alleged in his first application that he was abducted in April 2003, whilst in his supplementary application he stated that he was abducted in October or November 2003. As a result, the Defence argues that the information provided by this applicant is uncertain and contradictory and it does not meet the requirements of Rule 85. In the circumstances, it is submitted the application should be rejected.²⁰⁵

The observations of the prosecution

The prosecution originally submitted that the applicant meets, *prima facie*, the necessary requirements for victim participation and that the application forms and further information received by the Registry suggest that this applicant was under the age of 15 at the time of his enlistment, conscription or use by the armed forces of the UPC during the relevant time frame. The Prosecutor submits the Chamber should grant the applicant participation status as a victim.²⁰⁶ In a later filing, the

²⁰² First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 152-153 and Annex 76.

²⁰³ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 152-153 and Annex 76.

²⁰⁴ Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008, 10 June 2008, ICC-01/04-01/06-1388, paragraph 17, pages 12-13.

²⁰⁵ Observations de la Défense sur les 15 demandes de participation à la procédure et les 30 demandes de participation complémentaires communiquées le 27 novembre 2008 ; Réponse de la Défense aux observations des représentants légaux relatives aux 105 demandes de participation communiquées le 20 mai 2008 ; et Observations de la Défense relatives aux victimes indirectes, 5 December 2008, ICC-01/04-01/06-1536, paragraph 26, 46.

²⁰⁶ Prosecution's Observations on 105 Redacted Applications for Victim Participation to the Case, 9 June 2008, ICC-01/04-01/06-1386, paragraph 27, pages 14-15.

prosecution submitted that the information provided supports the suggestion that the applicant was under the age of 15 during the material events.²⁰⁷

The observations of the victim's legal representative

The legal representatives submit in their reply that since the applicant has set out that he was recruited by the FPLC as a child soldier when he was under 15 years old, there is direct link with the charges brought against the accused. Therefore, it is submitted the applicant should be granted the status of victim and admitted as a participant in the proceedings.²⁰⁸

Legal representation

The applicant has been represented thus far by Mr Joseph Keta Orwinyo and Mr Jean Louis Gilissen.²⁰⁹

The Chamber's analysis and conclusions

The Trial Chamber notes that the applicant has also applied to participate in the DRC Situation and his application has been transmitted to Pre-Trial Chamber I, which determined that the applicant's request was incomplete as he had not included, at the time, any identification document.²¹⁰

The Trial Chamber considers that the documents and the other material provided prove, *prima facie*, the identity of the applicant in accordance with the Trial Chamber's Decision on victims' participation. Upon careful review of the documents attached to the application form and the VPRS report, the Trial Chamber concludes that the weight of the evidence, based on applicant's the birth certificate and his school identity card, and his own account, establish, *prima facie*, that the applicant was born in 1988 and was thus ■ at the time of recruitment in 2003.²¹¹ In light of this

²⁰⁷ Prosecution's Observations on supplementary information for victim applications a/0002/06, a/0047/06, a/0048/06, a/0051/06, a/0052/06, a/0077/06, a/0221/06, a/0224/06, a/0225/06, a/0227/06, a/0229/06, a/0230/06, a/0236/06, a/0237/06, a/0238/06, a/0239/06, a/0240/06, a/0243/06, a/0055/07, a/0056/07, a/0057/07, a/0058/07, a/0060/07, a/0155/07, a/0156/07, a/0172/07, a/0187/07, a/0007/08, ICC-01/04-01/06-1540-Conf, paragraph 27.

²⁰⁸ Réponse aux "Prosecution's Observations on 105 Applications for Victim Participation to the Case" du 9 juin 2008 et aux « Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008 » du 10 juin 2008, 28 November, ICC-01/04-01/06/1522, paragraph 25, page 10.

²⁰⁹ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 152-153 and Annex 76. See also Second Report on supplementary information, ICC-01/04-01/06-1503-Conf-Exp, 21 November 2008, page 8 and Anx 14.

²¹⁰ Corrigendum à la "Décision sur les demandes de participation à la procédure déposées dans le cadre de l'enquête en République démocratique du Congo par a/0004/06 à a/0009/06, a/0016/06 à a/0063/06, a/0071/06 à a/0080/06 et a/0105/06 à a/0110/06, a/0188/06, a/0128/06 à a/0162/06, a/0199/06, a/0203/06, a/0209/06, a/0214/06, a/0220/06 à a/0222/06, a/0224/06, a/0227/06 à a/0230/06, a/0234/06 à a/0236/06, a/0240/06, a/0225/06, a/0226/06, a/0231/06 à a/0233/06, a/0237/06 à a/0239/06 et a/0241/06 à a/0250/06", ICC-01/04-423-Corr, 31 January 2008, paragraph 17.

²¹¹ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, Annex 76, pages 19 and 20. See also Second Report on supplementary information, ICC-01/04-01/06-1503-Conf-Exp, 21 November 2008, page 8 and Anx 14.

material, the Chamber does not accept that the apparent error made at one stage as to his date of birth *ipso facto* destroys the credibility of this application, since it is a credible explanation that this was a simple mistake.

The Trial Chamber thus determines that the applicant has given sufficient evidence to establish, *prima facie*, that he is a victim under Rule 85(a) of the Rules, as the Chamber has been provided with enough information to conclude that the applicant suffered personal harm as a result of crimes included in the charges brought against the accused, namely his alleged enlistment and/or conscription and/or use to participate actively in the hostilities by the UPC between September 2002 and 13 August 2003.²¹²

Applicant a/0230/06 [Annex 77]

The means of identification

The Trial Chamber has been provided with the school identity card and the birth certificate for the applicant.²¹³

The claim to victim status

The applicant suggests that in 2002 he was recruited by UPC militia when he was [REDACTED] years old. He explains that after his recruitment, he was taken first to a transit centre and thereafter to a training camp. He states that his military training lasted [REDACTED], during which time he learnt how to use firearms, to apply combat techniques, to steal and loot and to get drugged in order to increase his courage for raping girls. The applicant states that he thereafter participated in attacks. Later, he was taken as [REDACTED], following the [REDACTED], and the applicant was then deployed to carry cases of ammunition. The applicant also states that he learnt how to fight with [REDACTED]. The applicant managed to escape in [REDACTED] 2003: he went through [REDACTED]. The applicant explains that he was maltreated numerous times by his instructors and the older soldiers, and that the militia obliged him to kill. He states he was tortured, rolled on ground, starved and drugged. He still suffers from physical pain, severe psychological troubles and anxiety crises. The applicant suffered moral harm and serious violations of his fundamental rights.²¹⁴

The phases of the proceedings

²¹² Decision on victims' participation, 18 January 2008, ICC-01/04-01/06-1119, as confirmed, amended and reversed by the Appeals Chamber's 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.

²¹³ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 154-155 and Annex 77.

²¹⁴ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 154-155 and Annex 77.

The applicant submits he has an interest in participating in all phases of the proceedings.²¹⁵

The observations of the defence

The defence submits that this applicant should not be granted status to participate in the proceedings. It is argued that the application includes important contradictions that indicate that his credibility and the certainty of the application are in doubt. The defence submit that the dates of birth provided are inconsistent: October 1988 and December 1987.²¹⁶ In particular, the defence submits that a different date of birth has been given to that set out in the initial application, and as a result, the application does not meet the requirements of Rule 85. In the circumstances, it is submitted the application should be rejected.²¹⁷

The observations of the prosecution

The prosecution submit that this applicant meets, *prima facie*, the necessary requirements for victim participation and that the application forms and further information received by the Registry suggest that this applicant was under the age of 15 at the time of his enlistment, conscription or use by the armed forces of the UPC during the relevant time frame. The Prosecutor requests the Chamber to grant participation status as a victim ²¹⁸ The prosecution particularly submits that the information provided supports the suggestion that the applicant was under the age of 15 during the material events.²¹⁹

The observations of the victim's legal representative

The legal representatives submit in their reply that since the applicant has set out that he was recruited for the FPLC as a child soldier when he was under 15 years old, there is a direct link with the charges brought against the accused. Therefore the applicant should be granted the status of victim and admitted as a participant in the proceedings.²²⁰

²¹⁵ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 154-155 and Annex 77.

²¹⁶ Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008, 10 June 2008, ICC-01/04-01/06-1388, paragraph 17 and pages 12-13

²¹⁷ Observations de la Défense sur les 15 demandes de participation à la procédure et les 30 demandes de participation complémentaires communiquées le 27 novembre 2008 ; Réponse de la Défense aux observations des représentants légaux relatives aux 105 demandes de participation communiquées le 20 mai 2008 ; et Observations de la Défense relatives aux victimes indirectes, 5 December 2008, ICC-01/04-01/06-1536, paragraph 26.

²¹⁸ Prosecution's Observations on 105 Redacted Applications for Victim Participation to the Case, 9 June 2008, ICC-01/04-01/06-1386, paragraph 27, pages 14-15.

²¹⁹ Prosecution's Observations on supplementary information for victim applications a/0002/06, a/0047/06, a/0048/06, a/0051/06, a/0052/06, a/0077/06, a/0221/06, a/0224/06, a/0225/06, a/0227/06, a/0229/06, a/0230/06, a/0236/06, a/0237/06, a/0238/06, a/0239/06, a/0240/06, a/0243/06, a/0055/07, a/0056/07, a/0057/07, a/0058/07, a/0060/07, a/0155/07, a/0156/07, a/0172/07, a/0187/07, a/0007/08, ICC-01/04-01/06-1540-Conf, paragraph 27.

²²⁰ Réponse aux "Prosecution's Observations on 105 Applications for Victim Participation to the Case" du 9 juin 2008 et aux « Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008 » du 10 juin 2008, 28 November, ICC-01/04-01/06/1522, paragraph 25, page 10

Legal representation

The applicant has been represented thus far by Mr Joseph Keta Orwinyo and Mr Jean Louis Gilissen.²²¹

The Chamber's analysis and conclusions

The Trial Chamber notes that the applicant has also applied to participate in the DRC Situation and that his application has been sent to Pre-Trial Chamber I, which determined that the applicant's request was incomplete as he had not included, at that stage, any identification document.²²²

The Trial Chamber considers that the documents provided prove, *prima facie*, the identity of the applicant in accordance with the Trial Chamber's Decision on victims' participation. Upon careful review of the documents attached to the application form and the VPRS report, the Trial Chamber concludes that the weight of the evidence, based on applicant's the birth certificate and his school identity card, and his own account establish, *prima facie*, that he was born in 1988 and was thus under the age of 15 at the time of his recruitment.²²³ In light of this material, the Chamber does not accept that the error made at one stage as to his date of birth, *ipso facto*, destroys the credibility of this application, since it is a plausible explanation that this was a simple mistake.

The Trial Chamber thus determines that the applicant has given sufficient evidence to establish, *prima facie*, that he is a victim under Rule 85(a) of the Rules, as the Chamber has been provided with enough information to conclude that the applicant suffered personal harm as a result of crimes included in the charges brought against the accused, namely his alleged enlistment and/or conscription and/or use to participate actively in the hostilities by the UPC between September 2002 and 13 August 2003.²²⁴

Applicant a/0003/07 [Annex 79]

²²¹ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 154-155 and Annex 77. See also Second Report on supplementary information, ICC-01/04-01/06-1503-Conf-Exp, 21 November 2008, page 8 and Anx15. See also Second Report on supplementary information, ICC-01/04-01/06-1503-Conf-Exp, 21 November 2008, page 8 and Anx16.

²²² Corrigendum à la "Décision sur les demandes de participation à la procédure déposées dans le cadre de l'enquête en République démocratique du Congo par a/0004/06 à a/0009/06, a/0016/06 à a/0063/06, a/0071/06 à a/0080/06 et a/0105/06 à a/0110/06, a/0188/06, a/0128/06 à a/0162/06, a/0199/06, a/0203/06, a/0209/06, a/0214/06, a/0220/06 à a/0222/06, a/0224/06, a/0227/06 à a/0230/06, a/0234/06 à a/0236/06, a/0240/06, a/0225/06, a/0226/06, a/0231/06 à a/0233/06, a/0237/06 à a/0239/06 et a/0241/06 à a/0250/06", ICC-01/04-423-Corr, 31 January 2008, paragraph 17.

²²³ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, Annex 77, Supplementary information, pages 5-6.

²²⁴ Decision on victims' participation, 18 January 2008, ICC-01/04-01/06-1119, as confirmed, amended and reversed by the Appeals Chamber's 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.

The means of identification

The Trial Chamber has been provided with a demobilisation certificate, a certificate of a former child soldier (EAFGA), a family search certificate and a family reunification certificate for the applicant, as well as the election card and the identification card for the person acting on his behalf.²²⁵

The claim to victim status

The applicant describes how he was recruited by the UPC in 2002, when coming back from school at the age of ■ or ■ years. He underwent military training and served as a soldier until 2005. The applicant explains how he spent ■ years with the UPC and as a consequence stopped studying. The applicant has suffered psychological harm and experienced serious violations of his fundamental rights.²²⁶

The phases of the proceedings

The applicant submits he has an interest in participating in all phases of the proceedings except the appeals phase.²²⁷

The observations of the defence

The defence did not make any observations as regards this applicant.²²⁸

The observations of the prosecution

The prosecution submits that this applicant meets, *prima facie*, the necessary requirements for victim participation and that the application forms and further information received by the Registry suggest that this applicant was under the age of 15 at the time of his enlistment, conscription or use by the armed forces of the UPC during the relevant time frame. The Prosecutor requests the Chamber to grant participation status as a victim²²⁹

The observations of the victim's legal representative

The legal representative observes in her reply that the prosecution does not oppose the participation of the applicant. The legal representative requests that the applicant is granted status to participate in the proceedings.²³⁰

²²⁵ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 158-159 and Annex 79.

²²⁶ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 158-159 and Annex 79.

²²⁷ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 158-159 and Annex 79.

²²⁸ Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008, 10 June 2008, ICC-01/04-01/06-1388.

²²⁹ Prosecution's Observations on 105 Redacted Applications for Victim Participation to the Case, 9 June 2008, ICC-01/04-01/06-1386, paragraph 27, pages 14-15.

²³⁰ Réponse des demandeurs a/0105/06, a/0231/06, a/0232/06, a/0233/06, a/0242/06, a/0243/06, a/0244/06, a/0245/06, a/0246/06, a/0247/06, a/0248/06, a/0249/06, a/0250/06, a/0001/07, a/0002/07, a/0003/07, a/0004/07, a/0005/07, a/0006/07, a/0251/07, a/0253/07 et a/0254/07 aux observations du

Legal representation

The applicant has been represented thus far by Mr Carine Bapita Buyangandu.²³¹

The Chamber's analysis and conclusions

This application has not been considered by Pre-Trial Chamber I.

The Trial Chamber considers that the documents and the other material provided prove, *prima facie*, the identity of the applicant and the person acting on his behalf in accordance with the Trial Chamber's Decision on victims' participation. They prove, *prima facie*, the relationship between the applicant and the person acting on his behalf (his father) and that the applicant was under the age of 15 during the material events.

The Trial Chamber thus determines that the applicant has given sufficient evidence to establish, *prima facie*, that he is a victim under Rule 85(a) of the Rules, as the Chamber has been provided with enough information to conclude that the applicant suffered personal harm as a result of crimes included in the charges brought against the accused, namely his alleged enlistment and/or conscription and/or use to participate actively in the hostilities by the UPC between September 2002 and 13 August 2003.²³²

Applicant a/0224/06 [Annex 93]**The means of identification**

The applicant did not submit any identification document in his original application. However, in a subsequent filing, the Trial Chamber was provided with the school identity card and birth certificate of the applicant.²³³

The claim to victim status

The applicant describes how, on [REDACTED] 2003, he was recruited by UPC militia when he was around [REDACTED] years old; however, according to the applicant's birth

Procureur et de la Défense quant à leur demande de participation à la procédure dans l'affaire Le Procureur contre Thomas Lubanga, 28 November 2008, ICC-01/04-01/06-1514, paragraphs 7, 25.

²³¹ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 158-159 and Annex 79.

²³² Decision on victims' participation, 18 January 2008, ICC-01/04-01/06-1119, as confirmed, amended and reversed by the Appeals Chamber's 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.

²³³ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 187-188 and Annex 93; Report on supplementary information received and missing information concerning the applications for participation dealt with in the "First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court" dated 11 April 2008 (ICC-01/04-01/06-1275), 6 June 2008, ICC-01/04-01/06-1380-Conf, Annex 3.

certificate this occurred when he was [REDACTED].²³⁴ The applicant states he was tortured and drugged, and trained to loot. As a result, he fell behind in his schooling and he has become demoralised. The applicant has suffered psychological and physical harm.²³⁵

In an additional filing submitted subsequently by the VPRS, the applicant provided further information on his recruitment and training in various camps. The applicant participated in fights against the FNI in [REDACTED] 2003 and in one incident he was spared by [REDACTED] and was able to hide. The applicant estimates that he killed approximately [REDACTED] people, and he explains the harm he has suffered is a direct consequence of his recruitment into the militia forces by the UPC. He is demoralised and suffers psychologically.²³⁶

The phases of the proceedings

The applicant submits he is interested in participating in the trial and any appellate proceedings.²³⁷

The observations of the defence

The defence argues that since the applicant states he was born in early 1987, he was 15 years old in September 2002.²³⁸ However, the defence addressed the additional information provided by the applicant, in which he set out a different date of birth (June 1989) from that indicated in his initial application (February 1987); moreover, it is pointed out that the applicant alleged in his first application that he was abducted in January 2003, whilst in a later application he stated that he was abducted in February 2003. As a result, the defence submits that the information provided is uncertain and contradictory and it does not meet the requirements of Rule 85. In the circumstances, it is submitted that the application should be rejected.²³⁹

The observations of the prosecution

The prosecution originally argued that the applicant does not meet the criteria to participate in the case because the applicant was either over the age of 15 at the time

²³⁴ Report on supplementary information received and missing information concerning the applications for participation dealt with in the "First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court" dated 11 April 2008 (ICC-01/04-01/06-1275), 6 June 2008, ICC-01/04-01/06-1380-Conf, Annex 3, page 5.

²³⁵ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 187-188 and Annex 93.

²³⁶ Report on supplementary information received and missing information concerning the applications for participation dealt with in the "First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court" dated 11 April 2008 (ICC-01/04-01/06-1275), 6 June 2008, ICC-01/04-01/06-1380-Conf, Annex 3.

²³⁷ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 93.

²³⁸ Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008, 10 June 2008, ICC-01/04-01/06-1388, 13.

²³⁹ Observations de la Défense sur les 15 demandes de participation à la procédure et les 30 demandes de participation complémentaires communiquées le 27 novembre 2008 ; Réponse de la Défense aux observations des représentants légaux relatives aux 105 demandes de participation communiquées le 20 mai 2008 ; et Observations de la Défense relatives aux victimes indirectes, 5 December 2008, ICC-01/04-01/06-1536, paragraph 26, 46.

of his recruitment or he had turned 15 by September 2002.²⁴⁰ However, in a further filing the prosecution submits that the information provided supports the suggestion that the applicant was under the age of 15 during the material events.²⁴¹

The observations of the victim's legal representative

The legal representatives submit in their reply that the applicant has set out that he was recruited for the FPLC as a child soldier when he was under 15 years old and thus there is direct link with the charges brought against the accused, and therefore the applicant should be granted the status of victim and admitted as a participant in the proceedings.²⁴²

Legal representation

The applicant has been represented thus far by Mr Joseph Keta and Mr Jean Louis Gilissen.²⁴³

The Chamber's analysis and conclusions

The Trial Chamber notes that the applicant has also applied to participate in the DRC situation and his application form was transmitted to Pre-Trial Chamber I. In its decision of 31 January 2008, the Pre-Trial Chamber concluded that since the applicant had not provided the Chamber with any identification document, his application was incomplete.²⁴⁴

The Trial Chamber notes that applicants a/0224/06, a/0225/06, a/0226/06 and a/0227/06 were allegedly recruited at same time.²⁴⁵

The Chamber considers that the documents and the other material provided prove, *prima facie*, the identity of the applicant in accordance with the Trial Chamber's Decision on victims' participation. The Trial Chamber acknowledges that the year of

²⁴⁰ Prosecution's Observations on 105 Redacted Applications for Victim Participation to the Case, 9 June 2008, ICC-01/04-01/06-1386, paragraph 27, paragraphs 36 and 41.

²⁴¹ Prosecution's Observations on supplementary information for victim applications a/0002/06, a/0047/06, a/0048/06, a/0051/06, a/0052/06, a/0077/06, a/0221/06, a/0224/06, a/0225/06, a/0227/06, a/0229/06, a/0230/06, a/0236/06, a/0237/06, a/0238/06, a/0239/06, a/0240/06, a/0243/06, a/0055/07, a/0056/07, a/0057/07, a/0058/07, a/0060/07, a/0155/07, a/0156/07, a/0172/07, a/0187/07, a/0007/08, ICC-01/04-01/06-1540-Conf, paragraphs 28-29.

²⁴² Réponse aux "Prosecution's Observations on 105 Applications for Victim Participation to the Case" du 9 juin 2008 et aux « Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008 » du 10 juin 2008, 28 November, ICC-01/04-01/06/1522, paragraph 25, page 9.

²⁴³ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, page 188 and Annex 93. See also Second Report on supplementary information, ICC-01/04-01/06-1503-Conf-Exp, 21 November 2008, page 8 and Anx 13.

²⁴⁴ Corrigendum à la "Décision sur les demandes de participation à la procédure déposées dans le cadre de l'enquête en République démocratique du Congo par a/0004/06 à a/0009/06, a/0016/06 à a/0063/06, a/0071/06 à a/0080/06 et a/0105/06 à a/0110/06, a/0188/06, a/0128/06 à a/0162/06, a/0199/06, a/0203/06, a/0209/06, a/0214/06, a/0220/06 à a/0222/06, a/0224/06, a/0227/06 à a/0230/06, a/0234/06 à a/0236/06, a/0240/06, a/0225/06, a/0226/06, a/0231/06 à a/0233/06, a/0237/06 à a/0239/06 et a/0241/06 à a/0250/06", ICC-01/04-423-Corr, 31 January 2008, paragraph 17.

²⁴⁵ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annexes 11, 75, 93 and 94.

birth of the applicant as set out in the application form (██████████ 1987) and the applicant's initial declaration seem to indicate that he was 15 years old during the material events. However, the two identity documents subsequently submitted to the Chamber (particularly his birth certificate) afford significant support for the suggestion that the applicant was born in ██████████ 1989.²⁴⁶ Therefore, notwithstanding the contradictions, the two identity documents prove, *prima facie*, that the applicant was under the age of 15 during the material events.

It follows, in light of the documentary material, that the Chamber does not accept that the contradiction as to his date of birth, *ipso facto*, destroys the credibility of this application, since it is a sustainable explanation that there was a simple mistake in the application form.

The Trial Chamber therefore determines that the applicant has given sufficient evidence to establish, *prima facie*, that he is a victim under Rule 85(a) of the Rules, as the Chamber has been provided with enough information to conclude that the applicant suffered personal harm as a result of crimes included in the charges brought against the accused, namely his alleged enlistment and/or conscription and/or use to participate actively in the hostilities by the UPC between September 2002 and 13 August 2003.²⁴⁷

Application of victim a/0123/08 [Annex 5, filing 1501]

The means of identification

The Chamber has been provided with a family reunification certificate for the applicant, as well as the election card and the certificate that indicates the position for the person acting on his behalf, namely the ██████████.²⁴⁸ The Chamber notes that the applicant was ██████████ years old at the time the application was made but he has nevertheless consented to the ██████████ acting on his behalf.

The claim to victim status

The applicant claims that he was recruited by the UPC militia of Thomas Lubanga in ██████████ 2002, when he was ██████████ years old. He was trained to use weapons, and he suffered from psychological and physical torture during this time. He participated in hostilities against the FNI. He states he was reunited with his family in 2002 and that as a consequence of his recruitment, his schooling was interrupted and he suffers

²⁴⁶ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 187-188 and Annex 93; Report on supplementary information received and missing information concerning the applications for participation dealt with in the "First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court" dated 11 April 2008 (ICC-01/04-01/06-1275), 6 June 2008, ICC-01/04-01/06-1380-Conf, Annex 3.

²⁴⁷ Decision on victims' participation, 18 January 2008, ICC-01/04-01/06-1119, as confirmed, amended and reversed by the Appeals Chamber's 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.

²⁴⁸ Second Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1501-Conf-Exp, 21 November 2008, Annex 2, pages 5-6 and Annex 5.

from “indaptation pédagogique”. He also experiences memory, psychological and physical problems.²⁴⁹

The phases of the proceedings

The applicant submits he has an interest in participating in all phases of the proceedings.²⁵⁰

The observations of the defence

The defence did not refer to the applicant in its observations.²⁵¹

The observations of the prosecution

The prosecution submits that the applicant meets the requirements under Rule 85(a) of the Rules for participation as a victim.²⁵²

The observations of the victim’s legal representative

The legal representative did not file observations as regards this applicant.

Legal representation

The applicant has been represented thus far by Ms Carine Bapita Buyangandu.²⁵³

The Chamber’s analysis and conclusions

The Chamber considers that the documents and other information provided assist in demonstrating the identity of the applicant in accordance with the Trial Chamber’s Decision on victims’ participation. The family reunification certificate proves, *prima facie*, that the applicant was under 18 years of age at the time he was reunited with his family in ██████████ 2005.²⁵⁴ Furthermore, the applicant has stated precisely and unequivocally in his application that his date of birth is ██████████ 1989. In all the circumstances, the Chamber has been provided with enough information to

²⁴⁹ Second Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1501-Conf-Exp, 21 November 2008, Annex 2, pages 5-6 and Annex 5.

²⁵⁰ Second Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1501-Conf-Exp, 21 November 2008, Annex 2, pages 5-6 and Annex 5.

²⁵¹ Observations de la Défense sur les 15 demandes de participation à la procédure et les 30 demandes de participation complémentaires communiquées le 27 novembre 2008 ; Réponse de la Défense aux observations des représentants légaux relatives aux 105 demandes de participation communiquées le 20 mai 2008 ; et Observations de la Défense relatives aux victimes indirectes, 5 December 2008, ICC-01/04-01/06-1536.

²⁵² Prosecution's Observations on 12 Redacted Applications for Victim Participation to the Case, concerning applicants a/0063/07, a/0122/08, a/0123/08, a/0124/08, a/0125/08, a/0126/08, a/0130/08, a/0149/08, a/0404/08, a/0405/08, a/0406/08 and a/0409/08, 8 December 2008, ICC-01/04-01/06-1541, paragraph 16.

²⁵³ Second Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1501-Conf-Exp, 21 November 2008, Annex 2, pages 5-6 and Annex 5

²⁵⁴ Second Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1501-Conf-Exp, 21 November 2008, Annex 2, pages 5-6 and Annex 5.

determine, *prima facie*, that the applicant was under the age of 15 at the time of the relevant events.

In all circumstances, the Trial Chamber determines that the applicant has given sufficient evidence to establish, *prima facie*, that he is a victim under Rules 85(a) of the Rules, as the Chamber has been provided with information that leads it to conclude that the applicant suffered personal harm as a result of crimes confirmed against the accused, namely his alleged conscription and/or enlistment and/or use to participate actively in the hostilities, between September 2002 and 13 August 2003.²⁵⁵

Application of victim a/0409/08 [Annex 17, filing 1501]

The means of identification

The Chamber has been provided with the school identity card for the applicant.²⁵⁶ The Chamber notes that the applicant was an adult at the time the application form was completed.

The claim to victim status

The applicant states that in [REDACTED] 2003 he was recruited by force by the UPC of Thomas Lubanga, when he was [REDACTED] years old, after the attack on [REDACTED], when he lost his parents. He was then trained and he later worked as [REDACTED]. In 2004 he was demobilised, and he claims that as a result of his recruitment he has suffered material loss and including the death of his parents. He states that his recruitment interrupted his schooling.²⁵⁷

The phases of the proceedings

The applicant submits he has an interest in participating in all phases of the proceedings.²⁵⁸

The observations of the defence

The defence submits that the applicant has not proved that he has suffered any personal harm that has a direct link with the charges brought against the accused.

²⁵⁵ Decision on victims' participation, 18 January 2008, ICC-01/04-01/06-1119, as confirmed, amended and reversed by the Appeals Chamber's 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.

²⁵⁶ Second Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1501-Conf-Exp, 21 November 2008, Annex 2, pages 29-30 and Annex 17.

²⁵⁷ Second Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1501-Conf-Exp, 21 November 2008, Annex 2, pages 29-30 and Annex 17.

²⁵⁸ Second Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1501-Conf-Exp, 21 November 2008, Annex 2, pages 29-30 and Annex 17.

Thus, the Defence submits that the applicant does not meet the criteria of Rule 85 of the Rules, and the application should be rejected.²⁵⁹

The observations of the prosecution

The prosecution submits that the applicant meets the requirements of Rule 85(a) of the Rules for participation as a victim.²⁶⁰

The observations of the victim's legal representative

The legal representative reply did not file observations as regards this applicant.

Legal representation

The applicant has been represented thus far by Mr Hervé Diakese.²⁶¹

The Chamber's analysis and conclusions

The Chamber considers that the documents and other information provided assist in demonstrating the identity of the applicant in accordance with the Trial Chamber's Decision on victims' participation. They indicate that the applicant was ■ years old at the time of the relevant events.

In all the circumstances, the Trial Chamber determines that the applicant has given sufficient evidence to establish, *prima facie*, that he is a victim under Rules 85(a) of the Rules, as the Chamber has been provided with information that leads it to conclude that the applicant suffered personal harm as a result of crimes confirmed against the accused, namely his alleged conscription and/or enlistment and/or use to participate actively in the hostilities, between September 2002 and 13 August 2003.²⁶²

Group 1(c): Applicants who do not share kinship with the person acting on their behalf (but where the applicant consents)

Applicant a/0047/06 [Annex 4]

The means of identification

²⁵⁹ Observations de la Défense sur les 15 demandes de participation à la procédure et les 30 demandes de participation complémentaires communiquées le 27 novembre 2008 ; Réponse de la Défense aux observations des représentants légaux relatives aux 105 demandes de participation communiquées le 20 mai 2008 ; et Observations de la Défense relatives aux victimes indirectes, 5 December 2008, ICC-01/04-01/06-1536, paragraph 41, 42.

²⁶⁰ Prosecution's Observations on 12 Redacted Applications for Victim Participation to the Case, concerning applicants a/0063/07, a/0122/08, a/0123/08, a/0124/08, a/0125/08, a/0126/08, a/0130/08, a/0149/08, a/0404/08, a/0405/08, a/0406/08 and a/0409/08, 8 December 2008, ICC-01/04-01/06-1541, paragraph 16.

²⁶¹ Second Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1501-Conf-Exp, 21 November 2008, Annex 2, pages 29-30 and Annex 17.

²⁶² Decision on victims' participation, 18 January 2008, ICC-01/04-01/06-1119, as confirmed, amended and reversed by the Appeals Chamber's 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

The applicant has provided the Chamber with his birth certificate and a demobilisation certificate, along with the identity card and election card for the person acting on his behalf.²⁶³ The applicant has consented to that person acting,²⁶⁴ for whom a signed declaration and an identity card has accompanied a supplementary filing.²⁶⁵

The claim to victim status

The applicant states that in early 2003 he was recruited by the UPC when he was [REDACTED] years old, for a period of [REDACTED] months. The applicant was trained over [REDACTED] weeks, and later worked as [REDACTED]. In 2003 he participated actively in hostilities; he killed and mutilated people, burned schools, houses and churches, and looted and destroyed everything he saw. The applicant also referred to girls being raped before they were killed. The applicant states that he suffered from inhumane and degrading treatment, lack of food and torture. He was shot and still suffers from the injury. He experiences nightmares and psychological problems, and he suggests that his studies were interrupted due to his recruitment, and that as a result he has suffered from moral and physical harm and violations of his fundamental rights.²⁶⁶

The phases of the proceedings

The applicant submits he has an interest in participating in all phases of the proceedings.²⁶⁷

The observations of the defence

The defence did not refer to this applicant in its observations.²⁶⁸

The observations of the prosecution

The prosecution submits the applicant should be granted status to participate in the trial as he fulfils all the necessary criteria. However, the prosecution observe that his participation as a victim should not detract from his role as a prosecution witness.²⁶⁹ The prosecution observes that in the supplementary information provided to the

²⁶³ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 6-7 and Annex 4 See also Second Report on supplementary information, ICC-01/04-01/06-1503-Conf-Exp. 21 November 2008, page 7 and Anx9.

²⁶⁴ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 4, page 16.

²⁶⁵ Second Report on supplementary information, 21 November 2008, ICC-01/04-01/06-1503-Conf-Exp, Annex 9.

²⁶⁶ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 6-7 and Annex 4.

²⁶⁷ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 6-7 and Annex 4.

²⁶⁸ Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008, 10 June 2008, ICC-01/04-01/06-1388.

²⁶⁹ Prosecution's Observations on 105 Redacted Applications for Victim Participation to the Case. 9 June 2008, ICC-01/04-01/06-1386, paragraph 24.

Chamber, the OPCV, in its role as legal representative of the applicant, has submitted signed consent forms by the legal guardian and thus the application is complete.²⁷⁰

The observations of the victim's legal representative

The legal representatives submit in their reply that he meets the criteria set out in Rule 85 of the Rules, since he has suffered personal harm as a result of the events described in his application, and there is a direct link with the charges brought against the accused. It is submitted that his participation in the proceedings is not prejudicial or inconsistent with the rights of the accused and a fair and impartial trial (see article 68 (3)); in the circumstances, it is submitted he should be granted the status of victim in the present case and the right to participate in the proceedings.²⁷¹

Legal representation

The applicant has no legal representative and has been represented by the OPCV during the application process.

The Chamber's analysis and conclusions

The Trial Chamber notes that Pre-Trial Chamber I determined that the applicant was a victim of the case but decided that his participation was not appropriate at the time of the confirmation hearing.²⁷²

The applicant has also applied to participate in the DRC situation and the application was provided to Pre-Trial Chamber I. In its decision of 31 January 2008, the Pre-Trial Chamber determined it would not resolve the applicant's status, stating that since the application was also pending before the Trial Chamber, the applicant's recognition as a victim in the "case" would automatically result in his recognition in the "situation".²⁷³ In a more recent decision of 3 July 2008, the Pre-Trial Chamber decided that the application was incomplete since the applicant was a minor at the time the application was made and did not include the consent of the applicant's next-of-kin or legal guardian.²⁷⁴

²⁷⁰ Prosecution's Observations on supplementary information for victim applications a/0002/06, a/0047/06, a/0048/06, a/0051/06, a/0052/06, a/0077/06, a/0221/06, a/0224/06, a/0225/06, a/0227/06, a/0229/06, a/0230/06, a/0236/06, a/0237/06, a/0238/06, a/0239/06, a/0240/06, a/0243/06, a/0055/07, a/0056/07, a/0057/07, a/0058/07, a/0060/07, a/0155/07, a/0156/07, a/0172/07, a/0187/07, a/0007/08, ICC-01/04-01/06-1540-Conf, paragraphs 16 and 18.

²⁷¹ Observations du BPCV en tant que représentant légal des demandeurs a/0004/06, a/0047/06 à a/0052/06, a/0077/06, a/0078/06 et a/0240/06, sur leurs demandes de participation dans le cadre de l'affaire *Le Procureur c. Thomas Lubanga Dyilo*, 28 November 2008, ICC-01/04-01/06-1510, paragraphs 25-27.

²⁷² Décision sur les demandes de participation à la procédure a/0004/06 à a/0009/06, a/0016/06 à a/0063/06, a/0071/06 à a/0080/06 et a/0105/06 dans le cadre de l'affaire le Procureur c. Thomas Lubanga Dyilo, 20 October 2006, ICC-01/04-01/06-601, pages 10-11.

²⁷³ Corrigendum à la "Décision sur les demandes de participation à la procédure déposées dans le cadre de l'enquête en République démocratique du Congo par a/0004/06 à a/0009/06, a/0016/06 à a/0063/06, a/0071/06 à a/0080/06 et a/0105/06 à a/0110/06, a/0188/06, a/0128/06 à a/0162/06, a/0199/06, a/0203/06, a/0209/06, a/0214/06, a/0220/06 à a/0222/06, a/0224/06, a/0227/06 à a/0230/06, a/0234/06 à a/0236/06, a/0240/06, a/0225/06, a/0226/06, a/0231/06 à a/0233/06, a/0237/06 à a/0239/06 et a/0241/06 à a/0250/06", ICC-01/04-423-Corr, 31 January 2008, paragraph 144.

²⁷⁴ Decision on the applications for participation file din connection with the investigation in the Democratic Republic of Congo by Applicants a/0047/06 to a/0052/06, a/163/06 to a/0187/06,

The Chamber considers that the documents and the other material provided prove, *prima facie*, the identity of the applicant and the person acting on his behalf in accordance with the Trial Chamber's Decision on victims' participation. They also prove, *prima facie*, that the applicant was ■ years old at the time of the alleged recruitment.

The Chamber notes that the applicant has consented to someone else acting on his behalf. The question that arises is whether the applicant needs to establish that the person acting on his behalf is either a relative or legal guardian, in order to participate in the proceedings. Alternatively, is the Chamber entitled to act on the application that has been submitted "by a person" on the applicant's behalf, which indicates clearly that the victim wishes to participate in these proceedings.

The Rome Statute framework is clear on this issue. There are no provisions establishing categories of people who alone are allowed to act for victims, whether the latter are adults or children. Rule 89(3) of the Rules simply states that "(a)n 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". It follows that the person acting on behalf of a victim does not have to be a relative or a legal guardian because, within the Rules, the "person acting" is undefined and unrestricted.

In support of this approach, the inevitable experience of most, if not all, children who were recruited in the circumstances alleged in this trial, is that they will have been separated from their parents and other adult relatives at a relatively young age. Many of them have been living, to put it at its lowest, disjointed and very unsettled lives for a number of years. Some children have still not been reunited with their families and they do not have legal guardians. To the extent that they have managed to find representation at all, they are often assisted by people such as schoolteachers and other similar community figures.

In this regard, the Chamber notes the General Comment No. 6(2005) of the Committee on the Rights of the Child in which it was recognised that separated or unaccompanied children (defined as children who have been separated from both parents, other relatives or from any previous legal or customary primary caregiver), in some situations "have no access to proper and appropriate identification, registration, age assessment, documentation family tracing, guardianship systems or legal advice".²⁷⁵ The Committee further noted that "in large-scale crises, where it will

a/0221/06, a/0226/06, a/0231/06 to a/0233/06, a/0237/06 to a/0239/06, and a/0241 to a/0250/06, 3 July 2008, ICC-01/04-505, paragraph 31.

²⁷⁵ Committee on the Rights of the Child, General Comment No. 6 (2005), 1 September 2005, CRC/GC/2005/6, paragraphs 3, 7 and 8. Although this General Comment applies to children that have crossed and international border, the Committee has acknowledged that there are many similar challenges related to internally displaced unaccompanied and separated children and encourages States Parties to adopt the relevant aspects of the General Comment in relation to internally displaced unaccompanied and separated children (paragraph 5).

be difficult to establish guardianship arrangements on an individual basis, the rights and best interests of separated children should be safeguarded and promoted by States and organizations working on behalf of these children".²⁷⁶

The Chamber has paid careful attention to the experience of the Registry in the field in the DRC, and particularly its opinion that "legal guardianship is very rare in Eastern Congo and many children who do not live with their parents, for instance because they have not yet been reunited with their families after being demobilised from an armed group or because they experience difficulties in reintegration, are looked after by persons such as school principals, transition centres for demobilised children, who do not have a formal status in relation to the child".

The real possibility exists, therefore, that a number of applicants who seek to participate in these proceedings will be living in circumstances where they cannot be represented by their parents, other family relatives or a legal guardian. In relation to these victims, who are over 18 years of age or are close thereto, they have individually applied through a person acting on their behalf (who is not their next-of-kin or their legal guardian) to participate in this trial as a victim. In each instance, the application accords with the express requirements of Rule 89 (3) of the Rules.

All of the matters set out above provide strong support for the approach that the Rules have not restricted the types of people who are able to act on behalf of all victims and including child victims.

Moreover, in this case, the Chamber notes that the applicant was [REDACTED] years old at the time the application was completed. He is a [REDACTED] and the person acting on his behalf is a [REDACTED].

The Trial Chamber determines that the applicant has given sufficient evidence to establish, *prima facie*, that he is a victim under Rule 85(a) of the Rules, as the Chamber has been provided with enough information to establish that the applicant suffered personal harm as a result of the commission of crimes included in the charges brought against the accused, namely his alleged enlistment and/or conscription and/or use to participate actively in the hostilities by the UPC between September 2002 and 13 August 2003.²⁷⁷

The Chamber has taken account of the fact that the applicant was a child when the application was filed but is now an adult. Although this is not an impediment to granting the application, the Chamber nonetheless instructs the VPRS to enquire of

²⁷⁶ Committee on the Rights of the Child, General Comment No. 6 (2005), 1 September 2005, CRC/GC/2005/6, paragraph 38.

²⁷⁷ Decision on victims' participation, 18 January 2008, ICC-01/04-01/06-1119, as confirmed, amended and reversed by the Appeals Chamber's 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.

the applicant whether he wishes to participate on his own behalf or through the person acting on his behalf.

Applicant a/0048/06 [Annex 5]

The means of identification

The applicant has provided the Chamber with his birth certificate and demobilisation certificate, and the identity and election cards for the person acting on his behalf.²⁷⁸ The applicant has consented to this person acting for him²⁷⁹ and in a supplementary filing, the Chamber has been provided with a signed declaration and an identity card for this person.²⁸⁰

The claim to victim status

The applicant describes that in 2003 he was recruited by the UPC at age [REDACTED] during a period of [REDACTED] months. He was trained and participated in combat, and he also acted as [REDACTED]. The applicant states that he suffered torture, inhumane treatment, lack of food, and punishment. During combat he was used to kill, mutilate, burn and loot villages, and rape girls. He states that he was shot during fighting. The applicant maintains he suffered physical and psychological harm, and suffers from [REDACTED] as a result of [REDACTED] he was forced to commit.²⁸¹

The phases of the proceedings

The applicant submits he has an interest in participating in all phases of the proceedings.²⁸²

The observations of the defence

In its observations the defence did not refer to the applicant.²⁸³

The observations of the prosecution

The prosecution submits the applicant should be granted the status to participate in the trial as he fulfils all the necessary criteria. However, the prosecution observes that his participation as a victim should not detract from his role as a prosecution

²⁷⁸ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, 8-9 and Annex 5. See also Second Report on supplementary information, ICC-01/04-01/06-1503-Conf-Exp, 21 November 2008, page 7, Anx10.

²⁷⁹ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 5, page 16.

²⁸⁰ Second Report on supplementary information, 21 November 2008, ICC-01/04-01/06-1503-Conf-Exp, Annex 10.

²⁸¹ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, 8-9 and Annex 5.

²⁸² First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 8-9 and Annex 5

²⁸³ Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008, 10 June 2008, ICC-01/04-01/06-1388.

witness.²⁸⁴ The prosecution submits that since the OPCV, in its role as legal representative of the applicant, has submitted signed consent forms by the legal guardian, the applications are complete.²⁸⁵

The observations of the victim's legal representative

The legal representatives submit in their reply that he meets the criteria set out in Rule 85 of the Rules, since he has suffered personal harm as a result of the events described in his application, and thus there is a direct link with the charges brought against the accused. It is submitted that his participation in the proceedings is not prejudicial or inconsistent with the rights of the accused and a fair and impartial trial (see article 68(3) of the Statute), and therefore he should be granted the status of a victim in the present case and the right to participate in the proceedings.²⁸⁶

Legal representation

The applicant has no legal representative and has been represented by the OPCV during the application process.

The Chamber's analysis and conclusions

The Trial Chamber notes that Pre-Trial Chamber I determined that the applicant was a victim of the case but deemed that his participation was not appropriate at the time of the confirmation hearing.²⁸⁷

The applicant has also applied to participate in the DRC situation and the application was provided to Pre-Trial Chamber I. In its decision of 31 January 2008, the Pre-Trial Chamber determined it would not resolve the applicant's status, stating that since the application was also pending before the Trial Chamber, the applicant's recognition as a victim in the "case" would automatically result in his recognition in the "situation".²⁸⁸ In a more recent decision of 3 July 2008, the Pre-Trial Chamber considered that his application was incomplete since he was a minor at the time the

²⁸⁴ Prosecution's Observations on 105 Redacted Applications for Victim Participation to the Case, 9 June 2008, ICC-01/04-01/06-1386, paragraph 24.

²⁸⁵ Prosecution's Observations on supplementary information for victim applications a/0002/06, a/0047/06, a/0048/06, a/0051/06, a/0052/06, a/0077/06, a/0221/06, a/0224/06, a/0225/06, a/0227/06, a/0229/06, a/0230/06, a/0236/06, a/0237/06, a/0238/06, a/0239/06, a/0240/06, a/0243/06, a/0055/07, a/0056/07, a/0057/07, a/0058/07, a/0060/07, a/0155/07, a/0156/07, a/0172/07, a/0187/07, a/0007/08, ICC-01/04-01/06-1540-Conf, paragraphs 16 and 18.

²⁸⁶ Observations du BPCV en tant que représentant légal des demandeurs a/0004/06, a/0047/06 à a/0052/06, a/0077/06, a/0078/06 et a/0240/06, sur leurs demandes de participation dans le cadre de l'affaire *Le Procureur c. Thomas Lubanga Dyilo*, 28 November 2008, ICC-01/04-01/06-1510, paragraphs 25-27.

²⁸⁷ Décision sur les demandes de participation à la procédure a/0004/06 à a/0009/06, a/0016/06 à a/0063/06, a/0071/06 à a/0080/06 et a/0105/06 dans le cadre de l'affaire le Procureur c. Thomas Lubanga Dyilo, 20 October 2006, ICC-01/04-01/06-601, pages 10-11.

²⁸⁸ Corrigendum à la "Décision sur les demandes de participation à la procédure déposées dans le cadre de l'enquête en République démocratique du Congo par a/0004/06 à a/0009/06, a/0016/06 à a/0063/06, a/0071/06 à a/0080/06 et a/0105/06 à a/0110/06, a/0188/06, a/0128/06 à a/0162/06, a/0199/06, a/0203/06, a/0209/06, a/0214/06, a/0220/06 à a/0222/06, a/0224/06, a/0227/06 à a/0230/06, a/0234/06 à a/0236/06, a/0240/06, a/0225/06, a/0226/06, a/0231/06 à a/0233/06, a/0237/06 à a/0239/06 et a/0241/06 à a/0250/06", ICC-01/04-423-Corr, 31 January 2008, paragraph 144.

application was made and did not include the consent of the applicant's next-of-kin or legal guardian for an application to made on the applicant's behalf.²⁸⁹

The Chamber considers that the documents and the other material provided prove, *prima facie*, the identity of the applicant and the person acting on his behalf in accordance with the Trial Chamber's Decision on victims' participation. They prove, *prima facie*, that the applicant was ■ years old during the material events.

The Chamber notes that the applicant has consented to someone else acting on his behalf. The question that arises is whether the applicant needs to establish that the person acting on his behalf is either a relative or legal guardian, in order to participate in the proceedings. Alternatively, is the Chamber entitled to act on the application that has been submitted "by a person" on the applicant's behalf, which indicates clearly that the victim wishes to participate in these proceedings.

The Rome Statute framework is clear on this issue. There are no provisions establishing categories of people who alone are allowed to act for victims, whether the latter are adults or children. Rule 89(3) of the Rules simply states that "(a)n 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". It follows that the person acting on behalf of a victim does not have to be a relative or a legal guardian because, within the Rules, the "person acting" is undefined and unrestricted.

In support of this approach, the inevitable experience of most, if not all, children who were recruited in the circumstances alleged in this trial, is that they will have been separated from their parents and other adult relatives at a relatively young age. Many of them have been living, to put it at its lowest, disjointed and very unsettled lives for a number of years. Some children have still not been reunited with their families and they do not have legal guardians. To the extent that they have managed to find representation at all, they are often assisted by people such as schoolteachers and other similar community figures.

In this regard, the Chamber notes the General Comment No. 6(2005) of the Committee on the Rights of the Child in which it was recognised that separated or unaccompanied children (defined as children who have been separated from both parents, other relatives or from any previous legal or customary primary caregiver), in some situations "have no access to proper and appropriate identification, registration, age assessment, documentation family tracing, guardianship systems or legal advice".²⁹⁰ The Committee further noted that "in large-scale crises, where it will

²⁸⁹ Decision on the applications for participation file din connection with the investigation in the Democratic Republic of Congo by Applicants a/0047/06 to a/0052/06, a/163/06 to a/0187/06, a/0221/06, a/0226/06, a/0231/06 to a/0233/06, a/0237/06 to a/0239/06, and a/0241 to a/0250/06, 3 July 2008, ICC-01/04-505, paragraph 31.

²⁹⁰ Committee on the Rights of the Child, General Comment No. 6 (2005),1 September 2005, CRC/GC/2005/6, paragraphs 3, 7 and 8. Although this General Comment applies to children that have crossed and international border, the Committee has acknowledged that there are many similar

be difficult to establish guardianship arrangements on an individual basis, the rights and best interests of separated children should be safeguarded and promoted by States and organizations working on behalf of these children".²⁹¹

The Chamber has paid careful attention to the experience of the Registry in the field in the DRC, and particularly its opinion that "legal guardianship is very rare in Eastern Congo and many children who do not live with their parents, for instance because they have not yet been reunited with their families after being demobilised from an armed group or because they experience difficulties in reintegration, are looked after by persons such as school principals, transition centres for demobilised children, who do not have a formal status in relation to the child".

The real possibility exists, therefore, that a number of applicants who seek to participate in these proceedings will be living in circumstances where they cannot be represented by their parents, other family relatives or a legal guardian. In relation to these victims, who are over 18 years of age or are close thereto, they have individually applied through a person acting on their behalf (who is not their next-of-kin or their legal guardian) to participate in this trial as a victim. In each instance, the application accords with the express requirements of Rule 89 (3) of the Rules.

All of the matters set out above provide strong support for the approach that the Rules have not restricted the types of people who are able to act on behalf of all victims and including child victims.

Moreover, in this case, the Chamber notes that the applicant was [REDACTED] years old at the time the application was completed. He is [REDACTED] and the person acting on his behalf is [REDACTED]

The Trial Chamber determines that the applicant has given sufficient evidence to establish, *prima facie*, that he is a victim under Rule 85(a) of the Rules, as the Chamber has been provided with enough information to establish that the applicant suffered personal harm as a result of the commission of crimes included in the charges brought against the accused, namely his alleged enlistment and/or conscription and/or use to participate actively in the hostilities by the UPC between September 2002 and 13 August 2003.²⁹²

The Chamber has taken account of the fact that the applicant was a child when the application was filed but is now an adult. Although this is not an impediment to

challenges related to internally displaced unaccompanied and separated children and encourages States Parties to adopt the relevant aspects of the General Comment in relation to internally displaced unaccompanied and separated children (paragraph 5).

²⁹¹ Committee on the Rights of the Child, General Comment No. 6 (2005), 1 September 2005, CRC/GC/2005/6, paragraph 38.

²⁹² Decision on victims' participation, 18 January 2008, ICC-01/04-01/06-1119, as confirmed, amended and reversed by the Appeals Chamber's 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.

granting the application, the Chamber nonetheless instructs the VPRS to enquire of the applicant whether he wishes to participate on his own behalf or through the person acting on his behalf.

Applicant a/0049/06 [Annex 6]

The means of identification

The Chamber has been provided with a birth certificate and demobilisation certificate for the applicant, and the identity card and election card for the person acting on her behalf.²⁹³ The applicant has consented to this person so acting.²⁹⁴

The claim to victim status

The applicant states that in 2003 she was recruited by the UPC, when she was [REDACTED] years old. She was trained for a period of [REDACTED] weeks, but later managed to escape (the Chamber notes, however, that in a previous application she stated she had been trained for a period of [REDACTED] months). Originally, the applicant suggested that she had been sexually abused [REDACTED]. However, in an additional document attached to her application, she asserted she was not a victim of sexual abuse. The applicant set out that she suffered from inhumane treatment and lack of food, as well as moral harm as a result of her recruitment and the [REDACTED]. The applicant explained that any contradiction between her accounts is the result of difficulties in interpretation.²⁹⁵

The phases of the proceedings

The applicant submits she has an interest in participating in all phases of the proceedings.²⁹⁶

The observations of the defence

In its observations the defence argues that the changes in the applicant's account, set out above, pose serious doubts as to the truth and precision of the matters set out in the application.²⁹⁷

The observations of the prosecution

The prosecution submits the applicant should be granted the status to participate in the trial as she fulfils all the necessary criteria. However, the prosecution observes

²⁹³ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 10-11 and Annex 6.

²⁹⁴ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 6, page 16.

²⁹⁵ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 10-11 and Annex 6.

²⁹⁶ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 10-11 and Annex 6.

²⁹⁷ Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008, 10 June 2008, ICC-01/04-01/06-1388, page 11.

that his participation as a victim should not detract from his role as a prosecution witness.²⁹⁸

The observations of the victim's legal representative

The OPCV submits that the contradictions raised by the defence regarding this victim are apparent rather than real since the applicant has established beyond doubt that she was recruited when she was younger than 15 years old, and thus her application meets the criteria in Rule 85(a) of the Rules, and her participation fulfils the requirements of Article 68(3) of the Statute. In all the circumstances, it is submitted that the applicant should be admitted as a participant in the proceedings.²⁹⁹

Legal representation

The applicant has no legal representative and has been represented by the OPCV during the application process.

The Chamber's analysis and conclusions

The Trial Chamber notes that Pre-Trial Chamber I determined that the applicant was a victim of the case but decided that participation by her was not appropriate at the time of the confirmation hearing.³⁰⁰

The applicant has also applied to participate in the DRC situation and the application was provided to Pre-Trial Chamber I. In its decision of 31 January 2008, the Pre-Trial Chamber determined it would not determine the applicant's status, stating that since the application was also pending before the Trial Chamber, the applicant's recognition as a victim in the "case" would automatically result in her recognition in the "situation".³⁰¹ In a more recent decision of 3 July 2008, the Pre-Trial Chamber decided that the application was incomplete since the applicant was a minor at the time the application was made, and it did not include the consent of the applicant's next-of-kin or legal guardian for an application to be made on her behalf.³⁰²

²⁹⁸ Prosecution's Observations on 105 Redacted Applications for Victim Participation to the Case, 9 June 2008, ICC-01/04-01/06-1386, paragraph 24.

²⁹⁹ Observations du BPCV en tant que représentant légal des demandeurs a/0004/06, a/0047/06 à a/0052/06, a/0077/06, a/0078/06 et a/0240/06, sur leurs demandes de participation dans le cadre de l'affaire *Le Procureur c. Thomas Lubanga Dyilo*, 28 November 2008, ICC-01/04-01/06-1510, paragraphs 28-29.

³⁰⁰ Décision sur les demandes de participation à la procédure a/0004/06 à a/0009/06, a/0016/06 à a/0063/06, a/0071/06 à a/0080/06 et a/0105/06 dans le cadre de l'affaire *le Procureur c. Thomas Lubanga Dyilo*, 20 October 2006, ICC-01/04-01/06-601, pages 10-11.

³⁰¹ Corrigendum à la "Décision sur les demandes de participation à la procédure déposées dans le cadre de l'enquête en République démocratique du Congo par a/0004/06 à a/0009/06, a/0016/06 à a/0063/06, a/0071/06 à a/0080/06 et a/0105/06 à a/0110/06, a/0188/06, a/0128/06 à a/0162/06, a/0199/06, a/0203/06, a/0209/06, a/0214/06, a/0220/06 à a/0222/06, a/0224/06, a/0227/06 à a/0230/06, a/0234/06 à a/0236/06, a/0240/06, a/0225/06, a/0226/06, a/0231/06 à a/0233/06, a/0237/06 à a/0239/06 et a/0241/06 à a/0250/06", ICC-01/04-423-Corr, 31 January 2008, paragraph 144.

³⁰² Decision on the applications for participation file in connection with the investigation in the Democratic Republic of Congo by Applicants a/0047/06 to a/0052/06, a/163/06 to a/0187/06, a/0221/06, a/0226/06, a/0231/06 to a/0233/06, a/0237/06 to a/0239/06, and a/0241 to a/0250/06, 3 July 2008, ICC-01/04-505, paragraph 31

In the Trial Chamber's estimation, the original error or contradiction in the applicant's account concerning her husband, subsequently corrected, does not, *ipso facto*, destroy the credibility of this application. There are a number of sustainable reasons why the applicant has contradicted herself on this issue, given the necessarily complicated and confusing circumstances in which the applicant found herself. Allowing, however, for this element, which the Chamber has carefully weighed, the documents and the other material provided nonetheless prove, *prima facie*, the identity of the applicant and of the person acting on her behalf in accordance with the Trial Chamber's Decision on victims' participation. They also prove, *prima facie*, that the applicant was ■ years old during the material events.

The Chamber notes that the applicant has consented to someone else acting on her behalf. The question that arises is whether the applicant needs to establish that the person acting on her behalf is either a relative or legal guardian, in order to participate in the proceedings. Alternatively, is the Chamber entitled to act on the application that has been submitted "by a person" on the applicant's behalf, which indicates clearly that the victim wishes to participate in these proceedings.

The Rome Statute framework is clear on this issue. There are no provisions establishing categories of people who alone are allowed to act for victims, whether the latter are adults or children. Rule 89(3) of the Rules simply states that "(a)n 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". It follows that the person acting on behalf of a victim does not have to be a relative or a legal guardian because, within the Rules, the "person acting" is undefined and unrestricted.

In support of this approach, the inevitable experience of most, if not all, children who were recruited in the circumstances alleged in this trial, is that they will have been separated from their parents and other adult relatives at a relatively young age. Many of them have been living, to put it at its lowest, disjointed and very unsettled lives for a number of years. Some children have still not been reunited with their families and they do not have legal guardians. To the extent that they have managed to find representation at all, they are often assisted by people such as schoolteachers and other similar community figures.

In this regard, the Chamber notes the General Comment No. 6(2005) of the Committee on the Rights of the Child in which it was recognised that separated or unaccompanied children (defined as children who have been separated from both parents, other relatives or from any previous legal or customary primary caregiver), in some situations "have no access to proper and appropriate identification, registration, age assessment, documentation family tracing, guardianship systems or legal advice".³⁰³ The Committee further noted that "in large-scale crises, where it will

³⁰³ Committee on the Rights of the Child, General Comment No. 6 (2005), 1 September 2005, CRC/GC/2005/6, paragraphs 3, 7 and 8. Although this General Comment applies to children that have crossed and international border, the Committee has acknowledged that there are many similar

be difficult to establish guardianship arrangements on an individual basis, the rights and best interests of separated children should be safeguarded and promoted by States and organizations working on behalf of these children".³⁰⁴

The Chamber has paid careful attention to the experience of the Registry in the field in the DRC, and particularly its opinion that "legal guardianship is very rare in Eastern Congo and many children who do not live with their parents, for instance because they have not yet been reunited with their families after being demobilised from an armed group or because they experience difficulties in reintegration, are looked after by persons such as school principals, transition centres for demobilised children, who do not have a formal status in relation to the child".

The real possibility exists, therefore, that a number of applicants who seek to participate in these proceedings will be living in circumstances where they cannot be represented by their parents, other family relatives or a legal guardian. In relation to these victims, who are over 18 years of age or are close thereto, they have individually applied through a person acting on their behalf (who is not their next-of-kin or their legal guardian) to participate in this trial as a victim. In each instance, the application accords with the express requirements of Rule 89 (3) of the Rules.

All of the matters set out above provide strong support for the approach that the Rules have not restricted the types of people who are able to act on behalf of all victims and including child victims.

Moreover, in this case, the applicant was [REDACTED] years old at the time the application was completed. She is a [REDACTED] and the person acting on his behalf is a [REDACTED]

The Trial Chamber determines that the applicant has given sufficient evidence to establish, *prima facie*, that she is a victim under Rule 85(a) of the Rules, as the Chamber has been provided with enough information to establish that the applicant has suffered personal harm as a result of the commission of crimes included in the charges brought against the accused, namely her alleged enlistment and/or conscription and/or use to participate actively in the hostilities by the UPC between September 2002 and 13 August 2003.³⁰⁵

The Chamber has taken account of the fact that the applicant was a child when the application was filed but is now an adult. Although this is not an impediment to

challenges related to internally displaced unaccompanied and separated children and encourages States Parties to adopt the relevant aspects of the General Comment in relation to internally displaced unaccompanied and separated children (paragraph 5).

³⁰⁴ Committee on the Rights of the Child, General Comment No. 6 (2005), 1 September 2005, CRC/GC/2005/6, paragraph 38.

³⁰⁵ Decision on victims' participation, 18 January 2008, ICC-01/04-01/06-1119, as confirmed, amended and reversed by the Appeals Chamber's 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.

granting the application, the Chamber nonetheless instructs the VPRS to enquire of the applicant whether she wishes to participate on her own behalf or through the person acting on his behalf.

Applicant a/0052/06 [Annex 8]

The means of identification

The applicant has provided the Chamber with his birth certificate and demobilisation certificate, and with the identity card and election card for the person acting on his behalf.³⁰⁶ The applicant has consented to this person so acting.³⁰⁷ In a supplementary filing, the Chamber has been provided with a signed declaration and an identity card for this person.³⁰⁸

The claim to victim status

The applicant states that he was recruited in ██████████ 2003 by the UPC, when he was ██████████ years old. He describes how he was trained for ██████████ months and while in training he suffered humiliating and degrading treatment, lack of food, punishments and torture. He suggests that he participated in hostilities during the year of 2003 and the first ██████████ months of 2004. He later became a ██████████. He was used to kill; he burnt and looted villages; and he was shot, causing an injury from which he still suffers. He suffers psychological problems and his education was interrupted.³⁰⁹

The phases of the proceedings

The applicant submits he has an interest in participating in all phases of the proceedings.³¹⁰

The observations of the defence

The defence made no observations as regards the applicant.³¹¹

The observations of the prosecution

The prosecution submits the applicant should be granted the status to participate in the trial against Thomas Lubanga Dyilo, as he fulfils all the necessary criteria. However, the prosecution contends that the status of the applicant as a victim should

³⁰⁶ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 14-15 and Annex 8 See also Second Report on supplementary information, ICC-01/04-01/06-1503-Conf-Exp, 21 November 2008, page 7, Anx 11.

³⁰⁷ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 8, page 16.

³⁰⁸ Second Report on supplementary information, 21 November 2008, ICC-01/04-01/06-1503-Conf-Exp, Annex 11.

³⁰⁹ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 14-15 and Annex 8.

³¹⁰ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 14-15 and Annex 8

³¹¹ Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008, 10 June 2008, ICC-01/04-01/06-1388

not detract from his role as a prosecution witness.³¹² In a further submission, the prosecution submits that since the OPCV, in its role as legal representative of the applicant, has submitted signed consent forms by the legal guardian, the application is complete.³¹³

The observations of the victim's legal representative

The legal representatives submit in their reply that he meets the criteria set out in Rule 85 of the Rules, since he has suffered personal harm as a result of the events described in his application, and thus there is a direct link with the charges brought against the accused. It is submitted that his participation in the proceedings is not prejudicial or inconsistent with the rights of the accused and a fair and impartial trial (see article 68(3) of the Statute), and therefore he should be granted the status of victim in the present case and the right to participate in the proceedings.³¹⁴

Legal representation

The applicant has no legal representative and has therefore been represented by the OPCV during the application proceedings.

The Chamber's analysis and conclusions

The Trial Chamber notes that Pre-Trial Chamber I determined that the applicant was a victim of the case but deemed that his participation was not appropriate at the time of the confirmation hearing.³¹⁵

The applicant has also applied to participate in the DRC situation and the application was provided to Pre-Trial Chamber I. In its decision of 31 January 2008, the Pre-Trial Chamber determined it would not resolve the applicant's status, stating that since the application was also pending before the Trial Chamber, the applicant's recognition as a victim in the "case" would automatically result in his recognition in the "situation".³¹⁶ In a more recent decision of 3 July 2008, the Pre-Trial Chamber decided that the application was incomplete since the applicant was a minor at the

³¹² Prosecution's Observations on 105 Redacted Applications for Victim Participation to the Case, 9 June 2008, ICC-01/04-01/06-1386, paragraph 24.

³¹³ Prosecution's Observations on supplementary information for victim applications a/0002/06, a/0047/06, a/0048/06, a/0051/06, a/0052/06, a/0077/06, a/0221/06, a/0224/06, a/0225/06, a/0227/06, a/0229/06, a/0230/06, a/0236/06, a/0237/06, a/0238/06, a/0239/06, a/0240/06, a/0243/06, a/0055/07, a/0056/07, a/0057/07, a/0058/07, a/0060/07, a/0155/07, a/0156/07, a/0172/07, a/0187/07, a/0007/08, ICC-01/04-01/06-1540-Conf, paragraphs 16 and 18.

³¹⁴ Observations du BPCV en tant que représentant légal des demandeurs a/0004/06, a/0047/06 à a/0052/06, a/0077/06, a/0078/06 et a/0240/06, sur leurs demandes de participation dans le cadre de l'affaire *Le Procureur c Thomas Lubanga Dyilo*, 28 November 2008, ICC-01/04-01/06-1510, paragraphs 25-27.

³¹⁵ Décision sur les demandes de participation à la procédure a/0004/06 à a/0009/06, a/0016/06 à a/0063/06, a/0071/06 à a/0080/06 et a/0105/06 dans le cadre de l'affaire *le Procureur c. Thomas Lubanga Dyilo*, 20 October 2006, ICC-01/04-01/06-601, pages 10-11.

³¹⁶ Corrigendum à la "Décision sur les demandes de participation à la procédure déposées dans le cadre de l'enquête en République démocratique du Congo par a/0004/06 à a/0009/06, a/0016/06 à a/0063/06, a/0071/06 à a/0080/06 et a/0105/06 à a/0110/06, a/0188/06, a/0128/06 à a/0162/06, a/0199/06, a/0203/06, a/0209/06, a/0214/06, a/0220/06 à a/0222/06, a/0224/06, a/0227/06 à a/0230/06, a/0234/06 à a/0236/06, a/0240/06, a/0225/06, a/0226/06, a/0231/06 à a/0233/06, a/0237/06 à a/0239/06 et a/0241/06 à a/0250/06", ICC-01/04-423-Corr, 31 January 2008, paragraph 144

time the application was made and did not include the consent of the applicant's next-of-kin or legal guardian for an application to be made on the applicant's behalf.³¹⁷

The Chamber considers that the documents and the other material provided prove, *prima facie*, the identity of the applicant and the person acting on his behalf in accordance with the Trial Chamber's Decision on victims' participation. They prove, *prima facie*, that the applicant was ■ years old during the material events.

The Chamber notes that the applicant has consented to someone acting on his behalf. The question that arises is whether the applicant needs to establish that the person acting on his behalf is either a relative or legal guardian, in order to participate in the proceedings. Alternatively, is the Chamber entitled to act on the application that has been submitted "by a person" on the applicant's behalf, which indicates clearly that the victim wishes to participate in these proceedings.

The Rome Statute framework is clear on this issue. There are no provisions establishing categories of people who alone are allowed to act for victims, whether the latter are adults or children. Rule 89(3) of the Rules simply states that "(a)n 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". It follows that the person acting on behalf of a victim does not have to be a relative or a legal guardian because, within the Rules, the "person acting" is undefined and unrestricted.

In support of this approach, the inevitable experience of most, if not all, children who were recruited in the circumstances alleged in this trial, is that they will have been separated from their parents and other adult relatives at a relatively young age. Many of them have been living, to put it at its lowest, disjointed and very unsettled lives for a number of years. Some children have still not been reunited with their families and they do not have legal guardians. To the extent that they have managed to find representation at all, they are often assisted by people such as schoolteachers and other similar community figures.

In this regard, the Chamber notes the General Comment No. 6(2005) of the Committee on the Rights of the Child in which it was recognised that separated or unaccompanied children (defined as children who have been separated from both parents, other relatives or from any previous legal or customary primary caregiver), in some situations "have no access to proper and appropriate identification, registration, age assessment, documentation family tracing, guardianship systems or legal advice".³¹⁸ The Committee further noted that "in large-scale crises, where it will

³¹⁷ Decision on the applications for participation file in connection with the investigation in the Democratic Republic of Congo by Applicants a/0047/06 to a/0052/06, a/163/06 to a/0187/06, a/0221/06, a/0226/06, a/0231/06 to a/0233/06, a/0237/06 to a/0239/06, and a/0241 to a/0250/06, 3 July 2008, ICC-01/04-505, paragraph 31.

³¹⁸ Committee on the Rights of the Child, General Comment No. 6 (2005), 1 September 2005, CRC/GC/2005/6, paragraphs 3, 7 and 8. Although this General Comment applies to children that have

be difficult to establish guardianship arrangements on an individual basis, the rights and best interests of separated children should be safeguarded and promoted by States and organizations working on behalf of these children".³¹⁹

The Chamber has paid careful attention to the experience of the Registry in the field in the DRC, and particularly its opinion that "legal guardianship is very rare in Eastern Congo and many children who do not live with their parents, for instance because they have not yet been reunited with their families after being demobilised from an armed group or because they experience difficulties in reintegration, are looked after by persons such as school principals, transition centres for demobilised children, who do not have a formal status in relation to the child".

The real possibility exists, therefore, that a number of applicants who seek to participate in these proceedings will be living in circumstances where they cannot be represented by their parents, other family relatives or a legal guardian. In relation to these victims, who are over 18 years of age or are close thereto, they have individually applied through a person acting on their behalf (who is not their next-of-kin or their legal guardian) to participate in this trial as a victim. In each instance, the application accords with the express requirements of Rule 89 (3) of the Rules.

All of the matters set out above provide strong support for the approach that the Rules have not restricted the types of people who are able to act on behalf of all victims and including child victims.

Moreover, in this case, the applicant was [REDACTED] years old at the time the application was completed. Furthermore, the applicant is a [REDACTED] and the person acting on his behalf is a [REDACTED]

The Trial Chamber determines that the applicant has given sufficient evidence to establish, *prima facie*, that he is a victim under Rule 85(a) of the Rules, as the Chamber has been provided with enough information to establish that the applicant has suffered personal harm as a result of the commission of crimes included in the charges brought against the accused, namely his alleged enlistment and/or conscription and/or use to participate actively in the hostilities by the UPC between September 2002 and 13 August 2003.³²⁰

crossed and international border, the Committee has acknowledged that there are many similar challenges related to internally displaced unaccompanied and separated children and encourages States Parties to adopt the relevant aspects of the General Comment in relation to internally displaced unaccompanied and separated children (paragraph 5).

³¹⁹ Committee on the Rights of the Child, General Comment No. 6 (2005), 1 September 2005, CRC/GC/2005/6, paragraph 38.

³²⁰ Decision on victims' participation, 18 January 2008, ICC-01/04-01/06-1119, as confirmed, amended and reversed by the Appeals Chamber's 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

The Chamber has taken account of the fact that the applicant was a child when the application was filed but is now an adult. Although this is not an impediment to granting the application, the Chamber nonetheless instructs the VPRS to enquire of the applicant whether he wishes to participate on his own behalf or through the person acting on his behalf.

Applicant a/0057/07 [Annex 28]

The means of identification

The Chamber has been provided with the birth certificate and student identity card for the applicant.³²¹ In an additional filing the applicant submitted the election card for the person acting on his behalf.³²² The applicant has consented to this person so acting.³²³

The claim to victim status

The applicant states that he was recruited by the UPC when he was [REDACTED] years old, in [REDACTED] 2002. He describes how he was trained, and later he was ordered to loot and rape in various villages. In an additional declaration the applicant amended the date of his recruitment from [REDACTED] 2002 to [REDACTED] 2002. He states that he was directed by militias who spoke in Lingala and Swahili, and he was ordered to transport ammunition. While in the training camp he was trained to handle different kinds of weapons, to shoot and to use other combat tactics, and after his training, the applicant participated in fighting. He suffered inhuman treatment; he received lashes; he was ordered to plunder and to take women and children for the commanders. As a result of his recruitment, the applicant suffers from [REDACTED] injuries, a [REDACTED] in his [REDACTED] and psychological harm, along with reflexes of violence and revenge.³²⁴ He suggests that he is now a violent person, and his education has been affected. He suffered moral and material harm, and violations of his fundamental rights.³²⁵

The phases of the proceedings

The applicant submits he has an interest in participating in all phases of the proceedings.³²⁶

³²¹ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 54-55 and Annex 28.

³²² Report on supplementary information received and missing information concerning the applications for participation dealt with in the "First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court" dated 11 April 2008 (ICC-01/04-01/06-1275), 6 June 2008, ICC-01/04-01/06-1380-Conf, Annex 7.

³²³ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 28, page 16.

³²⁴ Report on supplementary information received and missing information concerning the applications for participation dealt with in the "First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court" dated 11 April 2008 (ICC-01/04-01/06-1275), 6 June 2008, ICC-01/04-01/06-1380-Conf, Annex 7.

³²⁵ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 54-55 and Annex 28.

³²⁶ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 54-55 and Annex 28.

The observations of the defence

In its original observations the defence did not refer to the applicant.³²⁷ However, in a later filing, the defence observed that the applicant has mentioned a different date of birth from that indicated in his initial application. Furthermore, he alleged in his first application that he was abducted in December 2002, whilst in the supplementary application he stated that he was abducted in October 2002. As a result, the defence submits that the information provided by applicant is uncertain and contradictory and it does not meet the requirements of Rule 85 of the Rules. In all the circumstances, it is submitted that the application should be rejected.³²⁸

The observations of the prosecution

The prosecution submits that the applicant meets, *prima facie*, the necessary requirements for victim participation.³²⁹ The prosecution argues that the additional documents provided to the Chamber prove the identity, legal guardianship and consent of the applicant's legal guardian.³³⁰ The prosecution also submits that the information provided supports the suggestion that the applicant was under the age of 15 during the material events.³³¹

The observations of the victim's legal representative

The legal representatives submit in their reply that since he has set out that he was recruited for the FPLC as a child soldier when he was under 15 years old, there is direct link with the charges brought against the accused. Therefore, the applicant should be granted the status of victim and admitted as a participant in the proceedings.³³²

Legal representation

³²⁷ Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008, 10 June 2008, ICC-01/04-01/06-1388, page X.

³²⁸ Observations de la Défense sur les 15 demandes de participation à la procédure et les 30 demandes de participation complémentaires communiquées le 27 novembre 2008 ; Réponse de la Défense aux observations des représentants légaux relatives aux 105 demandes de participation communiquées le 20 mai 2008 ; et Observations de la Défense relatives aux victimes indirectes, 5 December 2008, ICC-01/04-01/06-1536, paragraph 26, 46.

³²⁹ Prosecution's Observations on 105 Redacted Applications for Victim Participation to the Case, 9 June 2008, ICC-01/04-01/06-1386, paragraph 27.

³³⁰ Prosecution's Observations on supplementary information for victim applications a/0002/06, a/0047/06, a/0048/06, a/0051/06, a/0052/06, a/0077/06, a/0221/06, a/0224/06, a/0225/06, a/0227/06, a/0229/06, a/0230/06, a/0236/06, a/0237/06, a/0238/06, a/0239/06, a/0240/06, a/0243/06, a/0055/07, a/0056/07, a/0057/07, a/0058/07, a/0060/07, a/0155/07, a/0156/07, a/0172/07, a/0187/07, a/0007/08, ICC-01/04-01/06-1540-Conf, paragraph 21.

³³¹ Prosecution's Observations on supplementary information for victim applications a/0002/06, a/0047/06, a/0048/06, a/0051/06, a/0052/06, a/0077/06, a/0221/06, a/0224/06, a/0225/06, a/0227/06, a/0229/06, a/0230/06, a/0236/06, a/0237/06, a/0238/06, a/0239/06, a/0240/06, a/0243/06, a/0055/07, a/0056/07, a/0057/07, a/0058/07, a/0060/07, a/0155/07, a/0156/07, a/0172/07, a/0187/07, a/0007/08, ICC-01/04-01/06-1540-Conf, paragraph 27.

³³² Réponse aux "Prosecution's Observations on 105 Applications for Victim Participation to the Case" du 9 juin 2008 et aux « Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008 » du 10 juin 2008, 28 November, ICC-01/04-01/06/1522, paragraph 25, page 12.

The applicant has been represented thus far by Mr Joseph Keta and Mr Jean Louis Gilissen.

The Chamber's analysis and conclusions

The Chamber considers that the documents and the other material provided prove, *prima facie*, the identity of the applicant and the person acting on his behalf in accordance with the Trial Chamber's Decision on victims' participation. They also prove, *prima facie*, that the applicant was ■ years old during the material events.

The Chamber notes that the applicant has consented to someone else acting on his behalf. The question that arises is whether the applicant needs to establish that the person acting on his behalf is either a relative or legal guardian, in order to participate in the proceedings. Alternatively, is the Chamber entitled to act on the application that has been submitted "by a person" on the applicant's behalf, which indicates clearly that the victim wishes to participate in these proceedings.

The Rome Statute framework is clear on this issue. There are no provisions establishing categories of people who alone are allowed to act for victims, whether the latter are adults or children. Rule 89(3) of the Rules simply states that "(a)n 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". It follows that the person acting on behalf of a victim does not have to be a relative or a legal guardian because, within the Rules, the "person acting" is undefined and unrestricted.

In support of this approach, the inevitable experience of most, if not all, children who were recruited in the circumstances alleged in this trial, is that they will have been separated from their parents and other adult relatives at a relatively young age. Many of them have been living, to put it at its lowest, disjointed and very unsettled lives for a number of years. Some children have still not been reunited with their families and they do not have legal guardians. To the extent that they have managed to find representation at all, they are often assisted by people such as schoolteachers and other similar community figures.

In this regard, the Chamber notes the General Comment No. 6(2005) of the Committee on the Rights of the Child in which it was recognised that separated or unaccompanied children (defined as children who have been separated from both parents, other relatives or from any previous legal or customary primary caregiver), in some situations "have no access to proper and appropriate identification, registration, age assessment, documentation family tracing, guardianship systems or legal advice".³³³ The Committee further noted that "in large-scale crises, where it will

³³³ Committee on the Rights of the Child, General Comment No. 6 (2005), 1 September 2005, CRC/GC/2005/6, paragraphs 3, 7 and 8. Although this General Comment applies to children that have crossed and international border, the Committee has acknowledged that there are many similar challenges related to internally displaced unaccompanied and separated children and encourages States Parties to adopt the relevant aspects of the General Comment in relation to internally displaced unaccompanied and separated children (paragraph 5).

be difficult to establish guardianship arrangements on an individual basis, the rights and best interests of separated children should be safeguarded and promoted by States and organizations working on behalf of these children".³³⁴

The Chamber has paid careful attention to the experience of the Registry in the field in the DRC, and particularly its opinion that "legal guardianship is very rare in Eastern Congo and many children who do not live with their parents, for instance because they have not yet been reunited with their families after being demobilised from an armed group or because they experience difficulties in reintegration, are looked after by persons such as school principals, transition centres for demobilised children, who do not have a formal status in relation to the child".

The real possibility exists, therefore, that a number of applicants who seek to participate in these proceedings will be living in circumstances where they cannot be represented by their parents, other family relatives or a legal guardian. In relation to these victims, who are over 18 years of age or are close thereto, they have individually applied through a person acting on their behalf (who is not their next-of-kin or their legal guardian) to participate in this trial as a victim. In each instance, the application accords with the express requirements of Rule 89 (3) of the Rules.

All of the matters set out above provide strong support for the approach that the Rules have not restricted the types of people who are able to act on behalf of all victims and including child victims.

Moreover, in this case, the applicant was [REDACTED] years old at the time the application was completed and the VPRS has stated in its report that person acting on his behalf is the person who has *de facto* responsibility for the applicant [REDACTED] [REDACTED]).

The Trial Chamber determines that the applicant has given sufficient evidence to establish, *prima facie*, that he is a victim under Rule 85(a) of the Rules, as the Chamber has been provided with enough information to establish that the applicant suffered personal harm as a result of the commission of crimes included in the charges brought against the accused, namely his alleged enlistment and/or conscription and/or use to participate actively in the hostilities by the UPC between September 2002 and 13 August 2003.³³⁵

The Chamber has taken account of the fact that the applicant was a child when the application was filed but is now an adult. Although this is not an impediment to granting the application, the Chamber nonetheless thus instructs the VPRS to enquire

³³⁴ Committee on the Rights of the Child, General Comment No. 6 (2005), 1 September 2005, CRC/GC/2005/6, paragraph 38.

³³⁵ Decision on victims' participation, 18 January 2008, ICC-01/04-01/06-1119, as confirmed, amended and reversed by the Appeals Chamber's 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.

of the applicant whether he wishes to participate on her own behalf or through the person acting on his behalf.

Application of victim a/0063/07 [Annex 3, filing 1501]

The means of identification

The Chamber has been provided with the school identity card for the applicant.³³⁶ Although the application does not include the identity document of the person acting on behalf of the applicant, the Chamber notes that it has been provided with the election card for this individual in relation to other applicants for whom he is also acting. The applicant consents to this person acting on his behalf.³³⁷

The claim to victim status

The applicant states that he was recruited by force by the UPC militia of Thomas Lubanga in ██████ 2002 when he was ██████ years old. In ██████ 2003, he was under the orders of a dissident branch of the UPC, the FAPC, when he participated actively in hostilities. He alleges he suffered physical violence, and his ██████ and ██████ were raped on the day he was recruited. He indicates he was trained by the UPC and was ill-treated and subjected to extremely arduous physical exercise. He participated in combat in ██████ 2003, when he committed pillage and rape. As a consequence of his recruitment, the applicant indicates he suffered from a ██████ and has psychological problems as well as reflexes of violence and vengeance. He also states that his schooling was interrupted.³³⁸

The phases of the proceedings

The applicant submits he has an interest in participating in all phases of the proceedings.³³⁹

The observations of the defence

The Defence observes that the applicant alleged in his initial application that he was enlisted by the FAPC militia in November 2003, whilst in a supplementary declaration dated 11 June 2008, he suggested his was abducted in October 2002. As a result, the defence contends that the information provided by applicant is uncertain and contradictory, and his application lacks the requirements for its, *prima facie*,

³³⁶ Second Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1501-Conf-Exp, 21 November 2008, Annex 2, pages 1-2 and Annex 3-Corr.

³³⁷ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 24-25 and Annex 13.

³³⁸ Second Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1501-Conf-Exp, 21 November 2008, Annex 2, pages 1-2 and Annex 3-Corr.

³³⁹ Second Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1501-Conf-Exp, 21 November 2008, Annex 2, pages 1-2 and Annex 3-Corr.

admission under Rule 85 of the Rules. In all the circumstances, it is submitted the application should be rejected.³⁴⁰

The observations of the prosecution

The prosecution submits that the applicant meets the requirements under Rule 85(a) of the Rules for participation as victim.³⁴¹

The observations of the victim's legal representative

The legal representatives submit that in the supplementary information provided by the applicant he has explained the apparent contradiction summarised above. He set out how he was recruited by UPC forces in October 2002, but when a dissident commander created the FAPC in March 2003 he was taken to fight with that group. Therefore, he was recruited as a child soldier by both the UPC and the FAPC forces. Against that background, it is submitted the applicant should be granted the status of victim in the present case and admitted as a participant in the proceedings.³⁴²

Legal representation

The applicant has been represented thus far by Mr Joseph Keta Orwinyo and Jean Louis Gilissen.³⁴³

The Chamber's analysis and conclusions

The Chamber considers that the documents and other information provided assist in demonstrating the identity of the applicant in accordance with the Trial Chamber's Decision on victims' participation. The documents and the other material indicate the applicant was ■ years old during the material events.

The Chamber notes that the applicant has consented to someone else acting on his behalf. The question that arises is whether the applicant needs to establish that the

³⁴⁰ Observations de la Défense sur les 15 demandes de participation à la procédure et les 30 demandes de participation complémentaires communiquées le 27 novembre 2008 ; Réponse de la Défense aux observations des représentants légaux relatives aux 105 demandes de participation communiquées le 20 mai 2008 ; et Observations de la Défense relatives aux victimes indirectes, 5 December 2008, ICC-01/04-01/06-1536, paragraph 32.

³⁴¹ Prosecution's Observations on 12 Redacted Applications for Victim Participation to the Case, concerning applicants a/0063/07, a/0122/08, a/0123/08, a/0124/08, a/0125/08, a/0126/08, a/0130/08, a/0149/08, a/0404/08, a/0405/08, a/0406/08 and a/0409/08, 8 December 2008, ICC-01/04-01/06-1541, paragraph 16.

³⁴² "Réponse aux « Prosecution's Observations on supplementary information for victim applications a/0002/06, a/0047/06, a/0048/06, a/0051/06, a/0052/06, a/0077/06, a/0221/06, a/0224/06, a/0225/06, /0227/06 a/0229/06, a/0230/06, a/0236/06, a/0237/06, a/0238/06, a/0239/06, a/0240/06, a/0243/06, a/0055/07, a/0056/07, a/0057/07, a/0058/07, a/0060/07, a/0155/07, a/0156/07, a/0172/07, a/0187/07, a/0007/08", et aux « Prosecution's Observations on 12 Redacted Applications for Victim Participation to the Case, concerning applicants a/0063/07, a/0122/08, a/0123/08, a/0124/08, a/0125/08, a/0126/08, a/0130/08, /0149/08, a/0404/08, a/0405/08, a/0406/08 and a/0409/08", et aux « Observations de la Défense sur les 15 demandes de participation à la procédure et les 30 demandes de participation complémentaires communiquées le 27 novembre 2008 ; Réponse de la Défense aux observations des représentants légaux relatives aux 105 demandes de participation communiquées le 20 mai 2008 », et à du 5 décembre 2008", 10 December 2008, ICC-01/04-01/06-1551, paragraphs 11 to 13.

³⁴³ Second Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1501-Conf-Exp, 21 November 2008, Annex 2, pages 1-2 and Annex 3-Corr.

person acting on his behalf is either a relative or legal guardian, in order to participate in the proceedings. Alternatively, is the Chamber entitled to act on the application that has been submitted “by a person” on the applicant’s behalf, which indicates clearly that the victim wishes to participate in these proceedings.

The Rome Statute framework is clear on this issue. There are no provisions establishing categories of people who alone are allowed to act for victims, whether the latter are adults or children. Rule 89(3) of the Rules simply states that “(a)n 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”. It follows that the person acting on behalf of a victim does not have to be a relative or a legal guardian because, within the Rules, the “person acting” is undefined and unrestricted.

In support of this approach, the inevitable experience of most, if not all, children who were recruited in the circumstances alleged in this trial, is that they will have been separated from their parents and other adult relatives at a relatively young age. Many of them have been living, to put it at its lowest, disjointed and very unsettled lives for a number of years. Some children have still not been reunited with their families and they do not have legal guardians. To the extent that they have managed to find representation at all, they are often assisted by people such as schoolteachers and other similar community figures.

In this regard, the Chamber notes the General Comment No. 6(2005) of the Committee on the Rights of the Child in which it was recognised that separated or unaccompanied children (defined as children who have been separated from both parents, other relatives or from any previous legal or customary primary caregiver), in some situations “have no access to proper and appropriate identification, registration, age assessment, documentation family tracing, guardianship systems or legal advice”.³⁴⁴ The Committee further noted that “in large-scale crises, where it will be difficult to establish guardianship arrangements on an individual basis, the rights and best interests of separated children should be safeguarded and promoted by States and organizations working on behalf of these children”.³⁴⁵

The Chamber has paid careful attention to the experience of the Registry in the field in the DRC, and particularly its opinion that “legal guardianship is very rare in Eastern Congo and many children who do not live with their parents, for instance because they have not yet been reunited with their families after being demobilised from an armed group or because they experience difficulties in reintegration, are

³⁴⁴ Committee on the Rights of the Child, General Comment No. 6 (2005), 1 September 2005, CRC/GC/2005/6, paragraphs 3, 7 and 8. Although this General Comment applies to children that have crossed and international border, the Committee has acknowledged that there are many similar challenges related to internally displaced unaccompanied and separated children and encourages States Parties to adopt the relevant aspects of the General Comment in relation to internally displaced unaccompanied and separated children (paragraph 5).

³⁴⁵ Committee on the Rights of the Child, General Comment No. 6 (2005), 1 September 2005, CRC/GC/2005/6, paragraph 38.

looked after by persons such as school principals, transition centres for demobilised children, who do not have a formal status in relation to the child”.

The real possibility exists, therefore, that a number of applicants who seek to participate in these proceedings will be living in circumstances where they cannot be represented by their parents, other family relatives or a legal guardian. In relation to these victims, who are over 18 years of age or are close thereto, they have individually applied through a person acting on their behalf (who is not their next-of-kin or their legal guardian) to participate in this trial as a victim. In each instance, the application accords with the express requirements of Rule 89 (3) of the Rules.

All of the matters set out above provide strong support for the approach that the Rules have not restricted the types of people who are able to act on behalf of all victims and including child victims.

In all the circumstances, the Trial Chamber determines that the applicant has given sufficient evidence to establish, *prima facie*, that he is a victim under Rules 85(a) of the Rules, as the Chamber has been provided with information that leads it to conclude that the applicant suffered personal harm as a result of crimes confirmed against the accused, namely his alleged conscription and/or enlistment and/or use to participate actively in the hostilities, between September 2002 and at least until March 2003.³⁴⁶

Application of victim a/0122/08 [Annex 4, filing 1501]

The means of identification

The Chamber has been provided with the demobilisation certificate and a family reunification certificate for the applicant, as well as the election card and the certificate that indicates the position for the person acting on his behalf, [REDACTED]. The applicant has consented to this person acting on his behalf.³⁴⁷

The claim to victim status

The applicant states that he was recruited by the UPC militia of Thomas Lubanga in [REDACTED] 2002 when he was [REDACTED] years old. He was trained to use weapons. He claims he was tortured, and he was drugged and forced to walk long distances, whilst in a state of hunger. He was used to intimidate people in villages and to steal their food. He was forced to commit acts of torture. He returned to his family in 2004, and as consequence of his recruitment his schooling was interrupted and he suffers

³⁴⁶ Decision on victims' participation, 18 January 2008, ICC-01/04-01/06-1119, as confirmed, amended and reversed by the Appeals Chamber's 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.

³⁴⁷ Second Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1501-Conf-Exp, 21 November 2008, Annex 2, pages 3-4 and Annex 4.

from psychological problems and pain in his [REDACTED]. He suffered material and "human" loss.³⁴⁸

The phases of the proceedings

The applicant submits he has an interest in participating in all phases of the proceedings.³⁴⁹

The observations of the defence

The defence did not refer to the applicant in its observations.³⁵⁰

The observations of the prosecution

The prosecution submits that the applicant meets the requirements under Rule 85(a) of the Rules for participation as a victim.³⁵¹

The observations of the victim's legal representative

The legal representative reply did not file observations as regards this applicant.

Legal representation

The applicant has been represented thus far by Ms Carine Bapita Buyangandu.³⁵²

The Chamber's analysis and conclusions

The Chamber considers that the documents and the other information provided to the Chamber assist in demonstrating the identity of the applicant in accordance with the Trial Chamber's Decision on victims' participation. The demobilisation certificate proves, *prima facie*, that the applicant was under 18 years of age at the time of his demobilisation.³⁵³ Furthermore, the applicant has stated precisely and unequivocally in his application that his date of birth is [REDACTED] 1989. In all the circumstances, the Chamber has been provided with enough information to determine, *prima facie*, that the applicant was under the age of 15 at the time of the relevant events.

³⁴⁸ Second Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1501-Conf-Exp, 21 November 2008, Annex 2, pages 3-4 and Annex 4.

³⁴⁹ Second Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1501-Conf-Exp, 21 November 2008, Annex 2, pages 3-4 and Annex 4.

³⁵⁰ Observations de la Défense sur les 15 demandes de participation à la procédure et les 30 demandes de participation complémentaires communiquées le 27 novembre 2008 ; Réponse de la Défense aux observations des représentants légaux relatives aux 105 demandes de participation communiquées le 20 mai 2008 , et Observations de la Défense relatives aux victimes indirectes, 5 December 2008, ICC-01/04-01/06-1536.

³⁵¹ Prosecution's Observations on 12 Redacted Applications for Victim Participation to the Case, concerning applicants a/0063/07, a/0122/08, a/0123/08, a/0124/08, a/0125/08, a/0126/08, a/0130/08, a/0149/08, a/0404/08, a/0405/08, a/0406/08 and a/0409/08, 8 December 2008, ICC-01/04-01/06-1541, paragraph 16.

³⁵² Second Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1501-Conf-Exp, 21 November 2008, Annex 2, pages 3-4 and Annex 4.

³⁵³ Second Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1501-Conf-Exp, 21 November 2008, Annex 4, page 20.

The Chamber notes that the applicant has consented to someone else acting on his behalf. The question that arises is whether the applicant needs to establish that the person acting on his behalf is either a relative or legal guardian, in order to participate in the proceedings. Alternatively, is the Chamber entitled to act on the application that has been submitted “by a person” on the applicant’s behalf, which indicates clearly that the victim wishes to participate in these proceedings.

The Rome Statute framework is clear on this issue. There are no provisions establishing categories of people who alone are allowed to act for victims, whether the latter are adults or children. Rule 89(3) of the Rules simply states that “(a) 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”. It follows that the person acting on behalf of a victim does not have to be a relative or a legal guardian because, within the Rules, the “person acting” is undefined and unrestricted.

In support of this approach, the inevitable experience of most, if not all, children who were recruited in the circumstances alleged in this trial, is that they will have been separated from their parents and other adult relatives at a relatively young age. Many of them have been living, to put it at its lowest, disjointed and very unsettled lives for a number of years. Some children have still not been reunited with their families and they do not have legal guardians. To the extent that they have managed to find representation at all, they are often assisted by people such as schoolteachers and other similar community figures.

In this regard, the Chamber notes the General Comment No. 6(2005) of the Committee on the Rights of the Child in which it was recognised that separated or unaccompanied children (defined as children who have been separated from both parents, other relatives or from any previous legal or customary primary caregiver), in some situations “have no access to proper and appropriate identification, registration, age assessment, documentation family tracing, guardianship systems or legal advice”.³⁵⁴ The Committee further noted that “in large-scale crises, where it will be difficult to establish guardianship arrangements on an individual basis, the rights and best interests of separated children should be safeguarded and promoted by States and organizations working on behalf of these children”.³⁵⁵

The Chamber has paid careful attention to the experience of the Registry in the field in the DRC, and particularly its opinion that “legal guardianship is very rare in Eastern Congo and many children who do not live with their parents, for instance

³⁵⁴ Committee on the Rights of the Child, General Comment No. 6 (2005), 1 September 2005, CRC/GC/2005/6, paragraphs 3, 7 and 8. Although this General Comment applies to children that have crossed an international border, the Committee has acknowledged that there are many similar challenges related to internally displaced unaccompanied and separated children and encourages States Parties to adopt the relevant aspects of the General Comment in relation to internally displaced unaccompanied and separated children (paragraph 5).

³⁵⁵ Committee on the Rights of the Child, General Comment No. 6 (2005), 1 September 2005, CRC/GC/2005/6, paragraph 38.

because they have not yet been reunited with their families after being demobilised from an armed group or because they experience difficulties in reintegration, are looked after by persons such as school principals, transition centres for demobilised children, who do not have a formal status in relation to the child”.

The real possibility exists, therefore, that a number of applicants who seek to participate in these proceedings will be living in circumstances where they cannot be represented by their parents, other family relatives or a legal guardian. In relation to these victims, who are over 18 years of age or are close thereto, they have individually applied through a person acting on their behalf (who is not their next-of-kin or their legal guardian) to participate in this trial as a victim. In each instance, the application accords with the express requirements of Rule 89 (3) of the Rules.

All of the matters set out above provide strong support for the approach that the Rules have not restricted the types of people who are able to act on behalf of all victims and including child victims.

In all the circumstances, the Trial Chamber determines that the applicant has given sufficient evidence to establish, *prima facie*, that he is a victim under Rules 85(a) of the Rules, as the Chamber has been provided with information that leads it to conclude that the applicant suffered personal harm as a result of crimes confirmed against the accused, namely his alleged conscription and/or enlistment and/or use to participate actively in the hostilities, between September 2002 and 13 August 2003.³⁵⁶

Application of victim a/0124/08 [Annex 6, filing 1501]

The means of identification

The Chamber has been provided with the student identity card and the demobilisation certificate for the applicant as well as the election card and the certificate that indicates the position for the person acting on his behalf, [REDACTED]. The applicant has consented to this person acting on his behalf.³⁵⁷

The claim to victim status

The applicant states that he was recruited by force in [REDACTED] 2003 by the UPC militia of Thomas Lubanga when he was [REDACTED] years old. He was trained, and he claims he suffered psychological torture. He was used as a [REDACTED] and as a [REDACTED], and he

³⁵⁶ Decision on victims’ participation, 18 January 2008, ICC-01/04-01/06-1119, as confirmed, amended and reversed by the Appeals Chamber’s 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.

³⁵⁷ Second Report to Trial Chamber I on Victims’ Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1501-Conf-Exp, 21 November 2008, Annex 2, pages 7-8 and Annex 6.

██████████ to the UPC. He was trained to kill and rape. He was demobilised in ██████████ 2004, and as a result of his recruitment his schooling was interrupted.³⁵⁸

The phases of the proceedings

The applicant submits he has an interest in participating in all phases of the proceedings.³⁵⁹

The observations of the defence

The defence submits that the applicant has not established his relationship with the person acting on his behalf. Thus, the defence suggests that the application does not meet the criteria for *prima facie* admission under Rule 85 of the Rules, and it should be rejected.³⁶⁰

The observations of the prosecution

The prosecution submits that the applicant meets the requirements under Rule 85(a) of the Rules for participation as a victim.³⁶¹

The observations of the victim's legal representative

The legal representative reply did not file observations as regards this applicant.

Legal representation

The applicant has been represented thus far by Ms Carine Bapita Buyangandu.³⁶²

The Chamber's analysis and conclusions

The Chamber considers that the documents and other material provided to the Chamber assist in demonstrating the identity of the applicant in accordance with the Trial Chamber's Decision on victims' participation. In all the circumstances, the Chamber has been provided with enough information (particularly the student identity card) to determine, *prima facie*, that the applicant was under the age of 15 during the material events.

³⁵⁸ Second Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1501-Conf-Exp, 21 November 2008, Annex 2, pages 7-8 and Annex 6.

³⁵⁹ Second Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1501-Conf-Exp, 21 November 2008, Annex 2, pages 7-8 and Annex 6.

³⁶⁰ Observations de la Défense sur les 15 demandes de participation à la procédure et les 30 demandes de participation complémentaires communiquées le 27 novembre 2008 ; Réponse de la Défense aux observations des représentants légaux relatives aux 105 demandes de participation communiquées le 20 mai 2008 ; et Observations de la Défense relatives aux victimes indirectes, 5 December 2008, ICC-01/04-01/06-1536, paragraph 39.

³⁶¹ Prosecution's Observations on 12 Redacted Applications for Victim Participation to the Case, concerning applicants a/0063/07, a/0122/08, a/0123/08, a/0124/08, a/0125/08, a/0126/08, a/0130/08, a/0149/08, a/0404/08, a/0405/08, a/0406/08 and a/0409/08, 8 December 2008, ICC-01/04-01/06-1541, paragraph 16.

³⁶² Second Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1501-Conf-Exp, 21 November 2008, Annex 2, pages 7-8 and Annex 6

The Chamber notes that the applicant has consented to someone else acting on his behalf. The question that arises is whether the applicant needs to establish that the person acting on his behalf is either a relative or legal guardian, in order to participate in the proceedings. Alternatively, is the Chamber entitled to act on the application that has been submitted "by a person" on the applicant's behalf, which indicates clearly that the victim wishes to participate in these proceedings.

The Rome Statute framework is clear on this issue. There are no provisions establishing categories of people who alone are allowed to act for victims, whether the latter are adults or children. Rule 89(3) of the Rules simply states that "(a) 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". It follows that the person acting on behalf of a victim does not have to be a relative or a legal guardian because, within the Rules, the "person acting" is undefined and unrestricted.

In support of this approach, the inevitable experience of most, if not all, children who were recruited in the circumstances alleged in this trial, is that they will have been separated from their parents and other adult relatives at a relatively young age. Many of them have been living, to put it at its lowest, disjointed and very unsettled lives for a number of years. Some children have still not been reunited with their families and they do not have legal guardians. To the extent that they have managed to find representation at all, they are often assisted by people such as schoolteachers and other similar community figures.

In this regard, the Chamber notes the General Comment No. 6(2005) of the Committee on the Rights of the Child in which it was recognised that separated or unaccompanied children (defined as children who have been separated from both parents, other relatives or from any previous legal or customary primary caregiver), in some situations "have no access to proper and appropriate identification, registration, age assessment, documentation family tracing, guardianship systems or legal advice".³⁶³ The Committee further noted that "in large-scale crises, where it will be difficult to establish guardianship arrangements on an individual basis, the rights and best interests of separated children should be safeguarded and promoted by States and organizations working on behalf of these children".³⁶⁴

The Chamber has paid careful attention to the experience of the Registry in the field in the DRC, and particularly its opinion that "legal guardianship is very rare in Eastern Congo and many children who do not live with their parents, for instance

³⁶³ Committee on the Rights of the Child, General Comment No. 6 (2005), 1 September 2005, CRC/GC/2005/6, paragraphs 3, 7 and 8. Although this General Comment applies to children that have crossed and international border, the Committee has acknowledged that there are many similar challenges related to internally displaced unaccompanied and separated children and encourages States Parties to adopt the relevant aspects of the General Comment in relation to internally displaced unaccompanied and separated children (paragraph 5).

³⁶⁴ Committee on the Rights of the Child, General Comment No. 6 (2005), 1 September 2005, CRC/GC/2005/6, paragraph 38.

because they have not yet been reunited with their families after being demobilised from an armed group or because they experience difficulties in reintegration, are looked after by persons such as school principals, transition centres for demobilised children, who do not have a formal status in relation to the child”.

The real possibility exists, therefore, that a number of applicants who seek to participate in these proceedings will be living in circumstances where they cannot be represented by their parents, other family relatives or a legal guardian. In relation to these victims, who are over 18 years of age or are close thereto, they have individually applied through a person acting on their behalf (who is not their next-of-kin or their legal guardian) to participate in this trial as a victim. In each instance, the application accords with the express requirements of Rule 89 (3) of the Rules.

All of the matters set out above provide strong support for the approach that the Rules have not restricted the types of people who are able to act on behalf of all victims and including child victims.

Therefore, the Trial Chamber determines that the applicant has given sufficient evidence to establish, *prima facie*, that he is a victim under Rules 85(a) of the Rules, as the Chamber has been provided with information that leads it to conclude that the applicant suffered personal harm as a result of crimes confirmed against the accused, namely his alleged conscription and/or enlistment and/or use to participate actively in the hostilities, between September 2002 and 13 August 2003.³⁶⁵

Application of victim a/0125/08 [Annex 7, filing 1501]

The means of identification

The Chamber has been provided with the demobilisation certificate, a family reunification certificate and a certificate of participation in an activity for former child soldiers for the applicant, as well as the election card and the certificate that indicates the position for the person acting on his behalf, [REDACTED]. The applicant has consented to this person acting on his behalf.³⁶⁶

The claim to victim status

The applicant states that in [REDACTED] 2002 he was recruited by the FNI militia when he was [REDACTED] years old. Three days later, he was recruited by the UPC militia of Thomas Lubanga. He was trained to use weapons, and he experienced moral and physical torture. He was used as [REDACTED], because the purpose of the UPC was to kill any Lendu they encountered. He was demobilised and reunited with his family in [REDACTED] 2004,

³⁶⁵ Decision on victims' participation, 18 January 2008, ICC-01/04-01/06-1119, as confirmed, amended and reversed by the Appeals Chamber's 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.

³⁶⁶ Second Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1501-Conf-Exp, 21 November 2008, Annex 2, pages 9-10 and Annex 7.

and he claims that as a result of his recruitment his schooling was interrupted and he feels demoralised and has suffered considerable material loss.³⁶⁷

The phases of the proceedings

The applicant submits he has an interest in participating in all phases of the proceedings.³⁶⁸

The observations of the defence

The defence did not refer to the applicant in its observations.³⁶⁹

The observations of the prosecution

The prosecution submits that the applicant meets the requirements under Rule 85(a) of the Rules for participation as a victim.³⁷⁰

The observations of the victim's legal representative

The legal representative reply did not file observations as regards this applicant.

Legal representation

The applicant has been represented thus far by Ms Carine Bapita Buyangandu.³⁷¹

The Chamber's analysis and conclusions

The Chamber considers that the documents and other information provided assist in demonstrating the identity of the applicant in accordance with the Trial Chamber's Decision on victims' participation. The Chamber considers that the demobilisation certificate proves, *prima facie*, that the applicant was under 18 years at the date of his demobilisation in ██████████ 2005.³⁷² Furthermore, the applicant has stated precisely and unequivocally in his application that his date of birth is ██████████ 1990. In all the circumstances, the Chamber has been provided with enough information to

³⁶⁷ Second Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1501-Conf-Exp, 21 November 2008, Annex 2, pages 9-10 and Annex 7.

³⁶⁸ Second Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1501-Conf-Exp, 21 November 2008, Annex 2, pages 9-10 and Annex 7.

³⁶⁹ Observations de la Défense sur les 15 demandes de participation à la procédure et les 30 demandes de participation complémentaires communiquées le 27 novembre 2008 ; Réponse de la Défense aux observations des représentants légaux relatives aux 105 demandes de participation communiquées le 20 mai 2008 ; et Observations de la Défense relatives aux victimes indirectes, 5 December 2008, ICC-01/04-01/06-1536.

³⁷⁰ Prosecution's Observations on 12 Redacted Applications for Victim Participation to the Case, concerning applicants a/0063/07, a/0122/08, a/0123/08, a/0124/08, a/0125/08, a/0126/08, a/0130/08, a/0149/08, a/0404/08, a/0405/08, a/0406/08 and a/0409/08, 8 December 2008, ICC-01/04-01/06-1541, paragraph 16.

³⁷¹ Second Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1501-Conf-Exp, 21 November 2008, Annex 2, pages 7-8 and Annex 6.

³⁷² Second Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1501-Conf-Exp, 21 November 2008, Annex 6, pages 18 and 19.

determine, *prima facie*, that the applicant was under the age of 15 during the material events.

The Chamber notes that the applicant has consented to someone else acting on his behalf. The question that arises is whether the applicant needs to establish that the person acting on his behalf is either a relative or legal guardian, in order to participate in the proceedings. Alternatively, is the Chamber entitled to act on the application that has been submitted “by a person” on the applicant’s behalf, which indicates clearly that the victim wishes to participate in these proceedings.

The Rome Statute framework is clear on this issue. There are no provisions establishing categories of people who alone are allowed to act for victims, whether the latter are adults or children. Rule 89(3) of the Rules simply states that “(a)n 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”. It follows that the person acting on behalf of a victim does not have to be a relative or a legal guardian because, within the Rules, the “person acting” is undefined and unrestricted.

In support of this approach, the inevitable experience of most, if not all, children who were recruited in the circumstances alleged in this trial, is that they will have been separated from their parents and other adult relatives at a relatively young age. Many of them have been living, to put it at its lowest, disjointed and very unsettled lives for a number of years. Some children have still not been reunited with their families and they do not have legal guardians. To the extent that they have managed to find representation at all, they are often assisted by people such as schoolteachers and other similar community figures.

In this regard, the Chamber notes the General Comment No. 6(2005) of the Committee on the Rights of the Child in which it was recognised that separated or unaccompanied children (defined as children who have been separated from both parents, other relatives or from any previous legal or customary primary caregiver), in some situations “have no access to proper and appropriate identification, registration, age assessment, documentation family tracing, guardianship systems or legal advice”.³⁷³ The Committee further noted that “in large-scale crises, where it will be difficult to establish guardianship arrangements on an individual basis, the rights and best interests of separated children should be safeguarded and promoted by States and organizations working on behalf of these children”.³⁷⁴

³⁷³ Committee on the Rights of the Child, General Comment No. 6 (2005), 1 September 2005, CRC/GC/2005/6, paragraphs 3, 7 and 8. Although this General Comment applies to children that have crossed and international border, the Committee has acknowledged that there are many similar challenges related to internally displaced unaccompanied and separated children and encourages States Parties to adopt the relevant aspects of the General Comment in relation to internally displaced unaccompanied and separated children (paragraph 5)

³⁷⁴ Committee on the Rights of the Child, General Comment No. 6 (2005), 1 September 2005, CRC/GC/2005/6, paragraph 38.

The Chamber has paid careful attention to the experience of the Registry in the field in the DRC, and particularly its opinion that “legal guardianship is very rare in Eastern Congo and many children who do not live with their parents, for instance because they have not yet been reunited with their families after being demobilised from an armed group or because they experience difficulties in reintegration, are looked after by persons such as school principals, transition centres for demobilised children, who do not have a formal status in relation to the child”.

The real possibility exists, therefore, that a number of applicants who seek to participate in these proceedings will be living in circumstances where they cannot be represented by their parents, other family relatives or a legal guardian. In relation to these victims, who are over 18 years of age or are close thereto, they have individually applied through a person acting on their behalf (who is not their next-of-kin or their legal guardian) to participate in this trial as a victim. In each instance, the application accords with the express requirements of Rule 89 (3) of the Rules.

All of the matters set out above provide strong support for the approach that the Rules have not restricted the types of people who are able to act on behalf of all victims and including child victims.

In the circumstances, the Trial Chamber determines that the applicant has given sufficient evidence to establish, *prima facie*, that he is a victim under Rules 85(a) of the Rules, as the Chamber has been provided with information that leads it to conclude that the applicant suffered personal harm as a result of crimes confirmed against the accused, namely his alleged conscription and/or enlistment and/or use to participate actively in the hostilities, between September 2002 and 13 August 2003.³⁷⁵

The Chamber has taken account of the fact that the applicant was a child when the application was filed but is now an adult. Although this is not an impediment to granting the application, the Chamber nonetheless instructs the VPRS to enquire of the applicant whether he wishes to participate on his own behalf or through the person acting on his behalf.

Application of victim a/0126/08 [Annex 8, filing 1501]

The means of identification

The Chamber has been provided with the student identity card for the applicant as well as the election card and the certificate that indicates the position for the person acting on his behalf, [REDACTED]. The applicant has consented that this person acts on his behalf.³⁷⁶

³⁷⁵ Decision on victims' participation, 18 January 2008, ICC-01/04-01/06-1119, as confirmed, amended and reversed by the Appeals Chamber's 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.

³⁷⁶ Second Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1501-Conf-Exp, 21 November 2008, Annex 2, pages 11-12 and Annex 8.

The claim to victim status

The applicant states that in [REDACTED] 2003 he was recruited by force by the UPC militia of Thomas Lubanga, when he was [REDACTED] years old. He was trained, and he experienced psychological torture. He was used as a [REDACTED] and as [REDACTED], and he [REDACTED] for the UPC. He was demobilised and reunited with his family in [REDACTED] 2004. As a result of his recruitment, the applicant claims his schooling was interrupted and he was taught to kill and rape.³⁷⁷

The phases of the proceedings

The applicant submits he has an interest in participating in all phases of the proceedings.³⁷⁸

The observations of the defence

The defence did not refer to the applicant in its observations.³⁷⁹

The observations of the prosecution

The prosecution submits that the applicant meets the requirements under Rule 85(a) of the Rules for participation as a victim.³⁸⁰

The observations of the victim's legal representative

The legal representative reply did not file observations as regards this applicant.

Legal representation

The applicant has been represented thus far by Ms Carine Bapita Buyangandu.³⁸¹

The Chamber's analysis and conclusions

The Chamber considers that the documents and other material provided to the Chamber assist in demonstrating the identity of the applicant in accordance with the Trial Chamber's Decision on victims' participation. In all the circumstances, the Chamber has been provided with enough information (particularly the student

³⁷⁷ Second Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1501-Conf-Exp, 21 November 2008, Annex 2, pages 11-12 and Annex 8

³⁷⁸ Second Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1501-Conf-Exp, 21 November 2008, Annex 2, pages 11-12 and Annex 8.

³⁷⁹ Observations de la Défense sur les 15 demandes de participation à la procédure et les 30 demandes de participation complémentaires communiquées le 27 novembre 2008 ; Réponse de la Défense aux observations des représentants légaux relatives aux 105 demandes de participation communiquées le 20 mai 2008 ; et Observations de la Défense relatives aux victimes indirectes, 5 December 2008, ICC-01/04-01/06-1536.

³⁸⁰ Prosecution's Observations on 12 Redacted Applications for Victim Participation to the Case, concerning applicants a/0063/07, a/0122/08, a/0123/08, a/0124/08, a/0125/08, a/0126/08, a/0130/08, a/0149/08, a/0404/08, a/0405/08, a/0406/08 and a/0409/08, 8 December 2008, ICC-01/04-01/06-1541, paragraph 16.

³⁸¹ Second Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1501-Conf-Exp, 21 November 2008, Annex 2, pages 11-12 and Annex 8.

identity card) to determine, *prima facie*, that the applicant was under the age of 15 at the time of the relevant events.

The Chamber notes that the applicant has consented to someone else acting on his behalf. The question that arises is whether the applicant needs to establish that the person acting on his behalf is either a relative or legal guardian, in order to participate in the proceedings. Alternatively, is the Chamber entitled to act on the application that has been submitted “by a person” on the applicant’s behalf, which indicates clearly that the victim wishes to participate in these proceedings.

The Rome Statute framework is clear on this issue. There are no provisions establishing categories of people who alone are allowed to act for victims, whether the latter are adults or children. Rule 89(3) of the Rules simply states that “(a)n 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”. It follows that the person acting on behalf of a victim does not have to be a relative or a legal guardian because, within the Rules, the “person acting” is undefined and unrestricted.

In support of this approach, the inevitable experience of most, if not all, children who were recruited in the circumstances alleged in this trial, is that they will have been separated from their parents and other adult relatives at a relatively young age. Many of them have been living, to put it at its lowest, disjointed and very unsettled lives for a number of years. Some children have still not been reunited with their families and they do not have legal guardians. To the extent that they have managed to find representation at all, they are often assisted by people such as schoolteachers and other similar community figures.

In this regard, the Chamber notes the General Comment No. 6(2005) of the Committee on the Rights of the Child in which it was recognised that separated or unaccompanied children (defined as children who have been separated from both parents, other relatives or from any previous legal or customary primary caregiver), in some situations “have no access to proper and appropriate identification, registration, age assessment, documentation family tracing, guardianship systems or legal advice”.³⁸² The Committee further noted that “in large-scale crises, where it will be difficult to establish guardianship arrangements on an individual basis, the rights and best interests of separated children should be safeguarded and promoted by States and organizations working on behalf of these children”.³⁸³

³⁸² Committee on the Rights of the Child, General Comment No. 6 (2005), 1 September 2005, CRC/GC/2005/6, paragraphs 3, 7 and 8. Although this General Comment applies to children that have crossed and international border, the Committee has acknowledged that there are many similar challenges related to internally displaced unaccompanied and separated children and encourages States Parties to adopt the relevant aspects of the General Comment in relation to internally displaced unaccompanied and separated children (paragraph 5).

³⁸³ Committee on the Rights of the Child, General Comment No. 6 (2005), 1 September 2005, CRC/GC/2005/6, paragraph 38.

The Chamber has paid careful attention to the experience of the Registry in the field in the DRC, and particularly its opinion that “legal guardianship is very rare in Eastern Congo and many children who do not live with their parents, for instance because they have not yet been reunited with their families after being demobilised from an armed group or because they experience difficulties in reintegration, are looked after by persons such as school principals, transition centres for demobilised children, who do not have a formal status in relation to the child”.

The real possibility exists, therefore, that a number of applicants who seek to participate in these proceedings will be living in circumstances where they cannot be represented by their parents, other family relatives or a legal guardian. In relation to these victims, who are over 18 years of age or are close thereto, they have individually applied through a person acting on their behalf (who is not their next-of-kin or their legal guardian) to participate in this trial as a victim. In each instance, the application accords with the express requirements of Rule 89 (3) of the Rules.

All of the matters set out above provide strong support for the approach that the Rules have not restricted the types of people who are able to act on behalf of all victims and including child victims.

In those circumstances, the Trial Chamber determines that the applicant has given sufficient evidence to establish, *prima facie*, that he is a victim under Rules 85(a) of the Rules, as the Chamber has been provided with information that leads it to conclude that the applicant suffered personal harm as a result of crimes confirmed against the accused, namely his alleged conscription and/or enlistment and/or use to participate actively in the hostilities, between September 2002 and 13 August 2003.³⁸⁴

Application of victim a/0130/08[Annex 9, filing 1501]

The means of identification

The Chamber has been provided with the demobilisation certificate, a family reunification certificate and a certificate of participation in an activity for former child soldiers for the applicant, as well as the election card for the person acting on his behalf.³⁸⁵ The Chamber notes that the applicant was [REDACTED] years old at the time the application was made but he has nevertheless consented to another person acting on his behalf.

The claim to victim status

³⁸⁴ Decision on victims' participation, 18 January 2008, ICC-01/04-01/06-1119, as confirmed, amended and reversed by the Appeals Chamber's 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.

³⁸⁵ Second Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1501-Conf-Exp, 21 November 2008, Annex 2, pages 13-14 and Annex 9.

The applicant claims that in ██████████ 2002 he was recruited by the UPC militia of Thomas Lubanga, when he was ██████ years old. He states that he was trained for several months and he learnt how to use weapons and he was subjected to physical torture. He participated in hostilities. He was demobilised in ██████████ 2004. As a result of these events, the applicant claims his schooling was interrupted and he has psychological problems. He suffered from drug abuse and has ██████████ problems.³⁸⁶

The phases of the proceedings

The applicant submits he has an interest in participating in all phases of the proceedings.³⁸⁷

The observations of the defence

The defence did not refer to the applicant in its observations.³⁸⁸

The observations of the prosecution

The prosecution submits that the applicant meets the requirements under Rule 85(a) of the Rules for participation as a victim.³⁸⁹

The observations of the victim's legal representative

The legal representative reply did not file observations as regards this applicant.

Legal representation

The applicant has been represented thus far by Ms Carine Bapita Buyangandu.³⁹⁰

The Chamber's analysis and conclusions

The Chamber considers that the documents and the other information provided assist in demonstrating the identity of the applicant in accordance with the Trial Chamber's Decision on victims' participation. The Chamber considers that the demobilisation certificate proves, *prima facie*, that the applicant was under 18 years at

³⁸⁶ Second Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1501-Conf-Exp, 21 November 2008, Annex 2, pages 13-14 and Annex 9.

³⁸⁷ Second Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1501-Conf-Exp, 21 November 2008, Annex 2, pages 13-14 and Annex 9.

³⁸⁸ Observations de la Défense sur les 15 demandes de participation à la procédure et les 30 demandes de participation complémentaires communiquées le 27 novembre 2008 ; Réponse de la Défense aux observations des représentants légaux relatives aux 105 demandes de participation communiquées le 20 mai 2008 ; et Observations de la Défense relatives aux victimes indirectes, 5 December 2008, ICC-01/04-01/06-1536.

³⁸⁹ Prosecution's Observations on 12 Redacted Applications for Victim Participation to the Case, concerning applicants a/0063/07, a/0122/08, a/0123/08, a/0124/08, a/0125/08, a/0126/08, a/0130/08, a/0149/08, a/0404/08, a/0405/08, a/0406/08 and a/0409/08, 8 December 2008, ICC-01/04-01/06-1541, paragraph 16.

³⁹⁰ Second Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1501-Conf-Exp, 21 November 2008, Annex 2, pages 13-14 and Annex 9.

the time of his demobilisation in ██████████ 2004.³⁹¹ Furthermore, the applicant has stated precisely and unequivocally in his application that his date of birth is ██████████ 1989. In all the circumstances, the Chamber has been provided with enough information to determine, *prima facie*, that the applicant was under the age of 15 during the material events.

The Chamber notes that the applicant has consented to someone else acting on his behalf. The question that arises is whether the applicant needs to establish that the person acting on his behalf is either a relative or legal guardian, in order to participate in the proceedings. Alternatively, is the Chamber entitled to act on the application that has been submitted “by a person” on the applicant’s behalf, which indicates clearly that the victim wishes to participate in these proceedings.

The Rome Statute framework is clear on this issue. There are no provisions establishing categories of people who alone are allowed to act for victims, whether the latter are adults or children. Rule 89(3) of the Rules simply states that “(a)n 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”. It follows that the person acting on behalf of a victim does not have to be a relative or a legal guardian because, within the Rules, the “person acting” is undefined and unrestricted.

In support of this approach, the inevitable experience of most, if not all, children who were recruited in the circumstances alleged in this trial, is that they will have been separated from their parents and other adult relatives at a relatively young age. Many of them have been living, to put it at its lowest, disjointed and very unsettled lives for a number of years. Some children have still not been reunited with their families and they do not have legal guardians. To the extent that they have managed to find representation at all, they are often assisted by people such as schoolteachers and other similar community figures.

In this regard, the Chamber notes the General Comment No. 6(2005) of the Committee on the Rights of the Child in which it was recognised that separated or unaccompanied children (defined as children who have been separated from both parents, other relatives or from any previous legal or customary primary caregiver), in some situations “have no access to proper and appropriate identification, registration, age assessment, documentation family tracing, guardianship systems or legal advice”.³⁹² The Committee further noted that “in large-scale crises, where it will be difficult to establish guardianship arrangements on an individual basis, the rights

³⁹¹ Second Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1501-Conf-Exp, 21 November 2008, Annex 9, pages 19 and 20.

³⁹² Committee on the Rights of the Child, General Comment No. 6 (2005), 1 September 2005, CRC/GC/2005/6, paragraphs 3, 7 and 8. Although this General Comment applies to children that have crossed and international border, the Committee has acknowledged that there are many similar challenges related to internally displaced unaccompanied and separated children and encourages States Parties to adopt the relevant aspects of the General Comment in relation to internally displaced unaccompanied and separated children (paragraph 5).

and best interests of separated children should be safeguarded and promoted by States and organizations working on behalf of these children".³⁹³

The Chamber has paid careful attention to the experience of the Registry in the field in the DRC, and particularly its opinion that "legal guardianship is very rare in Eastern Congo and many children who do not live with their parents, for instance because they have not yet been reunited with their families after being demobilised from an armed group or because they experience difficulties in reintegration, are looked after by persons such as school principals, transition centres for demobilised children, who do not have a formal status in relation to the child".

The real possibility exists, therefore, that a number of applicants who seek to participate in these proceedings will be living in circumstances where they cannot be represented by their parents, other family relatives or a legal guardian. In relation to these victims, who are over 18 years of age or are close thereto, they have individually applied through a person acting on their behalf (who is not their next-of-kin or their legal guardian) to participate in this trial as a victim. In each instance, the application accords with the express requirements of Rule 89 (3) of the Rules.

All of the matters set out above provide strong support for the approach that the Rules have not restricted the types of people who are able to act on behalf of all victims and including child victims.

In those circumstances, the Trial Chamber determines that the applicant has given sufficient evidence to establish, *prima facie*, that he is a victim under Rules 85(a) of the Rules, as the Chamber has been provided with information that leads it to conclude that the applicant suffered personal harm as a result of crimes confirmed against the accused, namely his alleged conscription and/or enlistment and/or use to participate actively in the hostilities, between September 2002 and 13 August 2003.³⁹⁴

Application of victim a/0405/08 [Annex 13, filing 1501]

The means of identification

The Chamber has been provided with a medical certificate for the applicant as well as the election card for the person acting on his behalf. The applicant has consented to this person acting for him.³⁹⁵

The claim to victim status

³⁹³ Committee on the Rights of the Child, General Comment No. 6 (2005), 1 September 2005, CRC/GC/2005/6, paragraph 38.

³⁹⁴ Decision on victims' participation, 18 January 2008, ICC-01/04-01/06-1119, as confirmed, amended and reversed by the Appeals Chamber's 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.

³⁹⁵ Second Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1501-Conf-Exp, 21 November 2008, Annex 2, pages 21-22 and Annex 13

The applicant states that he was recruited, along with other members of his family, in ██████ 2003 by the UPC militia, when he was ██████ years old. He was trained to use weapons and he was given a military uniform. He was sent to fight the Lendu, the Bangiti and the Ugandans. He was given drugs in his food to make him more willing to fight and kill others, without regret. During these events, the applicant states that his house was pillaged and burned by the UPC. He lost his ██████, and he has suffered because there is no one to help him. He states that as a result he is ██████. ³⁹⁶

The phases of the proceedings

The applicant submits he has an interest in participating in all phases of the proceedings. ³⁹⁷

The observations of the defence

The defence observes that the applicant has alleged that he was abducted by the FPLC forces in October 2003. As a result, it is contended that the events described in his application do not have a direct link with the charges confirmed against the accused: the enlistment of children under the age of 15 years into the FLPC forces between September 2002 and the 13 August 2003. Furthermore, the applicant has not provided any document proving his relationship with the person acting on his behalf. In all the circumstances, the defence submits that the application does not meet the criteria for *prima facie* admission under Rule 85 of the Rules, and therefore it should be rejected. ³⁹⁸

The observations of the prosecution

The prosecution submits that the application is incomplete since it does not include the relevant consent of the legal guardian or parent of the applicant (who is a child). ³⁹⁹

The observations of the victim's legal representative

The legal representative reply did not file observations as regards this applicant.

Legal representation

The applicant has been represented thus far by Mr Hervé Diakese. ⁴⁰⁰

³⁹⁶ Second Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1501-Conf-Exp, 21 November 2008, Annex 2, pages 21-22 and Annex 13.

³⁹⁷ Second Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1501-Conf-Exp, 21 November 2008, Annex 2, pages 21-22 and Annex 13.

³⁹⁸ Observations de la Défense sur les 15 demandes de participation à la procédure et les 30 demandes de participation complémentaires communiquées le 27 novembre 2008 ; Réponse de la Défense aux observations des représentants légaux relatives aux 105 demandes de participation communiquées le 20 mai 2008 ; et Observations de la Défense relatives aux victimes indirectes, 5 December 2008, ICC-01/04-01/06-1536, paragraphs 33, 34 and 39.

³⁹⁹ Prosecution's Observations on 12 Redacted Applications for Victim Participation to the Case, concerning applicants a/0063/07, a/0122/08, a/0123/08, a/0124/08, a/0125/08, a/0126/08, a/0130/08, a/0149/08, a/0404/08, a/0405/08, a/0406/08 and a/0409/08, 8 December 2008, ICC-01/04-01/06-1541, paragraph 17.

The Chamber's analysis and conclusions

The Chamber considers that the documents and other material provided to the Chamber assist in demonstrating the identity of the applicant in accordance with the Trial Chamber's Decision on victims' participation. The medical certificate proves, *prima facie*, that the applicant was ■ years old in 2003. In all the circumstances, the Chamber has been provided with enough information to determine, *prima facie*, that the applicant was under the age of 15 during the material events.

The Chamber notes that the applicant has consented to someone else acting on his behalf. The question that arises is whether the applicant needs to establish that the person acting on his behalf is either a relative or legal guardian, in order to participate in the proceedings. Alternatively, is the Chamber entitled to act on the application that has been submitted "by a person" on the applicant's behalf, which indicates clearly that the victim wishes to participate in these proceedings.

The Rome Statute framework is clear on this issue. There are no provisions establishing categories of people who alone are allowed to act for victims, whether the latter are adults or children. Rule 89(3) of the Rules simply states that "(a)n 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". It follows that the person acting on behalf of a victim does not have to be a relative or a legal guardian because, within the Rules, the "person acting" is undefined and unrestricted.

In support of this approach, the inevitable experience of most, if not all, children who were recruited in the circumstances alleged in this trial, is that they will have been separated from their parents and other adult relatives at a relatively young age. Many of them have been living, to put it at its lowest, disjointed and very unsettled lives for a number of years. Some children have still not been reunited with their families and they do not have legal guardians. To the extent that they have managed to find representation at all, they are often assisted by people such as schoolteachers and other similar community figures.

In this regard, the Chamber notes the General Comment No. 6(2005) of the Committee on the Rights of the Child in which it was recognised that separated or unaccompanied children (defined as children who have been separated from both parents, other relatives or from any previous legal or customary primary caregiver), in some situations "have no access to proper and appropriate identification, registration, age assessment, documentation family tracing, guardianship systems or legal advice".⁴⁰¹ The Committee further noted that "in large-scale crises, where it will

⁴⁰⁰ Second Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1501-Conf-Exp, 21 November 2008, Annex 2, pages 21-22 and Annex 13.

⁴⁰¹ Committee on the Rights of the Child, General Comment No. 6 (2005), 1 September 2005, CRC/GC/2005/6, paragraphs 3, 7 and 8. Although this General Comment applies to children that have crossed and international border, the Committee has acknowledged that there are many similar

be difficult to establish guardianship arrangements on an individual basis, the rights and best interests of separated children should be safeguarded and promoted by States and organizations working on behalf of these children".⁴⁰²

The Chamber has paid careful attention to the experience of the Registry in the field in the DRC, and particularly its opinion that "legal guardianship is very rare in Eastern Congo and many children who do not live with their parents, for instance because they have not yet been reunited with their families after being demobilised from an armed group or because they experience difficulties in reintegration, are looked after by persons such as school principals, transition centres for demobilised children, who do not have a formal status in relation to the child".

The real possibility exists, therefore, that a number of applicants who seek to participate in these proceedings will be living in circumstances where they cannot be represented by their parents, other family relatives or a legal guardian. In relation to these victims, who are over 18 years of age or are close thereto, they have individually applied through a person acting on their behalf (who is not their next-of-kin or their legal guardian) to participate in this trial as a victim. In each instance, the application accords with the express requirements of Rule 89 (3) of the Rules.

All of the matters set out above provide strong support for the approach that the Rules have not restricted the types of people who are able to act on behalf of all victims and including child victims.

In all the circumstances, the Trial Chamber determines that the applicant has given sufficient evidence to establish, *prima facie*, that he is a victim under Rules 85(a) of the Rules, as the Chamber has been provided with information that leads it to conclude that the applicant suffered personal harm as a result of crimes confirmed against the accused, namely his alleged conscription and/or enlistment and/or use to participate actively in the hostilities, between September 2002 and 13 August 2003.⁴⁰³

challenges related to internally displaced unaccompanied and separated children and encourages States Parties to adopt the relevant aspects of the General Comment in relation to internally displaced unaccompanied and separated children (paragraph 5).

⁴⁰² Committee on the Rights of the Child, General Comment No. 6 (2005), 1 September 2005, CRC/GC/2005/6, paragraph 38.

⁴⁰³ Decision on victims' participation, 18 January 2008, ICC-01/04-01/06-1119, as confirmed, amended and reversed by the Appeals Chamber's 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.

Group 1(d): Applicants who were children when the application was originally filed but who are now adults, or are close thereto

Applicant a/0225/06 [Annex 11]

The means of identification

The Chamber has been provided with the school identity card of the applicant and the birth certificate and [REDACTED] for the person acting on his behalf. In an additional report, the Chamber has been provided with the applicant's school card and birth certificate, and the election card of his [REDACTED]. In addition, proof of parental links were provided, together with a letter from the person acting on his behalf, who is acting as guardian for a number of applicants whose parents were killed during the hostilities or who have disappeared.⁴⁰⁴

The claim to victim status

The applicant states that he was recruited by the UPC in [REDACTED] 2003, when he was [REDACTED] years old. The applicant describes that due to his recruitment, his education was interrupted and his self-esteem affected.⁴⁰⁵

In an additional report, the Registry submitted to the Chamber a declaration by the applicant providing further details of his alleged recruitment, namely that he had been trained and had carried heavy munitions. The additional declaration also referred to the applicant being imprisoned and drugged, and his participation in hostilities. The applicant set out that his recruitment shocked him deeply and he has been demoralised; he has suffered permanent damage to his [REDACTED] and [REDACTED], as well as injuries to his [REDACTED].⁴⁰⁶

The phases of the proceedings

The applicant submits he has an interest in participating in all phases of the proceedings.⁴⁰⁷

The observations of the defence

The defence made no observations as regards the applicant in its original observations.⁴⁰⁸ However, in a later filing the defence submits that since the applicant

⁴⁰⁴ Report on supplementary information received and missing information concerning the applications for participation dealt with in the "First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court" dated 11 April 2008 (ICC-01/04-01/06-1275), 6 June 2008, ICC-01/04-01/06-1380-Conf, Annex 4.

⁴⁰⁵ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 20-21 and Annex 11.

⁴⁰⁶ Report on supplementary information received and missing information concerning the applications for participation dealt with in the "First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court" dated 11 April 2008 (ICC-01/04-01/06-1275), 6 June 2008, ICC-01/04-01/06-1380-Conf, Annex 4.

⁴⁰⁷ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 20-21 and Annex 11.

has given a different date of birth from that indicated in his initial application, the application does not meet the requirements for its *prima facie* admission under Rule 85 and it should be rejected.⁴⁰⁹

The observations of the prosecution

The prosecution submits that the applicant meets, *prima facie*, the necessary requirements for victim participation.⁴¹⁰ It is submitted that the additional documents provided to the Chamber prove the identity and consent of his legal guardian.⁴¹¹ The prosecution also contends that the information provided supports the suggestion that the applicant was under the age of 15 during the material events.⁴¹²

The observations of the victim's legal representative

The legal representatives submit that since the applicant has set out that he was recruited for the FPLC as a child soldier when he was under 15 years old, there is direct link with the charges brought against the accused. Therefore it is submitted the applicant should be granted the status of victim and admitted as a participant in the proceedings.⁴¹³

Legal representation

The applicant has been represented thus far by Mr Joseph Keta Orwinyo and Mr Jean Louis Gilissen.

The Chamber's analysis and conclusions

⁴⁰⁸ Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008, 10 June 2008, ICC-01/04-01/06-1388.

⁴⁰⁹ Observations de la Défense sur les 15 demandes de participation à la procédure et les 30 demandes de participation complémentaires communiquées le 27 novembre 2008 ; Réponse de la Défense aux observations des représentants légaux relatives aux 105 demandes de participation communiquées le 20 mai 2008 ; et Observations de la Défense relatives aux victimes indirectes, 5 December 2008, ICC-01/04-01/06-1536, paragraph 26

⁴¹⁰ Prosecution's Observations on 105 Redacted Applications for Victim Participation to the Case, 9 June 2008, ICC-01/04-01/06-1386, paragraph 27.

⁴¹¹ Prosecution's Observations on supplementary information for victim applications a/0002/06, a/0047/06, a/0048/06, a/0051/06, a/0052/06, a/0077/06, a/0221/06, a/0224/06, a/0225/06, a/0227/06, a/0229/06, a/0230/06, a/0236/06, a/0237/06, a/0238/06, a/0239/06, a/0240/06, a/0243/06, a/0055/07, a/0056/07, a/0057/07, a/0058/07, a/0060/07, a/0155/07, a/0156/07, a/0172/07, a/0187/07, a/0007/08, ICC-01/04-01/06-1540-Conf, paragraph 21.

⁴¹² Prosecution's Observations on supplementary information for victim applications a/0002/06, a/0047/06, a/0048/06, a/0051/06, a/0052/06, a/0077/06, a/0221/06, a/0224/06, a/0225/06, a/0227/06, a/0229/06, a/0230/06, a/0236/06, a/0237/06, a/0238/06, a/0239/06, a/0240/06, a/0243/06, a/0055/07, a/0056/07, a/0057/07, a/0058/07, a/0060/07, a/0155/07, a/0156/07, a/0172/07, a/0187/07, a/0007/08, ICC-01/04-01/06-1540-Conf, paragraph 27.

⁴¹³ Réponse aux "Prosecution's Observations on 105 Applications for Victim Participation to the Case" du 9 juin 2008 et aux « Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008 » du 10 juin 2008, 28 November, ICC-01/04-01/06/1522, paragraph 25, page 9.

The Trial Chamber notes that the applicant has applied to participate in the DRC situation and the application was provided to Pre-Trial Chamber I. In its decision of 31 January 2008, the Pre-Trial Chamber determined it would not resolve the applicant's status, stating that since the application was also pending before the Trial Chamber, the applicant's recognition as a victim in the "case" would automatically result in his recognition in the "situation".⁴¹⁴ In a more recent decision of 3 July 2008 the Pre-Trial Chamber concluded that since the applicant had not presented any identification document, the application was incomplete.⁴¹⁵

The Trial Chamber notes that applicants a/0224/06, a/0225/06, a/0226/06 and a/0227/06 were allegedly recruited at same time.⁴¹⁶

The Chamber considers that the documents and the other materials provided prove, *prima facie*, the identity of the applicant and for the person acting on his behalf in accordance with the Trial Chamber's Decision on victims' participation. They also prove, *prima facie*, that the applicant was ■ years old during the material events.

The Chamber notes that the applicant was a child when the application was filed but may now be an adult. Although this is not an impediment to granting the application, if - or when - the applicant is an adult, the VPRS is instructed to enquire of the applicant whether he wishes to participate on his own behalf or through the person acting on his behalf.

The Trial Chamber determines that the applicant has given sufficient evidence to establish, *prima facie*, that he is a victim under Rule 85(a) of the Rules, as the Chamber has been provided with enough information to conclude that the applicant suffered personal harm as a result of the commission of crimes included in the charges brought against the accused, namely his alleged enlistment and/or conscription and/or use to participate actively in the hostilities by the UPC between September 2002 and 13 August 2003.⁴¹⁷

⁴¹⁴ Corrigendum à la "Décision sur les demandes de participation à la procédure déposées dans le cadre de l'enquête en République démocratique du Congo par a/0004/06 à a/0009/06, a/0016/06 à a/0063/06, a/0071/06 à a/0080/06 et a/0105/06 à a/0110/06, a/0188/06, a/0128/06 à a/0162/06, a/0199/06, a/0203/06, a/0209/06, a/0214/06, a/0220/06 à a/0222/06, a/0224/06, a/0227/06 à a/0230/06, a/0234/06 à a/0236/06, a/0240/06, a/0225/06, a/0226/06, a/0231/06 à a/0233/06, a/0237/06 à a/0239/06 et a/0241/06 à a/0250/06", ICC-01/04-423-Corr, 31 January 2008, paragraph 144.

⁴¹⁵ Decision on the applications for participation file in connection with the investigation in the Democratic Republic of Congo by Applicants a/0047/06 to a/0052/06, a/163/06 to a/0187/06, a/0221/06, a/0226/06, a/0231/06 to a/0233/06, a/0237/06 to a/0239/06, and a/0241 to a/0250/06, 3 July 2008, ICC-01/04-505, paragraph 32.

⁴¹⁶ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annexes 11, 75, 93 and 94.

⁴¹⁷ Decision on victims' participation, 18 January 2008, ICC-01/04-01/06-1119, as confirmed, amended and reversed by the Appeals Chamber's 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.

Applicant a/0232/06 [Annex 12]**The means of identification**

The Chamber has been provided with the demobilisation certificate from the government as well as a certificate of identity for the applicant, and the election card and certificate of identity for the person acting on her behalf.⁴¹⁸

The claim to victim status

The applicant states that she was recruited by the UPC in ██████████ 2002. She was "married" to ██████████ of the UPC. She describes how she stayed with the UPC until ██████████ 2003 (see the demobilisation certificate). The applicant suggests that as a result of her recruitment her education was interrupted and she was rejected by her community. She also suffered from moral and physical harm and violations of her fundamental rights.⁴¹⁹

The phases of the proceedings

The applicant submits she has an interest participating in all phases of the proceedings.⁴²⁰

The observations of the defence

In its observations the defence argue that redactions in the application relating to the period of her recruitment have prevented the defence from establishing, *prima facie*, whether or not the events occurred between September 2002 and 13 August 2003.⁴²¹

The observations of the prosecution

The prosecution submit that the applicant meets, *prima facie*, the necessary requirements for victim participation.⁴²²

The observations of the victim's legal representative

The legal representative notes that the prosecution has not opposed the participation of the applicant. As regards the observations of the defence, the legal representative submits that the latter's inability to evaluate the application because of the necessary redactions should not affect the status of the applicant. The legal representative requests that the applicant is granted status to participate in the proceedings.⁴²³

⁴¹⁸ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 22-23 and Annex 12.

⁴¹⁹ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 22-23 and Annex 12.

⁴²⁰ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 22-23 and Annex 12.

⁴²¹ Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008, 10 June 2008, ICC-01/04-01/06-1388, page 7.

⁴²² Prosecution's Observations on 105 Redacted Applications for Victim Participation to the Case, 9 June 2008, ICC-01/04-01/06-1386, paragraph 26.

⁴²³ Réponse des demandeurs a/0105/06, a/0231/06, a/0232/06, a/0233/06, a/0242/06, a/0243/06, a/0244/06, a/0245/06, a/0246/06, a/0247/06, a/0248/06, a/0249/06, a/0250/06, a/0001/07, a/0002/07, a/0003/07, a/0004/07, a/0005/07, a/0006/07, a/0251/07, a/0253/07 et a/0254/07 aux observations du Procureur et de la Défense quant à leur demande de participation à la procédure dans l'affaire Le Procureur contre Thomas Lubanga, 28 November 2008, ICC-01/04-01/06-1514, paragraphs 7, 15, 25.

Legal representation

The applicant has been represented thus far by Ms Carine Bapita Buyangandu.

The Chamber's analysis and conclusions

The Trial Chamber notes that the applicant has applied to participate in the DRC situation and the application was provided to Pre-Trial Chamber I. In its decision of 31 January 2008, the Pre-Trial Chamber determined it would not resolve the applicant's status, stating that since the application was also pending before the Trial Chamber, the applicant's recognition as a victim in the "case" would automatically result in his recognition in the "situation".⁴²⁴ In a more recent decision of 3 July 2008, the Pre-Trial Chamber granted the applicant status to participate in the DRC Situation proceedings.⁴²⁵

The Chamber considers that the documents and the other materials provided prove, *prima facie*, the identity of the applicant and the person acting on her behalf in accordance with the Trial Chamber's Decision on victims' participation. They also prove, *prima facie*, that the applicant was ■ years old during the material events. The documents also prove the kinship between the applicant and the person acting on her behalf (father).

The Chamber notes the applicant was a child when the application was filed but may now be an adult. Although this is not an impediment to granting the application, if - or when - the applicant is an adult, the VPRS is instructed to enquire of the applicant whether he wishes to participate on his own behalf or through the person acting on his behalf.

The Trial Chamber determines that the applicant has given sufficient evidence to establish, *prima facie*, that she is a victim under Rule 85(a) of the Rules, as the Chamber has been provided with enough information to conclude that the applicant suffered personal harm as a result of the commission of crimes included in the charges brought against the accused, namely her alleged enlistment and/or conscription and/or use to participate actively in the hostilities by the UPC between September 2002 and 13 August 2003.⁴²⁶

⁴²⁴ Corrigendum à la "Décision sur les demandes de participation à la procédure déposées dans le cadre de l'enquête en République démocratique du Congo par a/0004/06 à a/0009/06, a/0016/06 à a/0063/06, a/0071/06 à a/0080/06 et a/0105/06 à a/0110/06, a/0188/06, a/0128/06 à a/0162/06, a/0199/06, a/0203/06, a/0209/06, a/0214/06, a/0220/06 à a/0222/06, a/0224/06, a/0227/06 à a/0230/06, a/0234/06 à a/0236/06, a/0240/06, a/0225/06, a/0226/06, a/0231/06 à a/0233/06, a/0237/06 à a/0239/06 et a/0241/06 à a/0250/06", ICC-01/04-423-Corr, 31 January 2008, paragraph 144.

⁴²⁵ Decision on the applications for participation file din connection with the investigation in the Democratic Republic of Congo by Applicants a/0047/06 to a/0052/06, a/163/06 to a/0187/06, a/0221/06, a/0226/06, a/0231/06 to a/0233/06, a/0237/06 to a/0239/06, and a/0241 to a/0250/06, 3 July 2008, ICC-01/04-505, paragraph 94 and page 41.

⁴²⁶ Decision on victims' participation, 18 January 2008, ICC-01/04-01/06-1119, as confirmed, amended and reversed by the Appeals Chamber's Judgment on the appeals of The Prosecutor and The Defence

Applicant a/0239/06 [Annex 15]**The means of identification**

The Chamber has been provided with a school identity card for the applicant, a letter of guardianship and an election card for the person acting on his behalf.⁴²⁷

The claim to victim status

The applicant states that he was recruited in ██████████ 2002 by the UPC when he was █ years old, and he allegedly learned how to fight and to use drugs. He participated actively in the hostilities, and he looted and killed. He was unable to find his parents upon demobilisation but he was reunited with his uncle. He maintains he suffers from physical and psychological trauma as a result of the serious crimes he committed, and he has problems with ██████████ and ██████████. He suffered moral and physical harm, and violations of his fundamental rights.⁴²⁸

The phases of the proceedings

The applicant submits he has an interest in participating in all phases of the proceedings.⁴²⁹

The observations of the defence

The defence did not refer to the applicant in its original observations.⁴³⁰ In a further filing the defence submits since that the applicant has mentioned a different date of birth from that indicated in his initial application, the application does not meet the requirements for its *prima facie* admission under Rule 85 and it should be rejected.⁴³¹

The observations of the prosecution

The prosecution submits that the applicant meets, *prima facie*, the requirements for victim participation.⁴³² The prosecution argues that the information provided

against Trial Chamber I's Decision on Victims' Participation of 18 January 2008, 11 July 2008, ICC-01/04-01/06-1432.

⁴²⁷ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 28-29 and Annex 15.

⁴²⁸ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 28-29 and Annex 15.

⁴²⁹ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 28-29 and Annex 15.

⁴³⁰ Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008, 10 June 2008, ICC-01/04-01/06-1388.

⁴³¹ Observations de la Défense sur les 15 demandes de participation à la procédure et les 30 demandes de participation complémentaires communiquées le 27 novembre 2008 ; Réponse de la Défense aux observations des représentants légaux relatives aux 105 demandes de participation communiquées le 20 mai 2008 ; et Observations de la Défense relatives aux victimes indirectes, 5 December 2008, ICC-01/04-01/06-1536, paragraph 26

⁴³² Prosecution's Observations on 105 Redacted Applications for Victim Participation to the Case, 9 June 2008, ICC-01/04-01/06-1386, paragraph 27

supports the suggestion that the applicant was under the age of 15 during the material events.⁴³³

The observations of the victim's legal representative

The legal representatives submit in their reply that the applicant has set out that he was recruited for the FPLC as a child soldier when he was under 15 years old and thus there is a direct link with the charges brought against the accused. Therefore, it is submitted that the applicant should be granted the status of victim and admitted as a participant in the proceedings.⁴³⁴

Legal representation

The applicant has been represented thus far by Mr Joseph Keta Orwinyo and Mr Jean Louis Gilissen.⁴³⁵

The Chamber's analysis and conclusions

The Trial Chamber notes that the applicant has applied to participate in the DRC situation and the application was provided also to Pre-Trial Chamber I. In its decision of 31 January 2008, the Pre-Trial Chamber determined it would not decide on the applicant's status, stating that since the application was also pending before the Trial Chamber, the applicant's recognition as a victim in the "case" would automatically result in his recognition in the "situation".⁴³⁶ In a more recent decision of 3 July 2008 the Pre-Trial Chamber concluded that since the applicant had not presented any identification document, the application was incomplete.⁴³⁷

The Chamber considers that the documents and the other materials provided to this Chamber prove, *prima facie*, the identity of the applicant and the person acting on his behalf in accordance with the Trial Chamber's Decision on victims' participation. They also prove, *prima facie*, that the applicant was ■ years old during the material

⁴³³ Prosecution's Observations on supplementary information for victim applications a/0002/06, a/0047/06, a/0048/06, a/0051/06, a/0052/06, a/0077/06, a/0221/06, a/0224/06, a/0225/06, a/0227/06, a/0229/06, a/0230/06, a/0236/06, a/0237/06, a/0238/06, a/0239/06, a/0240/06, a/0243/06, a/0055/07, a/0056/07, a/0057/07, a/0058/07, a/0060/07, a/0155/07, a/0156/07, a/0172/07, a/0187/07, a/0007/08, ICC-01/04-01/06-1540-Conf, paragraph 27.

⁴³⁴ Réponse aux "Prosecution's Observations on 105 Applications for Victim Participation to the Case" du 9 juin 2008 et aux « Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008 » du 10 juin 2008, 28 November, ICC-01/04-01/06/1522, paragraph 25, page 11.

⁴³⁵ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 28-29 and Annex 15. See also Second Report on supplementary information, ICC-01/04-01/06-1503-Conf-Exp, 21 November 2008, page 8 and Anx18.

⁴³⁶ Corrigendum à la "Décision sur les demandes de participation à la procédure déposées dans le cadre de l'enquête en République démocratique du Congo par a/0004/06 à a/0009/06, a/0016/06 à a/0063/06, a/0071/06 à a/0080/06 et a/0105/06 à a/0110/06, a/0188/06, a/0128/06 à a/0162/06, a/0199/06, a/0203/06, a/0209/06, a/0214/06, a/0220/06 à a/0222/06, a/0224/06, a/0227/06 à a/0230/06, a/0234/06 à a/0236/06, a/0240/06, a/0225/06, a/0226/06, a/0231/06 à a/0233/06, a/0237/06 à a/0239/06 et a/0241/06 à a/0250/06", ICC-01/04-423-Corr, 31 January 2008, paragraph 144.

⁴³⁷ Decision on the applications for participation file in connection with the investigation in the Democratic Republic of Congo by Applicants a/0047/06 to a/0052/06, a/163/06 to a/0187/06, a/0221/06, a/0226/06, a/0231/06 to a/0233/06, a/0237/06 to a/0239/06, and a/0241 to a/0250/06, 3 July 2008, ICC-01/04-505, paragraph 32.

events, along with the kinship between the applicant and the person acting on his behalf.

The Chamber notes the applicant was a child when the application was filed but may now be an adult. Although this is not an impediment to granting the application, if - or when - the applicant is an adult, the VPRS is instructed to enquire of the applicant whether he wishes to participate on his own behalf or through the person acting on his behalf.

The Trial Chamber determines that the applicant has given sufficient evidence to establish, *prima facie*, that he is a victim under Rule 85(a) of the Rules, as the Chamber has been provided with enough information to conclude that the applicant suffered personal harm as a result of crimes included in the charges brought against the accused, namely his alleged enlistment and/or conscription and/or use to participate actively in the hostilities by the UPC between September 2002 and 13 August 2003.⁴³⁸

Applicant a/0001/07 [Annex 16]

The means of identification

The Chamber was provided with a certificate of demobilisation, and a certificate of family reunification as well as an election card and certificate of identity for the person acting on behalf of the applicant.⁴³⁹

The claim to victim status

The applicant states he suffered moral harm and violations of his fundamental rights as a result of his recruitment by the UPC between [REDACTED] 2001 and until 2004, commencing when he was [REDACTED] years old. The recruitment affected his family life and his education, and as a result he is now a difficult person and does not act as a person of his age. He refers to applicant a/0002/07 as being another victim.⁴⁴⁰

The phases of the proceedings

The applicant submits he has an interest in participating in all phases of the proceedings.⁴⁴¹

The observations of the defence

The defence did not refer to the applicant in its observations.⁴⁴²

⁴³⁸ Decision on victims' participation, 18 January 2008, ICC-01/04-01/06-1119, as confirmed, amended and reversed by the Appeals Chamber's 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.

⁴³⁹ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 30-31 and Annex 16.

⁴⁴⁰ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 30-31 and Annex 16.

⁴⁴¹ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 30-31 and Annex 16.

The observations of the prosecution

The prosecution submits that the applicant meets, *prima facie*, the necessary requirements for victim participation.⁴⁴³

The observations of the victim's legal representative

The legal representative submits in her reply that the prosecution did not oppose the participation of the applicant. The legal representative requests that the applicant is granted status to participate in the proceedings.⁴⁴⁴

Legal representation

The applicant has been represented thus far by Ms Carine Bapita Buyangandu.

The Chamber's analysis and conclusions

The Chamber considers that the documents and other the material provided prove, *prima facie*, the identity of the applicant and the person acting on his behalf in accordance with the Trial Chamber's Decision on victims' participation, along with his age – he was ■ years old during the material events – together with the kinship of the applicant and the person acting on his behalf (his father).

The Chamber notes the applicant was a child when the application was filed but may now be an adult. Although this is not an impediment to granting the application, if - or when - the applicant is an adult, the VPRS is instructed to enquire of the applicant whether he wishes to participate on his own behalf or through the person acting on his behalf.

The Trial Chamber determines that the applicant has given sufficient evidence to establish, *prima facie*, that he is a victim under Rule 85(a) of the Rules, as the Chamber has been provided with enough information to conclude that the applicant suffered personal harm as a result of crimes included in the charges brought against the accused, namely his alleged enlistment and/or conscription and/or use to participate actively in the hostilities by the UPC between September 2002 and 13 August 2003.⁴⁴⁵

Applicant a/0005/07 [Annex 18]

⁴⁴² Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008, 10 June 2008, ICC-01/04-01/06-1388, page X.

⁴⁴³ Prosecution's Observations on 105 Redacted Applications for Victim Participation to the Case, 9 June 2008, ICC-01/04-01/06-1386, paragraph 27.

⁴⁴⁴ Réponse des demandeurs a/0105/06, a/0231/06, a/0232/06, a/0233/06, a/0242/06, a/0243/06, a/0244/06, a/0245/06, a/0246/06, a/0247/06, a/0248/06, a/0249/06, a/0250/06, a/0001/07, a/0002/07, a/0003/07, a/0004/07, a/0005/07, a/0006/07, a/0251/07, a/0253/07 et a/0254/07 aux observations du Procureur et de la Défense quant à leur demande de participation à la procédure dans l'affaire Le Procureur contre Thomas Lubanga, 28 November 2008, ICC-01/04-01/06-1514, paragraphs 7, 25.

⁴⁴⁵ Decision on victims' participation, 18 January 2008, ICC-01/04-01/06-1119, as confirmed, amended and reversed by the Appeals Chamber's 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.

The means of identification

The Chamber has been provided with a demobilisation certificate, a family reunification certificate and a certificate of former child soldier (EAFGA) for the applicant, as well as an election card and a certificate of identity for the person acting on his behalf.⁴⁴⁶

The claim to victim status

The applicant states he was first used to transport ammunition for the Ugandan army in █████ 2003, and that at the age of █████ he was recruited by the UPC to serve as a "soldier". He was demobilised in █████ 2004 and reunited with his family in █████ 2005. As a result of his recruitment, his education was interrupted and he suffered moral harm and violations of his fundamental rights.⁴⁴⁷

The phases of the proceedings

The applicant submits he has an interest in participating in all phases of the proceedings, save for appeals.⁴⁴⁸

The observations of the defence

The defence did not refer to the applicant in its observations.⁴⁴⁹

The observations of the prosecution

The prosecution submits that the applicant meets, *prima facie*, the necessary requirements for victim participation.⁴⁵⁰

The observations of the victim's legal representative

The legal representative notes that the prosecution has not opposed the participation of the applicant. The legal representative requests that the applicant is granted status to participate in the proceedings.⁴⁵¹

Legal representation

The applicant has been represented thus far by Ms Carine Bapita Buyangandu.

The Chamber's analysis and conclusions

⁴⁴⁶ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 34-35 and Annex 18

⁴⁴⁷ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 34-35 and Annex 18.

⁴⁴⁸ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 34-35 and Annex 18.

⁴⁴⁹ Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008, 10 June 2008, ICC-01/04-01/06-1388.

⁴⁵⁰ Prosecution's Observations on 105 Redacted Applications for Victim Participation to the Case, 9 June 2008, ICC-01/04-01/06-1386, paragraph 27.

⁴⁵¹ Réponse des demandeurs a/0105/06, a/0231/06, a/0232/06, a/0233/06, a/0242/06, a/0243/06, a/0244/06, a/0245/06, a/0246/06, a/0247/06, a/0248/06, a/0249/06, a/0250/06, a/0001/07, a/0002/07, a/0003/07, a/0004/07, a/0005/07, a/0006/07, a/0251/07, a/0253/07 et a/0254/07 aux observations du Procureur et de la Défense quant à leur demande de participation à la procédure dans l'affaire Le Procureur contre Thomas Lubanga, 28 November 2008, ICC-01/04-01/06-1514, paragraphs 7, 25

The Chamber considers that the documents and the other materials provided prove, *prima facie*, the identity of the applicant and the person acting on his behalf in accordance with the Trial Chamber's Decision on victims' participation. They also prove, *prima facie*, that the applicant was [REDACTED] years old during the material events, as well as the kinship between the applicant and the person acting on his behalf (his father).

The Chamber notes the applicant was a child when the application was filed but may now be an adult. Although this is not an impediment to granting the application, if - or when - the applicant is an adult, the VPRS is instructed to enquire of the applicant whether he wishes to participate on his own behalf or through the person acting on his behalf.

The Trial Chamber determines that the applicant has given sufficient evidence to establish, *prima facie*, that he is a victim under Rule 85(a) of the Rules, as the Chamber has been provided with enough information to conclude that the applicant suffered personal harm as a result of crimes included in the charges brought against the accused, namely his alleged enlistment and/or conscription and/or use to participate actively in the hostilities by the UPC between September 2002 and 13 August 2003.⁴⁵²

Applicant a/0059/07 [Annex 21]

The means of identification

The Chamber has been provided with a birth certificate, a certificate of former child soldier (EAFGA), a family reunification certificate, a demobilisation certificate, and school identity card for the applicant as well as with an election card and a guardianship certificate for the person acting on his behalf.⁴⁵³

The claim to victim status

The applicant states that the UPC first attempted to recruit him in [REDACTED] 2002, and this happened in [REDACTED] of 2002 when he was [REDACTED] years old. The applicant describes how he tried to escape and was beaten. He was trained and learned combat techniques, and he was forced to rape, kill and loot. The applicant eventually escaped successfully, and was reunited with his family in [REDACTED] 2004; he now lives with his uncle, who is acting on his behalf. As a result of his recruitment he suffers from psychological problems and depression; he is violent; and he has difficulties reintegrating. Additionally, his education was severely delayed, and he suffered from moral harm and violations of his fundamental rights.⁴⁵⁴

⁴⁵² Decision on victims' participation, 18 January 2008, ICC-01/04-01/06-1119, as confirmed, amended and reversed by the Appeals Chamber's 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.

⁴⁵³ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 40-41 and Annex 21.

⁴⁵⁴ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 40-41 and Annex 21.

The phases of the proceedings

The applicant submits he has an interest in participating in all phases of the proceedings.⁴⁵⁵

The observations of the defence

In its original observations the defence did not refer to the applicant.⁴⁵⁶ The defence submits in a further filing that since the applicant has mentioned a different date of birth from that indicated in his initial application, the application does not meet the requirements for *prima facie* admission under Rule 85 of the Rules and it should be rejected.⁴⁵⁷

The observations of the prosecution

The prosecution submits that the applicant meets, *prima facie*, the necessary requirements for participation.⁴⁵⁸

The observations of the victim's legal representative

The legal representatives submit in their reply that the applicant has set out that he was recruited for the FPLC as a child soldier, when he was under 15 years old, and thus there is direct link with the charges brought against the accused. Therefore, it is submitted, the applicant should be granted the status of victim and admitted as a participant in the proceedings.⁴⁵⁹

Legal representation

The applicant has been represented thus far by Mr Joseph Keta Orwinyo and Mr Jean Louis Gilissen.

The Chamber's analysis and conclusions

The Chamber considers that the documents and the other material provided prove, *prima facie*, the identity of the applicant and the person acting on his behalf in accordance with the Trial Chamber's Decision on victims' participation. They also prove, *prima facie*, that the applicant was approximately ■ years old during the material events, along with the kinship between the applicant and the person acting on his behalf.

⁴⁵⁵ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 40-41 and Annex 21.

⁴⁵⁶ Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008, 10 June 2008, ICC-01/04-01/06-1388.

⁴⁵⁷ Observations de la Défense sur les 15 demandes de participation à la procédure et les 30 demandes de participation complémentaires communiquées le 27 novembre 2008 ; Réponse de la Défense aux observations des représentants légaux relatives aux 105 demandes de participation communiquées le 20 mai 2008 ; et Observations de la Défense relatives aux victimes indirectes, 5 December 2008, ICC-01/04-01/06-1536, paragraph 26.

⁴⁵⁸ Prosecution's Observations on 105 Redacted Applications for Victim Participation to the Case, 9 June 2008, ICC-01/04-01/06-1386, paragraph 27.

⁴⁵⁹ Réponse aux "Prosecution's Observations on 105 Applications for Victim Participation to the Case" du 9 juin 2008 et aux « Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008 » du 10 juin 2008, 28 November, ICC-01/04-01/06/1522, paragraph 25, page 13.

The Chamber notes the applicant was a child when the application was filed but is now an adult. Although this is not an impediment to granting the application, the Chamber nonetheless instructs the VPRS to enquire of the applicant whether he wishes to participate on his own behalf or through the person acting on his behalf.

The Trial Chamber determines that the applicant has given sufficient evidence to establish, *prima facie*, that he is a victim under Rule 85(a) of the Rules, the Chamber has been provided with enough information to conclude that the applicant suffered personal harm as a result of crimes included in the charges brought against the accused, namely his alleged enlistment and/or conscription and/or use to participate actively in the hostilities by the UPC between September 2002 and 13 August 2003.⁴⁶⁰

Applicant a/0149/07 [Annex 23]

The means of identification

The Chamber has been provided with the certificate of identification and the election card for the person acting on behalf of the applicant (his father). The certificate of identification also refers to the identity of the applicant and his date of birth, as well as the kinship between the applicant and his father.⁴⁶¹

The claim to victim status

The applicant states that in 2002 he was recruited by the UPC, and in [REDACTED] 2003 his family saw him in a training camp, when he was [REDACTED] years old. He acted as a [REDACTED] the UPC who worked with the [REDACTED]. The applicant has now been [REDACTED]. The father of the applicant, who is acting on his behalf, says that the recruitment caused mental harm to his son, for example causing him to threaten to kill [REDACTED] on one occasion. The applicant suggests he suffered moral harm and violations of his fundamental rights.⁴⁶²

The phases of the proceedings

The applicant submits he has an interest in participating in all phases of the proceedings.⁴⁶³

The observations of the defence

In its observations the defence did not refer to the applicant.⁴⁶⁴

⁴⁶⁰ Decision on victims' participation, 18 January 2008, ICC-01/04-01/06-1119, as confirmed, amended and reversed by the Appeals Chamber's 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.

⁴⁶¹ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 44-45 and Annex 23.

⁴⁶² First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 44-45 and Annex 23.

⁴⁶³ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 44-45 and Annex 23.

The observations of the prosecution

The prosecution submit that the applicant meets, *prima facie*, the necessary requirements for victim participation.⁴⁶⁵

Victim's legal representative submissions

The legal representatives a/0149/07 submit in their reply that the applicant meets the requirements of Rule 85 of the Rules, and given neither the defence nor the prosecution have submitted any observations regarding the applicant, he should be granted status of victim and admitted to participate in the proceedings.⁴⁶⁶

Legal representation

The applicant has been represented thus far by Mr Jean Chrysostome Mulamba Nsokoloni.

The Chamber's analysis and conclusions

The Chamber considers that the documents and the other materials provided prove, *prima facie*, the identity of the applicant and the person acting on his behalf in accordance with the Trial Chamber's Decision on victims' participation. The Chamber considers that these documents also prove, *prima facie*, that the applicant was approximately ■ years old during the material events, along with the kinship between the applicant and the person acting on his behalf.

The Chamber notes the applicant was a child when the application was filed but is now an adult. Although this is not an impediment to granting the application, the Chamber nonetheless instructs the VPRS to enquire of the applicant whether he wishes to participate on his own behalf or through the person acting on his behalf.

Since the father of the applicant also alleges that he, together with his wife, suffered personal harm, the Chamber refers to the Registry the issue of whether the father of the applicant wishes to participate on his own behalf or on behalf of his wife, or both, as well as on behalf of his son.

Notwithstanding the lack of documentation relating directly to the applicant, on the basis of the evidence provided by his father, the Trial Chamber determines that the applicant has given sufficient evidence to establish, *prima facie*, that he is a victim under Rule 85(a) of the Rules, as the Chamber has been provided with enough information to conclude that the applicant suffered personal harm as a result of crimes included in the charges brought against the accused, namely his alleged

⁴⁶⁴ Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008, 10 June 2008, ICC-01/04-01/06-1388.

⁴⁶⁵ Prosecution's Observations on 105 Redacted Applications for Victim Participation to the Case, 9 June 2008, ICC-01/04-01/06-1386, paragraph 27.

⁴⁶⁶ Réponse des demandeurs a/0149/07 et a/0162/07 aux observations du Procureur et de la Défense quant à leur demande de participation à la procédure dans l'affaire Le Procureur contre Thomas Lubanga, 28 November 2008, ICC-01/04-01/06-1516, page 3.

enlistment and/or conscription and/or use to participate actively in the hostilities by the UPC between September 2002 and 13 August 2003.⁴⁶⁷

Applicant a/0155/07 [Annex 24]

The means of identification

The Chamber has been provided with a photograph of the applicant and a certificate of his school grades for 2006, as well as with a declaration setting out the relationship between the applicant and the person acting on his behalf (his mother) and the election card for the person acting on his behalf.⁴⁶⁸

The claim to victim status

The applicant states that in [REDACTED] 2003 he was recruited by the UPC when he was [REDACTED] or [REDACTED] years old. He took this step in order to protect his family and for his own safety. The applicant suggests he was ordered to loot and burn the homes of others, and to kill civilians. The applicant lost several family members during the conflict, and his family was displaced and their home looted. As a result, the applicant suffers from psychological problems, and he has been subject to moral and material harm, and he has experienced violations of his fundamental rights.⁴⁶⁹

The phases of the proceedings

The applicant submits he has an interest in participating in all phases of the proceedings.⁴⁷⁰

The observations of the defence

The defence highlights that the applicant has not referred to the FPLC in his detailed description of the alleged crimes.⁴⁷¹ The defence further submits that there are inconsistencies between the names and surnames listed by the guardian of the applicant on the identity card and on the application form. As a result, the defence argues that the information provided by this applicant is uncertain and contradictory and it does not meet the requirements for *prima facie* admission under Rule 85 of the Rules. In all the circumstances, it is submitted that the application should be rejected.⁴⁷²

⁴⁶⁷ Decision on victims' participation, 18 January 2008, ICC-01/04-01/06-1119, as confirmed, amended and reversed by the Appeals Chamber's 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.

⁴⁶⁸ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 46-47 and Annex 24. See also Second Report on supplementary information, ICC-01/04-01/06-1503-Conf-Exp, 21 November 2008, pages 8-9 and Anx21.

⁴⁶⁹ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 46-47 and Annex 24.

⁴⁷⁰ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 46-47 and Annex 24.

⁴⁷¹ Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008, 10 June 2008, ICC-01/04-01/06-1388, page 9.

⁴⁷² Observations de la Défense sur les 15 demandes de participation à la procédure et les 30 demandes de participation complémentaires communiquées le 27 novembre 2008 ; Réponse de la Défense aux

The observations of the prosecution

The prosecution submit that the applicant meets, *prima facie*, the necessary requirements for victim participation.⁴⁷³ This stance was confirmed in a subsequent prosecution filing.⁴⁷⁴

The observations of the victim's legal representative

The legal representatives submit in their reply that the supplementary information provided by the applicant shows that he was recruited as a child soldier by the FPLC forces and therefore the applicant should be granted the status of victim and admitted to participate in the proceedings.⁴⁷⁵

Legal representation

The applicant was originally represented by the OCPV. Later, the Trial Chamber was informed that the applicant wished to appoint Mr Hervé as his legal representative. However, the mother of the applicant, who is acting on his behalf, indicated a preference for the OPCV to continue to represent her son.⁴⁷⁶ The Trial Chamber has decided that the legal representative, during the application process, should be Mr Hervé Diakese, given that that is the wish of the applicant, who currently is between 17 and 18 years old.⁴⁷⁷

The Chamber's analysis and conclusions

The Chamber considers that the documents and the other material provided prove, *prima facie*, the identity of the applicant and the person acting on his behalf in accordance with the Trial Chamber's Decision on victims' participation. The Chamber considers that these documents also prove, *prima facie*, that the applicant was approximately ■ years old during the material events, along with the kinship between the applicant and the person acting on his behalf.

The Chamber notes the applicant was a child when the application was filed but is now an adult. Although this is not an impediment to granting the application, the

observations des représentants légaux relatives aux 105 demandes de participation communiquées le 20 mai 2008 ; et Observations de la Défense relatives aux victimes indirectes, 5 December 2008, ICC-01/04-01/06-1536, paragraph 46.

⁴⁷³ Prosecution's Observations on 105 Redacted Applications for Victim Participation to the Case, 9 June 2008, ICC-01/04-01/06-1386, paragraph 27.

⁴⁷⁴ Prosecution's Observations on supplementary information for victim applications a/0002/06, a/0047/06, a/0048/06, a/0051/06, a/0052/06, a/0077/06, a/0221/06, a/0224/06, a/0225/06, a/0227/06, a/0229/06, a/0230/06, a/0236/06, a/0237/06, a/0238/06, a/0239/06, a/0240/06, a/0243/06, a/0055/07, a/0056/07, a/0057/07, a/0058/07, a/0060/07, a/0155/07, a/0156/07, a/0172/07, a/0187/07, a/0007/08, ICC-01/04-01/06-1540-Conf, paragraphs 26 and 27.

⁴⁷⁵ Réponse des demandeurs a/0155/07 et a/0157/07 aux observations du Procureur et de la Défense quant à leur demande de participation à la procédure dans l'affaire Le Procureur contre Thomas Lubanga, 28 November 2008, ICC-01/04-01/06-1515, page 3.

⁴⁷⁶ Second Report on supplementary information, ICC-01/04-01/06-1503-Conf-Exp, 21 November 2008, pages 9, 12-14, and Anx21

⁴⁷⁷ Transcript of status conference of 25 November 2008, ICC-01/04-01/06-T-99-ENG ET, page 13, line 18, to page 14, line 8.

Chamber nonetheless instructs the VPRS to enquire of the applicant whether he wishes to participate on his own behalf or through the person acting on his behalf (his mother).

Likewise, since the applicant's mother alleges she suffered harm as a result of her child's recruitment, the Trial Chamber refers to the Registry the issue of whether she wishes to participate on her own behalf.

The Trial Chamber determines that notwithstanding a shortage of documentary material to support this application, the applicant has given sufficient evidence to establish, *prima facie*, that he is a victim under Rule 85(a) of the Rules, as the Chamber has been provided with enough information to conclude that the applicant suffered personal harm as a result of crimes included in the charges brought against the accused, namely his alleged enlistment and/or conscription and/or use to participate actively in the hostilities by the UPC between September 2002 and 13 August 2003.⁴⁷⁸

Applicant a/0231/06 [Annex 30]

The means of identification

The Chamber has been provided with a demobilisation certificate for the applicant, family connection and reunification forms, a form verifying association with armed forces, and an election and an identification card for the person acting on his behalf.⁴⁷⁹

The claim to victim status

The applicant states that in [REDACTED] 2002 she was recruited by the UPC when she was [REDACTED] years old to become the "wife" of [REDACTED]. She was later abandoned by her "husband", and thereafter she stayed in the UPC armed forces for [REDACTED] years (see the demobilisation certificate). The applicant suggests that as a result of these events she [REDACTED] interrupting her schooling and causing her rejection by her community. The applicant has suffered psychological and physical harm and violations of her fundamental rights.⁴⁸⁰

The phases of the proceedings

The applicant submits she has an interest in participating in all phases of the proceedings.⁴⁸¹

⁴⁷⁸ Decision on victims' participation, 18 January 2008, ICC-01/04-01/06-1119, as confirmed, amended and reversed by the Appeals Chamber's 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.

⁴⁷⁹ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 59-60 and Annex 30.

⁴⁸⁰ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 59-60 and Annex 30.

⁴⁸¹ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 59-60 and Annex 30.

The observations of the defence

The defence did not refer to the applicant in its observations.⁴⁸²

The observations of the prosecution

The prosecution submit that her application should be accepted since she was allegedly recruited into the UPC and forcibly married to a UPC officer during 2002 and 2003, while she was under the age of 15.⁴⁸³

The observations of the victim's legal representative

The legal representative observes in her reply that the prosecution does not oppose the participation of the applicant. The legal representative requests that the applicant is granted status to participate in the proceedings.⁴⁸⁴

Legal representation

This applicant has been represented thus far by Ms Carine Bapita Bayangandu.⁴⁸⁵

The Chamber's analysis and conclusions

The Trial Chamber notes that the applicant has applied to participate in the DRC situation and that as a result the application has been provided to Pre-Trial Chamber I. However, in its decision of 31 January 2008, the Pre-Trial Chamber determined it would not resolve the applicant's status, stating that since the application was also pending before the Trial Chamber, the applicant's recognition as a victim in the "case" would automatically result in his recognition in the "situation".⁴⁸⁶ In a later decision the Pre-Trial Chamber granted the applicant the status to participate in the DRC Situation proceedings.⁴⁸⁷

The Chamber considers that the documents and other material provided prove, *prima facie*, the identity of the applicant and the person acting on her behalf in accordance with the Trial Chamber's Decision on victims' participation. These documents also

⁴⁸² Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008, 10 June 2008, ICC-01/04-01/06-1388.

⁴⁸³ Prosecution's Observations on 105 Redacted Applications for Victim Participation to the Case, 9 June 2008, ICC-01/04-01/06-1386, paragraph 26.

⁴⁸⁴ Réponse des demandeurs a/0105/06, a/0231/06, a/0232/06, a/0233/06, a/0242/06, a/0243/06, a/0244/06, a/0245/06, a/0246/06, a/0247/06, a/0248/06, a/0249/06, a/0250/06, a/0001/07, a/0002/07, a/0003/07, a/0004/07, a/0005/07, a/0006/07, a/0251/07, a/0253/07 et a/0254/07 aux observations du Procureur et de la Défense quant à leur demande de participation à la procédure dans l'affaire Le Procureur contre Thomas Lubanga, 28 November 2008, ICC-01/04-01/06-1514, paragraphs 7, 25.

⁴⁸⁵ ICC-01/04-01/06-1275-Conf-Exp-Anx30, 14 April 2008, p. 13.

⁴⁸⁶ Corrigendum à la "Décision sur les demandes de participation à la procédure déposées dans le cadre de l'enquête en République démocratique du Congo par a/0004/06 à a/0009/06, a/0016/06 à a/0063/06, a/0071/06 à a/0080/06 et a/0105/06 à a/0110/06, a/0188/06, a/0128/06 à a/0162/06, a/0199/06, a/0203/06, a/0209/06, a/0214/06, a/0220/06 à a/0222/06, a/0224/06, a/0227/06 à a/0230/06, a/0234/06 à a/0236/06, a/0240/06, a/0225/06, a/0226/06, a/0231/06 à a/0233/06, a/0237/06 à a/0239/06 et a/0241/06 à a/0250/06", ICC-01/04-423-Corr, 31 January 2008, paragraph 144.

⁴⁸⁷ Decision on the applications for participation file din connection with the investigation in the Democratic Republic of Congo by Applicants a/0047/06 to a/0052/06, a/163/06 to a/0187/06, a/0221/06, a/0226/06, a/0231/06 to a/0233/06, a/0237/06 to a/0239/06, and a/0241 to a/0250/06. 3 July 2008, ICC-01/04-505, paragraph 92 and page 41.

prove, *prima facie*, that the applicant was approximately ■ years old during the material events, along with the kinship between the applicant and the person acting on her behalf.⁴⁸⁸

The Chamber notes the applicant was a child when the application was filed but is now an adult. Although this is not an impediment to granting the application, the Chamber nonetheless instructs the VPRS to enquire of the applicant whether she wishes to participate on her own behalf or through the person acting on her behalf.

The Trial Chamber determines that the applicant has given sufficient evidence to establish, *prima facie*, that she is a victim under Rule 85(a) of the Rules, as the Chamber has been provided with enough information to conclude that the applicant suffered personal harm as a result of crimes included in the charges brought against the accused, namely her alleged enlistment and/or conscription and/or use to participate actively in the hostilities by the UPC between September 2002 and 13 August 2003.⁴⁸⁹

Applicant a/0245/06 [Annex 32]

The means of identification

The Chamber has been provided with a family search certificate, a family reunification certificate, and a certificate of a former child soldier (EAFGA) for the applicant, as well as the identity card for the person acting on his behalf.⁴⁹⁰

The claim to victim status

The applicant states he was recruited in ■ 2002 at the age of ■. He was apprehended in the locality of ■ by the militants of the UPC, and he was used to transport goods and as a ■. The applicant suggests that afterwards he served as a soldier in the ■ district. He stayed with the UPC for ■. The applicant claims he suffered psychological harm and serious violations of his fundamental rights. His recruitment meant that he has lost his opportunity to study.⁴⁹¹

The phases of the proceedings

The applicant submits he has an interest in participating in all phases of the proceedings.⁴⁹²

⁴⁸⁸ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 59-60 and Annex 30.

⁴⁸⁹ Decision on victims' participation, 18 January 2008, ICC-01/04-01/06-1119, as confirmed, amended and reversed by the Appeals Chamber's 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.

⁴⁹⁰ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 63-64 and Annex 32.

⁴⁹¹ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 63-64 and Annex 32.

⁴⁹² First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 63-64 and Annex 32.

The observations of the defence

The defence did not refer to the applicant in its observations.⁴⁹³

The observations of the prosecution

The prosecution submits the applicant was under the age of 15 at the time of his enlistment, conscription, or use by the armed forces of the UPC during the period relevant to the charges brought against Thomas Lubanga, and thus he should be permitted to participate.⁴⁹⁴

The observations of the victim's legal representative

The legal representative observes in her reply that the prosecution did not oppose the participation of the applicant. The legal representative requests that the applicant is granted status to participate in the proceedings.⁴⁹⁵

Legal representation

This applicant has been represented thus far by Ms Carine Bapita Bayangandu.⁴⁹⁶

The Chamber's analysis and conclusions

The Trial Chamber notes that the applicant has also applied to participate in the DRC situation and the application was provided to Pre-Trial Chamber I. However, in its decision of 31 January 2008, the Pre-Trial Chamber determined it would not determine his status in this regard, stating that since the application was also pending before the Trial Chamber, the applicant's recognition as a victim in the "case" would automatically result in his recognition in the "situation".⁴⁹⁷ In a more recent decision of 3 July 2008, the Pre-Trial Chamber concluded that the application was incomplete: although the applicant was a minor when his application was submitted and his guardian acted on his behalf, he is now an adult, and as a result the Pre-Trial Chamber sought additional information as to whether the applicant still consents to another person acting on his behalf.⁴⁹⁸

⁴⁹³ Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008, 10 June 2008, ICC-01/04-01/06-1388.

⁴⁹⁴ Prosecution's Observations on 105 Redacted Applications for Victim Participation to the Case, 9 June 2008, ICC-01/04-01/06-1386, paragraph 27.

⁴⁹⁵ Réponse des demandeurs a/0105/06, a/0231/06, a/0232/06, a/0233/06, a/0242/06, a/0243/06, a/0244/06, a/0245/06, a/0246/06, a/0247/06, a/0248/06, a/0249/06, a/0250/06, a/0001/07, a/0002/07, a/0003/07, a/0004/07, a/0005/07, a/0006/07, a/0251/07, a/0253/07 et a/0254/07 aux observations du Procureur et de la Défense quant à leur demande de participation à la procédure dans l'affaire Le Procureur contre Thomas Lubanga, 28 November 2008, ICC-01/04-01/06-1514, paragraphs 7, 25.

⁴⁹⁶ ICC-01/04-01/06-1275-Conf-Exp-Anx32, 14 April 2008, p. 13.

⁴⁹⁷ Corrigendum à la "Décision sur les demandes de participation à la procédure déposées dans le cadre de l'enquête en République démocratique du Congo par a/0004/06 à a/0009/06, a/0016/06 à a/0063/06, a/0071/06 à a/0080/06 et a/0105/06 à a/0110/06, a/0188/06, a/0128/06 à a/0162/06, a/0199/06, a/0203/06, a/0209/06, a/0214/06, a/0220/06 à a/0222/06, a/0224/06, a/0227/06 à a/0230/06, a/0234/06 à a/0236/06, a/0240/06, a/0225/06, a/0226/06, a/0231/06 à a/0233/06, a/0237/06 à a/0239/06 et a/0241/06 à a/0250/06", ICC-01/04-423-Corr, 31 January 2008, paragraph 144.

⁴⁹⁸ Decision on the applications for participation file *dm* connection with the investigation in the Democratic Republic of Congo by Applicants a/0047/06 to a/0052/06, a/163/06 to a/0187/06, a/0221/06, a/0226/06, a/0231/06 to a/0233/06, a/0237/06 to a/0239/06, and a/0241 to a/0250/06, 3 July 2008, ICC-01/04-505, paragraph 34.

The Chamber considers that the documents and the other material provided prove, *prima facie*, the identity of the applicant and the person acting on his behalf in accordance with the Trial Chamber's Decision on victims' participation. The Chamber considers that these documents also prove, *prima facie*, that the applicant was ■ years old during the material events, along with the kinship between the applicant and the person acting on his behalf.

The Chamber notes the applicant was a child when the application was filed but is now an adult. Although this is not an impediment to granting the application, the Chamber nonetheless instructs the VPRS to enquire of the applicant whether he wishes to participate on his own behalf or through the person acting on his behalf

The Trial Chamber determines that the applicant has given sufficient evidence to establish, *prima facie*, that he is a victim under Rule 85(a) of the Rules, as the Chamber has been provided with enough information to conclude that the applicant suffered personal harm as a result of crimes included in the charges brought against the accused, namely his alleged enlistment and/or conscription and/or use to participate actively in the hostilities by the UPC between September 2002 and 13 August 2003.⁴⁹⁹

Applicant a/0612/08 [Annex 33]

■⁵⁰⁰

The means of identification

The Chamber has been provided with a reunification certificate, a certificate of a former child soldier (EAFGA), a child demobilisation certificate, and the family history papers of the applicant, as well as with the election card of person acting on behalf.⁵⁰¹

The claim to victim status

In the application, the applicant states he was recruited by the Ugandan Armed Forces (UPDF) in ■ 2002, when he was used to transport munitions. Later in ■ he was recruited by the UPC, when aged ■ or ■ and he was subjected to slavery. In other documentation, it is suggested that the applicant was recruited when he was ■, in 2000, and that he stayed with different armed groups, among them the UPC, until 2005. The applicant maintains he has suffered mental harm and

⁴⁹⁹ Decision on victims' participation, 18 January 2008, ICC-01/04-01/06-1119, as confirmed, amended and reversed by the Appeals Chamber's 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.

⁵⁰⁰ ■, 3 December 2008, ICC-01/04-01/06-1531-Conf.

⁵⁰¹ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 65-66 and Annex 33.

serious violations of his fundamental rights. He has also lost the opportunity to study.⁵⁰²

The phases of the proceedings

The applicant submits he has an interest in participating in all phases of the proceedings.⁵⁰³

The observations of the prosecution

The Prosecution submits the applicant was under the age of 15 at the time of his enlistment, conscription, or use by the armed forces of the UPC during the period relevant to the charges brought against Thomas Lubanga, and thus he should be granted status to participate.⁵⁰⁴

The observations of the defence

The defence did not refer to the applicant in its observations.⁵⁰⁵

The observations of the victim's legal representative

The legal representative observes in her reply that the prosecution did not oppose the participation of the applicant. The legal representative requests that the applicant is granted status to participate in the proceedings.⁵⁰⁶

Legal representation

This applicant has been represented thus far by Ms Carine Bapita Bayangandu.⁵⁰⁷

The Chamber's analysis and conclusions

The Trial Chamber notes that the applicant has also applied to participate in the DRC situation and the application was provided also to Pre-Trial Chamber I. In its decision of 31 January 2008, the Pre-Trial Chamber determined it would not resolve the applicant's status, stating that since the application was also pending before the Trial Chamber, his recognition as a victim in the "case" would automatically result in

⁵⁰² First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 65-66 and Annex 33.

⁵⁰³ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 65-66 and Annex 33.

⁵⁰⁴ Prosecution's Observations on 105 Redacted Applications for Victim Participation to the Case, 9 June 2008, ICC-01/04-01/06-1386, paragraph 27.

⁵⁰⁵ Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008, 10 June 2008, ICC-01/04-01/06-1388.

⁵⁰⁶ Réponse des demandeurs a/0105/06, a/0231/06, a/0232/06, a/0233/06, a/0242/06, a/0243/06, a/0244/06, a/0245/06, a/0246/06, a/0247/06, a/0248/06, a/0249/06, a/0250/06, a/0001/07, a/0002/07, a/0003/07, a/0004/07, a/0005/07, a/0006/07, a/0251/07, a/0253/07 et a/0254/07 aux observations du Procureur et de la Défense quant à leur demande de participation à la procédure dans l'affaire Le Procureur contre Thomas Lubanga, 28 November 2008, ICC-01/04-01/06-1514, paragraphs 7, 25.

⁵⁰⁷ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 65-66 and Annex 33.

his recognition in the “situation”.⁵⁰⁸ In a more recent decision of 3 July 2008, the Pre-Trial Chamber granted the applicant status to participate in the DRC situation.⁵⁰⁹

As set out above, the applicant set out in his application that he was recruited in 2002 at the age of ■, whilst the relevant certificate of a former child soldier (EAFGA) states that the applicant was first recruited in the year 2000 at the age of ■ and that he was successively recruited by various armed groups, including the UPC, until 2005.

In the Trial Chamber’s estimation, the error or contradiction in the applicant’s account concerning the date and age of his original conscription does not, *ipso facto*, destroy the credibility of this application. There are a number of sustainable reasons why the applicant has contradicted himself on this issue, given the necessarily complicated and confusing circumstances in which the applicant found himself: on any view he was recruited at a very young age; these matters are unlikely to have been recorded by the applicant in writing; and he spent time, on his account, with a number of different groups at different ages. If true, he has a personal history which is likely to lead to mistakes in recollection. However, on either account he was recruited by the UPC whilst he was a child and even allowing for this element, which the Chamber has carefully weighed, the documents and the other material provided prove, *prima facie*, the identity of the applicant and the person acting on his behalf in accordance with the Trial Chamber’s Decision on victims’ participation. They also prove, *prima facie*, that the applicant was ■ years old during the material events, along with the kinship between the applicant and the person acting on his behalf.

The Chamber notes the applicant was a child when the application was filed but is now an adult. Although this is not an impediment to granting the application, the Chamber nonetheless instructs the VPRS to enquire of the applicant whether he wishes to participate on his own behalf or through the person acting on his behalf

The Trial Chamber determines that the applicant has given sufficient evidence to establish, *prima facie*, that he is a victim under Rule 85(a) of the Rules, as the Chamber has been provided with enough information to conclude that the applicant suffered personal harm as a result of crimes included in the charges brought against the accused, namely his alleged enlistment and/or conscription and/or use to participate actively in the hostilities by the UPC between September 2002 and 13 August 2003.⁵¹⁰

⁵⁰⁸ Corrigendum à la “Décision sur les demandes de participation à la procédure déposées dans le cadre de l’enquête en République démocratique du Congo par a/0004/06 à a/0009/06, a/0016/06 à a/0063/06, a/0071/06 à a/0080/06 et a/0105/06 à a/0110/06, a/0188/06, a/0128/06 à a/0162/06, a/0199/06, a/0203/06, a/0209/06, a/0214/06, a/0220/06 à a/0222/06, a/0224/06, a/0227/06 à a/0230/06, a/0234/06 à a/0236/06, a/0240/06, a/0225/06, a/0226/06, a/0231/06 à a/0233/06, a/0237/06 à a/0239/06 et a/0241/06 à a/0250/06”, ICC-01/04-423-Corr, 31 January 2008, paragraph 144.

⁵⁰⁹ Decision on the applications for participation file dm connection with the investigation in the Democratic Republic of Congo by Applicants a/0047/06 to a/0052/06, a/163/06 to a/0187/06, a/0221/06, a/0226/06, a/0231/06 to a/0233/06, a/0237/06 to a/0239/06, and a/0241 to a/0250/06, 3 July 2008, ICC-01/04-505, paragraph 100 and page 41.

⁵¹⁰ Decision on victims’ participation, 18 January 2008, ICC-01/04-01/06-1119, as confirmed, amended and reversed by the Appeals Chamber’s Judgment on the appeals of The Prosecutor and The Defence

Applicant a/0248/06 [Annex 34]**The means of identification**

The Chamber has been provided with a reunification certificate, a certificate of a former child soldier (EAFGA), a child demobilisation certificate, and the family history papers for the applicant, as well as with the election card for the person acting on his behalf.⁵¹¹

The claim to victim status

The applicant states he was recruited by the UPC when he was ■ years old. He was then trained in the localities of ■ and ■. Thereafter, he stayed with the UPC until 2003, and he later joined the armed group ■, with whom he remained until 2005. The applicant lost his "appetite to study" as a result of having been in an armed group for ■ years, and he suffered psychological harm and violations of his fundamental rights.⁵¹²

The phases of the proceedings

The applicant submits he has an interest in participating in all phases of the proceedings.⁵¹³

The observations of the defence

The defence did not refer to the applicant in its observations.⁵¹⁴

The observations of the prosecution

The prosecution submits that the applicant was under the age of 15 at the time of his enlistment, conscription, or use by the armed forces of the UPC during the period relevant to the charges brought against Thomas Lubanga, and thus he should be granted status to participate.⁵¹⁵

Victim's legal representative's observations

The legal representative observes in her reply that the prosecution did not oppose the participation of the applicant. The legal representative requests that the applicant is granted status to participate in the proceedings.⁵¹⁶

against Trial Chamber I's Decision on Victims' Participation of 18 January 2008, 11 July 2008, ICC-01/04-01/06-1432.

⁵¹¹ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 67-68 and Annex 34.

⁵¹² First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 67-68 and Annex 34.

⁵¹³ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 67-68 and Annex 34.

⁵¹⁴ Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008, 10 June 2008, ICC-01/04-01/06-1388.

⁵¹⁵ Prosecution's Observations on 105 Redacted Applications for Victim Participation to the Case, 9 June 2008, ICC-01/04-01/06-1386, paragraph 27.

⁵¹⁶ Réponse des demandeurs a/0105/06, a/0231/06, a/0232/06, a/0233/06, a/0242/06, a/0243/06, a/0244/06, a/0245/06, a/0246/06, a/0247/06, a/0248/06, a/0249/06, a/0250/06, a/0001/07, a/0002/07, a/0003/07, a/0004/07, a/0005/07, a/0006/07, a/0251/07, a/0253/07 et a/0254/07 aux observations du

Legal representation

This applicant has been represented thus far by Ms Carine Bapita Bayangandu.⁵¹⁷

The Chamber's analysis and conclusions

The Trial Chamber notes that the applicant has also applied to participate in the DRC situation and the application was provided to Pre-Trial Chamber I. In its decision of 31 January 2008, the Pre-Trial Chamber determined it would not determine the applicant's status, stating that since the application was also pending before the Trial Chamber, his recognition as a victim in the "case" would automatically result in his recognition in the "situation".⁵¹⁸ In a more recent decision of 3 July 2008, the Pre-Trial Chamber granted the applicant status to participate in the DRC situation.⁵¹⁹

The Chamber considers that the documents and the other material provided prove, *prima facie*, the identity of the applicant and the person acting on his behalf in accordance with the Trial Chamber's Decision on victims' participation. They also prove, *prima facie*, that the applicant was approximately ■ years old during the material events.

The Chamber notes the applicant was a child when the application was filed but is now an adult. Although this is not an impediment to granting the application, the Chamber nonetheless instructs the VPRS to enquire of the applicant whether he wishes to participate on his own behalf or through the person acting on his behalf.

The Trial Chamber determines that the applicant has given sufficient evidence to establish, *prima facie*, that he is a victim under Rule 85(a) of the Rules, as the Chamber has been provided with enough information to conclude that the applicant suffered personal harm as a result of crimes included in the charges brought against the accused, namely his alleged enlistment and/or conscription and/or use to participate actively in the hostilities by the UPC between September 2002 and 13 August 2003.⁵²⁰

Procureur et de la Défense quant à leur demande de participation à la procédure dans l'affaire Le Procureur contre Thomas Lubanga, 28 November 2008, ICC-01/04-01/06-1514, paragraphs 7, 25.

⁵¹⁷ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 67-68 and Annex 34.

⁵¹⁸ Corrigendum à la "Décision sur les demandes de participation à la procédure déposées dans le cadre de l'enquête en République démocratique du Congo par a/0004/06 à a/0009/06, a/0016/06 à a/0063/06, a/0071/06 à a/0080/06 et a/0105/06 à a/0110/06, a/0188/06, a/0128/06 à a/0162/06, a/0199/06, a/0203/06, a/0209/06, a/0214/06, a/0220/06 à a/0222/06, a/0224/06, a/0227/06 à a/0230/06, a/0234/06 à a/0236/06, a/0240/06, a/0225/06, a/0226/06, a/0231/06 à a/0233/06, a/0237/06 à a/0239/06 et a/0241/06 à a/0250/06", ICC-01/04-423-Corr, 31 January 2008, paragraph 144.

⁵¹⁹ Decision on the applications for participation file dm connection with the investigation in the Democratic Republic of Congo by Applicants a/0047/06 to a/0052/06, a/163/06 to a/0187/06, a/0221/06, a/0226/06, a/0231/06 to a/0233/06, a/0237/06 to a/0239/06, and a/0241 to a/0250/06, 3 July 2008, ICC-01/04-505, paragraph 102 and page 41.

⁵²⁰ Decision on victims' participation, 18 January 2008, ICC-01/04-01/06-1119, as confirmed, amended and reversed by the Appeals Chamber's 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.

These documents also prove the kinship between the applicant and the person acting on his behalf (uncle).

Applicant a/0613/08 [Annex 80]

⁵²¹

The means of identification

The Chamber has been provided with a demobilisation certificate, a certificate of a former child soldier (EAFGA) and a family reunification certificate for the applicant, and the election card for the person acting on his behalf.⁵²²

The claim to victim status

The applicant states that in 2002 he was forced by the Ugandan army to carry ammunition and he was subsequently recruited by the UPC militia, when he was [REDACTED] years old. The applicant served as a [REDACTED], as well as [REDACTED]. The applicant stayed for a [REDACTED] with the UPC, and was taken under the care of an NGO in 2004 and reunited with his family in 2005. As a result of his recruitment, his education has been interrupted. The father of the applicant, who is acting on his behalf, states he has suffered psychological anxiety and harm following the disappearance of his son for [REDACTED]. The applicant suffered psychological harm and serious violations of his fundamental rights.⁵²³

The phases of the proceedings

The applicant submits he has an interest in participating in all phases of the proceedings.⁵²⁴

The observations of the defence

The defence made no observations with respect to this applicant.⁵²⁵

The observations of the prosecution

The prosecution submits that this applicant meets, *prima facie*, the necessary requirements for victim participation and that the application forms and further information received by the Registry suggest that this applicant was under the age of 15 at the time of his enlistment, conscription or use by the armed forces of the UPC

⁵²¹ [REDACTED], 3

December 2008, ICC-01/04-01/06-1531-Conf.

⁵²² First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 160-161 and Annex 80.

⁵²³ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 160-161 and Annex 80.

⁵²⁴ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 160-161 and Annex 80.

⁵²⁵ Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008, 10 June 2008, ICC-01/04-01/06-1388.

during the relevant time frame. The Prosecutor requests the Chamber to grant the application.⁵²⁶

The observations of the victim's legal representative

The legal representative observes in her reply that the prosecution did not oppose the participation of the applicant. The legal representative requests that the applicant is granted status to participate in the proceedings.⁵²⁷

Legal representation

The applicant has been represented thus far by Ms Carine Bapita Buyangandu.⁵²⁸

The Chamber's analysis and conclusions

The Chamber considers that the documents and the other material provided prove, *prima facie*, the identity of the applicant and the person acting on his behalf in accordance with the Trial Chamber's Decision on victims' participation. They also prove, *prima facie*, that the applicant was approximately ■ years old during the material events, along with the relationship between the applicant and the person acting on his behalf (his father).

The Chamber notes the applicant was a child when the application was filed but is now an adult. Although this is not an impediment to granting the application, the Chamber nonetheless instructs the VPRS to enquire of the applicant whether he wishes to participate on his own behalf or through the person acting on his behalf.

The Trial Chamber determines that the applicant has given sufficient evidence to establish, *prima facie*, that he is a victim under Rule 85(a) of the Rules, as the Chamber has been provided with enough information to conclude that the applicant suffered personal harm as a result of crimes included in the charges brought against the accused, namely his alleged enlistment and/or conscription and/or use to participate actively in the hostilities by the UPC between September 2002 and 13 August 2003.⁵²⁹

Since the father of the applicant also alleges he suffered personal harm, the Trial Chamber refers to the Registry the question of whether he wishes to participate on his own behalf.

⁵²⁶ Prosecution's Observations on 105 Redacted Applications for Victim Participation to the Case, 9 June 2008, ICC-01/04-01/06-1386, paragraph 27, pages 14-15.

⁵²⁷ Réponse des demandeurs a/0105/06, a/0231/06, a/0232/06, a/0233/06, a/0242/06, a/0243/06, a/0244/06, a/0245/06, a/0246/06, a/0247/06, a/0248/06, a/0249/06, a/0250/06, a/0001/07, a/0002/07, a/0003/07, a/0004/07, a/0005/07, a/0006/07, a/0251/07, a/0253/07 et a/0254/07 aux observations du Procureur et de la Défense quant à leur demande de participation à la procédure dans l'affaire Le Procureur contre Thomas Lubanga, 28 November 2008, ICC-01/04-01/06-1514, paragraphs 7, 25

⁵²⁸ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 160-161 and Annex 80.

⁵²⁹ Decision on victims' participation, 18 January 2008, ICC-01/04-01/06-1119, as confirmed, amended and reversed by the Appeals Chamber's 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

Applicant a/0055/07 [Annex 82]

The means of identification

The Trial Chamber has been provided with the applicant's birth certificate and school identity card, as well as a letter from the applicant's guardian to the applicant's legal representatives, a certificate confirming guardianship and the guardian's election card. The latter is acting on behalf of the applicant.⁵³⁰

The claim to victim status

The applicant states that he was captured by the UPC in 2002 when he was ■ years old while on his way to school, along with ■ other children. He was recruited into one of the UPC camps, situated in ■, where he was taught by trainers to handle weapons. His daily task was to transport munitions. He received orders to plunder, harm and kill villagers, including children. He used an ■ weapon and was forced to participate in acts of rape. The applicant claims that as a result he suffers from psychological problems, he has reflexes of violence and feelings of revenge, and he suffers from serious ■ and ■ problems.⁵³¹

The phases of the proceedings

The applicant submits he has an interest in participating in all phases of the proceedings.⁵³²

The observations of the defence

The defence did not refer to the applicant in its original observations.⁵³³ The defence submits in a further filing that since the applicant mentioned a different date of birth from that set out in his initial application, the application does not meet the requirements for *prima facie* admission under Rule 85. In all the circumstances, it is submitted that the application should be rejected.⁵³⁴

The observations of the prosecution

⁵³⁰ Report on supplementary information received and missing information concerning the applications for participation dealt with in the "First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court" dated 11 April 2008 (ICC-01/04-01/06-1275-Conf-Exp), 6 June 2008, ICC-01/04-01/06-1380-Conf-Exp, Annex 6.

⁵³¹ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 164-165 and Annex 82, Report on supplementary information received and missing information concerning the applications for participation dealt with in the "First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court" dated 11 April 2008 (ICC-01/04-01/06-1275), 6 June 2008, ICC-01/04-01/06-1380-Conf, Annex 6.

⁵³² First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, page 165 and Annex 82.

⁵³³ Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008, 10 June 2008, ICC-01/04-01/06-1388.

⁵³⁴ Observations de la Défense sur les 15 demandes de participation à la procédure et les 30 demandes de participation complémentaires communiquées le 27 novembre 2008 ; Réponse de la Défense aux observations des représentants légaux relatives aux 105 demandes de participation communiquées le 20 mai 2008 ; et Observations de la Défense relatives aux victimes indirectes, 5 December 2008, ICC-01/04-01/06-1536, paragraph 26.

The prosecution submit that this applicant meets, *prima facie*, the necessary requirements for victim participation and that the application forms and further information received by the Registry suggest that he was under the age of 15 at the time of his enlistment, conscription or use by the armed forces of the UPC during the relevant time frame. The Prosecutor supports the application.⁵³⁵ In a further filing, the prosecution submits that the additional documents provided to the Chamber prove the identity, legal guardianship and consent of the legal guardian.⁵³⁶ The prosecution also submits that the information provided supports the suggestion that the applicant was under the age of 15 during the material events.⁵³⁷

The observations of the victim's legal representative

The legal representatives submit in their reply that the applicant has set out that he was recruited for the FPLC as a child soldier when he was under 15 years old and thus there is direct link with the charges brought against the accused, and therefore the applicant should be granted the status of victim and admitted as a participant in the proceedings.⁵³⁸

Legal representation

The applicant has been represented thus far by Mr Joseph Keta and Mr Jean Louis Gilissen.⁵³⁹

The Chamber's analysis and conclusions

The Chamber considers that the documents and the other material provided prove, *prima facie*, the identity of the applicant and the person acting on his behalf in accordance with the Trial Chamber's Decision on victims' participation. Whilst the Trial Chamber notes that there is a discrepancy between the year of birth of the applicant in the application form (1991) and in the identification documents (1990),⁵⁴⁰ both pieces of evidence support the conclusion that the applicant was under the age

⁵³⁵ Prosecution's Observations on 105 Redacted Applications for Victim Participation to the Case, 9 June 2008, ICC-01/04-01/06-1386, paragraph 27, pages 14-15.

⁵³⁶ Prosecution's Observations on supplementary information for victim applications a/0002/06, a/0047/06, a/0048/06, a/0051/06, a/0052/06, a/0077/06, a/0221/06, a/0224/06, a/0225/06, a/0227/06, a/0229/06, a/0230/06, a/0236/06, a/0237/06, a/0238/06, a/0239/06, a/0240/06, a/0243/06, a/0055/07, a/0056/07, a/0057/07, a/0058/07, a/0060/07, a/0155/07, a/0156/07, a/0172/07, a/0187/07, a/0007/08, ICC-01/04-01/06-1540-Conf, paragraph 21.

⁵³⁷ Prosecution's Observations on supplementary information for victim applications a/0002/06, a/0047/06, a/0048/06, a/0051/06, a/0052/06, a/0077/06, a/0221/06, a/0224/06, a/0225/06, a/0227/06, a/0229/06, a/0230/06, a/0236/06, a/0237/06, a/0238/06, a/0239/06, a/0240/06, a/0243/06, a/0055/07, a/0056/07, a/0057/07, a/0058/07, a/0060/07, a/0155/07, a/0156/07, a/0172/07, a/0187/07, a/0007/08, ICC-01/04-01/06-1540-Conf, paragraph 27.

⁵³⁸ Réponse aux "Prosecution's Observations on 105 Applications for Victim Participation to the Case" du 9 juin 2008 et aux « Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008 » du 10 juin 2008, 28 November, ICC-01/04-01/06/1522, paragraph 25, page 12.

⁵³⁹ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, page 165 and Annex 82.

⁵⁴⁰ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 164-165 and Annex 82.

of 15 at the time of these events. The birth certificate has a particular degree of reliability in this regard. The identification documents that have been provided establish the relationship between the applicant and the person acting on his behalf (his guardian).

The Chamber notes the applicant was a child when the application was filed but is now an adult. Although this is not an impediment to granting the application, the Chamber nonetheless instructs the VPRS to enquire of the applicant whether he wishes to participate on his own behalf or through the person acting on his behalf.

The Trial Chamber determines that the applicant has given sufficient evidence to establish, *prima facie*, that he is a victim under Rule 85(a) of the Rules, as the Chamber has been provided with enough information to conclude that the applicant suffered personal harm as a result of crimes included in the charges brought against the accused, namely his alleged enlistment and/or conscription and/or use to participate actively in the hostilities by the UPC between September 2002 and 13 August 2003.⁵⁴¹

⁵⁴¹ Decision on victims' participation, 18 January 2008, ICC-01/04-01/06-1119, as confirmed, amended and reversed by the Appeals Chamber's 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.

Group 1(e): Applications where the applicant's date of birth is uncertain or the demobilisation date is in issue

Applicant a/0187/07 [Annex 69]

The means of identification

The Chamber has been provided with a demobilisation certificate for the applicant and an election card for the person acting on his behalf. No proof of their relationship has been submitted and the applicant has not signed the application form.⁵⁴² In a subsequent filing, the applicant, who is now an adult, has signed a declaration stating that he wishes to act on his own behalf.⁵⁴³

The claim to victim status

The applicant states that in [REDACTED] 2002 he was recruited by the UPC, when he was [REDACTED] or [REDACTED] years old. His [REDACTED] joined the UPC at the same time and they both received military training. The applicant was allegedly demobilized on [REDACTED] 2004. The applicant claimed that as a result of these events, his schooling was interrupted and he suffered considerably during his recruitment, not least because members of his family died. The applicant suffered psychological harm and serious violations of his fundamental rights.⁵⁴⁴

The phases of the proceedings

The applicant submits he has an interest in participating in all phases of the proceedings.⁵⁴⁵

The observations of the defence

The defence notes that the applicant is among a group of applicants who have stated that they were recruited between 2000 and May 2002. However, the defence argue that this group of applicants do not state precisely the duration of their recruitment or the date on which they were demobilised. Accordingly, the defence submits, there is nothing to establish, *prima facie*, that the alleged events occurred during the period between September 2002 and 13 August 2003.⁵⁴⁶ The defence submits in a further

⁵⁴² First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 137-138 and Annex 69.

⁵⁴³ Second report on supplementary information concerning application for participation filed with the "First Report to Trial Chamber I on Victims' Applications under Regulation 86(5) of the Regulations of the Court", dated 11 April 2008 (ICC-01/04-01/06-1275-Conf-Exp), 21 November 2008, page 6 and Annex 8.

⁵⁴⁴ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 137-138 and Annex 69

⁵⁴⁵ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 137-138 and Annex 69.

⁵⁴⁶ Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008, 10 June 2008, ICC-01/04-01/06-1388, p. 9.

filing that although the applicant stated in his first application that he was voluntary enlisted in 2002, in a supplementary application he suggested that he was abducted in 2003. As a result, the defence maintains that the information provided by applicant is uncertain and contradictory, and it does not meet the requirements for *prima facie* admission under Rule 85 of the Rules. In all the circumstances, it is submitted that the application should be rejected.⁵⁴⁷

The observations of the prosecution

The prosecution submits that this applicant meets, *prima facie*, the necessary requirements for victim participation. The application forms and further information received by the Registry suggest that this applicant was under the age of 15 at the time of his enlistment, conscription or use by the armed forces of the UPC, during the relevant time frame. The Prosecutor supports this application.⁵⁴⁸ In a further filing, the prosecution submits that since the applicant has now attained majority, he no longer requires consent of another, and thus he may act on his own behalf.⁵⁴⁹ The prosecution also submits that the information provided supports the suggestion that the applicant was under the age of 15 during the material events.⁵⁵⁰

The observations of the victim's legal representative

The legal representatives submit in their reply that any contradictions or inaccuracies as to when events occurred are due to the ongoing problems in the DRC and the extreme difficulties in obtaining the necessary documents to support the application.⁵⁵¹ The legal representatives also submit that the applicant has given enough information to show that he has suffered harm directly linked with the charges brought against the accused, and therefore he should be granted the status of victim and admitted as a participant in the proceedings.⁵⁵²

⁵⁴⁷ Observations de la Défense sur les 15 demandes de participation à la procédure et les 30 demandes de participation complémentaires communiquées le 27 novembre 2008 ; Réponse de la Défense aux observations des représentants légaux relatives aux 105 demandes de participation communiquées le 20 mai 2008 ; et Observations de la Défense relatives aux victimes indirectes, 5 December 2008, ICC-01/04-01/06-1536, paragraph 26, 46.

⁵⁴⁸ Prosecution's Observations on 105 Redacted Applications for Victim Participation to the Case, 9 June 2008, ICC-01/04-01/06-1386, paragraph 27, pages 14-15.

⁵⁴⁹ Prosecution's Observations on supplementary information for victim applications a/0002/06, a/0047/06, a/0048/06, a/0051/06, a/0052/06, a/0077/06, a/0221/06, a/0224/06, a/0225/06, a/0227/06, a/0229/06, a/0230/06, a/0236/06, a/0237/06, a/0238/06, a/0239/06, a/0240/06, a/0243/06, a/0055/07, a/0056/07, a/0057/07, a/0058/07, a/0060/07, a/0155/07, a/0156/07, a/0172/07, a/0187/07, a/0007/08, ICC-01/04-01/06-1540-Conf, paragraph 23.

⁵⁵⁰ Prosecution's Observations on supplementary information for victim applications a/0002/06, a/0047/06, a/0048/06, a/0051/06, a/0052/06, a/0077/06, a/0221/06, a/0224/06, a/0225/06, a/0227/06, a/0229/06, a/0230/06, a/0236/06, a/0237/06, a/0238/06, a/0239/06, a/0240/06, a/0243/06, a/0055/07, a/0056/07, a/0057/07, a/0058/07, a/0060/07, a/0155/07, a/0156/07, a/0172/07, a/0187/07, a/0007/08, ICC-01/04-01/06-1540-Conf, paragraph 27.

⁵⁵¹ Réponse aux "Prosecution's Observations on 105 Applications for Victim Participation to the Case" du 9 juin 2008 et aux « Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008 » du 10 juin 2008, 28 November, ICC-01/04-01/06/1522, paragraph 22, page 19.

⁵⁵² Réponse aux "Prosecution's Observations on 105 Applications for Victim Participation to the Case" du 9 juin 2008 et aux « Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008 » du 10 juin 2008, 28 November, ICC-01/04-01/06/1522, paragraph 25, page 19.

Legal representation

The applicant has been represented thus far by Mr Joseph Keta Orwinyo and Mr Jean Louis Gilissen.⁵⁵³

The Chamber's analysis and conclusions:

This application was not before Pre-Trial Chamber I.

The Chamber considers the documents provided prove, *prima facie*, the identity of the applicant and the person acting on his behalf in accordance with the Trial Chamber's Decision on victims' participation. The Chamber considers that the demobilisation certificate proves, *prima facie*, that the applicant was under 18 years of age at the time when it was issued, in ██████ 2004.⁵⁵⁴ The applicant has stated precisely and unequivocally in his application that he was born on ██████ 1990 and that he was approximately █ or █ years old when he was recruited. Thus, the Chamber considers that it has been provided with enough information to determine, *prima facie*, that the applicant was under the age of 15 during the material events.

The Trial Chamber has reviewed the application and the report submitted by the VPRS and rejects the submission advanced by the defence that the applicant's alleged recruitment cannot be established, *prima facie*, to have occurred between September 2002 and August 2003. Weighing all the evidence, the Trial Chamber considers that the information provided in the application and in the VPRS report is sufficient to establish, *prima facie*, that the applicant was recruited in ██████ 2002, and that he was used as a combatant until ██████ 2004, when, it is reasonable to infer, he received his demobilisation certificate.⁵⁵⁵

The Trial Chamber thus determines that the applicant has given sufficient evidence to establish, *prima facie*, that he is a victim under Rule 85(a) of the Rules, as the Chamber has been provided with enough information to conclude that the applicant suffered personal harm as a result of crimes included in the charges brought against the accused, namely his alleged enlistment and/or conscription and/or use to participate actively in the hostilities by the UPC between September 2002 and 13 August 2003.⁵⁵⁶

Applicant a/0168/07 [Annex 37]

⁵⁵³ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 137-138 and Annex 69.

⁵⁵⁴ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, Annex 69, page 18.

⁵⁵⁵ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, Annex 37, page 18.

⁵⁵⁶ Decision on victims' participation, 18 January 2008, ICC-01/04-01/06-1119, as confirmed, amended and reversed by the Appeals Chamber's 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.

The means of identification

The Chamber has been provided with the child demobilisation certificate for the applicant.⁵⁵⁷

The claim to victim status

The applicant states that he was recruited in ██████ 2002 at the age of █ and that the UPC pressured and threatened his family so they would not oppose his recruitment. He was trained and later deployed. He received his demobilisation certificate in ██████ 2005. The applicant suggests that he suffered psychological harm and serious violations of his fundamental rights as a result of his recruitment. He lost years from his life and the opportunity to study.⁵⁵⁸

The phases of the proceedings

The applicant submits he has an interest in participating in all phases of the proceedings.⁵⁵⁹

The observations of the defence

The defence notes that the applicant is one of a group of applicants who, although they have stated that they were recruited between 2000 and ██████ 2002, have failed to indicate the duration of their recruitment or the date on which they were demobilised. On this basis, the defence submits the applicant has failed to establish, *prima facie*, that the alleged events occurred during the material period, between September 2002 and 13 August 2003.⁵⁶⁰ The defence submits in a further filing that the applicant has given a different date of birth from that indicated in his initial application, and as a result, the application does not meet the requirements for *prima facie* admission under Rule 85 of the Rules. In all the circumstances, it is submitted that the application should be rejected.⁵⁶¹

The observations of the prosecution

The prosecution submits that the applicant was under the age of 15 at the time of his enlistment, conscription, or use by the armed forces of the UPC, which is the period relevant to the charges brought against Thomas Lubanga, and thus he should be permitted to participate.⁵⁶²

⁵⁵⁷ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 73-74 and Annex 37

⁵⁵⁸ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 73-74 and Annex 37.

⁵⁵⁹ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 73-74 and Annex 37

⁵⁶⁰ Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008, 10 June 2008, ICC-01/04-01/06-1388, p. 9.

⁵⁶¹ Observations de la Défense sur les 15 demandes de participation à la procédure et les 30 demandes de participation complémentaires communiquées le 27 novembre 2008 ; Réponse de la Défense aux observations des représentants légaux relatives aux 105 demandes de participation communiquées le 20 mai 2008 ; et Observations de la Défense relatives aux victimes indirectes, 5 December 2008, ICC-01/04-01/06-1536, paragraph 26.

⁵⁶² Prosecution's Observations on 105 Redacted Applications for Victim Participation to the Case, 9 June 2008, ICC-01/04-01/06-1386, paragraph 27.

The observations of the victim's legal representative

The legal representatives submit in their reply that any contradictions or inaccuracies as to when events occurred are due to the ongoing problems in the DRC and the extreme difficulties in obtaining the necessary documents to support the application.⁵⁶³ The legal representatives also submit that the applicant has given enough information to show that he has suffered harm directly linked with the charges brought against the accused, and therefore he should be granted the status of victim and admitted as a participant in the proceedings.⁵⁶⁴

Legal representation

This applicant has been represented thus far by Mr Joseph Keta Urwinyo and Mr Jean Louis Gilissen.⁵⁶⁵

The Chamber's analysis and conclusions

The Chamber considers that the documents and the other material provided prove, *prima facie*, the identity of the applicant in accordance with the Trial Chamber's Decision on victims' participation. The demobilisation certificate proves, *prima facie*, that the applicant was under 18 years of age at the time of his demobilisation.⁵⁶⁶ Furthermore, the applicant has stated precisely and unequivocally in his application that his date of birth is [REDACTED] 1989. In all the circumstances, the Chamber has been provided with enough information to determine, *prima facie*, that the applicant was under the age of 15 during the material events.

The Trial Chamber has reviewed the application and the report submitted by the VPRS and rejects the submission advanced by the defence that the applicant's alleged recruitment cannot be established, *prima facie*, to have occurred between September 2002 and August 2003. Weighing all the evidence, the Trial Chamber considers that the information provided in the application and in the VPRS report is sufficient to establish, *prima facie*, that the applicant was recruited in [REDACTED] 2002, and that he was used as a combatant until [REDACTED] 2005, when, it is reasonable to infer, he received his demobilisation certificate.⁵⁶⁷

⁵⁶³ Réponse aux "Prosecution's Observations on 105 Applications for Victim Participation to the Case" du 9 juin 2008 et aux « Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008 » du 10 juin 2008, 28 November, ICC-01/04-01/06/1522, paragraph 22, page 14.

⁵⁶⁴ Réponse aux "Prosecution's Observations on 105 Applications for Victim Participation to the Case" du 9 juin 2008 et aux « Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008 » du 10 juin 2008, 28 November, ICC-01/04-01/06/1522, paragraph 25, page 14.

⁵⁶⁵ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 73-74 and Annex 37.

⁵⁶⁶ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, Annex 37, page 18.

⁵⁶⁷ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, Annex 37, page 18

The Trial Chamber thus determines that the applicant has given sufficient evidence to establish, *prima facie*, that he is a victim under Rule 85(a) of the Rules, as the Chamber has been provided with enough information to conclude that the applicant suffered personal harm as a result of crimes included in the charges brought against the accused, namely his alleged enlistment and/or conscription and/or use to participate actively in the hostilities by the UPC between September 2002 and 13 August 2003.⁵⁶⁸

Applicant a/0169/07 [Annex 38]

The means of identification

The Trial Chamber has been provided with the child demobilisation certificate for the applicant.⁵⁶⁹

The claim to victim status

The applicant states that he was recruited by the UPC militia in 2001, when he was [REDACTED] or [REDACTED] years old. He entered the UPC, in part, as a reaction to the violations that the Lendus were carrying out against his tribe, and, in part, because of fear and hunger. He received his demobilisation certificate in 2005. His parents' house was burned and destroyed and he was injured by a bullet in his [REDACTED] during combat. He claims to have experienced psychological, physical, and material harm, and violations of his fundamental rights.⁵⁷⁰

The phases of the proceedings

The applicant submits he has an interest in participating in all phases of the proceedings.⁵⁷¹

The observations of the defence

The defence notes that the applicant is one of a group of applicants who, although they have stated that they were recruited between 2000 and May 2002, have failed to indicate the duration of their recruitment or the date on which they were demobilised. On this basis, the defence submits the applicant has failed to establish, *prima facie*, that the alleged events occurred during the material period, between September 2002 and 13 August 2003.⁵⁷² The defence submits in a further filing that the applicant has given a different date of birth from that indicated in his initial application, and as a result, the application does not meet the requirements for *prima*

⁵⁶⁸ Decision on victims' participation, 18 January 2008, ICC-01/04-01/06-1119, as confirmed, amended and reversed by the Appeals Chamber's 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.

⁵⁶⁹ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 75-76 and Annex 38.

⁵⁷⁰ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 75-76 and Annex 38.

⁵⁷¹ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 75-76 and Annex 38.

⁵⁷² Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008, 10 June 2008, ICC-01/04-01/06-1388, page 9.

facie admission under Rule 85 of the Rules. In all the circumstances, it is submitted that the application should be rejected.⁵⁷³

The observations of the prosecution

The prosecution submits that the applicant was under the age of 15 at the time of his enlistment, conscription, or use by the armed forces of the UPC, which is the period relevant to the charges brought against Thomas Lubanga, and thus he should be permitted to participate.⁵⁷⁴

The observations of the victim's legal representative

The legal representatives submit in their reply that any contradictions or inaccuracies as to when events occurred are due to the ongoing problems in the DRC and the extreme difficulties in obtaining the necessary documents to support the application.⁵⁷⁵ The legal representatives also submit that the applicant has given enough information to show that he has suffered harm directly linked with the charges brought against the accused, and therefore the applicant should be granted the status of victim and admitted as a participant in the proceedings.⁵⁷⁶

Legal representation

The applicant has been represented thus far by Mr Joseph Keta Urwinyo and Mr Jean Louis Gilissen.⁵⁷⁷

The Chamber's analysis and conclusions

The Chamber considers that the documents and the other material provided prove, *prima facie*, the identity of the applicant in accordance with the Trial Chamber's Decision on victims' participation. The demobilisation certificate proves, *prima facie*, that the applicant was under 18 years of age at the time of the relevant events.⁵⁷⁸ The applicant has stated precisely and unequivocally in his application that his date of birth is [REDACTED] 1989, as confirmed by the VPRS in its report. In all the circumstances, the Chamber has been provided with enough information to determine, *prima facie*, that the applicant was, therefore, under the age of 15 during the material events.

⁵⁷³ Observations de la Défense sur les 15 demandes de participation à la procédure et les 30 demandes de participation complémentaires communiquées le 27 novembre 2008 ; Réponse de la Défense aux observations des représentants légaux relatives aux 105 demandes de participation communiquées le 20 mai 2008 ; et Observations de la Défense relatives aux victimes indirectes, 5 December 2008, ICC-01/04-01/06-1536, paragraph 26.

⁵⁷⁴ Prosecution's Observations on 105 Redacted Applications for Victim Participation to the Case, 9 June 2008, ICC-01/04-01/06-1386, paragraph 27.

⁵⁷⁵ Réponse aux "Prosecution's Observations on 105 Applications for Victim Participation to the Case" du 9 juin 2008 et aux « Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008 » du 10 juin 2008, 28 November, ICC-01/04-01/06/1522, paragraph 22, page 14.

⁵⁷⁶ Réponse aux "Prosecution's Observations on 105 Applications for Victim Participation to the Case" du 9 juin 2008 et aux « Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008 » du 10 juin 2008, 28 November, ICC-01/04-01/06/1522, paragraph 25, page 14.

⁵⁷⁷ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 75-76 and Annex 38.

⁵⁷⁸ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, Annex 38, page 18.

The Trial Chamber has reviewed the application and the report submitted by the VPRS and rejects the submission advanced by the defence that the alleged recruitment cannot be established, *prima facie*, to have occurred between September 2002 and August 2003. Weighing all the evidence, the Trial Chamber considers that the information provided in the application and the VPRS report is sufficient to establish, *prima facie*, that the applicant was recruited in 2001 and that he was a combatant until [REDACTED] 2005, when, if it is reasonable to infer, he received his demobilisation certificate.⁵⁷⁹

The Trial Chamber thus determines that the applicant has given sufficient evidence to establish, *prima facie*, that he is a victim under Rule 85(a) of the Rules, as the Chamber has been provided with enough information to conclude that the applicant suffered personal harm as a result of crimes included in the charges brought against the accused, namely his alleged enlistment and/or conscription and/or use to participate actively in the hostilities by the UPC between September 2002 and 13 August 2003.⁵⁸⁰

Applicant a/0170/07 [Annex 39]

The means of identification

The Trial Chamber has been provided with the child demobilisation certificate for the applicant.⁵⁸¹

The claim to victim status

The applicant states that he was recruited by the UPC in [REDACTED] 2001, when he was [REDACTED] years old, and he received training. He chose to join the UPC because he had to decide between "life or death" and the only way to survive was to become a combatant, since the enemy, the Lendus, did not distinguish between men, women or children. He received his demobilisation certificate in [REDACTED] 2004. His house was pillaged and he lost some years of education as a result of his recruitment. The applicant says he suffered psychological, physical, and material harm, as well as serious violations of his fundamental rights.⁵⁸²

The phases of the proceedings

⁵⁷⁹ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, Annex 38, page 18.

⁵⁸⁰ Decision on victims' participation, 18 January 2008, ICC-01/04-01/06-1119, as confirmed, amended and reversed by the Appeals Chamber's 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.

⁵⁸¹ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 77-78 and Annex 39.

⁵⁸² First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 77-78 and Annex 39.

The applicant submits he has an interest in participating in all phases of the proceedings.⁵⁸³

The observations of the defence

The defence notes that the applicant is one of a group of applicants who, although they have stated that they were recruited between 2000 and May 2002, have failed to indicate the duration of their recruitment or the date on which they were demobilised. On this basis, the defence submits the applicant has failed to establish, *prima facie*, that the alleged events occurred during the material period, between September 2002 and 13 August 2003.⁵⁸⁴ The defence submits in a further filing that the applicant has given a different date of birth from that indicated in his initial application, and as a result, the application does not meet the requirements for *prima facie* admission under Rule 85 of the Rules. In all the circumstances, it is submitted that the application should be rejected.⁵⁸⁵

The observations of the prosecution

The prosecution submits that the applicant was under the age of 15 at the time of his enlistment, conscription, or use by the armed forces of the UPC, which is the period relevant to the charges brought against Thomas Lubanga, and thus he should be permitted to participate.⁵⁸⁶

The observations of the victim's legal representative

The legal representatives submit in their reply that any contradictions or inaccuracies as to when events occurred are due to the ongoing problems in the DRC and the extreme difficulties in obtaining the necessary documents to support the application.⁵⁸⁷ The legal representatives also submit that the applicant has given enough information to show that he has suffered harm directly linked with the charges brought against the accused, and therefore the applicant should be granted the status of victim and admitted as a participant in the proceedings.⁵⁸⁸

Legal representation

⁵⁸³ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 77-78 and Annex 39.

⁵⁸⁴ Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008, 10 June 2008, ICC-01/04-01/06-1388, p. 9.

⁵⁸⁵ Observations de la Défense sur les 15 demandes de participation à la procédure et les 30 demandes de participation complémentaires communiquées le 27 novembre 2008 ; Réponse de la Défense aux observations des représentants légaux relatives aux 105 demandes de participation communiquées le 20 mai 2008 ; et Observations de la Défense relatives aux victimes indirectes, 5 December 2008, ICC-01/04-01/06-1536, paragraph 26.

⁵⁸⁶ Prosecution's Observations on 105 Redacted Applications for Victim Participation to the Case, 9 June 2008, ICC-01/04-01/06-1386, paragraph 27.

⁵⁸⁷ Réponse aux "Prosecution's Observations on 105 Applications for Victim Participation to the Case" du 9 juin 2008 et aux « Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008 » du 10 juin 2008, 28 November, ICC-01/04-01/06/1522, paragraph 22, page 14.

⁵⁸⁸ Réponse aux "Prosecution's Observations on 105 Applications for Victim Participation to the Case" du 9 juin 2008 et aux « Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008 » du 10 juin 2008, 28 November, ICC-01/04-01/06/1522, paragraph 25, page 14.

This applicant has been represented thus far by Mr Joseph Keta Urwinyo and Mr Jean Louis Gilissen.⁵⁸⁹

The Chamber's analysis and conclusions

The Chamber considers that the documents and the other material provided prove, *prima facie*, the identity of the applicant in accordance with the Trial Chamber's Decision on victims' participation. The demobilisation certificate proves, *prima facie*, that the applicant was under 18 years of age at the time of the relevant events.⁵⁹⁰ Moreover, the applicant has stated precisely and unequivocally in his application that his date of birth is ██████ 1988, as is confirmed by the VPRS in its report. In all the circumstances, the Chamber has been provided with enough information to determine, *prima facie*, that the applicant was under the age of 15 during the material events.

The Trial Chamber has reviewed the application and the report submitted by the VPRS and rejects the submission advanced by the defence that the alleged recruitment cannot be established, *prima facie*, to have occurred between September 2002 and August 2003. Weighing all the evidence, the Trial Chamber considers that the information provided in the application and the VPRS report is sufficient to establish, *prima facie*, that the applicant was recruited in 2001 and that he remained in the UPC until ██████ 2004, when, it is reasonable to infer, he received his demobilisation certificate.⁵⁹¹

The Trial Chamber thus determines that the applicant has given sufficient evidence to establish, *prima facie*, that he is a victim under Rule 85(a) of the Rules, as the Chamber has been provided with enough information to conclude that the applicant suffered personal harm as a result of crimes included in the charges brought against the accused, namely his alleged enlistment and/or conscription and/or use to participate actively in the hostilities by the UPC between September 2002 and 13 August 2003.⁵⁹²

Applicant a/0173/07 [Annex 40]

The means of identification

⁵⁸⁹ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 77-78 and Annex 39.

⁵⁹⁰ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, Annex 39, page 18.

⁵⁹¹ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, Annex 39, page 18.

⁵⁹² Decision on victims' participation, 18 January 2008, ICC-01/04-01/06-1119, as confirmed, amended and reversed by the Appeals Chamber's 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.

The Trial Chamber has been provided with the demobilisation certificate for the applicant.⁵⁹³

The claim to victim status

The applicant states he was recruited by the UPC in [REDACTED] 2001, at the age of [REDACTED] or [REDACTED]. He was trained by the UPC, and stayed with them until 2004. He decided to enlist in order to serve his country and the Hemas, and because of the drastic insecurity created by the Lendu attacks. The applicant suffered psychological and material harm, as well as serious violations of his fundamental rights; he also experienced difficulties with his studies. Many of his family members were killed, and his house and everything inside it was destroyed.⁵⁹⁴

The phases of the proceedings

The applicant submits he has an interest in participating in all phases of the proceedings.⁵⁹⁵

The observations of the defence

The defence submits that the applicant alleges an injury for which there is no direct link with the charges brought against the accused; indeed, the defence contends that the applicant's alleged injury is the result of crimes with which the Court is not seized.⁵⁹⁶ The defence also submits that the applicant has given a different date of birth from that indicated in his initial application, and as a result, the application does not meet the requirements for *prima facie* admission under Rule 85 of the Rules. In all the circumstances, it is submitted that the application should be rejected.⁵⁹⁷

The observations of the prosecution

The prosecution submits that the applicant was under the age of 15 at the time of his enlistment, conscription, or use by the armed forces of the UPC, which is the period relevant to the charges brought against Thomas Lubanga, and thus he should be permitted to participate.⁵⁹⁸

The observations of the victim's legal representative

The legal representatives submit in their reply that any contradictions or inaccuracies as to when events occurred are due to the ongoing problems in the DRC and the

⁵⁹³ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 79-80 and Annex 40.

⁵⁹⁴ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 79-80 and Annex 40.

⁵⁹⁵ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 79-80 and Annex 40.

⁵⁹⁶ Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008, 10 June 2008, ICC-01/04-01/06-1388, paragraph 21.

⁵⁹⁷ Observations de la Défense sur les 15 demandes de participation à la procédure et les 30 demandes de participation complémentaires communiquées le 27 novembre 2008 ; Réponse de la Défense aux observations des représentants légaux relatives aux 105 demandes de participation communiquées le 20 mai 2008 ; et Observations de la Défense relatives aux victimes indirectes, 5 December 2008, ICC-01/04-01/06-1536, paragraph 26.

⁵⁹⁸ Prosecution's Observations on 105 Redacted Applications for Victim Participation to the Case, 9 June 2008, ICC-01/04-01/06-1386, paragraph 27.

extreme difficulties in obtaining the necessary documents to support the application.⁵⁹⁹ The legal representatives also submit that the applicant has given enough information to show that he has suffered harm that is directly linked to the charges brought against the accused, and therefore he should be granted the status of victim and admitted as a participant in the proceedings.⁶⁰⁰

Legal representation

This applicant has been represented thus far by Mr Joseph Keta and Mr Jean Louis Gilissen.⁶⁰¹

The Chamber's analysis and conclusions

The Chamber considers that the documents and the other material provided prove, *prima facie*, the identity of the applicant in accordance with the Trial Chamber's Decision on victims' participation. The demobilisation certificate proves, *prima facie*, that the applicant was under 18 years of age at the time of the relevant events.⁶⁰² The applicant has stated precisely and unequivocally in his application that his date of birth is [REDACTED] 1989, as confirmed by the VPRS in its report. In all the circumstances, the Chamber has been provided with enough information to determine, *prima facie*, that the applicant was, therefore, under the age of 15 during the material events.

The Trial Chamber has reviewed the application and the report submitted by the VPRS and rejects the submission advanced by the defence that the application should be refused because the applicant alleges an injury for which there is no direct link with the charges faced by the accused. Although the defence correctly identifies that the applicant refers in his application form to particular harm or injury caused by crimes unrelated to the present charges, there is nonetheless sufficient evidence to infer that applicant suffered physical, psychological or material harm as a result of his recruitment into the UPC. For instance, the applicant suggests that his studies were interrupted is a result of his alleged recruitment.

The Trial Chamber therefore determines that the applicant has given sufficient evidence to establish, *prima facie*, that he is a victim under Rule 85(a) of the Rules, as the Chamber has been provided with enough information to conclude that the applicant suffered personal harm as a result of crimes included in the charges brought against the accused, namely his alleged enlistment and/or conscription

⁵⁹⁹ Réponse aux "Prosecution's Observations on 105 Applications for Victim Participation to the Case" du 9 juin 2008 et aux « Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008 » du 10 juin 2008, 28 November, ICC-01/04-01/06/1522, paragraph 22, page 15.

⁶⁰⁰ Réponse aux "Prosecution's Observations on 105 Applications for Victim Participation to the Case" du 9 juin 2008 et aux « Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008 » du 10 juin 2008, 28 November, ICC-01/04-01/06/1522, paragraph 25, page 15.

⁶⁰¹ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 79-80 and Annex 40.

⁶⁰² First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, Annex 40, page 18.

and/or use to participate actively in the hostilities by the UPC between September 2002 and 13 August 2003.⁶⁰³

Applicant a/0179/07 [Annex 41]

The means of identification

The Trial Chamber has been provided with the child demobilisation certificate for the applicant.⁶⁰⁴

The claim to victim status

The applicant states he was recruited and trained by the UPC in 2001, at the age of ■. He suggests that the conflict between his tribe, the Hema, and the Lendu “pushed” him to join the UPC.

The applicant suffered psychological, physical, and material harm, as well as serious violations of his fundamental rights. Moreover, the applicant lost years of study, his house was burnt and pillaged, and many members of his family were killed during the inter-ethnic conflict. The applicant further alleges that, subsequent to his recruitment he has had difficulties recommencing his studies and he has ■ problems.⁶⁰⁵

The phases of the proceedings

The applicant submits he has an interest in participating in all phases of the proceedings.⁶⁰⁶

The observations of the defence

The defence notes that the applicant is one of a group of applicants who, although they have stated that they were recruited between 2000 and May 2002, have failed to indicate the duration of their recruitment or the date on which they were demobilised. On this basis, the defence submits the applicant has failed to establish, *prima facie*, that the alleged events occurred during the material period, between September 2002 and 13 August 2003.⁶⁰⁷ The defence submits in a further filing that the applicant has given a different date of birth from that indicated in his initial application, and as a result, the application does not meet the requirements for *prima*

⁶⁰³ Decision on victims’ participation, 18 January 2008, ICC-01/04-01/06-1119, as confirmed, amended and reversed by the Appeals Chamber’s 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.

⁶⁰⁴ First Report to Trial Chamber I on Victims’ Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 81-82 and Annex 41.

⁶⁰⁵ First Report to Trial Chamber I on Victims’ Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 81-82 and Annex 41.

⁶⁰⁶ First Report to Trial Chamber I on Victims’ Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 81-82 and Annex 41.

⁶⁰⁷ Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008. 10 June 2008, ICC-01/04-01/06-1388, p. 9.

facie admission under Rule 85 of the Rules. In all the circumstances, it is submitted that the application should be rejected.⁶⁰⁸

The observations of the prosecution

The prosecution submits that the applicant was under the age of 15 at the time of his enlistment, conscription, or use by the armed forces of the UPC, which is the period relevant to the charges brought against Thomas Lubanga, and thus he should be permitted to participate.⁶⁰⁹

The observations of the victim's legal representative

The legal representatives submit in their reply that any contradictions or inaccuracies as to when events occurred are due to the ongoing problems in the DRC and the extreme difficulties in obtaining the necessary documents to support the application.⁶¹⁰ The legal representatives also submit that the applicant has given enough information to show that he has suffered harm directly linked with the charges brought against the accused, and therefore the applicant should be granted the status of victim and admitted as a participant in the proceedings.⁶¹¹

Legal representation

The applicant has been represented thus far by Mr Joseph Keta Urwinyo and Mr Jean Louis Gilissen.⁶¹²

The Chamber's analysis and conclusions

The Chamber considers that the documents and the other material provided prove, *prima facie*, the identity of the applicant in accordance with the Trial Chamber's Decision on victims' participation. The demobilisation certificate proves, *prima facie*, that the applicant was under 18 years of age at the time of the relevant events.⁶¹³ The applicant has stated precisely and unequivocally in his application that his date of birth is [REDACTED] 1988, as confirmed by the VPRS in their report. In all the circumstances, the Chamber has been provided with enough information to

⁶⁰⁸ Observations de la Défense sur les 15 demandes de participation à la procédure et les 30 demandes de participation complémentaires communiquées le 27 novembre 2008 ; Réponse de la Défense aux observations des représentants légaux relatives aux 105 demandes de participation communiquées le 20 mai 2008 ; et Observations de la Défense relatives aux victimes indirectes, 5 December 2008, ICC-01/04-01/06-1536, paragraph 26.

⁶⁰⁹ Prosecution's Observations on 105 Redacted Applications for Victim Participation to the Case, 9 June 2008, ICC-01/04-01/06-1386, paragraph 27.

⁶¹⁰ Réponse aux "Prosecution's Observations on 105 Applications for Victim Participation to the Case" du 9 juin 2008 et aux « Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008 » du 10 juin 2008, 28 November, ICC-01/04-01/06/1522, paragraph 22, page 17.

⁶¹¹ Réponse aux "Prosecution's Observations on 105 Applications for Victim Participation to the Case" du 9 juin 2008 et aux « Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008 » du 10 juin 2008, 28 November, ICC-01/04-01/06/1522, paragraph 25, page 17.

⁶¹² First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 81-82 and Annex 41

⁶¹³ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, Annex 41, page 18.

determine, *prima facie*, that the applicant was, therefore, under the age of 15 during the material events.

The Trial Chamber has reviewed the application and the report submitted by the VPRS and rejects the submission advanced by the defence that the time of the applicant's alleged recruitment cannot be established, *prima facie*, to have occurred between September 2002 and August 2003. Weighing all the evidence, the Trial Chamber considers that the information provided in the application and the VPRS report is sufficient to establish, *prima facie*, that the applicant was recruited in 2001 and that his involvement with the armed forces of the UPC lasted until [REDACTED] 2004, when, it is reasonable to infer, he received his demobilisation certificate.⁶¹⁴ Furthermore, this conclusion is supported by the statement of the applicant that he lost "years of study" as a result.⁶¹⁵

The Trial Chamber therefore determines that the applicant has given sufficient evidence to establish, *prima facie*, that he is a victim under Rule 85(a) of the Rules, as the Chamber has been provided with enough information to conclude that the applicant suffered personal harm as a result of crimes included in the charges brought against the accused, namely his alleged enlistment and/or conscription and/or use to participate actively in the hostilities by the UPC between September 2002 and until [REDACTED] 2003, when the applicant turned 15 years old.⁶¹⁶

Applicant a/0181/07 [Annex 42]

The means of identification

The Chamber has been provided with the child demobilisation certificate for the applicant.⁶¹⁷

The claim to victim status

The applicant states that he was recruited by the UPC in [REDACTED] 2002 and was demobilised in [REDACTED] 2004. The applicant suggests he unhesitatingly enlisted after he and his family fled as a result of Lendu attacks against their community, the Hema. The applicant suffered psychological and material harm, as well as serious violations of his fundamental rights. He alleges family members were killed, and he lost his house, and property.⁶¹⁸

⁶¹⁴ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 41, page 18.

⁶¹⁵ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 41, page 11.

⁶¹⁶ Decision on victims' participation, 18 January 2008, ICC-01/04-01/06-1119, as confirmed, amended and reversed by the Appeals Chamber's 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.

⁶¹⁷ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 83-84 and Annex 42.

⁶¹⁸ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 83-84 and Annex 42.

The phases of the proceedings

The applicant submits he has an interest in participating in all phases of the proceedings.⁶¹⁹

The observations of the defence

The defence observes that the applicant is one of a group of applicants who, although they have stated that they were recruited between 2000 and May 2002, have failed to indicate the duration of their recruitment or the date on which they were demobilised. On this basis, the defence submits the applicant has failed to establish, *prima facie*, that the alleged events occurred during the material period, between September 2002 and 13 August 2003.⁶²⁰ In addition, the Defence submits that the applicant relies on an injury that is unconnected with the present charges, but which is instead the result of other crimes.⁶²¹ The defence submits that the applicant has given a different date of birth from that indicated in his initial application, and as a result, the application does not meet the requirements for *prima facie* admission under Rule 85 of the Rules. In all the circumstances, it is submitted that the application should be rejected.⁶²²

The observations of the prosecution

The prosecution submits that the applicant was under the age of 15 at the time of his enlistment, conscription, or use by the armed forces of the UPC, which is the period relevant to the charges brought against Thomas Lubanga, and thus he should be permitted to participate..⁶²³

The observations of the victim's legal representative

The legal representatives submit in their reply that any contradictions or inaccuracies as to when events occurred are due to the ongoing problems in the DRC and the extreme difficulties in obtaining the necessary documents to support the application.⁶²⁴ The legal representatives also submit that the applicant has given enough information to show that he has suffered harm directly linked with the

⁶¹⁹ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 83-84 and Annex 42.

⁶²⁰ Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008, 10 June 2008, ICC-01/04-01/06-1388, p. 9.

⁶²¹ Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008, 10 June 2008, ICC-01/04-01/06-1388, paragraph 21.

⁶²² Observations de la Défense sur les 15 demandes de participation à la procédure et les 30 demandes de participation complémentaires communiquées le 27 novembre 2008 ; Réponse de la Défense aux observations des représentants légaux relatives aux 105 demandes de participation communiquées le 20 mai 2008 ; et Observations de la Défense relatives aux victimes indirectes, 5 December 2008, ICC-01/04-01/06-1536, paragraph 26.

⁶²³ Prosecution's Observations on 105 Redacted Applications for Victim Participation to the Case, 9 June 2008, ICC-01/04-01/06-1386, paragraph 27.

⁶²⁴ Réponse aux "Prosecution's Observations on 105 Applications for Victim Participation to the Case" du 9 juin 2008 et aux « Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008 » du 10 juin 2008, 28 November, ICC-01/04-01/06/1522, paragraph 22, page 18.

charges brought against the accused, and therefore the applicant should be granted the status of victim and admitted as a participant in the proceedings.⁶²⁵

Legal representation

This applicant has been represented thus far by Mr Joseph Keta Urwinyo and Mr Jean Louis Gilissen.⁶²⁶

The Chamber's analysis and conclusions

The Chamber considers that the documents and the other material provided prove, *prima facie*, the identity of the applicant in accordance with the Trial Chamber's Decision on victims' participation. The demobilisation certificate proves, *prima facie*, that the applicant was under 18 years of age at the time of the relevant events.⁶²⁷ The applicant has stated precisely and unequivocally in his application that his date of birth is ██████ 1988, as confirmed by the VPRS in its report. In all the circumstances, the Chamber has been provided with enough information to determine, *prima facie*, that the applicant was under the age of 15 during the material events.

The Trial Chamber has reviewed the application and the report submitted by the VPRS and rejects the submission advanced by the defence that the time of the applicant's alleged recruitment cannot be established, *prima facie*, to have occurred between September 2002 and August 2003. Weighing all the evidence, the Trial Chamber considers that the information provided in the application and the VPRS report, is sufficient to establish, *prima facie*, that the applicant was recruited in 2001 and that his involvement with the armed forces of the UPC lasted until ██████ 2004, when, it is reasonable to infer, the applicant received his demobilisation certificate.⁶²⁸

Furthermore, although the defence correctly identifies that the applicant refers in his application form to particular harm or injury caused by crimes unrelated to the present charges, there is nonetheless sufficient evidence to infer that applicant suffered physical, psychological or material harm as a result of his recruitment into the UPC. For instance, in his application the applicant states that he suffered much loss during the relevant period, and that it was useless to itemise it all.⁶²⁹ In all the circumstances, the applicant has provided enough information to infer, *prima facie*, that he suffered harm as a result of his enlistment and active participation in hostilities when he was ██████ years old.

⁶²⁵ Réponse aux "Prosecution's Observations on 105 Applications for Victim Participation to the Case" du 9 juin 2008 et aux « Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008 » du 10 juin 2008, 28 November, ICC-01/04-01/06/1522, paragraph 25, page 18.

⁶²⁶ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 83-84 and Annex 42.

⁶²⁷ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, Annex 42, page 18.

⁶²⁸ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 42, page 18.

⁶²⁹ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 42, page 11.

The Trial Chamber thus determines that the applicant has given sufficient evidence to establish, *prima facie*, that he is a victim under Rule 85(a) of the Rules, as the Chamber has been provided with enough information to conclude that the applicant suffered personal harm as a result of crimes included in the charges brought against the accused, namely his alleged enlistment and/or conscription and/or use to participate actively in the hostilities by the UPC between September 2002 and until [REDACTED] 2003, when the applicant became 15 years old.⁶³⁰

Applicant a/0188/07 [Annex 43]

The means of identification

The Trial Chamber has been provided with a child demobilisation certificate for the applicant.⁶³¹

The claim to victim status

The applicant states he was recruited by the UPC in [REDACTED] 2002 and was demobilised in [REDACTED] 2004. He joined the armed group because he followed the "message" of his leader, Thomas Lubanga, that a better life would result. The applicant suffered psychological harm and serious violations of his fundamental rights. He lost years of study and he regrets his life.⁶³²

The phases of the proceedings

The applicant submits he has an interest in participating in all phases of the proceedings.⁶³³

The observations of the defence

The defence submits that the applicant is one of a group of applicants who, although they have stated that they were recruited between 2000 and May 2002, have failed to indicate the duration of their recruitment or the date on which they were demobilised. On this basis, the defence submits the applicant has failed to establish, *prima facie*, that the alleged events occurred during the material period, between September 2002 and 13 August 2003.⁶³⁴ The defence also submits that the applicant has given a different date of birth from that indicated in his initial application, and as a result, the application does not meet the requirements for *prima facie* admission

⁶³⁰ Decision on victims' participation, 18 January 2008, ICC-01/04-01/06-1119, as confirmed, amended and reversed by the Appeals Chamber's 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.

⁶³¹ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 85-86 and Annex 43.

⁶³² First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 85-86 and Annex 43.

⁶³³ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 85-86 and Annex 43.

⁶³⁴ Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008, 10 June 2008, ICC-01/04-01/06-1388, p. 9.

under Rule 85 of the Rules. In all the circumstances, it is submitted that the application should be rejected.⁶³⁵

The observations of the prosecution

The prosecution submits that the applicant was under the age of 15 at the time of his enlistment, conscription, or use by the armed forces of the UPC, which is the period relevant to the charges brought against Thomas Lubanga, and thus he should be permitted to participate.⁶³⁶

The observations of the victim's legal representative

The legal representatives submit in their reply that any contradictions or inaccuracies as to when events occurred are due to the ongoing problems in the DRC and the extreme difficulties in obtaining the necessary documents to support the application.⁶³⁷ The legal representatives also submit that the applicant has given enough information to show that he has suffered harm directly linked with the charges brought against the accused, and therefore the applicant should be granted the status of victim and admitted as a participant in the proceedings.⁶³⁸

Legal representation

This applicant has been represented thus far by Mr Joseph Keta Urwinyo and Mr Jean Louis Gilissen.⁶³⁹

The Chamber's analysis and conclusions

The Chamber considers that the documents and the other material provided prove, *prima facie*, the identity of the applicant in accordance with the Trial Chamber's Decision on victims' participation. The demobilisation certificate proves, *prima facie*, that the applicant was under 18 years of age at the time of the relevant events.⁶⁴⁰ The applicant has stated precisely and unequivocally in his application that his date of birth is [REDACTED] 1988, as confirmed by the VPRS in their report. In all the circumstances, the Chamber has been provided with enough information to

⁶³⁵ Observations de la Défense sur les 15 demandes de participation à la procédure et les 30 demandes de participation complémentaires communiquées le 27 novembre 2008 ; Réponse de la Défense aux observations des représentants légaux relatives aux 105 demandes de participation communiquées le 20 mai 2008 ; et Observations de la Défense relatives aux victimes indirectes, 5 December 2008, ICC-01/04-01/06-1536, paragraph 26.

⁶³⁶ Prosecution's Observations on 105 Redacted Applications for Victim Participation to the Case, 9 June 2008, ICC-01/04-01/06-1386, paragraph 27.

⁶³⁷ Réponse aux "Prosecution's Observations on 105 Applications for Victim Participation to the Case" du 9 juin 2008 et aux « Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008 » du 10 juin 2008, 28 November, ICC-01/04-01/06/1522, paragraph 22, page 19.

⁶³⁸ Réponse aux "Prosecution's Observations on 105 Applications for Victim Participation to the Case" du 9 juin 2008 et aux « Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008 » du 10 juin 2008, 28 November, ICC-01/04-01/06/1522, paragraph 25, page 19.

⁶³⁹ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 85-86 and Annex 43.

⁶⁴⁰ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, Annex 43, page 18.

determine, *prima facie*, that the applicant was under the age of 15 during the material events.

The Trial Chamber has reviewed the application and the report submitted by the VPRS and rejects the submission advanced by the defence that the time of the applicant's alleged recruitment cannot be established, *prima facie*, as to have occurred between September 2002 and August 2003. Weighing all the evidence, the Trial Chamber considers that the information provided in the application and in the VPRS report is sufficient to establish, *prima facie*, that the applicant was recruited in 2001 and that his involvement with the armed forces of the UPC lasted until [REDACTED] 2005, when, it is reasonable to infer, he received his demobilisation certificate.⁶⁴¹

The Trial Chamber thus determines that the applicant has given sufficient evidence to establish, *prima facie*, that he is a victim under Rule 85(a) of the Rules, as the Chamber has been provided with enough information to conclude that the applicant suffered personal harm as a result of crimes included in the charges brought against the accused, namely his alleged enlistment and/or conscription and/or use to participate actively in the hostilities by the UPC between September 2002 and [REDACTED] 2003, when the applicant became 15 years old.⁶⁴²

Applicant a/0253/07 [Annex 44]

The means of identification

The Trial Chamber has been provided with the child demobilisation certificate for the applicant.⁶⁴³

The claim to victim status

The applicant states that she was recruited by the UPC in [REDACTED] 2002 when she was [REDACTED] years old. She suffered psychological and material harm and serious violations of her fundamental rights, and her property was pillaged.⁶⁴⁴

The phases of the proceedings

The applicant submits she has an interest in participating in all phases of the proceedings, save for the preliminary examination stage.⁶⁴⁵

⁶⁴¹ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 43, page 18.

⁶⁴² Decision on victims' participation, 18 January 2008, ICC-01/04-01/06-1119, as confirmed, amended and reversed by the Appeals Chamber's 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.

⁶⁴³ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 87-88 and Annex 44.

⁶⁴⁴ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 87-88 and Annex 44.

⁶⁴⁵ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 87-88 and Annex 44.

The observations of the defence

The defence submits that the applicant is one of a group of applicants who, although they have stated that they were recruited between 2000 and May 2002, have failed to indicate the duration of their recruitment or the date on which they were demobilised. On this basis, the defence submits the applicant has failed to establish, *prima facie*, that the alleged events occurred during the material period, between September 2002 and 13 August 2003. In addition, the defence submits that the applicant relies on an injury that is unconnected with the present charges, but which is instead the result of other crimes.⁶⁴⁶

The observations of the prosecution

The prosecution submits that the applicant was under the age of 15 at the time of his enlistment, conscription, or use by the armed forces of the UPC, which is the period relevant to the charges brought against Thomas Lubanga, and thus he should be permitted to participate.⁶⁴⁷

The observations of the victim's legal representative

The legal representative notes in her reply that the prosecution did not refer to the applicant in its observations. As regards the observations of the defence, the legal representative states that the applicant suffered harm directly linked with the charges, namely her forced recruitment by the UPC militia. The legal representative requests that the applicant is granted status to participate in the proceedings.⁶⁴⁸

Legal representation

This applicant has been represented thus far by Ms Carine Bapita-Buyangandu.⁶⁴⁹

The Chamber's analysis and conclusions

The Chamber considers that the documents and the other material provided prove, *prima facie*, the identity of the applicant in accordance with the Trial Chamber's Decision on victims' participation. The demobilisation certificate proves, *prima facie*, that the applicant was under 18 years of age during the material events.⁶⁵⁰ The applicant has stated precisely and unequivocally in her application that her date of birth is [REDACTED] 1988 as confirmed by the VPRS in its report. In all the circumstances, the Chamber has been provided with enough information to determine, *prima facie*, that the applicant was under the age of 15 during the material events.

⁶⁴⁶ Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008, 10 June 2008, ICC-01/04-01/06-1388, paragraph 21.

⁶⁴⁷ Prosecution's Observations on 105 Redacted Applications for Victim Participation to the Case, 9 June 2008, ICC-01/04-01/06-1386, paragraph 27.

⁶⁴⁸ Réponse des demandeurs a/0105/06, a/0231/06, a/0232/06, a/0233/06, a/0242/06, a/0243/06, a/0244/06, a/0245/06, a/0246/06, a/0247/06, a/0248/06, a/0249/06, a/0250/06, a/0001/07, a/0002/07, a/0003/07, a/0004/07, a/0005/07, a/0006/07, a/0251/07, a/0253/07 et a/0254/07 aux observations du Procureur et de la Défense quant à leur demande de participation à la procédure dans l'affaire Le Procureur contre Thomas Lubanga, 28 November 2008, ICC-01/04-01/06-1514, paragraphs 8, 24, 25.

⁶⁴⁹ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 87-88 and Annex 44.

⁶⁵⁰ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, Annex 44, page 18.

The Trial Chamber has reviewed the application and the report submitted by the VPRS and rejects the submission advanced by the defence that the application should be refused because the applicant alleges an injury that has no direct link with the charges brought against the accused. Although the applicant refers in her application to harm resulting from crimes, namely pillage, not confirmed against the accused, there is nonetheless sufficient evidence to infer that the applicant suffered physical, psychological or material harm as a result of her recruitment into the UPC. Weighing all the evidence, the Chamber has been provided with enough information to infer, *prima facie*, that she suffered personal harm as a result of her recruitment and her active participation in hostilities when she was ■ years old.

The Trial Chamber thus determines that the applicant has given sufficient evidence to establish, *prima facie*, that she is a victim under Rule 85(a) of the Rules, as the Chamber has been provided with enough information to conclude that the applicant suffered personal harm as a result of crimes included in the charges brought against the accused, namely her alleged enlistment and/or conscription and/or use to participate actively in the hostilities by the UPC between September 2002 and ■ 2003, when the applicant became 15 years old⁶⁵¹.

Applicant a/0257/07 [Annex 46]

The means of identification

The Trial Chamber has been provided with the demobilisation certificate and a reunification certificate for the applicant.⁶⁵²

The claim to victim status

The applicant states that she was recruited by the UPC in 2002 when aged ■ or ■ years old (the applicant submitted she was ■ on ■ 2002). The applicant returned to her family in 2005. She suffered psychological and material harm, and experienced serious violations of her fundamental rights. She suggests that ■ dollars and ■ were stolen during these events.⁶⁵³

The phases of the proceedings

The applicant submits she has an interest in participating in all phases of the proceedings.⁶⁵⁴

The observations of the defence

⁶⁵¹ Decision on victims' participation, 18 January 2008, ICC-01/04-01/06-1119, as confirmed, amended and reversed by the Appeals Chamber's 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

⁶⁵² First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 91-92 and Annex 46.

⁶⁵³ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 91-92 and Annex 46.

⁶⁵⁴ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 91-92 and Annex 46.

The defence submits that the applicant is one of a group of applicants who, although they have stated that they were recruited between 2000 and May 2002, have failed to indicate the duration of their recruitment or the date on which they were demobilised. On this basis, the defence submits the applicant has failed to establish, *prima facie*, that the alleged events occurred during the material period, between September 2002 and 13 August 2003.⁶⁵⁵

The observations of the prosecution

The prosecution submits that the applicant was under the age of 15 at the time of his enlistment, conscription, or use by the armed forces of the UPC, which is the period relevant to the charges brought against Thomas Lubanga, and thus he should be permitted to participate.⁶⁵⁶

The observations of the victim's legal representative

The legal representative of the applicant did not submit any observations.

Legal representation

The applicant has been represented thus far by Mr Paul Kabongo Tshibango.⁶⁵⁷

The Chamber's analysis and conclusions

The Chamber considers that the documents and the other material provided prove, *prima facie*, the identity of the applicant in accordance with the Trial Chamber's Decision on victims' participation. The demobilisation certificate proves, *prima facie*, that the applicant was under 18 years of age when it was issued in █████ 2005.⁶⁵⁸ The applicant has stated precisely and unequivocally in her application that she was born in 1988 and that she was approximately █████ years old on █████ 2002. In all the circumstances, the Chamber considers that it has been provided with enough information to determine, *prima facie*, that the applicant was under the age of 15 during the material events.

The Trial Chamber has reviewed the application and the report submitted by the VPRS and rejects the submission advanced by the defence that the time of the applicant's alleged recruitment cannot be established, *prima facie*, as to have occurred between September 2002 and August 2003. In all the circumstances, the information provided in the application and in the VPRS report is sufficient to establish, *prima facie*, that the applicant was allegedly recruited in 2002 and that her involvement

⁶⁵⁵ Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008, 10 June 2008, ICC-01/04-01/06-1388, pp. 8-9.

⁶⁵⁶ Prosecution's Observations on 105 Redacted Applications for Victim Participation to the Case, 9 June 2008, ICC-01/04-01/06-1386, paragraph 27.

⁶⁵⁷ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 91-100 and Annex 46.

⁶⁵⁸ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, Annex 46, page 18.

with the armed forces of the UPC lasted until █████ 2005 when, it is reasonable to infer, the applicant received her demobilisation certificate.⁶⁵⁹

The Trial Chamber thus determines that the applicant has given sufficient evidence to establish, *prima facie*, that he is a victim under Rule 85(a) of the Rules, as the Chamber has been provided with enough information to conclude that the applicant suffered personal harm as a result of crimes included in the charges brought against the accused, namely her alleged enlistment and/or conscription and/or use to participate actively in the hostilities by the UPC between September 2002 and 13 August 2003.⁶⁶⁰

Applicant a/0271/07 [Annex 47]

The means of identification

The Chamber has been provided with the child demobilisation certificate for the applicant.⁶⁶¹

The claim to victim status

The applicant states that he was recruited by the UPC, along with █████ other children, in 2001, when he was █████ or █████ years old, and he was trained. His parents were unable to oppose his recruitment because their lives were threatened. The applicant suffered psychological harm and serious violations of his fundamental rights.⁶⁶²

The phases of the proceedings

The applicant submits he has an interest in participating in all phases of the proceedings⁶⁶³

The observations of the defence

The defence submits that the applicant is one of a group of applicants who, although they have stated that they were recruited between 2000 and May 2002, have failed to indicate the duration of their recruitment or the date on which they were demobilised. On this basis, the defence submits the applicant has failed to establish, *prima facie*, that the alleged events occurred during the material period, between September 2002 and 13 August 2003.⁶⁶⁴

⁶⁵⁹ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 46, page 18.

⁶⁶⁰ Decision on victims' participation, 18 January 2008, ICC-01/04-01/06-1119, as confirmed, amended and reversed by the Appeals Chamber's 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.

⁶⁶¹ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 93-94 and Annex 47.

⁶⁶² First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 93-94 and Annex 47.

⁶⁶³ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 93-94 and Annex 47.

⁶⁶⁴ Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008, 10 June 2008, ICC-01/04-01/06-1388, p. 9

The observations of the prosecution

The prosecution submits that the applicant was under the age of 15 at the time of his enlistment, conscription, or use by the armed forces of the UPC, which is the period relevant to the charges brought against Thomas Lubanga, and thus he should be permitted to participate.⁶⁶⁵ The Prosecution further observed, however, that despite the applicant's status as a minor, no additional information (such as consent of a parent or legal guardian) has been provided.⁶⁶⁶

The observations of the victim's legal representative

The legal representatives did not submit any observations as regard this applicant.

Legal representation

The applicant has been represented thus far by Mr Joseph Keta Urwinyo and Mr Jean Louis Gilissen.⁶⁶⁷

The Chamber's analysis and conclusions

The Chamber considers that the documents and the other material provided prove, *prima facie*, the identity of the applicant in accordance with the Trial Chamber's Decision on victims' participation. The demobilisation certificate proves, *prima facie*, that the applicant was under 18 years of age when it was issued in ██████████ 2004.⁶⁶⁸ The applicant has stated precisely and unequivocally in his application that he was born on ██████████ 1989 and that he was approximately ██████ or ██████ years old at the time of the relevant events. In all the circumstances, the Chamber considers that it has been provided with enough information to determine, *prima facie*, that the applicant was, therefore, under the age of 15 during the material events.

The Trial Chamber has reviewed the application and the report submitted by the VPRS and rejects the submission advanced by the defence that the alleged recruitment cannot be established, *prima facie*, to have occurred between September 2002 and August 2003. Weighing the evidence, the Trial Chamber considers that the information provided in the application and in the VPRS report is sufficient to establish, *prima facie*, that the applicant was allegedly recruited in 2001 and that his involvement with the armed forces of the UPC lasted, it is reasonable to infer, until ██████████ 2004 when he received his demobilisation certificate.⁶⁶⁹

As regards the prosecution's observations concerning the lack of proven consent from a parent or guardian, given, for these purposes, the Trial Chamber has determined that the applicant was born in 1989 and therefore is no longer a child,

⁶⁶⁵ Prosecution's Observations on 105 Redacted Applications for Victim Participation to the Case, 9 June 2008, ICC-01/04-01/06-1386, paragraph 27.

⁶⁶⁶ Prosecution's Observations on 105 Redacted Applications for Victim Participation to the Case, 9 June 2008, ICC-01/04-01/06-1386, paragraph 22 and note 30.

⁶⁶⁷ ICC-01/04-01/06-1275-Conf-Exp-Anx47, 14 April 2008, p. 12.

⁶⁶⁸ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, Annex 47, page 18.

⁶⁶⁹ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 47, page 18.

consent from another is not a precondition for him to participate in these proceedings.

The Trial Chamber thus determines that the applicant has given sufficient evidence to establish, *prima facie*, that he is a victim under Rule 85(a) of the Rules, as the Chamber has been provided with enough information to conclude that the applicant suffered personal harm as a result of crimes included in the charges brought against the accused, namely his alleged enlistment and/or conscription and/or use to participate actively in the hostilities by the UPC between September 2002 and 13 August 2003.⁶⁷⁰

Applicant a/0272/07 [Annex 48]

The means of identification

The Trial Chamber has been provided with the child demobilisation certificate for the applicant.⁶⁷¹

The claim to victim status

The applicant states he was recruited by the UPC in 2001, at the age of ■ or ■. The applicant gives details of how the Lendus pillaged and destroyed his house; how he suffered because he was Hema; and of the numerous family-members who were killed, including his ■■■■■. The applicant further indicates that because his tribe was rich, with extensive land-holdings, and because his particular Hema tribe (■■■■■) were not on easy terms with all the other tribes, his father decided that all of the boys should take up arms to fight their enemies. The applicant suggests that if he had not fought against the Lendus, he and his tribe would have been exterminated. As a consequence of his recruitment, he suffered psychological, physical and material harm, and serious violations of his fundamental rights.⁶⁷²

The phases of the proceedings

The applicant submits he has an interest in participating in all phases of the proceedings.⁶⁷³

The observations of the defence

The Defence submits that the applicant is one of a group of applicants who, although they have stated that they were recruited between 2000 and May 2002, have failed to indicate the duration of their recruitment or the date on which they were

⁶⁷⁰ Decision on victims' participation, 18 January 2008, ICC-01/04-01/06-1119, as confirmed, amended and reversed by the Appeals Chamber's 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.

⁶⁷¹ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 95-96 and Annex 48.

⁶⁷² First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 95-96 and Annex 48.

⁶⁷³ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 95-96 and Annex 48.

demobilised. On this basis, the Defence submits the applicant has failed to establish, *prima facie*, that the alleged events occurred during the material period, between September 2002 and 13 August 2003.⁶⁷⁴

The observations of the prosecution

The prosecution submits that the applicant was under the age of 15 at the time of his enlistment, conscription, or use by the armed forces of the UPC, during the period relevant to the charges brought against Thomas Lubanga, and thus he should be permitted to participate.⁶⁷⁵

The observations of the victim's legal representative

The legal representatives did not submit observations as regards this applicant.

Legal representation

The applicant has been represented thus far by Mr Joseph Keta Urwinyo and Mr Jean Louis Gilissen.⁶⁷⁶

The Chamber's analysis and conclusions

The Chamber considers that the documents and the other material provided prove, *prima facie*, the identity of the applicant in accordance with the Trial Chamber's Decision on victims' participation. The demobilisation certificate proves, *prima facie*, that the applicant was under 18 years of age at the time when it was issued, that is [REDACTED] 2004.⁶⁷⁷ The applicant has stated precisely and unequivocally in his application that he was born on [REDACTED] 1988 and that he was approximately [REDACTED] or [REDACTED] years old during the material events. Thus, the Chamber considers that it has been provided with enough information to determine, *prima facie*, that the applicant was under the age of 15 at the relevant time.

The Trial Chamber has reviewed the application and the report submitted by the VPRS and rejects the submission advanced by the defence that the time of the applicant's alleged recruitment cannot be established, *prima facie*, to have occurred between September 2002 and August 2003. Weighing the evidence, the Trial Chamber considers that the information provided in the application, as well as in the VPRS report, is sufficient to establish, *prima facie*, that the applicant was allegedly recruited in 2001 and that his involvement with the armed forces of the UPC lasted until [REDACTED] 2004, when he received his demobilisation certificate.⁶⁷⁸

⁶⁷⁴ Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008, 10 June 2008, ICC-01/04-01/06-1388, p. 9.

⁶⁷⁵ Prosecution's Observations on 105 Redacted Applications for Victim Participation to the Case, 9 June 2008, ICC-01/04-01/06-1386, paragraph 27.

⁶⁷⁶ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 95-96 and Annex 48.

⁶⁷⁷ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, Annex 48, page 18.

⁶⁷⁸ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 48, page 18.

The Trial Chamber thus determines that the applicant has given sufficient evidence to establish, *prima facie*, that he is a victim under Rule 85(a) of the Rules, as the Chamber has been provided with enough information to conclude that the applicant suffered personal harm as a result of crimes included in the charges brought against the accused, namely his alleged enlistment and/or conscription and/or use to participate actively in the hostilities by the UPC between September 2002 and 13 August 2003.⁶⁷⁹

Applicant a/0273/07 [Annex 49]

The means of identification

The Trial Chamber has been provided with the child demobilisation certificate for the applicant.⁶⁸⁰

The claim to victim status

The applicant states he was recruited, along with other children, by the UPC in 2001 when he was ■ years old. He took this step in order to defend his tribe (the Hema). The applicant was allegedly demobilised in ■ 2004. In consequence of these events the applicant suffered psychological harm and serious violations of his fundamental rights. He lost these years of his life as a child, along with the opportunity to study, and he experienced trauma as a result of the number of deaths he saw. Presently he wanders the streets experiencing whatever type of life he finds, because he has not received any assistance following his demobilisation.⁶⁸¹

The phases of the proceedings

The applicant submits he has an interest in participating in all phases of the proceedings.⁶⁸²

The observations of the defence

The defence submits that the applicant is one of a group of applicants who, although they have stated that they were recruited between 2000 and May 2002, have failed to indicate the duration of their recruitment or the date on which they were demobilised. On this basis, the defence submits the applicant has failed to establish, *prima facie*, that the alleged events occurred during the material period, between September 2002 and 13 August 2003.⁶⁸³

⁶⁷⁹ Decision on victims' participation, 18 January 2008, ICC-01/04-01/06-1119, as confirmed, amended and reversed by the Appeals Chamber's 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.

⁶⁸⁰ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 97-98 and Annex 49.

⁶⁸¹ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 97-98 and Annex 49.

⁶⁸² First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 97-98 and Annex 49.

⁶⁸³ Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008, 10 June 2008, ICC-01/04-01/06-1388, p 9.

The observations of the prosecution

The Prosecution notes that even though the applicant was 17 years old at the time of his application, no additional information (such as consent of a parent or legal guardian) has been provided.⁶⁸⁴

The observations of the victim's legal representative

The legal representatives did not submit any observations as regards this applicant.

Legal representation

This applicant has been represented thus far by Mr Joseph Keta Urwinyo and Mr Jean Louis Gilissen.⁶⁸⁵

The Chamber's analysis and conclusions

The Chamber considers that the documents and the other material provided prove, *prima facie*, the identity of the applicant in accordance with the Trial Chamber's Decision on victims' participation. The Chamber considers that the demobilisation certificate proves, *prima facie*, that the applicant was under 18 years of age at the time when it was issued, in ██████████ 2004.⁶⁸⁶ The applicant has stated precisely and unequivocally in his application that he was born on ██████████ 1989 and that he was approximately ██████████ years old when recruited. Thus, the Chamber considers that it has been provided with enough information to determine, *prima facie*, that the applicant was under the age of 15 at the relevant time.

The Trial Chamber has reviewed the application and the report submitted by the VPRS and rejects the submission of the defence that the time of the applicant's alleged recruitment cannot be established, *prima facie*, to have occurred between September 2002 and August 2003. The Trial Chamber considers that the information provided in the application, as well as in the VPRS report, is sufficient to establish, *prima facie*, that the applicant was allegedly recruited in 2001 and that his involvement with the armed forces of the UPC lasted until ██████████ 2004, when he received his demobilisation certificate.⁶⁸⁷

As regards the prosecution's observations, the applicant is now approximately ██████████ years old and thus does not require parental or guardian consent to participate in these proceedings.

The Trial Chamber thus determines that the applicant has given sufficient evidence to establish, *prima facie*, that he is a victim under Rule 85(a) of the Rules, as the

⁶⁸⁴ Prosecution's Observations on 105 Redacted Applications for Victim Participation to the Case, 9 June 2008, ICC-01/04-01/06-1386, paragraph 22 and note 30.

⁶⁸⁵ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 97-98 and Annex 49.

⁶⁸⁶ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, Annex 49, page 18.

⁶⁸⁷ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 49, page 18.

Chamber has been provided with enough information to conclude that the applicant suffered personal harm as a result of crimes included in the charges brought against the accused, namely his alleged enlistment and/or conscription and/or use to participate actively in the hostilities by the UPC between September 2002 and 13 August 2003.⁶⁸⁸

Applicant a/0274/07 [Annex 50]

The means of identification

The Chamber has been provided with the child demobilisation certificate of the applicant.⁶⁸⁹

The claim to victim status

The applicant states that he was recruited by the UPC after the militia carried out a “sensibilisation” campaign to convince parents to let their children join the militia. He was recruited along with his [REDACTED] older brothers in 2001, at the time when the UPC was [REDACTED], when he was [REDACTED] or [REDACTED] years old. The applicant claims he suffered psychological and physical harm and violations of his fundamental rights as a result. He suffered inhuman treatment and he wanted to die. The applicant suggests that as a result of his recruitment he and his friends are street children, rejected by others.⁶⁹⁰

The phases of the proceedings

The applicant submits he has an interest in participating in all phases of the proceedings.⁶⁹¹

The observations of the defence

The defence submits that the applicant is one of a group of applicants who, although they have stated that they were recruited between 2000 and May 2002, have failed to indicate the duration of their recruitment or the date on which they were demobilised. On this basis, the defence submits the applicant has failed to establish, *prima facie*, that the alleged events occurred during the material period, between September 2002 and 13 August 2003.⁶⁹²

The observations of the prosecution

⁶⁸⁸ Decision on victims’ participation, 18 January 2008, ICC-01/04-01/06-1119, as confirmed, amended and reversed by the Appeals Chamber’s 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.

⁶⁸⁹ First Report to Trial Chamber I on Victims’ Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 99-100 and Annex 50.

⁶⁹⁰ First Report to Trial Chamber I on Victims’ Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 99-100 and Annex 50.

⁶⁹¹ First Report to Trial Chamber I on Victims’ Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 99-100 and Annex 50.

⁶⁹² Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008, 10 June 2008, ICC-01/04-01/06-1388, p 9

The prosecution submits that the applicant was under the age of 15 at the time of his enlistment, conscription, or use by the armed forces of the UPC, during the period relevant to the charges brought against Thomas Lubanga, and thus he should be permitted to participate.⁶⁹³ However, the Prosecution also observe that even though the applicant was 17 years old at the time of his application, no additional information (such as consent of a parent or legal guardian) has been provided.⁶⁹⁴

The observations of the victim's legal representative

The legal representatives did not submit observations as regards this applicant.

Legal representation

This applicant has been represented thus far by Mr Joseph Keta Urwinyo and Mr Jean Louis Gilissen.⁶⁹⁵

The Chamber's analysis and conclusions

The Chamber considers that the documents and the other material provided prove, *prima facie*, the identity of the applicant in accordance with the Trial Chamber's Decision on victims' participation. The Chamber considers that the demobilisation certificate proves, *prima facie*, that the applicant was under 18 years of age at the time when it was issued, that is [REDACTED] 2005.⁶⁹⁶ The applicant has stated precisely and unequivocally in his application that he was born on [REDACTED] 1989 and that he was approximately [REDACTED] or [REDACTED] years old at the time of his recruitment. Thus, the Chamber considers that it has been provided with enough information to determine, *prima facie*, that the applicant was under the age of 15 at the time of the relevant events.

The Trial Chamber has reviewed the application and the report submitted by the VPRS and rejects the submission of the defence that the time of the applicant's alleged recruitment cannot be established, *prima facie*, to have occurred between September 2002 and August 2003. The Trial Chamber considers that the information provided in the application, as well as in the VPRS report, is sufficient to establish, *prima facie*, that the applicant was allegedly recruited in 2001 and that his involvement with the armed forces of the UPC lasted until [REDACTED] 2005, when he received his demobilisation certificate.⁶⁹⁷

⁶⁹³ Prosecution's Observations on 105 Redacted Applications for Victim Participation to the Case, 9 June 2008, ICC-01/04-01/06-1386, paragraph 27.

⁶⁹⁴ Prosecution's Observations on 105 Redacted Applications for Victim Participation to the Case, 9 June 2008, ICC-01/04-01/06-1386, paragraph 22 and note 30.

⁶⁹⁵ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 99-100 and Annex 50.

⁶⁹⁶ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, Annex 50, page 18

⁶⁹⁷ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 50, page 18.

As regards the prosecution's observations, the applicant is now approximately ■ years old and thus does not require parental or guardian consent to participate in the proceedings.

The Trial Chamber thus determines that the applicant has given sufficient evidence to establish, *prima facie*, that he is a victim under Rule 85(a) of the Rules, as the Chamber has been provided with enough information to conclude that the applicant suffered personal harm as a result of crimes included in the charges brought against the accused, namely his alleged enlistment and/or conscription and/or use to participate actively in the hostilities by the UPC between September 2002 and 13 August 2003.⁶⁹⁸

Applicant a/0275/07 [Annex 51]

The means of identification

The Chamber has been provided with the child demobilisation certificate for the applicant.⁶⁹⁹

The claim to victim status

The applicant states he was recruited and trained by the UPC, along with other friends in 2000, when he was ■ years old. He stayed with them until 2004, when he was demobilised. The applicant suffered psychological harm and serious violations of his fundamental rights. He alleges he was shocked by the many deaths, and the burnt, pillaged and destroyed houses, that he saw.⁷⁰⁰

The phases of the proceedings

The applicant submits he has an interest in participating in all phases of the proceedings.⁷⁰¹

The observations of the defence

The defence submits that the applicant is one of a group of applicants who, although they have stated that they were recruited between 2000 and May 2002, have failed to indicate the duration of their recruitment or the date on which they were demobilised. On this basis, the defence submits the applicant has failed to establish,

⁶⁹⁸ Decision on victims' participation, 18 January 2008, ICC-01/04-01/06-1119, as confirmed, amended and reversed by the Appeals Chamber's 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.

⁶⁹⁹ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 101-102 and Annex 51.

⁷⁰⁰ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 101-102 and Annex 51.

⁷⁰¹ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 101-102 and Annex 51.

prima facie, that the alleged events occurred during the material period, between September 2002 and 13 August 2003.⁷⁰²

The observations of the prosecution

The prosecution submits that the applicant was under the age of 15 at the time of his enlistment, conscription, or use by the armed forces of the UPC, during the period relevant to the charges brought against Thomas Lubanga, and thus he should be permitted to participate.⁷⁰³

The observations of the victim's legal representative

The legal representatives did not submit observations as regards this applicant.

Legal representation

The applicant has been represented thus far by Mr Joseph Keta Urwinyo and Mr Jean Louis Gilissen.⁷⁰⁴

The Chamber's analysis and conclusions

The Chamber considers that the documents and the other material provided prove, *prima facie*, the identity of the applicant in accordance with the Trial Chamber's Decision on victims' participation. The Chamber considers that the demobilisation certificate proves, *prima facie*, that the applicant was under 18 years of age at the time when it was issued, that is ██████████ 2004.⁷⁰⁵ The applicant has stated precisely and unequivocally in his application that he was born ██████████ 1988 and that he was approximately ██████ years old at the time of the relevant events. Thus, the Chamber considers that it has been provided with enough information to determine, *prima facie*, that the applicant was under the age of 15 at the time of his recruitment.

The Trial Chamber has reviewed the application and the report submitted by the VPRS and rejects the submission of the defence that the time of the applicant's alleged recruitment cannot be established, *prima facie*, to have occurred between September 2002 and August 2003. The Trial Chamber considers that the information provided in the application, as well as in the VPRS report, is sufficient to establish, *prima facie*, that the applicant was allegedly recruited in 2000 and that his involvement with the armed forces of the UPC lasted until ██████████ 2004, when he received his demobilisation certificate.⁷⁰⁶

⁷⁰² Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008, 10 June 2008, ICC-01/04-01/06-1388, p. 9.

⁷⁰³ Prosecution's Observations on 105 Redacted Applications for Victim Participation to the Case, 9 June 2008, ICC-01/04-01/06-1386, paragraph 27.

⁷⁰⁴ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 101-102 and Annex 51.

⁷⁰⁵ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, Annex 51, page 18.

⁷⁰⁶ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 51, page 18.

The Trial Chamber thus determines that the applicant has given sufficient evidence to establish, *prima facie*, that he is a victim under Rule 85(a) of the Rules, as the Chamber has been provided with enough information to conclude that the applicant suffered personal harm as a result of crimes included in the charges brought against the accused, namely his alleged enlistment and/or conscription and/or use to participate actively in the hostilities by the UPC between September 2002 and 13 August 2003.⁷⁰⁷

Applicant a/0276/07 [Annex 52]

The means of identification

The Trial Chamber has been provided with the child demobilisation certificate for the applicant.⁷⁰⁸

The claim to victim status

The applicant states that he was recruited by the UPC in 2002, when he was [REDACTED] years old, and he was demobilised in [REDACTED] 2005. The applicant decided to join this armed group because of the Lendu attacks, and he wanted to help his seniors against the enemy. He received [REDACTED] training. The applicant suffered psychological and physical harm, and violations of his fundamental rights. He ceased his studies completely as a result of these events. He witnessed the death of [REDACTED] family members and he was afraid of the unfolding chaos.⁷⁰⁹

The phases of the proceedings

The applicant submits he has an interest in participating in all phases of the proceedings.⁷¹⁰

The observations of the defence

The defence submits that the applicant is one of a group of applicants who, although they have stated that they were recruited between 2000 and May 2002, have failed to indicate the duration of their recruitment or the date on which they were demobilised. On this basis, the defence submits the applicant has failed to establish,

⁷⁰⁷ Decision on victims' participation, 18 January 2008, ICC-01/04-01/06-1119, as confirmed, amended and reversed by the Appeals Chamber's 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.

⁷⁰⁸ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 103-104 and Annex 52.

⁷⁰⁹ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 103-104 and Annex 52.

⁷¹⁰ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 103-104 and Annex 52.

prima facie, that the alleged events occurred during the material period, between September 2002 and 13 August 2003.⁷¹¹

The observations of the prosecution

The prosecution submits that the applicant was under the age of 15 at the time of his enlistment, conscription, or use by the armed forces of the UPC, during the period relevant to the charges brought against Thomas Lubanga, and thus he should be permitted to participate.⁷¹²

The observations of the victim's legal representative

The legal representatives did not submit observations as regards this applicant.

Legal representation

The applicant has been represented thus far by Mr Joseph Keta Urwinyo and Mr Jean Louis Gilissen.⁷¹³

The Chamber's analysis and conclusions

The Chamber considers that the documents and the other material provided prove, *prima facie*, the identity of the applicant in accordance with the Trial Chamber's Decision on victims' participation. The Chamber considers that the demobilisation certificate proves, *prima facie*, that the applicant was under 18 years of age at the time when it was issued, that is ██████████ 2005.⁷¹⁴ The applicant has stated precisely and unequivocally in his application that he was born ██████████ 1988 and that he was approximately ██████████ years old at the time of his recruitment. Thus, the Chamber considers that it has been provided with enough information to determine, *prima facie*, that the applicant was under the age of 15 at the time of the relevant events.

The Trial Chamber has reviewed the application and the report submitted by the VPRS and rejects the submission of the defence that the time of the applicant's alleged recruitment cannot be established, *prima facie*, to have occurred between September 2002 and August 2003. The Trial Chamber considers that the information provided in the application, as well as in the VPRS report, is sufficient to establish, *prima facie*, that the applicant was allegedly recruited in 2000 and that his involvement with the armed forces of the UPC lasted until ██████████ 2005, when he received his demobilisation certificate.⁷¹⁵

⁷¹¹ Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008, 10 June 2008, ICC-01/04-01/06-1388, p. 9.

⁷¹² Prosecution's Observations on 105 Redacted Applications for Victim Participation to the Case, 9 June 2008, ICC-01/04-01/06-1386, paragraph 27.

⁷¹³ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 103-104 and Annex 52.

⁷¹⁴ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, Annex 52, page 18.

⁷¹⁵ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 52, page 18.

The Trial Chamber thus determines that the applicant has given sufficient evidence to establish, *prima facie*, that he is a victim under Rule 85(a) of the Rules, as the Chamber has been provided with enough information to conclude that the applicant suffered personal harm as a result of crimes included in the charges brought against the accused, namely his alleged enlistment and/or conscription and/or use to participate actively in the hostilities by the UPC between September 2002 and 13 August 2003.⁷¹⁶

Applicant a/0277/07 [Annex 53]

The means of identification

The Chamber has been provided with the child demobilisation certificate for the applicant.⁷¹⁷

The claim to victim status

The applicant states that he was recruited in 2001 (when he was ■ or ■) and thereafter was used to participate actively in the hostilities by the UPC, and he was demobilised in 2004. He decided to join the UPC in order to fight for his community against the Lendus. He suffered physically as a result of the strenuous work he undertook during his military training, particularly carrying heavy military objects.⁷¹⁸

The phases of the proceedings

The applicant submits he has an interest in participating in all phases of the proceedings.⁷¹⁹

The observations of the defence

The defence submits that the applicant is one of a group of applicants who, although they have stated that they were recruited between 2000 and May 2002, have failed to indicate the duration of their recruitment or the date on which they were demobilised. On this basis, the defence submits the applicant has failed to establish, *prima facie*, that the alleged events occurred during the material period, between September 2002 and 13 August 2003.⁷²⁰

⁷¹⁶ Decision on victims' participation, 18 January 2008, ICC-01/04-01/06-1119, as confirmed, amended and reversed by the Appeals Chamber's 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.

⁷¹⁷ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 105-106 and Annex 53.

⁷¹⁸ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 105-106 and Annex 53.

⁷¹⁹ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 105-106 and Annex 53.

⁷²⁰ Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008, 10 June 2008, ICC-01/04-01/06-1388, p. 9.

The observations of the prosecution

The prosecution submits that the applicant was under the age of 15 at the time of his enlistment, conscription, or use by the armed forces of the UPC, during the period relevant to the charges brought against Thomas Lubanga, and thus he should be permitted to participate.⁷²¹

The observations of the victim's legal representative

The legal representatives did not submit observations as regards this applicant.

Legal representation

The applicant has been represented thus far by Mr Joseph Keta Urwinyo and Mr Jean Louis Gilissen.⁷²²

The Chamber's analysis and conclusions

The Chamber considers that the documents and the other material provided prove, *prima facie*, the identity of the applicant in accordance with the Trial Chamber's Decision on victims' participation. The Chamber considers that the demobilisation certificate proves, *prima facie*, that the applicant was under 18 years of age at the time when it was issued, that is ■■■■ 2004.⁷²³ The applicant has stated precisely and unequivocally in his application that he was born ■■■■ 1989 and that he was approximately ■■■■ or ■■■■ years old at the time of his recruitment. Thus, the Chamber considers that it has been provided with enough information to determine, *prima facie*, that the applicant was under the age of 15 at the relevant time.

The Trial Chamber has reviewed the application and the report submitted by the VPRS and rejects the submissions of the defence that the time of the applicant's alleged recruitment cannot be established, *prima facie*, to have occurred between September 2002 and August 2003. The Trial Chamber considers that the information provided in the application, as well as in the VPRS report, is sufficient to establish, *prima facie*, that the applicant was allegedly recruited in 2001 and that his involvement with the armed forces of the UPC lasted until ■■■■ 2004, when he received his demobilisation certificate.⁷²⁴

The Trial Chamber thus determines that the applicant has given sufficient evidence to establish, *prima facie*, that he is a victim under Rule 85(a) of the Rules, as the Chamber has been provided with enough information to conclude that the applicant suffered personal harm as a result of crimes included in the charges brought against the accused, namely his alleged enlistment and/or conscription and/or use to

⁷²¹ Prosecution's Observations on 105 Redacted Applications for Victim Participation to the Case, 9 June 2008, ICC-01/04-01/06-1386, paragraph 27.

⁷²² First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 105-106 and Annex 53.

⁷²³ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, Annex 53, page 18.

⁷²⁴ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 53, page 18.

participate actively in the hostilities by the UPC between September 2002 and 13 August 2003.⁷²⁵

Applicant a/0279/07 [Annex 54]

The means of identification

The Chamber has been provided with the child demobilisation certificate for the applicant.⁷²⁶

The claim to victim status

The applicant states that he was recruited by the UPC in 2002 when he was ■ years old, along with other young men and boys. He participated in the hostilities and was demobilised in 2004. He stated that he decided to join the armed group because it was the only way to save the few possessions that they had left. The applicant claims that as result of his recruitment he has suffered psychological harm and violations of his fundamental rights, and he has become a street child and generally has a difficult life.⁷²⁷

The phases of the proceedings

The applicant has an interest in participating in all phases of the proceedings.⁷²⁸

The observations of the defence

The defence submits that the applicant is one of a group of applicants who, although they have stated that they were recruited between 2000 and May 2002, have failed to indicate the duration of their recruitment or the date on which they were demobilised. On this basis, the defence submits the applicant has failed to establish, *prima facie*, that the alleged events occurred during the material period, between September 2002 and 13 August 2003.⁷²⁹

In addition, the Defence submits that this application should be rejected because the applicant has not alleged any sufficient injury.⁷³⁰

⁷²⁵ Decision on victims' participation, 18 January 2008, ICC-01/04-01/06-1119, as confirmed, amended and reversed by the Appeals Chamber's 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.

⁷²⁶ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 107-108 and Annex 54.

⁷²⁷ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 107-108 and Annex 54.

⁷²⁸ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 107-108 and Annex 54.

⁷²⁹ Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008, 10 June 2008, ICC-01/04-01/06-1388, p. 9.

⁷³⁰ Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008, 10 June 2008, ICC-01/04-01/06-1388, paras. 18–19.

The observations of the prosecution

The prosecution submits that the applicant was under the age of 15 at the time of his enlistment, conscription, or use by the armed forces of the UPC, during the period relevant to the charges brought against Thomas Lubanga, and thus he should be permitted to participate.⁷³¹

The observations of the victim's legal representative

The legal representatives did not submit observations as regards this applicant.

Legal representation

The applicant has been represented thus far by Mr Joseph Keta Urwinyo and Mr Jean Louis Gilissen.⁷³²

The Chamber's analysis and conclusions

The Chamber considers that the documents and the other material provided prove, *prima facie*, the identity of the applicant in accordance with the Trial Chamber's Decision on victims' participation. The Chamber considers that the demobilisation certificate proves, *prima facie*, that the applicant was under 18 years of age at the time when it was issued, that is [REDACTED] 2004.⁷³³ The applicant has stated precisely and unequivocally in his application that he was born on [REDACTED] 1989 and that he was approximately [REDACTED] years old at the time of his recruitment. Thus, the Chamber considers that it has been provided with enough information to determine, *prima facie*, that the applicant was under the age of 15 at the relevant time.

The Trial Chamber has reviewed the application and the report submitted by the VPRS and rejects the submissions of the defence that the time of the applicant's alleged recruitment cannot be established, *prima facie*, to have occurred between September 2002 and August 2003. The Trial Chamber considers that the information provided in the application, as well as in the VPRS report, is sufficient to establish, *prima facie*, that the applicant was allegedly recruited in 2002 and that his involvement with the armed forces of the UPC lasted until [REDACTED] 2004, when he received his demobilisation certificate.⁷³⁴

The Trial Chamber also rejects the observation of the defence that the applicant does not allege any sufficient injury, given the applicant has set out that he has become a street child, leading a difficult life as a direct result of his recruitment.⁷³⁵

⁷³¹ Prosecution's Observations on 105 Redacted Applications for Victim Participation to the Case, 9 June 2008, ICC-01/04-01/06-1386, paragraph 27.

⁷³² First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 107-108 and Annex 54.

⁷³³ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, Annex 54, page 18.

⁷³⁴ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 54, page 18.

⁷³⁵ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 54, page 11.

The Trial Chamber thus determines that the applicant has given sufficient evidence to establish, *prima facie*, that he is a victim under Rule 85(a) of the Rules, as the Chamber has been provided with enough information to conclude that the applicant suffered personal harm as a result of crimes included in the charges brought against the accused, namely his alleged enlistment and/or conscription and/or use to participate actively in the hostilities by the UPC between September 2002 and 13 August 2003.⁷³⁶

Applicant a/0280/07 [Annex 55]

The means of identification

The Chamber has been provided with the child demobilisation certificate for the applicant.⁷³⁷

The claim to victim status

The applicant states that he was recruited by the UPC in [REDACTED] 2001, when he was [REDACTED] years old, along with some of his friends. He was chosen apparently because [REDACTED] and because his parents were unable to prevent him being taken due to threats to their lives. He was trained for [REDACTED] months, and thereafter he participated in the hostilities. He was demobilised in [REDACTED] 2005. The applicant claims that his home, along with other property, was destroyed, and that as a result he now lives on the street without hope of recovering his past life. He no longer studies and is unable to find work because he is a member of the Hema [REDACTED] tribe. He suffered moral and material harm and violations of his fundamental rights.⁷³⁸

The phases of the proceedings

The applicant submits he has an interest in participating in all phases of the proceedings.⁷³⁹

The observations of the defence

The defence submits that the applicant is one of a group of applicants who, although they have stated that they were recruited between 2000 and May 2002, have failed to indicate the duration of their recruitment or the date on which they were demobilised. On this basis, the defence submits the applicant has failed to establish,

⁷³⁶ Decision on victims' participation, 18 January 2008, ICC-01/04-01/06-1119, as confirmed, amended and reversed by the Appeals Chamber's 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.

⁷³⁷ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 109-110 and Annex 55.

⁷³⁸ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 109-110 and Annex 55.

⁷³⁹ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 109-110 and Annex 55.

prima facie, that the alleged events occurred during the material period, between September 2002 and 13 August 2003.⁷⁴⁰

The observations of the prosecution

The prosecution submits that the applicant was under the age of 15 at the time of his enlistment, conscription, or use by the armed forces of the UPC, during the period relevant to the charges brought against Thomas Lubanga, and thus he should be permitted to participate.⁷⁴¹

The observations of the victim's legal representative

The legal representatives did not submit observations as regards this applicant.

Legal representation

The applicant has been represented thus far by Mr Joseph Keta Urwinyo and Mr Jean Louis Gilissen.⁷⁴²

The Chamber's analysis and conclusions

The Chamber considers that the documents and the other material provided prove, *prima facie*, the identity of the applicant in accordance with the Trial Chamber's Decision on victims' participation. The demobilisation certificate proves, *prima facie*, that the applicant was under 18 years of age at the time when it was issued, in ██████████ 2005.⁷⁴³ The applicant has stated precisely and unequivocally in his application that he was born on ██████████ 1988 and that he was approximately ██████████ years old at the time of the relevant events. It follows that the Chamber has been provided with enough information to determine, *prima facie*, that the applicant was under the age of 15 during the material events.

The Trial Chamber has reviewed the application and the report submitted by the VPRS and rejects the defence submission that the time of the applicant's alleged recruitment cannot be established, *prima facie*, to have occurred between September 2002 and August 2003. The Trial Chamber considers that the information provided in the application and the VPRS report is sufficient to establish, *prima facie*, that the applicant was allegedly recruited in 2001 and that his involvement with the armed forces of the UPC lasted until ██████████ 2005, when he received his demobilisation certificate.⁷⁴⁴

⁷⁴⁰ Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008, 10 June 2008, ICC-01/04-01/06-1388, p. 9.

⁷⁴¹ Prosecution's Observations on 105 Redacted Applications for Victim Participation to the Case, 9 June 2008, ICC-01/04-01/06-1386, paragraph 27.

⁷⁴² First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 109-110 and Annex 55.

⁷⁴³ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, Annex 55, page 18.

⁷⁴⁴ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 55, page 18.

The Trial Chamber thus determines that the applicant has given sufficient evidence to establish, *prima facie*, that he is a victim under Rule 85(a) of the Rules, as the Chamber has been provided with enough information to conclude that the applicant suffered personal harm as a result of crimes included in the charges brought against the accused, namely his alleged enlistment and/or conscription and/or use to participate actively in the hostilities by the UPC between September 2002 and 13 August 2003.⁷⁴⁵

Applicant a/0282/07 [Annex 56]

The means of identification

The Trial Chamber has been provided with the child demobilisation certificate for the applicant.⁷⁴⁶

The claim to victim status

The applicant states that he was recruited by the UPC in 2001, when he was ■ years old. He suggests he did this at the insistence of other friends of his who also enrolled. He was trained to kill Lendus and he participated in hostilities in ■. He was demobilised in 2004 by ■. As a result of his recruitment, the applicant lost the opportunity to study and he lost the trust of his family and community. No one is interested in his situation.⁷⁴⁷

The phases of the proceedings

The applicant submits he has an interest in participating in all phases of the proceedings.⁷⁴⁸

The observations of the defence

The defence did not make any observation in relation to this applicant.⁷⁴⁹

The observations of the prosecution

The prosecution submits that the applicant was under the age of 15 at the time of his enlistment, conscription, or use by the armed forces of the UPC during the period

⁷⁴⁵ Decision on victims' participation, 18 January 2008, ICC-01/04-01/06-1119, as confirmed, amended and reversed by the Appeals Chamber's 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.

⁷⁴⁶ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 111-112 and Annex 56.

⁷⁴⁷ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 111-112 and Annex 56.

⁷⁴⁸ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 111-112 and Annex 56.

⁷⁴⁹ Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008, 10 June 2008, ICC-01/04-01/06-1388.

relevant to the charges brought against Thomas Lubanga, and thus he should be permitted to participate.⁷⁵⁰

The observations of the victim's legal representative

The legal representatives did not submit observations as regards this applicant.

Legal representation

The applicant has been represented thus far by Mr Joseph Keta Urwinyo and Mr Jean Louis Gilissen.⁷⁵¹

The Chamber's analysis and conclusions

The Chamber considers that the documents and the other material provided prove, *prima facie*, the identity of the applicant in accordance with the Trial Chamber's Decision on victims' participation. The Chamber considers that the demobilisation certificate proves, *prima facie*, that the applicant was under 18 years of age at the time when it was issued, in ██████████ 2004.⁷⁵² The applicant has stated precisely and unequivocally in his application that he was born ██████████ 1989 and that he was approximately ██████████ years old at the time of the relevant events. Thus, the Chamber considers that it has been provided with enough information to determine, *prima facie*, that the applicant was under the age of 15 during the material events.

The Trial Chamber thus determines that the applicant has given sufficient evidence to establish, *prima facie*, that he is a victim under Rule 85(a) of the Rules, as the Chamber has been provided with enough information to conclude that the applicant suffered personal harm as a result of crimes included in the charges brought against the accused, namely his alleged enlistment and/or conscription and/or use to participate actively in the hostilities by the UPC between September 2002 and 13 August 2003.⁷⁵³

Applicant a/0283/07 [Annex 57]

The means of identification

The Chamber has been provided with the demobilisation certificate for the applicant.⁷⁵⁴

⁷⁵⁰ Prosecution's Observations on 105 Redacted Applications for Victim Participation to the Case, 9 June 2008, ICC-01/04-01/06-1386, paragraph 27.

⁷⁵¹ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 111-112 and Annex 56.

⁷⁵² First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, Annex 56, page 18.

⁷⁵³ Decision on victims' participation, 18 January 2008, ICC-01/04-01/06-1119, as confirmed, amended and reversed by the Appeals Chamber's 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.

⁷⁵⁴ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 113-114 and Annex 57.

The claim to victim status

The applicant states he was recruited by the UPC, along with ■■■ of his brothers, in ■■■ 2001, when he was ■■■ years old. He participated in an attack against the Lendu population and he was demobilised in 2004 by an NGO. He suffered on account of the death of ■■■ of his family members; he experienced terrible psychological suffering; and as a result he has adopted a violent ideology and behaviour. He has a difficult life, since his family lost everything they owned. He suffered psychological harm and violations of his fundamental rights.⁷⁵⁵

The phases of the proceedings

The applicant submits he has an interest in participating in all phases of the proceedings.⁷⁵⁶

The observations of the defence

The defence did not make any observation in relation to this applicant.⁷⁵⁷

The observations of the prosecution

The prosecution submits the applicant meets, *prima facie*, the necessary requirements for victim participation. The application forms and further information received by the Registry suggest that this applicant was under the age of 15 at the time of his enlistment, conscription or use by the armed forces of the UPC, during the relevant time frame. The Prosecutor supports this application.⁷⁵⁸

The observations of the victim's legal representative

The legal representatives did not submit observations as regards this applicant.

Legal representation

The applicant has been represented thus far by Mr Joseph Keta Orwinyo and and Mr Jean Louis Gilissen.⁷⁵⁹

The Chamber's analysis and conclusions

This application has not been considered by Pre-Trial Chamber I.

⁷⁵⁵ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 113-114 and Annex 57.

⁷⁵⁶ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 113-114 and Annex 57

⁷⁵⁷ Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008, 10 June 2008, ICC-01/04-01/06-1388.

⁷⁵⁸ Prosecution's Observations on 105 Redacted Applications for Victim Participation to the Case, 9 June 2008, ICC-01/04-01/06-1386, paragraph 27, pages 14-15.

⁷⁵⁹ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 113-114 and Annex 57.

The Chamber considers that the documents and the other material provided prove, *prima facie*, the identity of the applicant in accordance with the Trial Chamber's Decision on victims' participation. The Chamber considers that the demobilisation certificate proves, *prima facie*, that the applicant was under 18 years of age at the time when it was issued, that is [REDACTED] 2004.⁷⁶⁰ The applicant has stated precisely and unequivocally in his application that he was born on [REDACTED] 1988 and that he was approximately [REDACTED] years old at the time of the material events. Thus, the Chamber considers that it has been provided with enough information to determine, *prima facie*, that the applicant was under the age of 15 at the relevant time.

The Trial Chamber determines that the applicant has given sufficient evidence to establish, *prima facie*, that he is a victim under Rule 85(a) of the Rules, as the Chamber has been provided with enough information to conclude that the applicant suffered personal harm as a result of crimes included in the charges brought against the accused, namely his alleged enlistment and/or conscription and/or use to participate actively in the hostilities by the UPC between September 2002 and 13 August 2003.⁷⁶¹

Applicant a/0285/07 [Annex 58]

The means of identification

The Chamber has been provided with the demobilisation certificate for the applicant.⁷⁶²

The claim to victim status

The applicant suggests he was recruited by the UPC in 2000 when he was [REDACTED] years old, following a message sent by the UPC that they were recruiting because of attacks by the Lendu. He decided to enlist, as they promised him a better life once the fighting was over. He was trained by the UPC and he was demobilised in [REDACTED] 2004. As a result, he experiences emotional problems and he has suffered psychological harm and serious violations of his fundamental rights.⁷⁶³

The phases of the proceedings

The applicant submits he has an interest in participating in all phases of the proceedings.⁷⁶⁴

⁷⁶⁰ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, Annex 57, page 18.

⁷⁶¹ Decision on victims' participation, 18 January 2008, ICC-01/04-01/06-1119, as confirmed, amended and reversed by the Appeals Chamber's 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.

⁷⁶² First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 115-116 and Annex 58.

⁷⁶³ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 115-116 and Annex 58.

⁷⁶⁴ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 115-116 and Annex 58.

The observations of the defence

The defence submits that the applicant is one of a group of applicants who, although they have stated that they were recruited between 2000 and May 2002, have failed to indicate the duration of their recruitment or the date on which they were demobilised. On this basis, the defence submits the applicant has failed to establish, *prima facie*, that the alleged events occurred during the material period, between September 2002 and 13 August 2003.⁷⁶⁵

The observations of the prosecution

The prosecution submits that this applicant meets, *prima facie*, the necessary requirements for victim participation. The application forms and further information received by the Registry suggest that this applicant was under the age of 15 at the time of his enlistment, conscription or use by the armed forces of the UPC, during the relevant time frame. The Prosecutor therefore supports the application.⁷⁶⁶

The observations of the victim's legal representative

The legal representatives did not submit observations as regards this applicant.

Legal representation

The applicant has been represented thus far by Mr Joseph Keta Orwinyo and Mr Jean Louis Gilissen.⁷⁶⁷

The Chamber's analysis and conclusions

This application was not before Pre-Trial Chamber I.

The Chamber considers that the documents and the other material provided prove, *prima facie*, the identity of the applicant in accordance with the Trial Chamber's Decision on victims' participation. The demobilisation certificate proves, *prima facie*, that the applicant was under 18 years of age at the time when it was issued, in ■■■ 2004.⁷⁶⁸ The applicant has stated precisely and unequivocally in his application that he was born on ■■■ 1988 and that he was approximately ■■■ years old at the time of the material events. Thus, the Chamber considers that it has been provided with enough information to determine, *prima facie*, that the applicant was under the age of 15 at the relevant time.

The Trial Chamber has reviewed the application and the report submitted by the VPRS and rejects the defence submission that the time of the applicant's alleged recruitment cannot be established, *prima facie*, to have occurred between September

⁷⁶⁵ Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008, 10 June 2008, ICC-01/04-01/06-1388, p. 9.

⁷⁶⁶ Prosecution's Observations on 105 Redacted Applications for Victim Participation to the Case, 9 June 2008, ICC-01/04-01/06-1386, paragraph 27, pages 14-15.

⁷⁶⁷ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 115-116 and Annex 58.

⁷⁶⁸ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, Annex 58, page 18.

2002 and August 2003. The Trial Chamber considers that the information provided in the application and the VPRS report is sufficient to establish, *prima facie*, that the applicant was allegedly recruited in 2000 and that his involvement with the armed forces of the UPC lasted until [REDACTED] 2004, when he received his demobilisation certificate.⁷⁶⁹

The Trial Chamber thus determines that the applicant has given sufficient evidence to establish, *prima facie*, that he is a victim under Rule 85(a) of the Rules, as the Chamber has been provided with enough information to conclude that the applicant suffered personal harm as a result of crimes included in the charges brought against the accused, namely his alleged enlistment and/or conscription and/or use to participate actively in the hostilities by the UPC between September 2002 and 13 August 2003.⁷⁷⁰

Applicant a/0171/07 [Annex 62]

The means of identification

The Trial Chamber has been provided with the demobilisation certificate for the applicant.⁷⁷¹

The claim to victim status

The applicant states that in 2002 he was recruited by the UPC militia when he was [REDACTED] or [REDACTED] years old. The applicant joined this armed group voluntarily, driven, he sets out, by insecurity and the need to protect and defend his family. The applicant was demobilised in [REDACTED] 2005. During the hostilities, his house was looted and set on fire, and as a consequence he is now homeless. Many men from his tribe died. He suffered psychological harm and experienced serious violations of his fundamental rights.⁷⁷²

The phases of the proceedings

The applicant submits he has an interest in participating in all phases of the proceedings.⁷⁷³

⁷⁶⁹ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 58, page 18

⁷⁷⁰ Decision on victims' participation, 18 January 2008, ICC-01/04-01/06-1119, as confirmed, amended and reversed by the Appeals Chamber's 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.

⁷⁷¹ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 123-124 and Annex 62.

⁷⁷² First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 123-124 and Annex 62.

⁷⁷³ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 123-124 and Annex 62.

The observations of the defence

The defence submit that this applicant should not be permitted to participate in the proceedings. The defence argue that the dates of the relevant events have been redacted in this application and it is therefore impossible to ascertain whether the alleged events occurred between September 2002 and August 13th 2003. Additionally, it is submitted that the harm allegedly suffered by the applicant is the result of crimes other than those confirmed by the Pre-Trial Chamber.⁷⁷⁴ The defence submits in a further filing that the applicant has mentioned a different date of birth from that stated in his initial application, and as a result, the application does not meet the requirements for *prima facie* admission under Rule 85 of the Rules. In all the circumstances, it is submitted that the application should be rejected.⁷⁷⁵

The observations of the prosecution

The prosecution submits that this applicant meets, *prima facie*, the necessary requirements for victim participation. The application forms and the further information received by the Registry suggest that this applicant was under the age of 15 at the time of his enlistment, conscription or use by the armed forces of the UPC during the relevant time frame. The Prosecutor supports this application.⁷⁷⁶

The observations of the victim's legal representative

The legal representatives submit in their reply that any contradictions or inaccuracies as to when events occurred are due to the ongoing problems in the DRC and the extreme difficulties in obtaining the necessary documents to support the application.⁷⁷⁷ The legal representatives also submit that the applicant has given enough information to show that he has suffered harm directly linked with the charges brought against the accused, and therefore the applicant should be granted the status of victim and admitted as a participant in the proceedings.⁷⁷⁸

Legal representation

⁷⁷⁴ Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008, 10 June 2008, ICC-01/04-01/06-1388, paragraphs 13, 21 and pages 12-13.

⁷⁷⁵ Observations de la Défense sur les 15 demandes de participation à la procédure et les 30 demandes de participation complémentaires communiquées le 27 novembre 2008 ; Réponse de la Défense aux observations des représentants légaux relatives aux 105 demandes de participation communiquées le 20 mai 2008 ; et Observations de la Défense relatives aux victimes indirectes, 5 December 2008, ICC-01/04-01/06-1536, paragraph 26.

⁷⁷⁶ Prosecution's Observations on 105 Redacted Applications for Victim Participation to the Case, 9 June 2008, ICC-01/04-01/06-1386, paragraph 27, pages 14-15.

⁷⁷⁷ Réponse aux "Prosecution's Observations on 105 Applications for Victim Participation to the Case" du 9 juin 2008 et aux « Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008 » du 10 juin 2008, 28 November, ICC-01/04-01/06/1522, paragraph 22, page 14.

⁷⁷⁸ Réponse aux "Prosecution's Observations on 105 Applications for Victim Participation to the Case" du 9 juin 2008 et aux « Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008 » du 10 juin 2008, 28 November, ICC-01/04-01/06/1522, paragraph 25, pages 14-15.

The applicant has been represented thus far by Mr Joseph Keta Orwinyo and Mr Jean Louis Gilissen.⁷⁷⁹

The Chamber's analysis and conclusions

This application was not before Pre-Trial Chamber I.

The Chamber considers that the documents and the other material provided prove, *prima facie*, the identity of the applicant in accordance with the Trial Chamber's Decision on victims' participation. The Chamber considers that the demobilisation certificate proves, *prima facie*, that the applicant was under 18 years of age at the time when it was issued, in █████ 2005.⁷⁸⁰ The applicant has stated precisely and unequivocally in his application that he was born on █████ 1989 and that he was approximately █████ or █████ years old at the time of the material events. Thus, the Chamber considers that it has been provided with enough information to determine, *prima facie*, that the applicant was under the age of 15 at the relevant time.

The Trial Chamber has reviewed the application and the report submitted by the VPRS and rejects the defence submission that the time of the applicant's alleged recruitment cannot be established, *prima facie*, to have occurred between September 2002 and August 2003. The Trial Chamber considers that the information provided in the application, as well as in the VPRS report, is sufficient to establish, *prima facie*, that the applicant was allegedly recruited in 2002 and that his involvement with the armed forces of the UPC lasted until █████ 2005, when he received his demobilisation certificate.⁷⁸¹

The Trial Chamber thus considers that the applicant has given sufficient evidence to establish, *prima facie*, that he is a victim under Rule 85(a) of the Rules, as the Chamber has been provided with enough information to conclude that the applicant suffered personal harm as a result of crimes included in the charges brought against the accused, namely his alleged enlistment and/or conscription and/or use to participate actively in the hostilities by the UPC between September 2002 and 13 August 2003.⁷⁸² It follows that the Chamber rejects the submission that any harm experienced by the applicant was the result of charges other than those confirmed by the Pre-Trial Chamber.

Applicant a/0183/07 [Annex 66]

⁷⁷⁹ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 123-124 and Annex 62.

⁷⁸⁰ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, Annex 62, page 18.

⁷⁸¹ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 62, page 18.

⁷⁸² Decision on victims' participation, 18 January 2008, ICC-01/04-01/06-1119, as confirmed, amended and reversed by the Appeals Chamber's 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.

The means of identification

The Chamber has been provided with the applicant's demobilisation certificate and the election card and certificate for the person acting on his behalf [REDACTED]

[REDACTED].⁷⁸³ The applicant has consented to this person acting on his behalf.⁷⁸⁴

The claim to victim status

The applicant suggests that in 2001 he was recruited by the UPC militia, when he was [REDACTED] years old and still in school. [REDACTED] witnessed the abduction of this applicant and other [REDACTED]. The applicant learnt how to use firearms, and was used for looting and as a human shield. The applicant states that he left the UPC in 2004, these events having interrupted his education. He now experiences bouts of fear and his [REDACTED] is impaired, and generally he suffers from psychological and physical difficulties. In all the circumstances, he experienced serious violations of his fundamental rights.⁷⁸⁵

The phases of the proceedings

The applicant submits he has an interest in participating in all phases of the proceedings.⁷⁸⁶

The observations of the defence

The defence submit that this applicant should not be permitted to participate in the proceedings, *inter alia*, because there is no reference to the UPC or the FPLC in the section headed 'detailed description of the alleged crimes'. Furthermore, it is suggested that the alleged dates of these events have not been set out, and there is, therefore, no link between the crimes charged, the accused and the facts alleged in the application.⁷⁸⁷ The defence submits in a further filing that the applicant has mentioned a different date of birth from that indicated in his initial application, and as a result, the application does not meet the requirements for *prima facie* admission under Rule 85 of the Rules. In all the circumstances, it is submitted that the application should be rejected.⁷⁸⁸

⁷⁸³ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 131-132 and Annex 66.

⁷⁸⁴ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 66, page 16.

⁷⁸⁵ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 131-132 and Annex 66.

⁷⁸⁶ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 131-132 and Annex 66.

⁷⁸⁷ Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008, 10 June 2008, ICC-01/04-01/06-1388, paragraph 13 and pages 12-13.

⁷⁸⁸ Observations de la Défense sur les 15 demandes de participation à la procédure et les 30 demandes de participation complémentaires communiquées le 27 novembre 2008 ; Réponse de la Défense aux observations des représentants légaux relatives aux 105 demandes de participation communiquées le 20 mai 2008 ; et Observations de la Défense relatives aux victimes indirectes, 5 December 2008, ICC-01/04-01/06-1536, paragraph 26.

The observations of the prosecution

The prosecution submits that this applicant meets, *prima facie*, the necessary requirements for victim participation and that the application forms and further information received by the Registry suggest that this applicant was under the age of 15 at the time of his enlistment, conscription or use by the armed forces of the UPC, during the relevant time frame. The Prosecutor supports this application.⁷⁸⁹

Victim representative observations

The legal representatives submit in their reply that any contradictions or inaccuracies as to when events occurred are due to the ongoing problems in the DRC and the extreme difficulties in obtaining the necessary documents to support the application.⁷⁹⁰ The legal representatives also submit that the applicant has given enough information to show that he has suffered harm directly linked with the charges brought against the accused, and therefore the applicant should be granted the status of victim and admitted as a participant in the proceedings.⁷⁹¹

Legal representation

The applicant has been represented thus far by Mr Joseph Keta Orwinyo and Mr Jean Louis Gilissen.⁷⁹²

The Chamber's analysis and conclusions

This application was not before Pre-Trial Chamber I.

The Chamber considers that the documents and the other material provided prove, *prima facie*, the identity of the applicant and the person acting on his behalf in accordance with the Trial Chamber's Decision on victims' participation.

The Chamber notes that the applicant has consented to someone else acting on his behalf. The question that arises is whether the applicant needs to establish that this person is either a relative or legal guardian, in order to participate in the proceedings. Alternatively, is the Chamber entitled to act on the application that has been submitted "by a person" on the applicant's behalf, which indicates clearly in each instance that the victim wishes to participate in these proceedings.

⁷⁸⁹ Prosecution's Observations on 105 Redacted Applications for Victim Participation to the Case, 9 June 2008, ICC-01/04-01/06-1386, paragraph 27, pages 14-15.

⁷⁹⁰ Réponse aux "Prosecution's Observations on 105 Applications for Victim Participation to the Case" du 9 juin 2008 et aux « Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008 » du 10 juin 2008, 28 November, ICC-01/04-01/06/1522, paragraph 22, page 18.

⁷⁹¹ Réponse aux "Prosecution's Observations on 105 Applications for Victim Participation to the Case" du 9 juin 2008 et aux « Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008 » du 10 juin 2008, 28 November, ICC-01/04-01/06/1522, paragraph 25, page 18.

⁷⁹² First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 131-132 and Annex 66.

The Rome Statute framework is clear on this issue. There are no provisions establishing categories of people who alone are allowed to act for victims, whether the latter are adults or children. Rule 89(3) of the Rules simply states that “(a)n 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”. It follows that the person acting on behalf of a victim does not have to be a relative or a legal guardian because, within the Rules, the “person acting” is undefined and unrestricted.

In support of this approach, the inevitable experience of most, if not all, children who were recruited in the circumstances alleged in this trial, is that they will have been separated from their parents and other adult relatives at a relatively young age. Many of them have been living, to put it at its lowest, disjointed and very unsettled lives for a number of years. Some children have still not been reunited with their families and they do not have legal guardians. To the extent that they have managed to find representation at all, they are often assisted by people such as schoolteachers and other similar community figures.

In this regard, the Chamber notes the General Comment No. 6(2005) of the Committee on the Rights of the Child in which it was recognised that separated or unaccompanied children (defined as children who have been separated from both parents, other relatives or from any previous legal or customary primary caregiver), in some situations “have no access to proper and appropriate identification, registration, age assessment, documentation family tracing, guardianship systems or legal advice”.⁷⁹³ The Committee further noted that “in large-scale crises, where it will be difficult to establish guardianship arrangements on an individual basis, the rights and best interests of separated children should be safeguarded and promoted by States and organizations working on behalf of these children”.⁷⁹⁴

The Chamber has paid careful attention to the experience of the Registry in the field in the DRC, and particularly its opinion that “legal guardianship is very rare in Eastern Congo and many children who do not live with their parents, for instance because they have not yet been reunited with their families after being demobilised from an armed group or because they experience difficulties in reintegration, are looked after by persons such as school principals, transition centres for demobilised children, who do not have a formal status in relation to the child”.

The real possibility exists, therefore, that a number of applicants who seek to participate in these proceedings will be living in circumstances where they cannot be

⁷⁹³ Committee on the Rights of the Child, General Comment No. 6 (2005), 1 September 2005, CRC/GC/2005/6, paragraphs 3, 7 and 8. Although this General Comment applies to children that have crossed an international border, the Committee has acknowledged that there are many similar challenges related to internally displaced unaccompanied and separated children and encourages States Parties to adopt the relevant aspects of the General Comment in relation to internally displaced unaccompanied and separated children (paragraph 5).

⁷⁹⁴ Committee on the Rights of the Child, General Comment No. 6 (2005), 1 September 2005, CRC/GC/2005/6, paragraph 38.

represented by their parents, other family relatives or a legal guardian. In relation to these victims, who are over 18 years of age or are close thereto, they have individually applied through a person acting on their behalf (who is not their next-of-kin or their legal guardian) to participate in this trial as a victim. In each instance, the application accords with the express requirements of Rule 89 (3) of the Rules.

All of the matters set out above provide strong support for the approach that the Rules have not restricted the types of people who are able to act on behalf of all victims and including child victims.

Moreover, in this case, the Chamber notes that the applicant was between [REDACTED] years old at the time the application was completed. Furthermore, the applicant apparently has a relationship of trust with the person acting on his behalf, who is [REDACTED] and who is also acting on behalf of other applicants who were [REDACTED].

The demobilisation certificate proves, *prima facie*, that the applicant was under 18 years of age at the time when it was issued, in [REDACTED] 2004.⁷⁹⁵ The applicant has stated precisely and unequivocally in his application that he was born [REDACTED] 1992 and that he was approximately [REDACTED] or [REDACTED] years old at the time of the material events. Thus, the Chamber considers that it has been provided with enough information to determine, *prima facie*, that the applicant was under the age of 15 at the relevant time.

The Trial Chamber has reviewed the application and the report submitted by the VPRS and rejects the defence submission that the time of the alleged recruitment of the applicant cannot be established, *prima facie*, to have occurred between September 2002 and August 2003. The Trial Chamber considers that the information provided in the application and the VPRS report is sufficient to establish, *prima facie*, that the applicant was allegedly recruited in 2001 and that his involvement with the armed forces of the UPC lasted until [REDACTED] 2004, when he received his demobilisation certificate.⁷⁹⁶ Furthermore, as regards the observations of the defence that the applicant did not mention the UPC/FPLC in his application, in the information before the Trial Chamber it is clear that the applicant has identified the accused and the UPC as those responsible for these events.⁷⁹⁷ Furthermore, the Trial Chamber notes that other applicants (e.g. a/0184/07, a/0190/07, a/0191/07) were witnesses to, and alleged victims of, the same events, and that the person acting on behalf of these applicants witnessed the alleged recruitment.⁷⁹⁸

⁷⁹⁵ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, Annex 66, page 19.

⁷⁹⁶ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 66, page 19.

⁷⁹⁷ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 66, page 10.

⁷⁹⁸ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annexes 66, 67, 71 and 72.

The Trial Chamber thus determines that the applicant has given sufficient evidence to establish, *prima facie*, that he is a victim under Rule 85(a) of the Rules, as the Chamber has been provided with enough information to conclude that the applicant suffered personal harm as a result of crimes included in the charges brought against the accused, namely his alleged enlistment and/or conscription and/or use to participate actively in the hostilities by the UPC between September 2002 and 13 August 2003.⁷⁹⁹

Applicant a/0184/07 [Annex 67]

The means of identification

The Chamber has been provided with the applicant's demobilisation certificate and the election card and certificate for the person acting on his behalf [REDACTED].⁸⁰⁰ The applicant has consented to this person acting on his behalf.⁸⁰¹

The claim to victim status

The applicant states that in 2001 he was recruited by the UPC when he was [REDACTED] or [REDACTED] years old. [REDACTED] witnessed the abduction of this applicant and other [REDACTED]. He was trained, and he participated in attacks and looting. He was used as [REDACTED] and as [REDACTED]. The applicant left the UPC in 2004 and, as an inevitable consequence of his recruitment, his education was interrupted. He no longer wishes to live as part of a family and he repeats some of the bad habits he acquired while in training. He suffered psychological harm and he experienced serious violations of his fundamental rights.⁸⁰²

The phases of the proceedings

The applicant submits he has an interest in participating in all phases of the proceedings.⁸⁰³

The observations of the defence

The defence submit that the applicant should not be granted status to participate in the proceedings, *inter alia*, because he relies on events that took place between 2001 and 2004 but he fails to specify the date of his recruitment and his demobilisation.

⁷⁹⁹ Decision on victims' participation, 18 January 2008, ICC-01/04-01/06-1119, as confirmed, amended and reversed by the Appeals Chamber's 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.

⁸⁰⁰ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 133-134 and Annex 67.

⁸⁰¹ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 67, page 16.

⁸⁰² First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 133-134 and Annex 67.

⁸⁰³ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 133-134 and Annex 67.

The defence argue that it is impossible to determine whether the facts alleged by the applicant took place between September 2002 and August 13th 2003, and whether the applicant was with the UPC during that period.⁸⁰⁴ The defence submits that the applicant has mentioned a different date of birth from that indicated in his initial application, and as a result, the application does not meet the requirements for *prima facie* admission under Rule 85 of the Rules. In all the circumstances, it is submitted that the application should be rejected.⁸⁰⁵

The observations of the prosecution

The prosecution submits that this applicant meets, *prima facie*, the necessary requirements for victim participation. The prosecution argues the application forms and further information received by the Registry suggest that this applicant was under the age of 15 at the time of his enlistment, conscription or use by the armed forces of the UPC, during the relevant time frame. The Prosecutor supports this application.⁸⁰⁶

The observations of the victim's legal representative

The legal representatives submit in their reply that any contradictions or inaccuracies as to when events occurred are due to the ongoing problems in the DRC and the extreme difficulties in obtaining the necessary documents to support the application.⁸⁰⁷ The legal representatives also submit that the applicant has given enough information to show that he has suffered harm directly linked with the charges brought against the accused, and therefore the applicant should be granted the status of victim and admitted as a participant in the proceedings.⁸⁰⁸

Legal representation

The applicant has been represented thus far by Mr Joseph Keta Orwinyo and Mr Jean Louis Gilissen.⁸⁰⁹

⁸⁰⁴ Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008, 10 June 2008, ICC-01/04-01/06-1388, paragraph 13 and pages 12-13.

⁸⁰⁵ Observations de la Défense sur les 15 demandes de participation à la procédure et les 30 demandes de participation complémentaires communiquées le 27 novembre 2008 ; Réponse de la Défense aux observations des représentants légaux relatives aux 105 demandes de participation communiquées le 20 mai 2008 ; et Observations de la Défense relatives aux victimes indirectes, 5 December 2008, ICC-01/04-01/06-1536, paragraph 26.

⁸⁰⁶ Prosecution's Observations on 105 Redacted Applications for Victim Participation to the Case, 9 June 2008, ICC-01/04-01/06-1386, paragraph 27, pages 14-15.

⁸⁰⁷ Réponse aux "Prosecution's Observations on 105 Applications for Victim Participation to the Case" du 9 juin 2008 et aux « Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008 » du 10 juin 2008, 28 November, ICC-01/04-01/06/1522, paragraph 22, page 14.

⁸⁰⁸ Réponse aux "Prosecution's Observations on 105 Applications for Victim Participation to the Case" du 9 juin 2008 et aux « Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008 » du 10 juin 2008, 28 November, ICC-01/04-01/06/1522, paragraph 25, page 14.

⁸⁰⁹ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 133-134 and Annex 67.

The Chamber's analysis and conclusions

This application has not been considered by Pre-Trial Chamber I.

The Chamber considers that the documents and the other material provided prove, *prima facie*, the identity of the applicant and the person acting on his behalf in accordance with the Trial Chamber's Decision on victims' participation.

The Chamber notes that the applicant has consented to someone else acting on his behalf. The question that arises is whether the applicant needs to establish that this person is either a relative or legal guardian, in order to participate in the proceedings. Alternatively, is the Chamber entitled to act on the application that has been submitted "by a person" on the applicant's behalf, which indicates clearly in each instance that the victim wishes to participate in these proceedings.

The Rome Statute framework is clear on this issue. There are no provisions establishing categories of people who alone are allowed to act for victims, whether the latter are adults or children. Rule 89(3) of the Rules simply states that "(a)n 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 ...". It follows that the person acting on behalf of a victim does not have to be a relative or a legal guardian because, within the Rules, the "person acting" is undefined and unrestricted.

In support of this approach, the inevitable experience of most, if not all, children who were recruited in the circumstances alleged in this trial, is that they will have been separated from their parents and other adult relatives at a relatively young age. Many of them have been living, to put it at its lowest, disjointed and very unsettled lives for a number of years. Some children have still not been reunited with their families and they do not have legal guardians. To the extent that they have managed to find representation at all, they are often assisted by people such as schoolteachers and other similar community figures.

In this regard, the Chamber notes the General Comment No. 6(2005) of the Committee on the Rights of the Child in which it was recognised that separated or unaccompanied children (defined as children who have been separated from both parents, other relatives or from any previous legal or customary primary caregiver), in some situations "have no access to proper and appropriate identification, registration, age assessment, documentation family tracing, guardianship systems or legal advice".⁸¹⁰ The Committee further noted that "in large-scale crises, where it will be difficult to establish guardianship arrangements on an individual basis, the rights

⁸¹⁰ Committee on the Rights of the Child, General Comment No. 6 (2005), 1 September 2005, CRC/GC/2005/6, paragraphs 3, 7 and 8. Although this General Comment applies to children that have crossed and international border, the Committee has acknowledged that there are many similar challenges related to internally displaced unaccompanied and separated children and encourages States Parties to adopt the relevant aspects of the General Comment in relation to internally displaced unaccompanied and separated children (paragraph 5).

and best interests of separated children should be safeguarded and promoted by States and organizations working on behalf of these children".⁸¹¹

The Chamber has paid careful attention to the experience of the Registry in the field in the DRC, and particularly its opinion that "legal guardianship is very rare in Eastern Congo and many children who do not live with their parents, for instance because they have not yet been reunited with their families after being demobilised from an armed group or because they experience difficulties in reintegration, are looked after by persons such as school principals, transition centres for demobilised children, who do not have a formal status in relation to the child".

The real possibility exists, therefore, that a number of applicants who seek to participate in these proceedings will be living in circumstances where they cannot be represented by their parents, other family relatives or a legal guardian. In relation to these victims, who are over 18 years of age or are close thereto, they have individually applied through a person acting on their behalf (who is not their next-of-kin or their legal guardian) to participate in this trial as a victim. In each instance, the application accords with the express requirements of Rule 89 (3) of the Rules.

All of the matters set out above provide strong support for the approach that the Rules have not restricted the types of people who are able to act on behalf of all victims and including child victims.

Moreover, in this case, the Chamber notes that the applicant was between [REDACTED] years old at the time the application was completed. Furthermore, the applicant apparently has a relationship of trust with the person acting on his behalf, who is [REDACTED] and who is also acting on behalf of other applicants who were [REDACTED].

The demobilisation certificate proves, *prima facie*, that the applicant was under 18 years of age at the time when it was issued, in [REDACTED] 2004.⁸¹² The applicant has stated precisely and unequivocally in his application that he was born [REDACTED] 1992 and that he was approximately [REDACTED] or [REDACTED] years old at the time of the material events. Thus, the Chamber considers that it has been provided with enough information to determine, *prima facie*, that the applicant was under the age of 15 at the relevant time.

The Trial Chamber has reviewed the application and the report submitted by the VPRS and rejects the defence submission that the time of the alleged recruitment cannot be established, *prima facie*, to have occurred between September 2002 and August 2003. The Trial Chamber considers that the information provided in the application, as well as in the VPRS report, is sufficient to establish, *prima facie*, that the applicant was recruited in 2001 and that his involvement with the armed forces

⁸¹¹ Committee on the Rights of the Child, General Comment No 6 (2005), 1 September 2005, CRC/GC/2005/6, paragraph 38.

⁸¹² First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, Annex 67, page 19.

of the UPC lasted until [REDACTED] 2004, when he received his demobilisation certificate.⁸¹³ Furthermore, the Trial Chamber takes note that other applicants (e.g. a/0183/07, a/0190/07, a/0191/07) were witnesses to, and alleged victims of, these incidents, and that the person acting on behalf of these applicants also witnessed the alleged recruitment.⁸¹⁴

The Trial Chamber thus determines that the applicant has given sufficient evidence to establish, *prima facie*, that he is a victim under Rule 85(a) of the Rules, as the Chamber has been provided with enough information to conclude that the applicant suffered personal harm as a result of crimes included in the charges brought against the accused, namely his alleged enlistment and/or conscription and/or use to participate actively in the hostilities by the UPC between September 2002 and 13 August 2003.⁸¹⁵

Applicant a/0190/07 [Annex 71]

The means of identification

The Chamber has been provided with a demobilisation certificate for the applicant and the election card and certificate for the person acting on his behalf, [REDACTED] [REDACTED].⁸¹⁶ The applicant has consented to this person acting on his behalf.⁸¹⁷

The claim to victim status

The applicant states that in 2001 he was recruited by the UPC militia when he was [REDACTED]-[REDACTED] years old, while in school. [REDACTED] witnessed his abduction, along with that of other [REDACTED]. He learned how to use firearms, and he was used for looting and as a human shield. The applicant returned to join his family in 2004. He suffered during his training and these events disturbed his schooling and his general behaviour. He suffered psychological harm and he experienced serious violations of his fundamental rights.⁸¹⁸

⁸¹³ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 67, page 19.

⁸¹⁴ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annexes 66, 67, 71 and 72.

⁸¹⁵ Decision on victims' participation, 18 January 2008, ICC-01/04-01/06-1119, as confirmed, amended and reversed by the Appeals Chamber's 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.

⁸¹⁶ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 141-142 and Annex 71.

⁸¹⁷ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 71, page 16.

⁸¹⁸ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 141-142 and Annex 71.

The phases of the proceedings

The applicant submits he has interest in participating in all the phases of these proceedings.⁸¹⁹

The observations of the defence

The defence did not refer to the applicant in its observations.⁸²⁰ The defence submits in a further filing that the applicant has mentioned a different date of birth from that indicated in his initial application, and as a result, the application does not meet the requirements for *prima facie* admission under Rule 85 of the Rules. In all the circumstances, it is submitted that the application should be rejected.⁸²¹

The observations of the prosecution

The prosecution submit that this applicant meets, *prima facie*, the necessary requirements for victim participation and that the application forms and further information received by the Registry suggest that this applicant was under the age of 15 at the time of his enlistment, conscription or use by the armed forces of the UPC, during the relevant time frame. The Prosecutor supports this application.⁸²²

The observations of the victim's legal representative

The legal representatives submit in their reply that any contradictions or inaccuracies as to when events occurred are due to the ongoing problems in the DRC and the extreme difficulties in obtaining the necessary documents to support the application.⁸²³ The legal representatives also submit that the applicant has given enough information to show that he has suffered harm directly linked with the charges brought against the accused, and therefore the applicant should be granted the status of victim and admitted as a participant in the proceedings.⁸²⁴

Legal representation

⁸¹⁹ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 141-142 and Annex 71

⁸²⁰ Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008, 10 June 2008, ICC-01/04-01/06-1388.

⁸²¹ Observations de la Défense sur les 15 demandes de participation à la procédure et les 30 demandes de participation complémentaires communiquées le 27 novembre 2008 ; Réponse de la Défense aux observations des représentants légaux relatives aux 105 demandes de participation communiquées le 20 mai 2008 ; et Observations de la Défense relatives aux victimes indirectes, 5 December 2008, ICC-01/04-01/06-1536, paragraph 26.

⁸²² Prosecution's Observations on 105 Redacted Applications for Victim Participation to the Case, 9 June 2008, ICC-01/04-01/06-1386, paragraph 27, pages 14-15.

⁸²³ Réponse aux "Prosecution's Observations on 105 Applications for Victim Participation to the Case" du 9 juin 2008 et aux « Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008 » du 10 juin 2008, 28 November, ICC-01/04-01/06/1522, paragraph 22, page 19.

⁸²⁴ Réponse aux "Prosecution's Observations on 105 Applications for Victim Participation to the Case" du 9 juin 2008 et aux « Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008 » du 10 juin 2008, 28 November, ICC-01/04-01/06/1522, paragraph 25, page 19.

The applicant has been represented thus far by Mr Joseph Keta Orwinyo and Mr Jean Louis Gilissen.⁸²⁵

The Chamber's analysis and conclusions

This application was not before Pre-Trial Chamber I.

The Chamber considers that the documents and the other material provided prove, *prima facie*, the identity of the applicant and the person acting on his behalf, in accordance with the Trial Chamber's Decision on victims' participation.

The Chamber notes that the applicant has consented to someone else acting on his behalf. The question that arises is whether the applicant needs to establish that this person is either a relative or legal guardian, in order to participate in the proceedings. Alternatively, is the Chamber entitled to act on the application that has been submitted "by a person" on the applicant's behalf, which indicates clearly in each instance that the victim wishes to participate in these proceedings.

The Rome Statute framework is clear on this issue. There are no provisions establishing categories of people who alone are allowed to act for victims, whether the latter are adults or children. Rule 89(3) of the Rules simply states that "(a)n 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". It follows that the person acting on behalf of a victim does not have to be a relative or a legal guardian because, within the Rules, the "person acting" is undefined and unrestricted.

In support of this approach, the inevitable experience of most, if not all, children who were recruited in the circumstances alleged in this trial, is that they will have been separated from their parents and other adult relatives at a relatively young age. Many of them have been living, to put it at its lowest, disjointed and very unsettled lives for a number of years. Some children have still not been reunited with their families and they do not have legal guardians. To the extent that they have managed to find representation at all, they are often assisted by people such as schoolteachers and other similar community figures.

In this regard, the Chamber notes the General Comment No. 6(2005) of the Committee on the Rights of the Child in which it was recognised that separated or unaccompanied children (defined as children who have been separated from both parents, other relatives or from any previous legal or customary primary caregiver), in some situations "have no access to proper and appropriate identification, registration, age assessment, documentation family tracing, guardianship systems or legal advice".⁸²⁶ The Committee further noted that "in large-scale crises, where it will

⁸²⁵ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 141-142 and Annex 71.

⁸²⁶ Committee on the Rights of the Child, General Comment No. 6 (2005), 1 September 2005, CRC/GC/2005/6, paragraphs 3, 7 and 8. Although this General Comment applies to children that have

be difficult to establish guardianship arrangements on an individual basis, the rights and best interests of separated children should be safeguarded and promoted by States and organizations working on behalf of these children".⁸²⁷

The Chamber has paid careful attention to the experience of the Registry in the field in the DRC, and particularly its opinion that "legal guardianship is very rare in Eastern Congo and many children who do not live with their parents, for instance because they have not yet been reunited with their families after being demobilised from an armed group or because they experience difficulties in reintegration, are looked after by persons such as school principals, transition centres for demobilised children, who do not have a formal status in relation to the child".

The real possibility exists, therefore, that a number of applicants who seek to participate in these proceedings will be living in circumstances where they cannot be represented by their parents, other family relatives or a legal guardian. In relation to these victims, who are over 18 years of age or are close thereto, they have individually applied through a person acting on their behalf (who is not their next-of-kin or their legal guardian) to participate in this trial as a victim. In each instance, the application accords with the express requirements of Rule 89 (3) of the Rules.

All of the matters set out above provide strong support for the approach that the Rules have not restricted the types of people who are able to act on behalf of all victims and including child victims.

Moreover, in this case, the Chamber notes that the applicant was between [REDACTED] years old at the time the application was completed. Furthermore, the applicant apparently has a relationship of trust with the person acting on his behalf, who is [REDACTED] and who is also acting on behalf of other applicants who were [REDACTED]

The demobilisation certificate proves, *prima facie*, that the applicant was under 18 years of age at the time when it was issued, in [REDACTED] 2004.⁸²⁸ The applicant has stated precisely and unequivocally in his application that he was born [REDACTED] 1992 and that he was approximately [REDACTED] or [REDACTED] years old at the time of the material events. Thus, the Chamber considers that it has been provided with enough information to determine, *prima facie*, that the applicant was under the age of 15 at the relevant time.

The Trial Chamber has reviewed the application and the report submitted by the VPRS and rejects the defence submission that the time of the alleged recruitment

crossed and international border, the Committee has acknowledged that there are many similar challenges related to internally displaced unaccompanied and separated children and encourages States Parties to adopt the relevant aspects of the General Comment in relation to internally displaced unaccompanied and separated children (paragraph 5).

⁸²⁷ Committee on the Rights of the Child, General Comment No. 6 (2005), 1 September 2005, CRC/GC/2005/6, paragraph 38.

⁸²⁸ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, Annex 71, page 19.

cannot be established, *prima facie*, to have occurred between September 2002 and August 2003. The Trial Chamber considers that the information provided in the application and the VPRS report is sufficient to establish, *prima facie*, that the applicant was allegedly recruited in 2001 and that his involvement with the armed forces of the UPC lasted until [REDACTED] 2004, when he received his demobilisation certificate.⁸²⁹ Furthermore, the Trial Chamber notes that other applicants (e.g. a/0183/07, a/0184/07, a/0191/07) were witnesses to, and alleged victims of, the incidents and that the person acting on behalf of these applicants witnessed the alleged recruitment.⁸³⁰

The Trial Chamber thus determines that the applicant has given sufficient evidence to establish, *prima facie*, that he is a victim under Rule 85(a) of the Rules, as the Chamber has been provided with enough information to conclude that the applicant suffered personal harm as a result of crimes included in the charges brought against the accused, namely his alleged enlistment and/or conscription and/or use to participate actively in the hostilities by the UPC between September 2002 and 13 August 2003.⁸³¹

Applicant a/0191/07 [Annex 72]

The means of identification

The Chamber has been provided with a demobilisation certificate for the applicant and the election card and certificate for the person acting on his behalf, [REDACTED].⁸³² The applicant has consented to this person acting on his behalf.⁸³³

The claim to victim status

The applicant states that in 2001 he was recruited by the UPC militia when he was [REDACTED] years old, while still in school. [REDACTED] witnessed the abduction of the applicant and other [REDACTED]. The applicant learned how to use firearms, and during training many children died due to malnutrition and the nature of the exercises. The applicant was allegedly used in hostilities, and before each attack he acted as [REDACTED]. He left the UPC in 2004, and these events affected him considerably. He regrets ceasing his studies and the disability that has resulted from the treatment he suffered during his recruitment and the feeling he experiences of having lost his

⁸²⁹ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 71, page 19

⁸³⁰ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annexes 66, 67, 71 and 72.

⁸³¹ Decision on victims' participation, 18 January 2008, ICC-01/04-01/06-1119, as confirmed, amended and reversed by the Appeals Chamber's 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.

⁸³² First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 143-144 and Annex 72.

⁸³³ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 72, page 16.

life. Generally, he suffered psychological harm and experienced serious violations of his fundamental rights.⁸³⁴

The phases of the proceedings

The applicant submits he has an interest in participating in all phases of the proceedings.⁸³⁵

The observations of the defence

The defence submits that this applicant should not be permitted to participate in the proceedings. It is contended that the applicant has not mentioned the UPC in his detailed description of the alleged crimes.⁸³⁶ The defence submits in a further filing that the applicant has mentioned a different date of birth from that indicated in his initial application, and as a result, the application does not meet the requirements for *prima facie* admission under Rule 85 of the Rules. In all the circumstances, it is submitted that the application should be rejected.⁸³⁷

The observations of the prosecution

The prosecution submits that this applicant meets, *prima facie*, the necessary requirements for victim participation and that the application forms and further information received by the Registry suggest that this applicant was under the age of 15 at the time of his enlistment, conscription or use by the armed forces of the UPC, during the relevant time-frame. The Prosecutor supports the application.⁸³⁸

The observations of the victim's legal representative

The legal representatives submit in their reply that any contradictions or inaccuracies as to when events occurred are due to the ongoing problems in the DRC and the extreme difficulties in obtaining the necessary documents to support the application.⁸³⁹ The legal representative also submit that the applicant has given enough information to show that he has suffered harm directly linked with the

⁸³⁴ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 143-144 and Annex 72

⁸³⁵ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 143-144 and Annex 72.

⁸³⁶ Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008, 10 June 2008, ICC-01/04-01/06-1388, paragraph 13 and pages 12-13.

⁸³⁷ Observations de la Défense sur les 15 demandes de participation à la procédure et les 30 demandes de participation complémentaires communiquées le 27 novembre 2008 ; Réponse de la Défense aux observations des représentants légaux relatives aux 105 demandes de participation communiquées le 20 mai 2008 ; et Observations de la Défense relatives aux victimes indirectes, 5 December 2008, ICC-01/04-01/06-1536, paragraph 26.

⁸³⁸ Prosecution's Observations on 105 Redacted Applications for Victim Participation to the Case, 9 June 2008, ICC-01/04-01/06-1386, paragraph 27, pages 14-15.

⁸³⁹ Réponse aux "Prosecution's Observations on 105 Applications for Victim Participation to the Case" du 9 juin 2008 et aux « Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008 » du 10 juin 2008, 28 November, ICC-01/04-01/06/1522, paragraph 22, page 19.

charges brought against the accused, and therefore the applicant should be granted the status of victim and admitted as a participant in the proceedings.⁸⁴⁰

Legal representation

The applicant has been represented thus far by Mr Joseph Keta Orwinyo and Mr Jean Louis Gilissen.⁸⁴¹

The Chamber's analysis and conclusions

This application was not before Pre-Trial Chamber I.

The Chamber considers that the documents and the other material provided prove, *prima facie*, the identity of the applicant and the person acting on his behalf in accordance with the Trial Chamber's Decision on victims' participation.

The Chamber notes that the applicant has consented to someone else acting on his behalf. The question that arises is whether the applicant needs to establish that this person is either a relative or legal guardian, in order to participate in the proceedings. Alternatively, is the Chamber entitled to act on the application that has been submitted "by a person" on the applicant's behalf, which indicates clearly in each instance that the victim wishes to participate in these proceedings.

The Rome Statute framework is clear on this issue. There are no provisions establishing categories of people who alone are allowed to act for victims, whether the latter are adults or children. Rule 89(3) of the Rules simply states that "(a)n 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". It follows that the person acting on behalf of a victim does not have to be a relative or a legal guardian because, within the Rules, the "person acting" is undefined and unrestricted.

In support of this approach, the inevitable experience of most, if not all, children who were recruited in the circumstances alleged in this trial, is that they will have been separated from their parents and other adult relatives at a relatively young age. Many of them have been living, to put it at its lowest, disjointed and very unsettled lives for a number of years. Some children have still not been reunited with their families and they do not have legal guardians. To the extent that they have managed to find representation at all, they are often assisted by people such as schoolteachers and other similar community figures.

⁸⁴⁰ Réponse aux "Prosecution's Observations on 105 Applications for Victim Participation to the Case" du 9 juin 2008 et aux « Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008 » du 10 juin 2008, 28 November, ICC-01/04-01/06/1522, paragraph 25, page 20.

⁸⁴¹ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 143-144 and Annex 72.

In this regard, the Chamber notes the General Comment No. 6(2005) of the Committee on the Rights of the Child in which it was recognised that separated or unaccompanied children (defined as children who have been separated from both parents, other relatives or from any previous legal or customary primary caregiver), in some situations “have no access to proper and appropriate identification, registration, age assessment, documentation family tracing, guardianship systems or legal advice”.⁸⁴² The Committee further noted that “in large-scale crises, where it will be difficult to establish guardianship arrangements on an individual basis, the rights and best interests of separated children should be safeguarded and promoted by States and organizations working on behalf of these children”.⁸⁴³

The Chamber has paid careful attention to the experience of the Registry in the field in the DRC, and particularly its opinion that “legal guardianship is very rare in Eastern Congo and many children who do not live with their parents, for instance because they have not yet been reunited with their families after being demobilised from an armed group or because they experience difficulties in reintegration, are looked after by persons such as school principals, transition centres for demobilised children, who do not have a formal status in relation to the child”.

The real possibility exists, therefore, that a number of applicants who seek to participate in these proceedings will be living in circumstances where they cannot be represented by their parents, other family relatives or a legal guardian. In relation to these victims, who are over 18 years of age or are close thereto, they have individually applied through a person acting on their behalf (who is not their next-of-kin or their legal guardian) to participate in this trial as a victim. In each instance, the application accords with the express requirements of Rule 89 (3) of the Rules.

All of the matters set out above provide strong support for the approach that the Rules have not restricted the types of people who are able to act on behalf of all victims and including child victims.

Moreover, in this case, the Chamber notes that the applicant was between [REDACTED] years old at the time the application was completed. Furthermore, the applicant apparently has a relationship of trust with the person acting on his behalf, who is [REDACTED] and who is also acting on behalf of other applicants who were [REDACTED].

⁸⁴² Committee on the Rights of the Child, General Comment No. 6 (2005), 1 September 2005, CRC/GC/2005/6, paragraphs 3, 7 and 8. Although this General Comment applies to children that have crossed and international border, the Committee has acknowledged that there are many similar challenges related to internally displaced unaccompanied and separated children and encourages States Parties to adopt the relevant aspects of the General Comment in relation to internally displaced unaccompanied and separated children (paragraph 5).

⁸⁴³ Committee on the Rights of the Child, General Comment No. 6 (2005), 1 September 2005, CRC/GC/2005/6, paragraph 38.

The demobilisation certificate proves, *prima facie*, that the applicant was under 18 years of age at the time when it was issued, in ██████████ 2004.⁸⁴⁴ The applicant has stated precisely and unequivocally in his application that he was born ██████████ 1993 and that he was approximately █ or █ years old at the time of the material events. Thus, the Chamber considers that it has been provided with enough information to determine, *prima facie*, that the applicant was under the age of 15 at the relevant time.

The Trial Chamber has reviewed the application and considers that the information provided in the application, as well as in the VPRS report, is sufficient to establish, *prima facie*, that the applicant was allegedly recruited in 2001 and that his involvement with the armed forces of the UPC lasted until ██████████ 2004, when he received his demobilisation certificate.⁸⁴⁵ Furthermore, the Chamber rejects the contention of the defence that the applicant has not mentioned the UPC/FPLC in his application, given the applicant indicated that the accused and the UPC were responsible for these events.⁸⁴⁶

Furthermore, the Trial Chamber notes that other applicants (a/0183/07, a/0184/07, a/0190/07) were witnesses to, and alleged victims of, the incidents and that the person acting on behalf of these applicants witnessed the alleged recruitment.⁸⁴⁷

The Trial Chamber thus determines that the applicant has given sufficient evidence to establish, *prima facie*, that he is a victim under Rule 85(a) of the Rules, as the Chamber has been provided with enough information to conclude that the applicant suffered personal harm as a result of crimes included in the charges brought against the accused, namely his alleged enlistment and/or conscription and/or use to participate actively in the hostilities by the UPC between September 2002 and 13 August 2003.⁸⁴⁸

Applicant a/0251/07 [Annex 73]

The means of identification

The Chamber has been provided with a demobilisation certificate and a family reunification certificate for the applicant, and an election card for the person acting on his behalf (his grandfather). No proof of their relationship has been provided to

⁸⁴⁴ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, Annex 72, page 18.

⁸⁴⁵ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 72, page 18

⁸⁴⁶ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 72, page 10.

⁸⁴⁷ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annexes 66, 67, 71 and 72.

⁸⁴⁸ Decision on victims' participation, 18 January 2008, ICC-01/04-01/06-1119, as confirmed, amended and reversed by the Appeals Chamber's 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.

the Chamber. The applicant has signed the application form consenting to his grandfather acting on his behalf.⁸⁴⁹

The claim to victim status

The applicant states that in 2002 he was recruited by the UPC, when he was [redacted] or [redacted] years old. This occurred when the militia looted and burned his family's property. The UPC pillaged the domestic animals, money and drink. The applicant was reunited with his family on [redacted] 2005.⁸⁵⁰ He suffered psychological harm and serious violations of his fundamental rights.

The phases of the proceedings

The applicant submits he has an interest in participating in all phases of the proceedings other than the pre-trial phase.⁸⁵¹

The observations of the defence

The defence submits that this applicant should not be permitted to participate in the proceedings, because the applicant does not describe the precise circumstances of his recruitment by the forces of the FPLC. Moreover, it is suggested the date of his recruitment is too vague and the final date of his alleged recruitment has been redacted.⁸⁵²

The observations of the prosecution

The prosecution submits that this applicant meets, *prima facie*, the necessary requirements for victim participation and that the application forms and further information received by the Registry suggest that this applicant was under the age of 15 at the time of his enlistment, conscription or use by the armed forces of the UPC, during the relevant time frame. The Prosecutor supports this application.⁸⁵³

The observations of the victim's legal representative

The legal representative observes in her reply that the prosecution does not oppose the participation of the applicant. As regards the observations of the defence, the legal representative submits that the argument that the time of recruitment is very vague, is due to the fact that the defence received a redacted version of the

⁸⁴⁹ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 145-146 and Annex 73.

⁸⁵⁰ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 145-146 and Annex 73.

⁸⁵¹ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 145-146 and Annex 73.

⁸⁵² Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008, 10 June 2008, ICC-01/04-01/06-1388, paragraph 13 and pages 12-13.

⁸⁵³ Prosecution's Observations on 105 Redacted Applications for Victim Participation to the Case, 9 June 2008, ICC-01/04-01/06-1386, paragraph 27, pages 14-15.

application. The legal representative requests that the applicant is granted status to participate in the proceedings.⁸⁵⁴

Legal representation

The applicant has been represented thus far by Ms Carine Bapita Buyangandu.⁸⁵⁵

The Chamber's analysis and conclusions

This application was not before Pre-Trial Chamber I.

The Chamber in its review of the documents has noted that there appears to be variations in the spelling of the names of the applicant and the person acting on his behalf. However, the Trial Chamber has determined that in all the circumstances these inconsistencies are probably due to minor typographical errors. The Chamber thus considers that the documents and the other material provided prove, *prima facie*, the identity of the applicant and the person acting on his behalf in accordance with the Trial Chamber's Decision on victims' participation.

The Chamber notes that the applicant has consented to someone else acting on his behalf. The question that arises is whether the applicant needs to establish that this person is either a relative or legal guardian, in order to participate in the proceedings. Alternatively, is the Chamber entitled to act on the application that has been submitted "by a person" on the applicant's behalf, which indicates clearly in each instance that the victim wishes to participate in these proceedings.

The Rome Statute framework is clear on this issue. There are no provisions establishing categories of people who alone are allowed to act for victims, whether the latter are adults or children. Rule 89(3) of the Rules simply states that "(a)n 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". It follows that the person acting on behalf of a victim does not have to be a relative or a legal guardian because, within the Rules, the "person acting" is undefined and unrestricted.

In support of this approach, the inevitable experience of most, if not all, children who were recruited in the circumstances alleged in this trial, is that they will have been separated from their parents and other adult relatives at a relatively young age. Many of them have been living, to put it at its lowest, disjointed and very unsettled lives for a number of years. Some children have still not been reunited with their families and they do not have legal guardians. To the extent that they have managed

⁸⁵⁴ Réponse des demandeurs a/0105/06, a/0231/06, a/0232/06, a/0233/06, a/0242/06, a/0243/06, a/0244/06, a/0245/06, a/0246/06, a/0247/06, a/0248/06, a/0249/06, a/0250/06, a/0001/07, a/0002/07, a/0003/07, a/0004/07, a/0005/07, a/0006/07, a/0251/07, a/0253/07 et a/0254/07 aux observations du Procureur et de la Défense quant à leur demande de participation à la procédure dans l'affaire Le Procureur contre Thomas Lubanga, 28 November 2008, ICC-01/04-01/06-1514, paragraphs 7, 23, 25.

⁸⁵⁵ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 145-146 and Annex 73.

to find representation at all, they are often assisted by people such as schoolteachers and other similar community figures.

In this regard, the Chamber notes the General Comment No. 6(2005) of the Committee on the Rights of the Child in which it was recognised that separated or unaccompanied children (defined as children who have been separated from both parents, other relatives or from any previous legal or customary primary caregiver), in some situations “have no access to proper and appropriate identification, registration, age assessment, documentation family tracing, guardianship systems or legal advice”.⁸⁵⁶ The Committee further noted that “in large-scale crises, where it will be difficult to establish guardianship arrangements on an individual basis, the rights and best interests of separated children should be safeguarded and promoted by States and organizations working on behalf of these children”.⁸⁵⁷

The Chamber has paid careful attention to the experience of the Registry in the field in the DRC, and particularly its opinion that “legal guardianship is very rare in Eastern Congo and many children who do not live with their parents, for instance because they have not yet been reunited with their families after being demobilised from an armed group or because they experience difficulties in reintegration, are looked after by persons such as school principals, transition centres for demobilised children, who do not have a formal status in relation to the child”.

The real possibility exists, therefore, that a number of applicants who seek to participate in these proceedings will be living in circumstances where they cannot be represented by their parents, other family relatives or a legal guardian. In relation to these victims, who are over 18 years of age or are close thereto, they have individually applied through a person acting on their behalf (who is not their next-of-kin or their legal guardian) to participate in this trial as a victim. In each instance, the application accords with the express requirements of Rule 89 (3) of the Rules.

All of the matters set out above provide strong support for the approach that the Rules have not restricted the types of people who are able to act on behalf of all victims and including child victims.

Moreover, in this case, the Chamber notes that the applicant was between [REDACTED] years old at the time the application was completed. Furthermore, the applicant declares in his application form that the person acting on his behalf is his grandfather.

⁸⁵⁶ Committee on the Rights of the Child, General Comment No. 6 (2005), 1 September 2005, CRC/GC/2005/6, paragraphs 3, 7 and 8. Although this General Comment applies to children that have crossed an international border, the Committee has acknowledged that there are many similar challenges related to internally displaced unaccompanied and separated children and encourages States Parties to adopt the relevant aspects of the General Comment in relation to internally displaced unaccompanied and separated children (paragraph 5).

⁸⁵⁷ Committee on the Rights of the Child, General Comment No. 6 (2005), 1 September 2005, CRC/GC/2005/6, paragraph 38.

The Chamber considers that the demobilisation certificate proves, *prima facie*, that the applicant was under 18 years of age at the time when it was issued, in ██████ 2005.⁸⁵⁸ The applicant has stated in his application that he was born in 1992 and that he was approximately █ or █ years old at the time of these events (2002). However, the family reunification certificate indicates that the applicant was █ years old in 2005, when the applicant was demobilised (and thus he was █ years old at the time of initial events).⁸⁵⁹ Although the Chamber cannot determine, on the present information, the exact year of birth of the applicant, on either basis there is sufficient information for the Chamber to determine, *prima facie*, that the applicant was under the age of 15 at the relevant time, viz. when he was recruited by the UPC.

The Trial Chamber has reviewed the application and the report submitted by the VPRS and rejects the defence submission that the time of the applicant's alleged recruitment cannot be established, *prima facie*, as to have occurred between September 2002 and August 2003. The Trial Chamber considers that the information provided in the application, as well as in the VPRS report, is sufficient to establish, *prima facie*, that the applicant was allegedly recruited in 2002 and that his involvement with the armed forces of the UPC lasted until ██████ 2005, when he received his demobilisation certificate and was reunited with his family.⁸⁶⁰

Furthermore, the Trial Chamber does not accept the observations of the defence that the applicant failed to describe the precise circumstances of his recruitment by the UPC. The information provided in the application, along with the demobilisation certificate, provide the Chamber with sufficient information to establish, *prima facie*, that the applicant was allegedly recruited by the UPC.⁸⁶¹

The Trial Chamber thus determines that the applicant has given sufficient evidence to establish, *prima facie*, that he is a victim under Rule 85(a) of the Rules, as the Chamber has been provided with enough information to conclude that the applicant suffered personal harm as a result of crimes included in the charges brought against the accused, namely his alleged enlistment and/or conscription and/or use to participate actively in the hostilities by the UPC between September 2002 and 13 August 2003.⁸⁶²

Application of victim a/0406/08 [Annex 14, filing 1501]

⁸⁵⁸ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, Annex 73, page 19.

⁸⁵⁹ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, Annex 73, page 20.

⁸⁶⁰ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 67, pages 19 and 20.

⁸⁶¹ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 67, pages 9, 10, 13, and 19.

⁸⁶² Decision on victims' participation, 18 January 2008, ICC-01/04-01/06-1119, as confirmed, amended and reversed by the Appeals Chamber's 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.

The means of identification

The Chamber has been provided with an election card for the applicant.⁸⁶³

The claim to victim status

The applicant states she is the mother of [REDACTED] children recruited by force by the UPC of Thomas Lubanga, in [REDACTED] 2002. She states that two of her sons were killed in combat when they were [REDACTED] and [REDACTED] years old, and that the others returned in [REDACTED] 2003 and in [REDACTED] or [REDACTED] 2003. She suffered from suddenly losing her children. After her children were recruited, she acted "like crazy", and she suffers from hypertension. She lost everything and her children now live elsewhere.⁸⁶⁴

The phases of the proceedings

The applicant submits she has an interest in participating in all phases of the proceedings.⁸⁶⁵

The observations of the defence

The defence submits that although the applicant has alleged that her seven children were recruited by the FPLC forces, she does not present any documentation to prove that she had seven children or to prove their identities. As a result, the defence argues that the applicant does not meet the *prima facie* conditions under Rule 85 of the Rules, and therefore her participation in the proceedings should be rejected.⁸⁶⁶

The observations of the prosecution

The prosecution submits that the applicant meets the requirements under Rule 85(a) of the Rules for participation as victim.⁸⁶⁷

The observations of the victim's legal representative

The legal representative reply did not file observations as regards this applicant.

Legal representation

The applicant has been represented thus far by Mr Hervé Diakese.⁸⁶⁸

⁸⁶³ Second Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1501-Conf-Exp, 21 November 2008, Annex 2, pages 23-24 and Annex 14.

⁸⁶⁴ Second Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1501-Conf-Exp, 21 November 2008, Annex 2, pages 23-24 and Annex 14.

⁸⁶⁵ Second Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1501-Conf-Exp, 21 November 2008, Annex 2, pages 23-24 and Annex 14.

⁸⁶⁶ Observations de la Défense sur les 15 demandes de participation à la procédure et les 30 demandes de participation complémentaires communiquées le 27 novembre 2008 ; Réponse de la Défense aux observations des représentants légaux relatives aux 105 demandes de participation communiquées le 20 mai 2008 ; et Observations de la Défense relatives aux victimes indirectes, 5 December 2008, ICC-01/04-01/06-1536, paragraph 35.

⁸⁶⁷ Prosecution's Observations on 12 Redacted Applications for Victim Participation to the Case, concerning applicants a/0063/07, a/0122/08, a/0123/08, a/0124/08, a/0125/08, a/0126/08, a/0130/08, a/0149/08, a/0404/08, a/0405/08, a/0406/08 and a/0409/08, 8 December 2008, ICC-01/04-01/06-1541, paragraph 16.

The Chamber's analysis and conclusions

The Chamber considers that the documents provided assist in demonstrating the identity of the applicant in accordance with the Trial Chamber's Decision on victims' participation.

Although there are no documents proving the exact age of the applicant's children at the time of the relevant events, the Trial Chamber determines that the applicant has given sufficient evidence to establish, *prima facie*, that she is a victim under Rules 85(a) of the Rules, as the overall information provided to the Chamber in the application leads it to conclude that the applicant suffered personal harm as a result of crimes confirmed against the accused, namely the alleged conscription and/or enlistment and/or use of at least two of her children by the UPC when they were approximately ■ and ■ years old to participate actively in the hostilities, between September 2002 and 13 August 2003.⁸⁶⁹

⁸⁶⁸ Second Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1501-Conf-Exp, 21 November 2008, Annex 2, pages 23-24 and Annex 14.

⁸⁶⁹ Decision on victims' participation, 18 January 2008, ICC-01/04-01/06-1119, as confirmed, amended and reversed by the Appeals Chamber's 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.

Group 1(f): Applications where there are some inconsistencies within the documents

Applicant a/0058/07 [Annex 83]

The means of identification

The Trial Chamber has been provided with the applicant's election card.⁸⁷⁰ In a subsequent filing the Trial Chamber has been provided with a student identity card for the applicant.⁸⁷¹

The claim to victim status

In ██████████ 2002 the applicant was allegedly recruited by the UPC when he was ██████████ years old. The applicant refers to episodes of rape, extortion, killing and torture, without specifying whether he was a victim or perpetrator. He was injured in the ██████████ ██████████ and suffered pain in his ██████████ and ██████████ which still persist. He suffers from violent and vengeful tendencies and his schooling was disrupted. The applicant alleges psychological, material and physical harm. His family's property was pillaged.⁸⁷²

The phases of the proceedings

The applicant did not specify in which phases of the proceedings he wishes to participate.⁸⁷³

The observations of the defence

The defence contended in its original filing that although the applicant suggests he was born in 1988, his election card states that he was born in 1986, and therefore he may have been 16 years old at the time of his alleged recruitment.⁸⁷⁴ The defence observes in a further filing that the applicant gives a date of birth (August 1986) in his supplementary application that contradicts his initial application (August 1988); furthermore he alleged in the first application that he was abducted in November 2002, whilst in his supplementary application he stated that he was abducted in September 2002. As a result, the Defence contends that the information provided by applicant is uncertain and contradictory and it does not meet the requirements for

⁸⁷⁰ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 166-167 and Annex 83.

⁸⁷¹ Second report on supplementary information concerning application for participation filed with the "First Report to Trial Chamber I on Victims' Applications under Regulation 86(5) of the Regulations of the Court", dated 11 April 2008 (ICC-01/04-01/06-1275-Conf-Exp), 21 November 2008, page 6 and Anx6.

⁸⁷² First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 166-167 and Annex 83.

⁸⁷³ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, page 167 and Annex 83.

⁸⁷⁴ Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008, 10 June 2008, ICC-01/04-01/06-1388, page 6.

prima facie admission under Rule 85 of the Rules. In all the circumstances, it is submitted that the application should be rejected.⁸⁷⁵

The observations of the prosecution

The prosecution submits that this applicant meets, *prima facie*, the necessary requirements for victim participation and that the application forms and further information received by the Registry suggest that this applicant was under the age of 15 at the time of his enlistment, conscription or use by the armed forces of the UPC, during the relevant time frame. The Prosecutor supports this application.⁸⁷⁶ In a further filing, the prosecution submits that the additional information provided confirms that applicant's date of birth in 1988.⁸⁷⁷ The prosecution also submits that the information provided supports the suggestion that the applicant was under the age of 15 during the material events.⁸⁷⁸

The observations of the victim's legal representative

The legal representatives submit in their reply that the applicant has set out that he was recruited for the FPLC as a child soldier when he was under 15 years old, and thus there is direct link with the charges brought against the accused, and therefore the applicant should be granted the status of victim and admitted as a participant in the proceedings.⁸⁷⁹

Legal representation

The applicant has been represented thus far by Mr Joseph Keta and Mr Jean Louis Gilissen.⁸⁸⁰

The Chamber's analysis and conclusions

⁸⁷⁵ Observations de la Défense sur les 15 demandes de participation à la procédure et les 30 demandes de participation complémentaires communiquées le 27 novembre 2008 ; Réponse de la Défense aux observations des représentants légaux relatives aux 105 demandes de participation communiquées le 20 mai 2008 ; et Observations de la Défense relatives aux victimes indirectes, 5 December 2008, ICC-01/04-01/06-1536, paragraph 26, 46.

⁸⁷⁶ Prosecution's Observations on 105 Redacted Applications for Victim Participation to the Case, 9 June 2008, ICC-01/04-01/06-1386, paragraph 27, pages 14-15.

⁸⁷⁷ Prosecution's Observations on supplementary information for victim applications a/0002/06, a/0047/06, a/0048/06, a/0051/06, a/0052/06, a/0077/06, a/0221/06, a/0224/06, a/0225/06, a/0227/06, a/0229/06, a/0230/06, a/0236/06, a/0237/06, a/0238/06, a/0239/06, a/0240/06, a/0243/06, a/0055/07, a/0056/07, a/0057/07, a/0058/07, a/0060/07, a/0155/07, a/0156/07, a/0172/07, a/0187/07, a/0007/08, ICC-01/04-01/06-1540-Conf, paragraph 22.

⁸⁷⁸ Prosecution's Observations on supplementary information for victim applications a/0002/06, a/0047/06, a/0048/06, a/0051/06, a/0052/06, a/0077/06, a/0221/06, a/0224/06, a/0225/06, a/0227/06, a/0229/06, a/0230/06, a/0236/06, a/0237/06, a/0238/06, a/0239/06, a/0240/06, a/0243/06, a/0055/07, a/0056/07, a/0057/07, a/0058/07, a/0060/07, a/0155/07, a/0156/07, a/0172/07, a/0187/07, a/0007/08, ICC-01/04-01/06-1540-Conf, paragraph 27.

⁸⁷⁹ Réponse aux "Prosecution's Observations on 105 Applications for Victim Participation to the Case" du 9 juin 2008 et aux « Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008 » du 10 juin 2008, 28 November, ICC-01/04-01/06/1522, paragraph 25, pages 12-13.

⁸⁸⁰ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, page 167 and Annex 83.

The Chamber considers that the documents provided prove, *prima facie*, the identity of the applicant in accordance with the Trial Chamber's Decision on victims' participation. The Trial Chamber notes that the year of birth of the applicant as set out in the application form (1988) and the identification document (1986) are different.⁸⁸¹ However, in a subsequent filing, the Trial Chamber was provided with a student identity card indicating that the applicant was born on [REDACTED] 1988.⁸⁸²

The Chamber has carefully weighed the inconsistencies revealed in the documentation as regards the applicant's date of birth, but in all the circumstances those differences do not, *ipso facto*, undermine the credibility of the applicant's assertion as to his age in the application form, supported by his student identity card. In the view of the Chamber the material, considered overall, proves, *prima facie*, the identity and age of the applicant in accordance with the Trial Chamber's Decision on victims' participation. Thus, the Chamber considers that it has been provided with enough information to determine, *prima facie*, that the applicant was approximately [REDACTED] years old at the relevant time.

The Trial Chamber determines that the applicant has given sufficient evidence to establish, *prima facie*, that he is a victim under Rule 85(a) of the Rules, as the Chamber has been provided with enough information to establish that the applicant has suffered personal harm as a result of the commission of crimes included in the charges brought against the accused, namely his alleged enlistment and/or conscription and/or use to participate actively in the hostilities by the UPC between September 2002 and 13 August 2003.⁸⁸³

Applicant a/0240/06 [Annex 95]

The means of identification

The Trial Chamber was not provided with any identification document for the applicant in the original application form.⁸⁸⁴ In a subsequent filing the Chamber was provided with his student identity card.⁸⁸⁵

⁸⁸¹ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 166-167 and Annex 83.

⁸⁸² Second report on supplementary information concerning application for participation filed with the "First Report to Trial Chamber I on Victims' Applications under Regulation 86(5) of the Regulations of the Court", dated 11 April 2008 (ICC-01/04-01/06-1275-Conf-Exp), 21 November 2008, page 6 and Anx6.

⁸⁸³ Decision on victims' participation, 18 January 2008, ICC-01/04-01/06-1119, as confirmed, amended and reversed by the Appeals Chamber's 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.

⁸⁸⁴ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 191-192 and Annex 95.

⁸⁸⁵ Second report on supplementary information concerning application for participation filed with the "First Report to Trial Chamber I on Victims' Applications under Regulation 86(5) of the Regulations of the Court", dated 11 April 2008 (ICC-01/04-01/06-1275-Conf-Exp), 21 November 2008, page 6 and Anx5.

The claim to victim status

The applicant stated in his original application that he was recruited by UPC militia in ██████ 2002 when he was ██████ years old. He was trained to murder, which caused him psychological harm.⁸⁸⁶ In a subsequent declaration the applicant explained that he was born on ██████ 1989 and that he was recruited in ██████ 2002, when he was ██████ years old.⁸⁸⁷

The phases of the proceedings

The applicant submits he is interested in participating in all phases of the proceedings.⁸⁸⁸

The observations of the defence

The defence submits the applicant was born in October 1986 and was thus over 15 years of age in September 2002.⁸⁸⁹ The defence further argues that the applicant gave a different date of birth (October 1989) in a supplementary application from that contained in his initial application (October 1986); furthermore he alleged in the first application that he was abducted in October 2002, whilst in his supplementary application he stated that he was abducted in March 2002 and that he participated in hostilities in October 2002. As a result, the defence contends that the information provided by this applicant is uncertain and contradictory, and it does not meet the requirements for *prima facie* admission under Rule 85. In all the circumstances, it is submitted that the application should be rejected.⁸⁹⁰

The observations of the prosecution

In its original filing, the prosecution submitted that the applicant does not meet the criteria for victims participating in the case because he was either over the age of 15 at the time of his recruitment or had turned 15 by September 2002.⁸⁹¹ However, in a later filing the prosecution submits that the information provided supports the suggestion that the applicant was under the age of 15 during the material events.⁸⁹²

⁸⁸⁶ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 191-192 and Annex 95.

⁸⁸⁷ Second report on supplementary information concerning application for participation filed with the "First Report to Trial Chamber I on Victims' Applications under Regulation 86(5) of the Regulations of the Court", dated 11 April 2008 (ICC-01/04-01/06-1275-Conf-Exp), 21 November 2008, page 6 and Anx5.

⁸⁸⁸ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, page 192 and Annex 95.

⁸⁸⁹ Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008, 10 June 2008, ICC-01/04-01/06-1388, paragraph 13.

⁸⁹⁰ Observations de la Défense sur les 15 demandes de participation à la procédure et les 30 demandes de participation complémentaires communiquées le 27 novembre 2008 ; Réponse de la Défense aux observations des représentants légaux relatives aux 105 demandes de participation communiquées le 20 mai 2008 ; et Observations de la Défense relatives aux victimes indirectes, 5 December 2008, ICC-01/04-01/06-1536, paragraph 26, 46.

⁸⁹¹ Prosecution's Observations on 105 Redacted Applications for Victim Participation to the Case, 9 June 2008, ICC-01/04-01/06-1386, paragraph 27, paragraphs 36 and 41.

⁸⁹² Prosecution's Observations on supplementary information for victim applications a/0002/06, a/0047/06, a/0048/06, a/0051/06, a/0052/06, a/0077/06, a/0221/06, a/0224/06, a/0225/06, a/0227/06, a/0229/06, a/0230/06, a/0236/06, a/0237/06, a/0238/06, a/0239/06, a/0240/06, a/0243/06, a/0055/07,

The observations of the victim's legal representative

The OPCV, who acted originally as the legal representative of the applicant submits in its reply that according to Rule 89(2) of the Rules a victim whose application has been rejected may file a fresh application later in the proceedings. Thus, nothing in the Statute prevents a victim, whose application has been rejected by the Pre-Trial Chamber, from submitting a new application or supplementing his or her previous application with additional information.⁸⁹³

The legal representatives submit in their reply that the applicant has set out that he was recruited for the FPLC as a child soldier when he was under 15 years old and thus there is direct link with the charges brought against the accused, and therefore the applicant should be granted the status of victim and admitted as a participant in the proceedings.⁸⁹⁴

Legal representation

As set out above, the applicant was originally represented by the OPCV.⁸⁹⁵ Thereafter, the Chamber was informed that the applicant had chosen Mr Joseph Keta as his legal representative.⁸⁹⁶

The Chamber's analysis and conclusions

The Trial Chamber notes that the applicant has also applied to participate in the DRC situation. In its decision of 31 January 2008, the Pre-Trial Chamber concluded that the applicant had not provided the Chamber with any identification document and thus his application was considered incomplete.⁸⁹⁷

The Trial Chamber considers that the documents and other information provided prove, *prima facie*, the identity of the applicant in accordance with the Trial Chamber's Decision on victims' participation.

a/0056/07, a/0057/07, a/0058/07, a/0060/07, a/0155/07, a/0156/07, a/0172/07, a/0187/07, a/0007/08, ICC-01/04-01/06-1540-Conf, paragraphs 28-29.

⁸⁹³ Observations du BPCV en tant que représentant légal des demandeurs a/0004/06, a/0047/06 à a/0052/06, a/0077/06, a/0078/06 et a/0240/06, sur leurs demandes de participation dans le cadre de l'affaire *Le Procureur c. Thomas Lubanga Dyilo*, 28 November 2008, ICC-01/04-01/06-1510, paragraph 22.

⁸⁹⁴ Réponse aux "Prosecution's Observations on 105 Applications for Victim Participation to the Case" du 9 juin 2008 et aux « Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008 » du 10 juin 2008, 28 November, ICC-01/04-01/06/1522, paragraph 25, page 11.

⁸⁹⁵ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, page 192 and Annex 95.

⁸⁹⁶ Amendement à la désignation du Bureau du conseil public pour les victimes pour la représentation légale du demandeur a/0240/06, 27 November 2008, ICC-01/04-01/06-1523.

⁸⁹⁷ Corrigendum à la "Décision sur les demandes de participation à la procédure déposées dans le cadre de l'enquête en République démocratique du Congo par a/0004/06 à a/0009/06, a/0016/06 à a/0063/06, a/0071/06 à a/0080/06 et a/0105/06 à a/0110/06, a/0188/06, a/0128/06 à a/0162/06, a/0199/06, a/0203/06, a/0209/06, a/0214/06, a/0220/06 à a/0222/06, a/0224/06, a/0227/06 à a/0230/06, a/0234/06 à a/0236/06, a/0240/06, a/0225/06, a/0226/06, a/0231/06 à a/0233/06, a/0237/06 à a/0239/06 et a/0241/06 à a/0250/06", ICC-01/04-423-Corr, 31 January 2008, paragraph 17.

The Chamber has carefully weighed the inconsistencies revealed in the documentation as regards the applicant's date of birth, but in all the circumstances those differences do not, *ipso facto*, undermine the credibility of the applicant's assertion as to his age in the application form, supported by his student identity card. In the view of the Chamber, the material, considered overall, proves, *prima facie*, the age of the applicant in accordance with the Trial Chamber's Decision on victims' participation.

The Chamber considers that the overall information (namely the student identity card, the application form and the additional information provided to the Chamber) also prove, *prima facie*, that the applicant was [REDACTED] years old during the material events.

The Trial Chamber determines that the applicant has given sufficient evidence to establish, *prima facie*, that he is a victim under Rule 85(a) of the Rules, as the Chamber has been provided with enough information to establish that the applicant has suffered personal harm as a result of the commission of crimes included in the charges brought against the accused, namely his alleged enlistment and/or conscription and/or use to participate actively in the hostilities by the UPC between September 2002 and 13 August 2003.⁸⁹⁸

Applicant a/0236/06 [Annex 107]

The means of identification

The Trial Chamber was not provided with any identification document for the applicant in the original application form.⁸⁹⁹ In a subsequent filing, the Chamber was provided with a student identity card of the applicant.⁹⁰⁰

The claim to victim status

The applicant stated in his original application that in [REDACTED] 2003 he was recruited by the UPC militia when he was [REDACTED] years old. He was subjected to serious corporal punishment when he was disobedient, and he was forced to take drugs and was subjected to indoctrination. He was tortured and trained to loot. As a consequence of these events, his schooling was interrupted and he has suffered psychological problems. He has pain in his [REDACTED] as a result of the mistreatment he suffered. The applicant alleges psychological and physical harm.⁹⁰¹ In a subsequent

⁸⁹⁸ Decision on victims' participation, 18 January 2008, ICC-01/04-01/06-1119, as confirmed, amended and reversed by the Appeals Chamber's 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.

⁸⁹⁹ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 220-221 and Annex 107.

⁹⁰⁰ Second report on supplementary information concerning application for participation filed with the "First Report to Trial Chamber I on Victims' Applications under Regulation 86(5) of the Regulations of the Court", dated 11 April 2008 (ICC-01/04-01/06-1275-Conf-Exp), 21 November 2008, page 6 and Anx 4.

⁹⁰¹ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 220-221 and Annex 107.

filing the applicant declares that he was born on [REDACTED] [REDACTED] 1988 and that he was [REDACTED] years old during the material events. He states that the mistake in the original application was due to a misunderstanding between the applicant and the intermediary who was assisting him to complete the form.⁹⁰²

The phases of the proceedings

The applicant has expressed an interest in participating in all phases of the proceedings.⁹⁰³

The observations of the defence

The defence, in its original submission, argued that since the applicant first stated that he was born in 1986, he was 16 years old in September 2002.⁹⁰⁴ The defence also relies on the change between the date of birth given by the applicant in his supplementary application (July 1988) and that indicated in his initial application (July 1986). Furthermore, the defence refers to the fact that he stated in the first application that he was abducted in September 2003, outside the period of the charges brought against the accused. This, submit the defence, was contradicted by the applicant in his supplementary application when he stated that he was abducted in February 2002. As a result, the defence contends that the information provided by this applicant is uncertain and contradictory and it does not meet the requirements for *prima facie* admission under Rule 85. In all the circumstances, it is submitted that the application should be rejected.⁹⁰⁵

The observations of the prosecution

The prosecution originally argued that the applicant does not meet the criteria for participation in the case because the applicant was either over the age of 15 at the time of his recruitment or he turned 15 by September 2002.⁹⁰⁶ However, in a later filing the prosecution submits that the information provided supports the suggestion that the applicant was under the age of 15 during the material events.⁹⁰⁷

⁹⁰² Second report on supplementary information concerning application for participation filed with the "First Report to Trial Chamber I on Victims' Applications under Regulation 86(5) of the Regulations of the Court", dated 11 April 2008 (ICC-01/04-01/06-1275-Conf-Exp), 21 November 2008, page 6 and Annex 4.

⁹⁰³ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, page 221 and Annex 107.

⁹⁰⁴ Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008, 10 June 2008, ICC-01/04-01/06-1388, paragraph 13, page 6.

⁹⁰⁵ Observations de la Défense sur les 15 demandes de participation à la procédure et les 30 demandes de participation complémentaires communiquées le 27 novembre 2008 ; Réponse de la Défense aux observations des représentants légaux relatives aux 105 demandes de participation communiquées le 20 mai 2008 ; et Observations de la Défense relatives aux victimes indirectes, 5 December 2008, ICC-01/04-01/06-1536, paragraph 26, 46.

⁹⁰⁶ Prosecution's Observations on 105 Redacted Applications for Victim Participation to the Case, 9 June 2008, ICC-01/04-01/06-1386, paragraph 27, paragraphs 36 and 41.

⁹⁰⁷ Prosecution's Observations on supplementary information for victim applications a/0002/06, a/0047/06, a/0048/06, a/0051/06, a/0052/06, a/0077/06, a/0221/06, a/0224/06, a/0225/06, a/0227/06, a/0229/06, a/0230/06, a/0236/06, a/0237/06, a/0238/06, a/0239/06, a/0240/06, a/0243/06, a/0055/07, a/0056/07, a/0057/07, a/0058/07, a/0060/07, a/0155/07, a/0156/07, a/0172/07, a/0187/07, a/0007/08, ICC-01/04-01/06-1540-Conf, paragraphs 28-29.

The observations of the victim's legal representative

The legal representatives submit in their reply that the applicant has set out that he was recruited for the FPLC as a child soldier when he was under 15 years old and thus there is direct link with the charges brought against the accused, and therefore the applicant should be granted the status of victim and admitted as a participant in the proceedings.⁹⁰⁸

Legal representation

The applicant has been represented thus far by Mr Joseph Keta and Mr Jean Louis Gilissen.⁹⁰⁹

The Chamber's analysis and conclusions

The Trial Chamber notes that the applicant has also applied to participate in the DRC Situation and Pre-Trial Chamber I determined that the applicant's request was incomplete as he had not included any identification document.⁹¹⁰

The Chamber has carefully weighed the inconsistencies revealed in the documentation as regards the applicant's date of birth, but in all the circumstances those differences do not, *ipso facto*, undermine the credibility of the applicant's assertion as to his age in the application form, supported by his student identity card. In the view of the Chamber, the material, considered overall, proves, *prima facie*, the identity and of the applicant in accordance with the Trial Chamber's Decision on victims' participation.

The Chamber considers that the overall information (namely the student identity card, the application form and the additional information provided to the Chamber) also prove, *prima facie*, that the applicant was ■ or ■ years old during the material events.

The Trial Chamber determines that the applicant has given sufficient evidence to establish, *prima facie*, that he is a victim under Rule 85(a) of the Rules, as the Chamber has been provided with enough information to establish that the applicant suffered personal harm as a result of the commission of crimes included in the charges brought against the accused, namely his alleged enlistment and/or conscription

⁹⁰⁸ Réponse aux "Prosecution's Observations on 105 Applications for Victim Participation to the Case" du 9 juin 2008 et aux « Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008 » du 10 juin 2008, 28 November, ICC-01/04-01/06/1522, paragraph 25, pages 10-11.

⁹⁰⁹ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, page 221 and Annex 107.

⁹¹⁰ Corrigendum à la "Décision sur les demandes de participation à la procédure déposées dans le cadre de l'enquête en République démocratique du Congo par a/0004/06 à a/0009/06, a/0016/06 à a/0063/06, a/0071/06 à a/0080/06 et a/0105/06 à a/0110/06, a/0188/06, a/0128/06 à a/0162/06, a/0199/06, a/0203/06, a/0209/06, a/0214/06, a/0220/06 à a/0222/06, a/0224/06, a/0227/06 à a/0230/06, a/0234/06 à a/0236/06, a/0240/06, a/0225/06, a/0226/06, a/0231/06 à a/0233/06, a/0237/06 à a/0239/06 et a/0241/06 à a/0250/06", ICC-01/04-423-Corr, 31 January 2008, paragraph 17.

and/or use to participate actively in the hostilities by the UPC between September 2002 and 13 August 2003.⁹¹¹

Applicant a/0227/06 [Annex 94]

The means of identification

The Trial Chamber was not originally provided with any identification document for the applicant in the original application form.⁹¹² However, in a subsequent filing, the Chamber was provided with the student identity card of the applicant.⁹¹³

The claim to victim status

The applicant stated in his original application that on [REDACTED] 2003 he was recruited by the UPC militia at the age of [REDACTED]. He killed a number of people, and he was trained to loot. He was tortured and drugged. He was shot in his [REDACTED], and his house was looted and burnt by UPC militia. His family was mistreated and he saw close relatives die. As a result of these events, his schooling was terminated and he learnt "violence and the spirit of killing". The applicant suffered psychological, physical and material harm.⁹¹⁴ In a subsequent declaration, the applicant explained that he was born in 1989 (and not in 1987 as previously stated).⁹¹⁵

The phases of the proceedings

The applicant has an interest in participating in all phases of the proceedings.⁹¹⁶

The observations of the defence

The defence originally submitted that the applicant has set out that he was born in July 1987 and was thus 15 years old in September 2002.⁹¹⁷ The defence also relies on the change between the date of birth given by the applicant in his supplementary application (July 1989) and that indicated in his initial application (July 1987). Furthermore, the defence refers to the fact that the applicant stated in his first

⁹¹¹ Decision on victims' participation, 18 January 2008, ICC-01/04-01/06-1119, as confirmed, amended and reversed by the Appeals Chamber's 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.

⁹¹² First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 189-190 and Annex 94.

⁹¹³ Second report on supplementary information concerning application for participation filed with the "First Report to Trial Chamber I on Victims' Applications under Regulation 86(5) of the Regulations of the Court", dated 11 April 2008 (ICC-01/04-01/06-1275-Conf-Exp), 21 November 2008, page 6 and Anx3.

⁹¹⁴ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 189-190 and Annex 94.

⁹¹⁵ Second report on supplementary information concerning application for participation filed with the "First Report to Trial Chamber I on Victims' Applications under Regulation 86(5) of the Regulations of the Court", dated 11 April 2008 (ICC-01/04-01/06-1275-Conf-Exp), 21 November 2008, page 6 and Anx3.

⁹¹⁶ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, page 190 and Annex 94.

⁹¹⁷ Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008, 10 June 2008, ICC-01/04-01/06-1388, paragraph 13

application that he was abducted in 2003, whilst in his supplementary application he stated that he does not remember the exact date of his abduction. As a result, the defence submits that the information provided by the applicant is uncertain and contradictory and it does not meet the requirements for *prima facie*, admission under Rule 85. In all the circumstances, it is submitted that the application should be rejected.⁹¹⁸

The observations of the prosecution

The prosecution contends that the applicant does not meet the criteria because he was either over the age of 15 at the time of his recruitment or turned 15 before September 2002.⁹¹⁹ In a further filing the prosecution submits that the information provided supports the suggestion that the applicant was under the age of 15 during the material events.⁹²⁰

The observations of the victim's legal representative

The legal representatives, submit in their reply that the applicant has set out that he was recruited for the FPLC as a child soldier when he was under 15 years old and thus there is direct link with the charges brought against the accused, and therefore the applicant should be granted the status of victim and admitted as a participant in the proceedings.⁹²¹

Legal representation

The applicant has been represented thus far by Mr Joseph Keta and Mr Jean Louis Gilissen.⁹²²

The Chamber's analysis and conclusions

The Trial Chamber notes that the applicant has also applied to participate in the DRC situation. In its decision of 31 January 2008, the Pre-Trial Chamber concluded that the

⁹¹⁸ Observations de la Défense sur les 15 demandes de participation à la procédure et les 30 demandes de participation complémentaires communiquées le 27 novembre 2008 ; Réponse de la Défense aux observations des représentants légaux relatives aux 105 demandes de participation communiquées le 20 mai 2008 ; et Observations de la Défense relatives aux victimes indirectes, 5 December 2008, ICC-01/04-01/06-1536, paragraph 26, 46.

⁹¹⁹ Prosecution's Observations on 105 Redacted Applications for Victim Participation to the Case, 9 June 2008, ICC-01/04-01/06-1386, paragraph 27, paragraphs 36 and 41

⁹²⁰ Prosecution's Observations on supplementary information for victim applications a/0002/06, a/0047/06, a/0048/06, a/0051/06, a/0052/06, a/0077/06, a/0221/06, a/0224/06, a/0225/06, a/0227/06, a/0229/06, a/0230/06, a/0236/06, a/0237/06, a/0238/06, a/0239/06, a/0240/06, a/0243/06, a/0055/07, a/0056/07, a/0057/07, a/0058/07, a/0060/07, a/0155/07, a/0156/07, a/0172/07, a/0187/07, a/0007/08, ICC-01/04-01/06-1540-Conf, paragraphs 28-29.

⁹²¹ Réponse aux "Prosecution's Observations on 105 Applications for Victim Participation to the Case" du 9 juin 2008 et aux « Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008 » du 10 juin 2008, 28 November, ICC-01/04-01/06/1522, paragraph 25, page 10.

⁹²² First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, page 190 and Annex 94; Second report on supplementary information concerning application for participation filed with the "First Report to Trial Chamber I on Victims' Applications under Regulation 86(5) of the Regulations of the Court", dated 11 April 2008 (ICC-01/04-01/06-1275-Conf-Exp), 21 November 2008, Anx3.

applicant had not provided the Chamber with any identification document and thus his application was considered incomplete.⁹²³

The Trial Chamber also notes that applicants a/0224/06, a/0225/06, a/0226/06 and a/0227/06 were allegedly recruited at same time.⁹²⁴

The Chamber has carefully weighed the inconsistencies revealed in the documentation as regards the applicant's date of birth, but in all the circumstances those differences do not, *ipso facto*, undermine the credibility of the applicant's assertion as to his age in the application form, supported by his student identity card. In the view of the Chamber, the material, considered overall, proves, *prima facie*, the identity of the applicant in accordance with the Trial Chamber's Decision on victims' participation.

The Chamber considers that the overall information (namely the student identity card, the application form and the additional information provided to the Chamber) also prove, *prima facie*, that the applicant was ■ years old during the material events.

The Trial Chamber determines that the applicant has given sufficient evidence to establish, *prima facie*, that he is a victim under Rule 85(a) of the Rules, as the Chamber has been provided with enough information to establish that the applicant has suffered personal harm as a result of the commission of crimes included in the charges brought against the accused, namely his alleged enlistment and/or conscription and/or use to participate actively in the hostilities by the UPC between September 2002 and 13 August 2003.⁹²⁵

Applicant a/0051/06 [Annex 105]

The means of identification

The Trial Chamber has been provided with the applicant's birth certificate and the election card and the identity card of the person acting on her behalf as well as the identity card of the witness who signed the application form.⁹²⁶ In a subsequent

⁹²³ Corrigendum à la "Décision sur les demandes de participation à la procédure déposées dans le cadre de l'enquête en République démocratique du Congo par a/0004/06 à a/0009/06, a/0016/06 à a/0063/06, a/0071/06 à a/0080/06 et a/0105/06 à a/0110/06, a/0188/06, a/0128/06 à a/0162/06, a/0199/06, a/0203/06, a/0209/06, a/0214/06, a/0220/06 à a/0222/06, a/0224/06, a/0227/06 à a/0230/06, a/0234/06 à a/0236/06, a/0240/06, a/0225/06, a/0226/06, a/0231/06 à a/0233/06, a/0237/06 à a/0239/06 et a/0241/06 à a/0250/06", ICC-01/04-423-Corr, 31 January 2008, paragraph 17.

⁹²⁴ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annexes 11, 75, 93 and 94.

⁹²⁵ Decision on victims' participation, 18 January 2008, ICC-01/04-01/06-1119, as confirmed, amended and reversed by the Appeals Chamber's 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.

⁹²⁶ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 216-217 and Annex 105.

filing the applicant, who is now an adult, renewed her application to act on her own behalf.⁹²⁷

The claim to victim status

The applicant states that she was recruited by the UPC militia in 2005 when she was ■ years old. In a subsequent filing in which the applicant provided further information to the Chamber, the applicant explained that she had been recruited by the UPC in 2003, and that she had stayed with the UPC until 2005. She states that there was a misunderstanding in the translation from ■ to French when she first completed her application in 2006.⁹²⁸ She was subject to inhumane and degrading treatment during her military training and was later forced to kill and to set Lendu villages on fire and to burn all that was in their way, and to mutilate and to loot. She was allegedly injured by ■ and believes it ■ her. As a consequence she is ■ and experiences physical pain, and has nightmares about these events. The applicant suffered psychological and physical harm.⁹²⁹

The phases of the proceedings

The applicant has expressed an interest in participating in all phases of the proceedings.⁹³⁰

The observations of the defence

The defence highlighted in its original filing that the applicant alleges she was recruited in 2005, outside the timeframe of the charges brought against the accused.⁹³¹ In a later filing, the defence relied on the contradiction between the applicant's assertion in her initial application that she was recruited in 2005 and the suggestion in her supplementary application that the recruitment took place in 2003. As a result, the defence contends that the application does not meet the requirements for *prima facie* admission under Rule 85 of the Rules. In all the circumstances, it is submitted that the application should be rejected.⁹³²

⁹²⁷ Second report on supplementary information concerning application for participation filed with the "First Report to Trial Chamber I on Victims' Applications under Regulation 86(5) of the Regulations of the Court", dated 11 April 2008 (ICC-01/04-01/06-1275-Conf-Exp), 21 November 2008, pages 5-6 and Anx1

⁹²⁸ Second report on supplementary information concerning application for participation filed with the "First Report to Trial Chamber I on Victims' Applications under Regulation 86(5) of the Regulations of the Court", dated 11 April 2008 (ICC-01/04-01/06-1275-Conf-Exp), 21 November 2008, pages 5-6 and Anx1.

⁹²⁹ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 216-217 and Annex 105.

⁹³⁰ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, page 217 and Annex 105.

⁹³¹ Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008, 10 June 2008, ICC-01/04-01/06-1388, paragraph 13, page 7.

⁹³² Observations de la Défense sur les 15 demandes de participation à la procédure et les 30 demandes de participation complémentaires communiquées le 27 novembre 2008 ; Réponse de la Défense aux observations des représentants légaux relatives aux 105 demandes de participation communiquées le 20 mai 2008 ; et Observations de la Défense relatives aux victimes indirectes, 5 December 2008, ICC-01/04-01/06-1536, paragraphs 26, 46.

The observations of the prosecution

The prosecution in its original submission contended that the applicant should be granted status to participate in the trial against Thomas Lubanga Dyilo as she fulfils all the necessary criteria. The prosecution noted that the applicant is a former prosecution witness.⁹³³ In a further submission, the prosecution submits that the applicant was no longer a minor when the application was submitted and therefore consent by a legal guardian is not necessary. Furthermore, the applicant clarifies in the supplementary information that she was conscripted in 2003 and not in 2005 as indicated in her application form.⁹³⁴

The observations of the victim's legal representative

The legal representatives submit in their reply that according to the additional information provided by the applicant, there is no doubt that she was recruited in Ituri, in the Democratic Republic of Congo, after 1 July 2002. Thus, it is said, her application meets the conditions in Rule 85(a) of the Rules, and participation by her fulfils the criteria established by Article 68(3) of the Statute. In all the circumstances, it is submitted the applicant should be admitted as a participant in the proceedings.

⁹³⁵

Legal representation

The applicant has been represented thus far by the OPCV.⁹³⁶

The Chamber's analysis and conclusions

The Trial Chamber observes that Pre-Trial Chamber I determined that the applicant was a victim of the case but deemed that her participation was not appropriate at the time of the confirmation hearing.⁹³⁷

The Chamber notes that the applicant also applied to participate in the DRC situation and that in its decision of 31 January 2008, the Pre-Trial Chamber determined it would not resolve the applicant's status, stating that since the application was also pending before the Trial Chamber, the applicant's recognition as a victim in the

⁹³³ Prosecution's Observations on 105 Redacted Applications for Victim Participation to the Case, 9 June 2008, ICC-01/04-01/06-1386, paragraph 24.

⁹³⁴ Prosecution's Observations on supplementary information for victim applications a/0002/06, a/0047/06, a/0048/06, a/0051/06, a/0052/06, a/0077/06, a/0221/06, a/0224/06, a/0225/06, a/0227/06, a/0229/06, a/0230/06, a/0236/06, a/0237/06, a/0238/06, a/0239/06, a/0240/06, a/0243/06, a/0055/07, a/0056/07, a/0057/07, a/0058/07, a/0060/07, a/0155/07, a/0156/07, a/0172/07, a/0187/07, a/0007/08, ICC-01/04-01/06-1540-Conf, paragraphs 17 and 18.

⁹³⁵ Observations du BPCV en tant que représentant légal des demandeurs a/0004/06, a/0047/06 à a/0052/06, a/0077/06, a/0078/06 et a/0240/06, sur leurs demandes de participation dans le cadre de l'affaire *Le Procureur c. Thomas Lubanga Dyilo*, 28 November 2008, ICC-01/04-01/06-1510, paragraphs 30-32.

⁹³⁶ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, page 217 and Annex 105.

⁹³⁷ Décision sur les demandes de participation à la procédure a/0004/06 à a/0009/06, a/0016/06 à a/0063/06, a/0071/06 à a/0080/06 et a/0105/06 dans le cadre de l'affaire *le Procureur c. Thomas Lubanga Dyilo*, 20 October 2006, ICC-01/04-01/06-601, pages 10-11

“case” would automatically result in his recognition in the “situation”.⁹³⁸ In another decision, the Pre-Trial Chamber considered that the application was incomplete since the applicant “(was) a minor at the time the application... (was) made and (did) not include the consent of the Applicant's next-of-kin or legal guardian that an application was made on the Applicant's behalf”.⁹³⁹

The Trial Chamber considers that the documents and other information provided prove, *prima facie*, the identity of the applicant in accordance with the Trial Chamber's Decision on victims' participation.

The Chamber has carefully weighed the inconsistencies revealed in the documentation as regards the applicant's date of recruitment. The Chamber considers that it is logical to conclude that the fact that the applicant was giving the information orally in [REDACTED], and that this was then translated and written in French may well have resulted in a mistake as to the date of recruitment. In those circumstances in, the view of the Chamber the material, considered overall, proves, *prima facie*, that the applicant was recruited in 2003 when she was [REDACTED] or [REDACTED] years old.

The Trial Chamber determines that the applicant has given sufficient evidence to establish, *prima facie*, that she is a victim under Rule 85(a) of the Rules, as the Chamber has been provided with enough information to establish that the applicant suffered personal harm as a result of the commission of crimes included in the charges brought against the accused, namely her alleged enlistment and/or conscription and/or use to participate actively in the hostilities by the UPC between September 2002 and 13 August 2003.⁹⁴⁰

Applicant a/0221/06 [Annex 59]

The means of identification

The applicant did not provide any identification document with his initial application.⁹⁴¹ In an additional application, the Chamber was provided with the

⁹³⁸ Corrigendum à la “Décision sur les demandes de participation à la procédure déposées dans le cadre de l'enquête en République démocratique du Congo par a/0004/06 à a/0009/06, a/0016/06 à a/0063/06, a/0071/06 à a/0080/06 et a/0105/06 à a/0110/06, a/0188/06, a/0128/06 à a/0162/06, a/0199/06, a/0203/06, a/0209/06, a/0214/06, a/0220/06 à a/0222/06, a/0224/06, a/0227/06 à a/0230/06, a/0234/06 à a/0236/06, a/0240/06, a/0225/06, a/0226/06, a/0231/06 à a/0233/06, a/0237/06 à a/0239/06 et a/0241/06 à a/0250/06”, ICC-01/04-423-Corr, 31 January 2008, paragraph 144.

⁹³⁹ Decision on the applications for participation file in connection with the investigation in the Democratic Republic of Congo by Applicants a/0047/06 to a/0052/06, a/163/06 to a/0187/06, a/0221/06, a/0226/06, a/0231/06 to a/0233/06, a/0237/06 to a/0239/06, and a/0241 to a/0250/06, 3 July 2008, ICC-01/04-505, paragraph 31.

⁹⁴⁰ Decision on victims' participation, 18 January 2008, ICC-01/04-01/06-1119, as confirmed, amended and reversed by the Appeals Chamber's 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.

⁹⁴¹ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 117-118 and Annex 59.

applicant's birth certificate,⁹⁴² and subsequently, the Chamber was provided with the student identity card for the applicant.⁹⁴³

The claim to victim status

The applicant states he was recruited by the UPC in ██████████ 2002 when he was ████████ years old. He was tortured; he was rolled on the ground; he was forced to fast and was starved; and he was drugged. His commanders made him loot other people's property. He suffered psychological harm and violations of his fundamental rights. These events interrupted his education; he is demoralised; and he contracted ██████████.⁹⁴⁴

The phases of the proceedings

The applicant submits he has an interest in participating in all phases of the proceedings.⁹⁴⁵

The observations of the defence

The defence submitted in its original filing that this applicant should not be permitted to participate in the proceedings, because at one stage he seemingly suggested he was born in January 1987, and was, therefore, 15 years old in September 2002. Further, it submitted that the applicant has not provided any proof of identification.⁹⁴⁶ The defence submits in a secondary filing that the applicant has mentioned three different dates of birth: in his initial application he suggested that he was born in January 1987, and in two subsequent applications he said he was born in January 1989 and July 1989. Furthermore he alleged in his first application that he was abducted in March 2002, whilst in his two further applications he stated that he was recruited either in January 2003 or in December 2003. As a result, the defence contends that the information provided by this applicant is uncertain and contradictory and it does not meet the minimum requirements for *prima facie* admission, under Rule 85. In all the circumstances, it is submitted that the application should be rejected.⁹⁴⁷

⁹⁴² Report on supplementary information received and missing information concerning the applications for participation dealt with in the "First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court" dated 11 April 2008 (ICC/01/04-01/06/1275-Conf-Exp), 6 June 2008, Annex 2.

⁹⁴³ Second report on supplementary information concerning application for participation filed with the "First Report to Trial Chamber I on Victims' Applications under Regulation 86(5) of the Regulations of the Court", dated 11 April 2008 (ICC-01/04-01/06-1275-Conf-Exp), 21 November 2008, page 7 and Anx12.

⁹⁴⁴ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 117-118 and Annex 59.

⁹⁴⁵ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 117-118 and Annex 59.

⁹⁴⁶ Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008, 10 June 2008, ICC-01/04-01/06-1388, paragraphs 13, 16 and pages 12-13.

⁹⁴⁷ Observations de la Défense sur les 15 demandes de participation à la procédure et les 30 demandes de participation complémentaires communiquées le 27 novembre 2008 ; Réponse de la Défense aux observations des représentants légaux relatives aux 105 demandes de participation communiquées le 20

The observations of the prosecution

The prosecution submitted in its original filing that this applicant meets, *prima facie*, the necessary requirements for victim participation. The application forms and the further information received by the Registry suggest that this applicant was under the age of 15 at the time of his enlistment, conscription or use by the armed forces of the UPC, during the relevant time-frame. The prosecution, therefore, supports this application.⁹⁴⁸ In a further filing, the prosecution submits that this application has been supplemented by a birth certificate and it should be considered complete since the facts indicate that the applicant was under the age of 15 during the material events.⁹⁴⁹

Victim representative observations

The legal representatives, submit in their reply that the applicant has set out that he was recruited for the FPLC as a child soldier when he was under 15 years old and thus there is direct link with the charges brought against the accused, and therefore the applicant should be granted the status of victim and admitted as a participant in the proceedings.⁹⁵⁰

Legal representation

The applicant has been represented thus far by Mr Joseph Keta Orwinyo and and Mr Jean Louis Gilissen.⁹⁵¹

The Chamber's analysis and conclusions

The Trial Chamber notes that the applicant has applied to participate in the DRC Situation. In its decision of 31 January 2008, the Pre-Trial Chamber determined it would not resolve the applicant's status, stating that since the application was also pending before the Trial Chamber, the applicant's recognition as a victim in the "case" would automatically result in his recognition in the "situation".⁹⁵² In a more

mai 2008 ; et Observations de la Défense relatives aux victimes indirectes, 5 December 2008, ICC-01/04-01/06-1536, paragraph 26, 46.

⁹⁴⁸ Prosecution's Observations on 105 Redacted Applications for Victim Participation to the Case, 9 June 2008, ICC-01/04-01/06-1386, paragraph 27, pages 14-15.

⁹⁴⁹ Prosecution's Observations on supplementary information for victim applications a/0002/06, a/0047/06, a/0048/06, a/0051/06, a/0052/06, a/0077/06, a/0221/06, a/0224/06, a/0225/06, a/0227/06, a/0229/06, a/0230/06, a/0236/06, a/0237/06, a/0238/06, a/0239/06, a/0240/06, a/0243/06, a/0055/07, a/0056/07, a/0057/07, a/0058/07, a/0060/07, a/0155/07, a/0156/07, a/0172/07, a/0187/07, a/0007/08, ICC-01/04-01/06-1540-Conf, paragraphs 20 and 27.

⁹⁵⁰ Réponse aux "Prosecution's Observations on 105 Applications for Victim Participation to the Case" du 9 juin 2008 et aux « Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008 » du 10 juin 2008, 28 November, ICC-01/04-01/06/1522, paragraph 25, page 9.

⁹⁵¹ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 117-118 and Annex 59.

⁹⁵² Corrigendum à la "Décision sur les demandes de participation à la procédure déposées dans le cadre de l'enquête en République démocratique du Congo par a/0004/06 à a/0009/06, a/0016/06 à a/0063/06, a/0071/06 à a/0080/06 et a/0105/06 à a/0110/06, a/0188/06, a/0128/06 à a/0162/06, a/0199/06, a/0203/06, a/0209/06, a/0214/06, a/0220/06 à a/0222/06, a/0224/06, a/0227/06 à a/0230/06,

recent decision of 3 July 2008, the Pre-Trial Chamber concluded that the applicant had not provided any proof of identity and thus the application was incomplete.⁹⁵³

The Chamber notes that the VPRS has commented that the date of the applicant's birth as revealed in his birth certificate (■ ■■ 1989) differs from other dates previously given (as set out in various documents submitted to the Chamber, rehearsed above).⁹⁵⁴ However, the applicant, in his application form, asserts that he was ■ years old when he was recruited in 2002, and this date is materially supported by his birth certificate and his student identity card. The Chamber has carefully weighed the inconsistencies revealed in the documentation as regards the applicant's date of birth, but in all the circumstances those differences do not, *ipso facto*, undermine the credibility of the applicant's assertion as to his age as set out in the application form, and confirmed by his birth certificate and his student identity card. In the view of the Chamber, the material, considered overall, proves, *prima facie*, the identity and age of the applicant in accordance with the Trial Chamber's Decision on victims' participation. It is fair to infer that mistakes may well have been made as regards his date of birth when some of the later paperwork for this applicant was completed. Thus, the Chamber considers that it has been provided with enough information to determine, *prima facie*, that the applicant was approximately ■ years old at the relevant time.

The Trial Chamber determines that the applicant has given sufficient evidence to establish, *prima facie*, that he is a victim under Rule 85(a) of the Rules, as the Chamber has been provided with enough information to conclude that the applicant suffered personal harm as a result of crimes included in the charges brought against the accused, namely his alleged enlistment and/or conscription and/or use to participate actively in the hostilities by the UPC between September 2002 and 13 August 2003.⁹⁵⁵

Applicant a/0226/06 [Annex 75]

The means of identification

a/0234/06 à a/0236/06, a/0240/06, a/0225/06, a/0226/06, a/0231/06 à a/0233/06, a/0237/06 à a/0239/06 et a/0241/06 à a/0250/06", ICC-01/04-423-Corr, 31 January 2008, paragraph 144.

⁹⁵³ Decision on the applications for participation file in connection with the investigation in the Democratic Republic of Congo by Applicants a/0047/06 to a/0052/06, a/163/06 to a/0187/06, a/0221/06, a/0226/06, a/0231/06 to a/0233/06, a/0237/06 to a/0239/06, and a/0241 to a/0250/06, 3 July 2008, ICC-01/04-505, paragraph 32.

⁹⁵⁴ The date of 11 January 1987 was referred to in filing ICC-01/04-01/06-1275-Conf-Exp, Annex 2, page 3; 11 January 1989 was referred to in filing ICC-01/04-01/06-1275-Conf-Exp, Annex 2, page 20; and 1 July 1989 in the birth certificate in filing ICC-01/04-01/06-1380-Conf-Exp.

⁹⁵⁵ Decision on victims' participation, 18 January 2008, ICC-01/04-01/06-1119, as confirmed, amended and reversed by the Appeals Chamber's 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.

The Trial Chamber has been provided with the applicant's school identity card and birth certificate.⁹⁵⁶

The claim to victim status

The applicant states that in 2003 he was recruited for the first time by the UPC, when he was [REDACTED] years old. He carried munitions for [REDACTED] kilometres, but he later escaped and returned home. Later that same year, at the same place, he was again recruited by the UPC militia. On this occasion, when he resisted, he was hit with a [REDACTED]. During this abduction, a [REDACTED] was assaulted when the latter tried to intervene. The applicant was taken to a training camp for a [REDACTED] programme, when he learnt how to use firearms, to loot, to rape young girls and to kill and massacre the Lendu population. The applicant was [REDACTED] and he participated in attacks. He explained how he was later [REDACTED] by the FAPC, when he suffered physical mistreatment. Thereafter, he was helped by [REDACTED] to escape and he returned to his home town, where [REDACTED] took care of him. As a consequence of these events his education was interrupted, and he suffers from anxiety, insomnia and serious psychological trauma. The applicant has been damaged morally, and he experienced serious violations of his fundamental rights.⁹⁵⁷

The applicant referred in his application to other victims (applicants a/0224/06, a/0225/06 and a/0227/06) who were allegedly recruited at same time.⁹⁵⁸

The phases of the proceedings

The applicant submits he has an interest in participating in all phases of the proceedings.⁹⁵⁹

The observations of the defence

The defence originally made no observations with respect to this applicant.⁹⁶⁰ However, the defence later observed that the applicant has mentioned a different date of birth from that indicated in his initial application. It submitted that as a result the application does not meet the requirements for *prima facie* admission under Rule 85 and it should be rejected.⁹⁶¹

⁹⁵⁶ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 150-151 and Annex 75.

⁹⁵⁷ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 150-151 and Annex 75.

⁹⁵⁸ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annexes 11, 75, 93 and 94.

⁹⁵⁹ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 150-151 and Annex 75.

⁹⁶⁰ Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008, 10 June 2008, ICC-01/04-01/06-1388.

⁹⁶¹ Observations de la Défense sur les 15 demandes de participation à la procédure et les 30 demandes de participation complémentaires communiquées le 27 novembre 2008 ; Réponse de la Défense aux observations des représentants légaux relatives aux 105 demandes de participation communiquées le 20

The observations of the prosecution

The prosecution submits that this applicant meets, *prima facie*, the necessary requirements for victim participation and that the application forms and further information received by the Registry suggest that this applicant was under the age of 15 at the time of his enlistment, conscription or use by the armed forces of the UPC, during the relevant time frame. The Prosecutor supports this application.⁹⁶²

The observations of the victim's legal representative

The legal representatives, submit in their reply that the applicant has set out that he was recruited for the FPLC as a child soldier when he was under 15 years old and thus there is direct link with the charges brought against the accused, and therefore the applicant should be granted the status of victim and admitted as a participant in the proceedings.⁹⁶³

Legal representation

The applicant has been represented thus far by Mr Joseph Keta Orwinyo and Mr Jean Louis Gilissen.⁹⁶⁴

The Chamber's analysis and conclusions

The Trial Chamber notes that the applicant has applied to participate in the DRC Situation. However, in its decision of 31 January 2008, the Pre-Trial Chamber determined it would not resolve the applicant's status, stating that since the application was also pending before the Trial Chamber, the applicant's recognition as a victim in the "case" would automatically result in his recognition in the "situation".⁹⁶⁵ In a more recent decision of 3 July 2008, the Pre-Trial Chamber concluded that since the applicant had not presented any identification document, the application was incomplete.⁹⁶⁶

mai 2008 ; et Observations de la Défense relatives aux victimes indirectes, 5 December 2008, ICC-01/04-01/06-1536, paragraph 26.

⁹⁶² Prosecution's Observations on 105 Redacted Applications for Victim Participation to the Case, 9 June 2008, ICC-01/04-01/06-1386, paragraph 27, pages 14-15.

⁹⁶³ Réponse aux "Prosecution's Observations on 105 Applications for Victim Participation to the Case" du 9 juin 2008 et aux « Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008 » du 10 juin 2008, 28 November, ICC-01/04-01/06/1522, paragraph 25, page 9

⁹⁶⁴ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 150-151 and Annex 75.

⁹⁶⁵ Corrigendum à la "Décision sur les demandes de participation à la procédure déposées dans le cadre de l'enquête en République démocratique du Congo par a/0004/06 à a/0009/06, a/0016/06 à a/0063/06, a/0071/06 à a/0080/06 et a/0105/06 à a/0110/06, a/0188/06, a/0128/06 à a/0162/06, a/0199/06, a/0203/06, a/0209/06, a/0214/06, a/0220/06 à a/0222/06, a/0224/06, a/0227/06 à a/0230/06, a/0234/06 à a/0236/06, a/0240/06, a/0225/06, a/0226/06, a/0231/06 à a/0233/06, a/0237/06 à a/0239/06 et a/0241/06 à a/0250/06", ICC-01/04-423-Corr, 31 January 2008, paragraph 144.

⁹⁶⁶ Decision on the applications for participation file din connection with the investigation in the Democratic Republic of Congo by Applicants a/0047/06 to a/0052/06, a/163/06 to a/0187/06, a/0221/06, a/0226/06, a/0231/06 to a/0233/06, a/0237/06 to a/0239/06, and a/0241 to a/0250/06, 3 July 2008, ICC-01/04-505, paragraph 32.

The Trial Chamber considers that the documents and the other material provided prove, *prima facie*, the identity of the applicant in accordance with the Trial Chamber's Decision on victims' participation. The birth certificate provided confirms the applicant's case, that he was born in 1988 and was thus under the age of 15 at the time of his recruitment. Although the school identity card sets out that the applicant was born in 1989, the Chamber considers that this may reasonably be the result of a typographical error, and, moreover, the weight of the evidence (*viz.* the applicant's own account and his birth certificate) supports the conclusion that he was born in 1988. In any event, whether he was born in 1988 or 1989, he was under the age of 15 at the relevant time. Therefore, viewed globally, this contradiction does not, *ipso facto*, destroy the credibility of this application.⁹⁶⁷

The Trial Chamber determines that the applicant has given sufficient evidence to establish, *prima facie*, that he is a victim under Rule 85(a) of the Rules, as the Chamber has been provided with enough information to conclude that the applicant suffered personal harm as a result of crimes included in the charges brought against the accused, namely his alleged enlistment and/or conscription and/or use to participate actively in the hostilities by the UPC between September 2002 and 13 August 2003.⁹⁶⁸

Applicant a/0233/06 [Annex 78]

The means of identification

The Trial Chamber has been provided with a demobilisation certificate, a certificate of a former child soldier (EAFGA), a family search certificate, a family reunification certificate, and a vaccination certificate for the applicant, and the election card for the person acting on his behalf.⁹⁶⁹

The claim to victim status

The applicant states he was forced by the UPDF to carry ammunitions in 2003, when he was ■ or ■ years old, resulting in his recruitment by the UPC when he was taken to a military camp. He remained with the UPC for ■ years. As a consequence of these events, the applicant was unable to attend school and suffered psychological harm and serious violations to his fundamental rights.⁹⁷⁰

The phases of the proceedings

⁹⁶⁷ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, Annex 75, pages 24 and 25.

⁹⁶⁸ Decision on victims' participation, 18 January 2008, ICC-01/04-01/06-1119, as confirmed, amended and reversed by the Appeals Chamber's 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.

⁹⁶⁹ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 156-157 and Annex 78.

⁹⁷⁰ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 156-157 and Annex 78.

The applicant submits he has an interest in participating in all phases of the proceedings.⁹⁷¹

The observations of the defence

The defence did not make any observations as regards this applicant.⁹⁷²

The observations of the prosecution

The prosecution submits that this applicant meets, *prima facie*, the necessary requirements for victim participation and that the application forms and further information received by the Registry suggest that this applicant was under the age of 15 at the time of his enlistment, conscription or use by the armed forces of the UPC, during the relevant time frame. The Prosecutor supports this application.⁹⁷³

The observations of the victim's legal representative

The legal representative observes in her reply that the prosecution does not oppose the participation of the applicant. The legal representative requests that the applicant is granted status to participate in the proceedings.⁹⁷⁴

Legal representation

The applicant has been represented thus far by Ms Carine Bapita Buyangandu.⁹⁷⁵

The Chamber's analysis and conclusions

The Trial Chamber notes that the applicant has applied to participate in the DRC Situation. However, in its decision of 31 January 2008, the Pre-Trial Chamber determined it would not resolve the applicant's status, stating that since the application was also pending before the Trial Chamber, the applicant's recognition as a victim in the "case" would automatically result in his recognition in the

⁹⁷¹ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 156-157 and Annex 78.

⁹⁷² Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008, 10 June 2008, ICC-01/04-01/06-1388.

⁹⁷³ Prosecution's Observations on 105 Redacted Applications for Victim Participation to the Case, 9 June 2008, ICC-01/04-01/06-1386, paragraph 27, pages 14-15.

⁹⁷⁴ Réponse des demandeurs a/0105/06, a/0231/06, a/0232/06, a/0233/06, a/0242/06, a/0243/06, a/0244/06, a/0245/06, a/0246/06, a/0247/06, a/0248/06, a/0249/06, a/0250/06, a/0001/07, a/0002/07, a/0003/07, a/0004/07, a/0005/07, a/0006/07, a/0251/07, a/0253/07 et a/0254/07 aux observations du Procureur et de la Défense quant à leur demande de participation à la procédure dans l'affaire Le Procureur contre Thomas Lubanga, 28 November 2008, ICC-01/04-01/06-1514, paragraphs 7, 25.

⁹⁷⁵ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 156-157 and Annex 78.

“situation”.⁹⁷⁶ In a more recent decision of 3 July 2008 the Pre-Trial Chamber granted his application to participate in the DRC Situation proceedings.⁹⁷⁷

The Trial Chamber considers that the documents provided prove, *prima facie*, the identity of the applicant and the person acting on his behalf in accordance with the Trial Chamber’s Decision on victims’ participation. These documents also prove the relationship between the applicant and the person acting on his behalf (his father).

The Trial Chamber has carefully reviewed the application form and the attached documents, along with the VPRS report, and it observes that the date of birth of the applicant is not described consistently: in the application form it is indicated that the applicant was born in 1991 (meaning he was approximately ■ at the time of his recruitment); in the EAFGA certificate it is stated to be 1992 (meaning he was approximately ■ at the time of his recruitment); in the family search certificate the date is given as “around 1989” (therefore meaning he was approximately ■ at the time of his recruitment); and in the reunification certificate it is set out that the applicant was ■ years old in 2005 (accordingly making the applicant approximately ■ at the time of his recruitment).⁹⁷⁸ The applicant also submitted his vaccination certificate, which states that he was born in 1988.

Although there is doubt as to the applicant’s precise age, there is no material doubt as to his identity, and the Trial Chamber considers that the applicant has provided the Chamber, in this sense, with the proper identification documents in accordance with the Trial Chamber’s Decision on victims’ participation. On the issue of his age, all the documents, save for one, indicate that the applicant was under the age of 15 at the time of his recruitment and the sole document to the contrary (a vaccination card) is of limited evidential value, and is self-evidently against the weight of the other evidence. A request that the applicant furnishes the Chamber with yet further documentation is unlikely to resolve this issue conclusively, and the Chamber, in all the circumstances, concludes that the burden of the evidence establishes, *prima facie*, that the applicant was under the age of 15 at the time of the relevant events.

⁹⁷⁶ Corrigendum à la “Décision sur les demandes de participation à la procédure déposées dans le cadre de l’enquête en République démocratique du Congo par a/0004/06 à a/0009/06, a/0016/06 à a/0063/06, a/0071/06 à a/0080/06 et a/0105/06 à a/0110/06, a/0188/06, a/0128/06 à a/0162/06, a/0199/06, a/0203/06, a/0209/06, a/0214/06, a/0220/06 à a/0222/06, a/0224/06, a/0227/06 à a/0230/06, a/0234/06 à a/0236/06, a/0240/06, a/0225/06, a/0226/06, a/0231/06 à a/0233/06, a/0237/06 à a/0239/06 et a/0241/06 à a/0250/06”, ICC-01/04-423-Corr, 31 January 2008, paragraph 144.

⁹⁷⁷ Decision on the applications for participation file in connection with the investigation in the Democratic Republic of Congo by Applicants a/0047/06 to a/0052/06, a/163/06 to a/0187/06, a/0221/06, a/0226/06, a/0231/06 to a/0233/06, a/0237/06 to a/0239/06, and a/0241 to a/0250/06, 3 July 2008, ICC-01/04-505, paragraph 96 and page 41.

⁹⁷⁸ First Report to Trial Chamber I on Victims’ Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 78

The Trial Chamber also notes that the applicant states in his application form that he was allegedly recruited in the █████ 2003, and thus within the scope of the charges brought against the accused.⁹⁷⁹

The Trial Chamber thus determines that the applicant has given sufficient evidence to establish, *prima facie*, that he is a victim under Rule 85(a) of the Rules, as the Chamber has been provided with enough information to conclude that the applicant suffered personal harm as a result of crimes included in the charges brought against the accused, namely his alleged enlistment and/or conscription and/or use to participate actively in the hostilities by the UPC between September 2002 and 13 August 2003.⁹⁸⁰

⁹⁷⁹ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 156-157 and Annex 78.

⁹⁸⁰ Decision on victims' participation, 18 January 2008, ICC-01/04-01/06-1119, as confirmed, amended and reversed by the Appeals Chamber's 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.

Group 1(g): Applicants who are still under 18 where the application has not been made by a person acting on their behalf

Application of victim a/0149/08 [Annex 10, filing 1501]

The means of identification

The Chamber has been provided with a school certificate for the applicant.⁹⁸¹

The claim to victim status

The applicant states that in ██████ 2002 he was recruited by force by the UPC militia of Thomas Lubanga when he was ██████ years old. His ██████ was killed and his family was displaced and lost all its property and livestock. The applicant claims he lost his childhood as a result of having lived within an armed group, and he killed many people. He states that he still suffers psychologically.⁹⁸²

The phases of the proceedings

The applicant submits he has an interest in participating in all phases of the proceedings.⁹⁸³

The observations of the defence

The defence submits that although the applicant has alleged that he was recruited in August 2002, he does not give any information about the duration of his recruitment. As a result, it is submitted there is no reason to conclude that he was still with the FLPC forces in September 2002, the beginning of the period of the charges. Thus, the Defence states that the applicant does not meet the *prima facie* conditions under Rule 85 of the Rules, and therefore his participation in the proceedings should be rejected. Furthermore, the defence suggests that the application is incomplete since the application was not made by a relative or guardian of the applicant.⁹⁸⁴

The observations of the prosecution

The prosecution submits that the application is incomplete since it does not include the consent of a legal guardian or parent of the applicant, who is a child.⁹⁸⁵

⁹⁸¹ Second Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1501-Conf-Exp, 21 November 2008, Annex 2, pages 15-16 and Annex 10.

⁹⁸² Second Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1501-Conf-Exp, 21 November 2008, Annex 2, pages 15-16 and Annex 10.

⁹⁸³ Second Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1501-Conf-Exp, 21 November 2008, Annex 2, pages 15-16 and Annex 10.

⁹⁸⁴ Observations de la Défense sur les 15 demandes de participation à la procédure et les 30 demandes de participation complémentaires communiquées le 27 novembre 2008 ; Réponse de la Défense aux observations des représentants légaux relatives aux 105 demandes de participation communiquées le 20 mai 2008 ; et Observations de la Défense relatives aux victimes indirectes, 5 December 2008, ICC-01/04-01/06-1536, paragraphs 35 and 38.

⁹⁸⁵ Prosecution's Observations on 12 Redacted Applications for Victim Participation to the Case, concerning applicants a/0063/07, a/0122/08, a/0123/08, a/0124/08, a/0125/08, a/0126/08, a/0130/08,

The observations of the victim's legal representative

The legal representative reply did not file observations as regards this applicant.

Legal representation

The applicant has been represented thus far by the OPCV.⁹⁸⁶

The Chamber's analysis and conclusions

The Chamber considers that the documents and other material provided to the Chamber assist in demonstrating the identity of the applicant in accordance with the Trial Chamber's Decision on victims' participation. In all the circumstances, the Chamber has been provided with enough information (particularly the school certificate) to determine, *prima facie*, that the applicant was under the age of 15 at the time of the relevant events.

It is to be noted that although the applicant is still a child, he is currently [REDACTED] and therefore will soon be an adult ([REDACTED] 2008).

The question that arises for this applicant is whether it is a precondition of his participation that his application is made by a person acting on his behalf.

It is to be observed that Rule 89 (3) of the Rules is a permissive rather than a mandatory provision: an application in the case of a victim who is an adult **may** be made by person on his or her behalf with their consent, and for a child an application **may** also be made by a person acting on his or her behalf. In the judgment of the Chamber, the wording of Rule 89(3) of the Rules, coupled with the absence of any provision denying children the opportunity of applying to participate without an intermediary, creates, at the very least, the opportunity for a child to apply on his or her own behalf to participate, depending always on their individual circumstances (*viz.* the age and the apparent maturity of the child) and the interests of justice overall.

The idea that the views of a child shall be given due weight in accordance with his or her maturity is consistent with internationally recognized human rights (Article 21(3) of the Statute), as reflected in Article 12(1) of the Convention on the Rights of the Child and the observations of the Committee on the Rights of the Child.⁹⁸⁷

There is no evidence to suggest the applicant is particularly immature or that he does not understand the application he is making. Although the Chamber would normally expect a person to act on behalf of a minor, the fact that the applicant is very close to the age of legal maturity at the moment when the trial is to commence, creates a

a/0149/08, a/0404/08, a/0405/08, a/0406/08 and a/0409/08, 8 December 2008, ICC-01/04-01/06-1541, paragraph 17.

⁹⁸⁶ Désignation du Bureau du conseil public pour les victimes pour la représentation légale du demandeur a/0149/08, 27 November 2008, ICC-01/04-01/06-1521.

⁹⁸⁷ Committee on the Rights of the Child, Final Recommendations, Day of General Discussion on the Right of the Child to be Heard, 43rd Session, 29 September 2006, paragraphs 51 and 52.

strong case for the Chamber to admit his application. Any other decision at this point in time would effectively remove his opportunity to participate.

In all the circumstances, the absence of a person acting on his behalf does not act as a bar to the applicant's participation in these proceedings.

In the circumstances, the Trial Chamber determines that the applicant has given sufficient evidence to establish, *prima facie*, that he is a victim under Rules 85(a) of the Rules, as the Chamber has been provided with information that leads it to conclude that the applicant suffered personal harm as a result of crimes confirmed against the accused, namely his alleged conscription and/or enlistment and/or use to participate actively in the hostilities, between September 2002 and 13 August 2003.⁹⁸⁸

Application of victim a/0404/08 [Annex 12, filing 1501]

The means of identification

The Chamber has been provided with a school certificate for the applicant.⁹⁸⁹

The claim to victim status

The applicant states he was recruited by force in [REDACTED] 2003 by the UPC of Thomas Lubanga, when he was [REDACTED] years old. He was trained for [REDACTED] weeks, when he learnt to use weapons and various military techniques. He acted as [REDACTED] and was deployed in operations around [REDACTED]. He participated in patrols where he "extorqué" civilians and fought against the Lendus and the Ntigis. His parents died during these events. The applicant states that he suffers following the loss of his parents, and because his life has been "ruined" following the interruption to his schooling. He has been helped by [REDACTED], and he wishes for justice to be done and for the truth to be known.⁹⁹⁰

The phases of the proceedings

The applicant submits he has an interest in participating in all phases of the proceedings.⁹⁹¹

The observations of the defence

⁹⁸⁸ Decision on victims' participation, 18 January 2008, ICC-01/04-01/06-1119, as confirmed, amended and reversed by the Appeals Chamber's 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.

⁹⁸⁹ Second Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1501-Conf-Exp, 21 November 2008, Annex 2, pages 19-20 and Annex 12.

⁹⁹⁰ Second Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1501-Conf-Exp, 21 November 2008, Annex 2, pages 19-20 and Annex 12.

⁹⁹¹ Second Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1501-Conf-Exp, 21 November 2008, Annex 2, pages 19-20 and Annex 12.

The defence submits that the applicant is a minor and the application should be presented by his parent or guardian. As a result, the defence submits that the applicant does not meet the *prima facie* conditions under Rule 85 of the Rules, and therefore his application to participate in the proceedings should be rejected.⁹⁹²

The observations of the prosecution

The prosecution submits that the application is incomplete since it does not include the consent of a legal guardian or a parent of the applicant, who is a child.⁹⁹³

The observations of the victim's legal representative

The legal representative reply did not file observations as regards this applicant.

Legal representation

The applicant has been represented thus far by Mr Hervé Diakiese.⁹⁹⁴

The Chamber's analysis and conclusions

The Chamber considers that the documents and other material provided to the Chamber assist in demonstrating the identity of the applicant in accordance with the Trial Chamber's Decision on victims' participation. Although the school certificate does not provide information in relation to his date of birth and his age at the time of the relevant events, the applicant has precisely and unequivocally indicated in his application that he was born [REDACTED] 1993, and thus was [REDACTED] years old during the material events.

It is to be noted that although the applicant is still a child, the applicant is currently [REDACTED] years old. The question that arises for this applicant is whether it is a precondition of his participation that his application is made by a person acting on his behalf.

It is to be observed that Rule 89 (3) of the Rules is a permissive rather than a mandatory provision: an application in the case of a victim who is an adult **may** be made by person on his or her behalf with their consent, and for a child an application **may** also be made by a person acting on his or her behalf. In the judgment of the Chamber, the wording of Rule 89(3) of the Rules, coupled with the absence of any provision denying children the opportunity of applying to participate without an intermediary, creates, at the very least, the opportunity for a child to apply on his or her own behalf to participate, depending always on their individual circumstances

⁹⁹² Observations de la Défense sur les 15 demandes de participation à la procédure et les 30 demandes de participation complémentaires communiquées le 27 novembre 2008 ; Réponse de la Défense aux observations des représentants légaux relatives aux 105 demandes de participation communiquées le 20 mai 2008 ; et Observations de la Défense relatives aux victimes indirectes, 5 December 2008, ICC-01/04-01/06-1536, paragraph 38.

⁹⁹³ Prosecution's Observations on 12 Redacted Applications for Victim Participation to the Case, concerning applicants a/0063/07, a/0122/08, a/0123/08, a/0124/08, a/0125/08, a/0126/08, a/0130/08, a/0149/08, a/0404/08, a/0405/08, a/0406/08 and a/0409/08, 8 December 2008, ICC-01/04-01/06-1541, paragraph 17.

⁹⁹⁴ Second Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1501-Conf-Exp, 21 November 2008, Annex 2, pages 19-20 and Annex 12.

(viz. the age and the apparent maturity of the child) and the interests of justice overall.

The idea that the views of a child shall be given due weight in accordance with his or her maturity is consistent with internationally recognized human rights (Article 21(3) of the Statute), as reflected in Article 12(1) of the Convention on the Rights of the Child and the observations of the Committee on the Rights of the Child.⁹⁹⁵

There is no evidence to suggest the applicant is particularly immature or that he does not understand the application he is making. Although the Chamber would normally expect a person to act on behalf of a minor, the fact that the applicant is very close to the age of legal maturity at the moment when the trial is to commence, creates a strong case for the Chamber to admit his application. Any other decision at this point in time would effectively remove his opportunity to participate.

In all the circumstances, the absence of a person acting on his behalf does not act as a bar to the applicant's participation in these proceedings.

In the circumstances, the Trial Chamber determines that the applicant has given sufficient evidence to establish, *prima facie*, that he is a victim under Rules 85(a) of the Rules, as the Chamber has been provided with information that leads it to conclude that the applicant suffered personal harm as a result of crimes confirmed against the accused, namely his alleged conscription and/or enlistment and/or use to participate actively in the hostilities, between September 2002 and 13 August 2003.⁹⁹⁶

⁹⁹⁵ Committee on the Rights of the Child, Final Recommendations, Day of General Discussion on the Right of the Child to be Heard, 43rd Session, 29 September 2006, paragraphs 51 and 52.

⁹⁹⁶ Decision on victims' participation, 18 January 2008, ICC-01/04-01/06-1119, as confirmed, amended and reversed by the Appeals Chamber's 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.

Group 1(h): Other

Applicant a/0162/07 [Annex 26]

The means of identification

The Chamber has been provided with the applicant's health and vaccination certificate and a certificate of identification for the person acting on her behalf (her father).⁹⁹⁷

The claim to victim status

The applicant states that in [REDACTED] 2003, when she was [REDACTED] years old, she was taken by force by the UPC and raped continuously, causing her physical harm. As a result she suffers from physical and psychological problems and is rejected in her community; she has suffered morally; and she has experienced violations of her fundamental rights.⁹⁹⁸

The phases of the proceedings

The applicant has an interest in participating in all phases of the proceedings.⁹⁹⁹

The observations of the defence

The defence, in its original filing, argued that this application should be rejected, because the age of the applicant appears to have been revised downwards from 19 years of age, as set out in the original application, to 10 years of age, and is in consequence uncertain.¹⁰⁰⁰ The defence submits in a further filing that this change as to her age has been demonstrated by her health card. For these reasons, the defence contends that the information is uncertain and contradictory, and her application lacks documentation and evidence of sufficient reliability to meet the *prima facie* conditions required by Rule 85 of the Rules, and therefore her application to participate should be rejected.¹⁰⁰¹

The observations of the prosecution

⁹⁹⁷ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 50-51 and Annex 26.

⁹⁹⁸ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 50-51 and Annex 26

⁹⁹⁹ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 50-51 and Annex 26.

¹⁰⁰⁰ Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008, 10 June 2008, ICC-01/04-01/06-1388, page 11.

¹⁰⁰¹ Observations de la Défense sur les 15 demandes de participation à la procédure et les 30 demandes de participation complémentaires communiquées le 27 novembre 2008 ; Réponse de la Défense aux observations des représentants légaux relatives aux 105 demandes de participation communiquées le 20 mai 2008 ; et Observations de la Défense relatives aux victimes indirectes, 5 December 2008, ICC-01/04-01/06-1536, paragraphs 20 – 22.

The prosecution submits that the application contains an insufficient causal link to the charges, since the application refers to the applicant being raped by UPC soldiers and it gives no information indicating that the applicant was enlisted, conscripted or used to participate actively in the hostilities.¹⁰⁰²

The observations of the victim's legal representative

The legal representatives submit in their reply that the applicant's father is acting on her behalf, and he contends that his daughter was recruited as a child soldier when she was 9 years old, and therefore she should be admitted to participate in the proceedings.¹⁰⁰³

Legal representation

The applicant has been represented thus far by Mr Jean Chrysostome Mulamba Nsokoloni.

The Chamber's analysis and conclusions

The Chamber has carefully reviewed the application form as well as the additional documents provided by the applicant and considers that the apparent contradiction as regards the age of the applicant has been clarified by the certificate of identification of the applicant's father, which includes the dates of birth of his [REDACTED] children. Therefore, the applicant's year of birth is sufficiently established as being 1994, in accordance with the identification documents provided to the Chamber.

The Chamber therefore considers that the documents and overall information provided prove, *prima facie*, the identity of the applicant and the person acting on her behalf in accordance with the Trial Chamber's Decision on victims' participation. They prove, *prima facie*, that the applicant was [REDACTED] years old during the material events and they establish the kinship between the applicant and the person acting on her behalf.

The Chamber has reviewed the application submitted by the alleged victim, which reveals that she was allegedly abducted and held by the UPC for a period (albeit of uncertain length) within the timeframe of these charges, in the context of a broad campaign conducted by the UPC of child abduction and forced recruitment. Given the alleged systematic recruitment, enlistment or use of child soldiers at this time by that group, on a *prima facie* basis, the Chamber considers that it is fair to infer that she was held, *inter alia*, for one of these purposes. Accordingly, the Chamber rejects the prosecution's submission that the fact that soldiers of the UPC allegedly forcibly took and raped her, and made threats to her life, results in an insufficient causal link between her abduction and the charges brought against the accused. To the contrary,

¹⁰⁰² Prosecution's Observations on 105 Redacted Applications for Victim Participation to the Case, 9 June 2008, ICC-01/04-01/06-1386, paragraph 31.

¹⁰⁰³ Réponse des demandeurs a/0149/07 et a/0162/07 aux observations du Procureur et de la Défense quant à leur demande de participation à la procédure dans l'affaire Le Procureur contre Thomas Lubanga, 28 November 2008, ICC-01/04-01/06-1516, page 3.

it is reasonable to conclude, on a *prima facie* basis, that she suffered other crimes (viz. rape and threats to her life), as well as being a victim of the charges brought against the accused which the Chamber is considering.

It is not necessary, in those circumstances, for the Chamber to engage in the critical question that otherwise arises in this application as to whether the "use" of children for sexual purposes alone, and including forced marriage, can be regarded as conscription or enlistment into an armed force, or the use of that person to participate actively in the hostilities, in accordance with article 8(2)(b)(xxvi) and Article 8(2)(e)(vii) of the Rome Statute. As just set out, the applicant has presented sufficient evidence for the Chamber to conclude, *prima facie*, that she was abducted in the broad context of the systematic conscription of children under the age of 15 into the military forces of the UPC.

Consequently, the Trial Chamber determines that the applicant has given sufficient evidence to establish, *prima facie*, that she is a victim under Rule 85(a) of the Rules, as the Chamber has been provided with enough information to conclude that the applicant suffered personal harm as a result of crimes included in the charges brought against the accused, namely her alleged enlistment and/or conscription and/or use to actively participate in the hostilities by the UPC between September 2002 and 13 August 2003.

Applicant a/0270/07 [Annex 81]

The means of identification

The Trial Chamber has been provided with the applicant's election card and a medical certificate.¹⁰⁰⁴

The claim to victim status

The applicant states that he was [REDACTED] a school, which, on [REDACTED] 2003, the UPC/FPLC militia surrounded and attacked in order to recruit the students. The applicant tried to help the students to escape but a number of them were caught by the militia. The applicant suggests that these events were witnessed by other [REDACTED] at the school. When he tried to oppose the militia, they offered to liberate the children for [REDACTED] US dollars. The applicant was unable to pay this sum, and when he repeated that the students should be liberated, a commander ordered [REDACTED] militia men to beat him. The militia then pillaged throughout the school and left. The applicant suffered [REDACTED] wounds following his beating, and currently he experiences trouble sleeping and headaches, and he is subject to anxiety. He feels a sense of guilt that he was unable to avoid the recruitment of the children. He has suffered

¹⁰⁰⁴ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 162-163 and Annex 81.

psychological harm and serious violations of his fundamental rights. The school has

[REDACTED].¹⁰⁰⁵

The phases of the proceedings

The applicant has an interest in participating in all phases of the proceedings.¹⁰⁰⁶

The observations of the defence

The defence submitted in its original observations that this applicant should not be permitted to participate in the proceedings since the harm he allegedly suffered is not directly linked to the charges confirmed against the accused.¹⁰⁰⁷ The defence submits in a further filing that the applicant's application contains no information relevant to his participation on behalf of an organization or institution. The defence notes that the applicant has not presented any document that proves the existence or constitution of the organization or institution, and, furthermore, there is a lack of evidence that the institution sustained "direct harm" to its property. For these reasons, the defence contends that the victim's application lacks the necessary documentations and evidence to meet the *prima facie* conditions required by Rule 85 of the Rules, and therefore the application should be rejected.¹⁰⁰⁸

The observations of the prosecution

The prosecution notes that the applicant not only seeks to participate as a victim in his capacity as a "natural" person, but also on behalf of an educational institution. The prosecution contends that this applicant meets, *prima facie*, the necessary requirements for victim participation under Rule 85(a) and (b) of the Rules. The Prosecutor supports this application.¹⁰⁰⁹

The observations of the victim's legal representative

The legal representatives submit that the institution has given sufficient information to demonstrate that it has suffered harm and in these circumstances the applicant should be granted the status of victim and admitted as a participant in the proceedings under Rule 85(a) and (b) of the Rules.¹⁰¹⁰

¹⁰⁰⁵ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 162-163 and Annex 81.

¹⁰⁰⁶ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 162-163 and Annex 81.

¹⁰⁰⁷ Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008, 10 June 2008, ICC-01/04-01/06-1388, pages 12-13.

¹⁰⁰⁸ Observations de la Défense sur les 15 demandes de participation à la procédure et les 30 demandes de participation complémentaires communiquées le 27 novembre 2008 ; Réponse de la Défense aux observations des représentants légaux relatives aux 105 demandes de participation communiquées le 20 mai 2008 ; et Observations de la Défense relatives aux victimes indirectes, 5 December 2008, ICC-01/04-01/06-1536, paragraphs 24, 25.

¹⁰⁰⁹ Prosecution's Observations on 105 Redacted Applications for Victim Participation to the Case, 9 June 2008, ICC-01/04-01/06-1386, paragraphs 21 and 27.

¹⁰¹⁰ Réponse aux "Prosecution's Observations on 105 Applications for Victim Participation to the Case" du 9 juin 2008 et aux « Observations de la Défense sur les 105 demandes de participation à la

Legal representation

The applicant has been represented thus far by Mr Joseph Keta Orwinyo and Mr Jean Louis Gilissen.¹⁰¹¹

The Chamber's analysis and conclusions:

This application was not before Pre-Trial Chamber I.

The Trial Chamber notes that the applicant wishes to participate as a "natural" person and as the representative of a "legal" person, namely the school [REDACTED]

As regards the applicant's participation as a natural person, the Chamber considers that the documents provided prove, *prima facie*, the identity of the applicant in accordance with the Trial Chamber's Decision on victims' participation.

The applicant alleges he is a victim who has suffered harm when intervening to help direct victims in the case, in the sense that he sought to prevent children from becoming the victims of crimes confirmed against the accused.

The Trial Chamber notes that Pre-Trial Chamber I has decided that those who suffered harm whilst intervening to help direct victims of the case, or to prevent the latter from becoming victims following the commission of relevant crimes, are victims in the case under Rule 85 of the Rules.¹⁰¹² The Trial Chamber has also applied the decision of the Appeals Chamber that any harm suffered does not necessarily have to be direct but it must be personal.¹⁰¹³

In all the circumstances, and applying the abovementioned case law, the Trial Chamber concludes that the applicant is an indirect victim of the crimes of enlistment and/or conscription and/or use to participate actively in hostilities of children under the age of 15 (viz. the students of his school) between September 2002 and 13 August 2003. The applicant has provided the Chamber with enough information (including the results of medical examinations) to determine, *prima facie*, that he suffered personal harm as a result of these crimes.¹⁰¹⁴ Although the Trial

procédure communiquées le 20 mai 2008 »du 10 juin 2008, 28 November, ICC-01/04-01/06/1522, paragraph 25, page 20.

¹⁰¹¹ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 162-163 and Annex 81.

¹⁰¹² Decision on the Applications for Participation in the Proceedings Submitted by VPRS 1 to VPRS 6 in the Case the Prosecutor v. Thomas Lubanga Dyilo, 29 June 2006, ICC-01/04-01/06-172-tEN, pages 8-9.

¹⁰¹³ Appeals Chamber's 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, paragraph 1.

¹⁰¹⁴ Decision on victims' participation, 18 January 2008, ICC-01/04-01/06-1119, as confirmed, amended and reversed by the Appeals Chamber's 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.

Chamber cannot determine whether all, or only some, of the students who were recruited were under the age of 15 at the time, the Trial Chamber infers that since the recruitment occurred in a school, it is highly likely that at least some of them were below that age.

As regards the applicant's application as the representative of a "legal" person, the Trial Chamber infers that as the principal of the school, the applicant has sufficient authority to act on behalf of this institution.

The Trial Chamber thus considers that the applicant has given sufficient evidence to establish, *prima facie*, that he is a victim under Rules 85(a) of the Rules, as the Chamber has been provided with enough information to conclude that the applicant suffered personal harm as a result of crimes included in the charges brought against the accused, namely the alleged enlistment and/or conscription of students in the school [REDACTED] and/or their use to participate actively in the hostilities by the UPC between September 2002 and 13 August 2003.¹⁰¹⁵ Moreover, for the reasons set out above, the applicant may participate in the trial on his own behalf, and on behalf of the school, under Rule 85 (b) of the Rules of Procedure and Evidence.

¹⁰¹⁵ Decision on victims' participation, 18 January 2008, ICC-01/04-01/06-1119, as confirmed, amended and reversed by the Appeals Chamber's 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.

GROUP 2: STATUS REJECTED

Group 2(a): Applications where the forms are incomplete

Application lacks ID

Applicant a/0241/06 [Annex 60]

The means of identification

The Trial Chamber has not been provided with any identification document for the applicant.¹⁰¹⁶

The claim to victim status

The applicant states that he was recruited by UPC forces in ██████████ 2003 when he was ██████ years old. The applicant was physically mistreated, and he was drugged and indoctrinated while he was with the UPC. He was part of a culture of killing which led him to feel as though he had lost himself. He has suffered psychological harm and violations of his fundamental rights.¹⁰¹⁷

The phases of the proceedings

The applicant submits he has an interest in participating in all phases of the proceedings.¹⁰¹⁸

The observations of the defence

The defence originally submitted that the application should be rejected because no proof of the applicant's identity has been provided.¹⁰¹⁹ The defence submits in a further filing that the applicant has given a different date of birth from that indicated in his initial application, and as a result, the application does not meet the requirements for *prima facie* admission under Rule 85 of the Rules. In all the circumstances, it is submitted that the application should be rejected.¹⁰²⁰

¹⁰¹⁶ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 119-120 and Annex 60.

¹⁰¹⁷ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 119-120 and Annex 60.

¹⁰¹⁸ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 119-120 and Annex 60.

¹⁰¹⁹ Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008, 10 June 2008, ICC-01/04-01/06-1388, paragraph 16, pages 12-13.

¹⁰²⁰ Observations de la Défense sur les 15 demandes de participation à la procédure et les 30 demandes de participation complémentaires communiquées le 27 novembre 2008 ; Réponse de la Défense aux observations des représentants légaux relatives aux 105 demandes de participation communiquées le 20 mai 2008 ; et Observations de la Défense relatives aux victimes indirectes, 5 December 2008, ICC-01/04-01/06-1536, paragraph 26.

The observations of the prosecution

The prosecution submits that this applicant meets, *prima facie*, the necessary requirements for victim participation. The application forms and further information received by the Registry suggest that this applicant was under the age of 15 at the time of enlistment, conscription or use by the armed forces of the UPC during the relevant time frame. The Prosecutor supports this application.¹⁰²¹

Victim representative observations

The legal representatives, submit that the applicant has set out that he was recruited for the FPLC as a child soldier when he was under 15 years old and thus there is direct link with the charges brought against the accused, and therefore the applicant should be granted the status of victim and admitted as a participant in the proceedings.¹⁰²²

Legal representation

The applicant has been represented thus far by Mr Joseph Keta Orwinyo and Jean Louis Gilissen.¹⁰²³

The Chamber's analysis and conclusions

The Trial Chamber notes that the applicant applied to participate in the DRC situation and the application was provided to Pre-Trial Chamber I. In its decision of 31 January 2008, the Pre-Trial Chamber determined it would not resolve the applicant's status, stating that since the application was also pending before the Trial Chamber, the applicant's recognition as a victim in the "case" would automatically result in his recognition in the "situation".¹⁰²⁴ In a more recent decision of 3 July 2008 the Pre-Trial Chamber concluded that since the applicant had not presented any identification document, the application was incomplete.¹⁰²⁵

¹⁰²¹ Prosecution's Observations on 105 Redacted Applications for Victim Participation to the Case, 9 June 2008, ICC-01/04-01/06-1386, paragraph 27, pages 14-15.

¹⁰²² Réponse aux "Prosecution's Observations on 105 Applications for Victim Participation to the Case" du 9 juin 2008 et aux « Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008 » du 10 juin 2008, 28 November, ICC-01/04-01/06/1522, paragraph 25, pages 11-12.

¹⁰²³ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 119-120 and Annex 60.

¹⁰²⁴ Corrigendum à la "Décision sur les demandes de participation à la procédure déposées dans le cadre de l'enquête en République démocratique du Congo par a/0004/06 à a/0009/06, a/0016/06 à a/0063/06, a/0071/06 à a/0080/06 et a/0105/06 à a/0110/06, a/0188/06, a/0128/06 à a/0162/06, a/0199/06, a/0203/06, a/0209/06, a/0214/06, a/0220/06 à a/0222/06, a/0224/06, a/0227/06 à a/0230/06, a/0234/06 à a/0236/06, a/0240/06, a/0225/06, a/0226/06, a/0231/06 à a/0233/06, a/0237/06 à a/0239/06 et a/0241/06 à a/0250/06", ICC-01/04-423-Corr, 31 January 2008, paragraph 144.

¹⁰²⁵ Decision on the applications for participation file in connection with the investigation in the Democratic Republic of Congo by Applicants a/0047/06 to a/0052/06, a/163/06 to a/0187/06, a/0221/06, a/0226/06, a/0231/06 to a/0233/06, a/0237/06 to a/0239/06, and a/0241 to a/0250/06, 3 July 2008, ICC-01/04-505, paragraph 32

The Trial Chamber has not been provided with any identification documents in accordance with its Decision on victims' participation.¹⁰²⁶ Although a lack of documents may be justified for applicants who are or have been confronted with particular difficulties, no explanation has been provided for the absence of any identifying documents to support this application. Consequently, the application form is materially incomplete. The Chamber instructs the VPRS to contact the applicant and his legal representative in order to seek appropriate documentation.

Applicant a/0246/06 [Annex 61]

[REDACTED]

¹⁰²⁶ Decision on victims' participation, 18 January 2008, ICC-01/04-01/06-1119.

[REDACTED]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

Applicant a/0061/07 [Annex 96]

The means of identification

The Trial Chamber has not been provided with any identification document for the applicant.¹⁰³⁷

The claim to victim status

The applicant states that on an unknown date he was recruited by an unspecified armed group. He had decided to enrol with his [REDACTED] to defend his tribe [REDACTED] against the attacks of the Lendus. He lost his [REDACTED] and has experienced various illnesses due to malnutrition. His possessions were looted (i.e. cows and chickens). He suffered psychological, physical and material harm.¹⁰³⁸

The phases of the proceedings

The applicant submits he is interested in participating in all phases of the proceedings.¹⁰³⁹

The observations of the defence

The defence submit that since the applicant was born in March 1987, he was 15 years old in September 2002. Furthermore, he has not provided any identification documents.¹⁰⁴⁰ The defence submits in a further filing that the applicant has mentioned a different date of birth from that indicated in his initial application, and as a result, the application does not meet the requirements for *prima facie* admission under Rule 85 of the Rules. In all the circumstances, it is submitted that the application should be rejected.¹⁰⁴¹

The observations of the prosecution

¹⁰³⁷ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 193-194 and Annex 96.

¹⁰³⁸ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 193-194 and Annex 96.

¹⁰³⁹ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, page 194 and Annex 96.

¹⁰⁴⁰ Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008, 10 June 2008, ICC-01/04-01/06-1388, paragraph 13.

¹⁰⁴¹ Observations de la Défense sur les 15 demandes de participation à la procédure et les 30 demandes de participation complémentaires communiquées le 27 novembre 2008 ; Réponse de la Défense aux observations des représentants légaux relatives aux 105 demandes de participation communiquées le 20 mai 2008 ; et Observations de la Défense relatives aux victimes indirectes, 5 December 2008, ICC-01/04-01/06-1536, paragraph 26.

The prosecution submit that the applicant does not meet the criteria for victims' participating in the case because he was either over the age of 15 at the time of his recruitment or had turned 15 by September 2002.¹⁰⁴²

The observations of the victim's legal representative

The legal representatives submit in their reply that there are certain contradictions or possible inaccuracies in this application due to the ongoing problems in the DRC and the extreme difficulties in obtaining the documents to support the application. Nevertheless, the applicant is ready to submit supplementary information to support his application and to respond to any request from the Court.¹⁰⁴³ The legal representatives also submit that the applicant has suffered harm that has a direct link with the charges brought against the accused, and therefore the applicant should be granted the status of victim and admitted as a participant in the proceedings.¹⁰⁴⁴

Legal representation

The applicant has been represented thus far by Mr Joseph Keta and Mr Jean Louis Gilissen.¹⁰⁴⁵

The Chamber's analysis and conclusions

The Trial Chamber has not been provided with any identification documents in accordance with its Decision on victims' participation.¹⁰⁴⁶ Although a lack of documents may be justified for applicants who are or have been confronted with particular difficulties, no explanation has been provided for the absence of any identifying documents to support this application. Consequently, the application form is materially incomplete. The Chamber instructs the VPRS to contact the applicant and his legal representative in order to seek appropriate documentation.

Moreover, on the present information it appears that the applicant was over 15 years of age at the relevant time.

Applicant a/0062/07 [Annex 97]

The means of identification

¹⁰⁴² Prosecution's Observations on 105 Redacted Applications for Victim Participation to the Case, 9 June 2008, ICC-01/04-01/06-1386, paragraph 27, paragraphs 36 and 41.

¹⁰⁴³ Réponse aux "Prosecution's Observations on 105 Applications for Victim Participation to the Case" du 9 juin 2008 et aux « Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008 » du 10 juin 2008, 28 November, ICC-01/04-01/06/1522, paragraphs 19-22, page 13.

¹⁰⁴⁴ Réponse aux "Prosecution's Observations on 105 Applications for Victim Participation to the Case" du 9 juin 2008 et aux « Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008 » du 10 juin 2008, 28 November, ICC-01/04-01/06/1522, paragraph 25

¹⁰⁴⁵ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, page 194 and Annex 96.

¹⁰⁴⁶ Decision on victims' participation, 18 January 2008, ICC-01/04-01/06-1119.

The Trial Chamber has not been provided with any identification document for the applicant.¹⁰⁴⁷

The claim to victim status

The applicant states he was recruited by the UPC in 2002 at age ■ or ■. He was allegedly injured by a bullet in ■. His house was looted and destroyed. He suffered physical and material harm.¹⁰⁴⁸

The phases of the proceedings

The applicant has expressed an interest in participating in all phases of the proceedings.¹⁰⁴⁹

The observations of the defence

The defence submit that since the applicant was born in January 1987, he was 15 years old in September 2002.¹⁰⁵⁰ The defence submits in a further filing that the applicant has mentioned a different date of birth from that indicated in his initial application, and as a result, the application does not meet the requirements for *prima facie* admission under Rule 85 of the Rules. In all the circumstances, it is submitted that the application should be rejected.¹⁰⁵¹

The observations of the prosecution

The prosecution submit that the applicant does not meet the criteria for victims participating in the case because he was either over the age of 15 at the time of his recruitment or had turned 15 by September 2002.¹⁰⁵²

The observations of the victim's legal representative

The legal representatives submit in their reply that there are certain contradictions or possible inaccuracies in this application due to the ongoing problems in the DRC and the extreme difficulties in obtaining the documents to support the application. Nevertheless, the applicant is ready to submit supplementary information to support

¹⁰⁴⁷ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 195-196 and Annex 97.

¹⁰⁴⁸ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 195-196 and Annex 97.

¹⁰⁴⁹ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, page 196 and Annex 97.

¹⁰⁵⁰ Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008, 10 June 2008, ICC-01/04-01/06-1388, paragraph 13.

¹⁰⁵¹ Observations de la Défense sur les 15 demandes de participation à la procédure et les 30 demandes de participation complémentaires communiquées le 27 novembre 2008 ; Réponse de la Défense aux observations des représentants légaux relatives aux 105 demandes de participation communiquées le 20 mai 2008 ; et Observations de la Défense relatives aux victimes indirectes, 5 December 2008, ICC-01/04-01/06-1536, paragraph 26.

¹⁰⁵² Prosecution's Observations on 105 Redacted Applications for Victim Participation to the Case, 9 June 2008, ICC-01/04-01/06-1386, paragraph 27, paragraphs 36 and 41.

his application and to respond to any request from the Court.¹⁰⁵³ The legal representatives also submit that the applicant has suffered harm directly linked with the charges brought against the accused, and therefore the applicant should be granted the status of victim and admitted as a participant in the proceedings.¹⁰⁵⁴

Legal representation

The applicant has been represented thus far by Mr Joseph Keta and Mr Jean Louis Gilissen.¹⁰⁵⁵

The Chamber's analysis and conclusions

The Trial Chamber has not been provided with any identification documents in accordance with its Decision on victims' participation.¹⁰⁵⁶ Although a lack of documents may be justified for applicants who are or have been confronted with particular difficulties, no explanation has been provided for the absence of any identifying documents to support this application. Consequently, the application form is materially incomplete. The Chamber instructs the VPRS to contact the applicant and his legal representative in order to seek appropriate documentation.

Moreover, on the present information it appears that the applicant was over 15 years of age at the relevant time.

Applicant a/0065/07 [Annex 98]

The means of identification

The Trial Chamber has not been provided with any identification document for the applicant.¹⁰⁵⁷

The claim to victim status

The applicant states he was recruited by the UPC at the age of ■ or ■ in 2002. He maintains he was ■ years of age on ■ 2002, although no proof of his date of birth has been provided. He suggests that a bullet injured his ■, leaving him permanently disabled. Many of his friends died in the fighting against the FNI and

¹⁰⁵³ Réponse aux "Prosecution's Observations on 105 Applications for Victim Participation to the Case" du 9 juin 2008 et aux « Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008 » du 10 juin 2008, 28 November, ICC-01/04-01/06/1522, paragraphs 19-22, page 13.

¹⁰⁵⁴ Réponse aux "Prosecution's Observations on 105 Applications for Victim Participation to the Case" du 9 juin 2008 et aux « Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008 » du 10 juin 2008, 28 November, ICC-01/04-01/06/1522, paragraph 25.

¹⁰⁵⁵ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, page 196 and Annex 97.

¹⁰⁵⁶ Decision on victims' participation, 18 January 2008, ICC-01/04-01/06-1119.

¹⁰⁵⁷ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 197-198 and Annex 98.

his parents' goods were looted. The applicant suffered psychological, physical and material harm as a result of these events.¹⁰⁵⁸

The phases of the proceedings

The applicant has expressed an interest in participating in all phases of the proceedings.¹⁰⁵⁹

The observations of the defence

The defence originally submitted that since the applicant was born in March 1987 he was 15 years old in September 2002.¹⁰⁶⁰ The defence submits in a further filing that the applicant has given a different date of birth from that stated in his initial application, and as a result, the application does not meet the requirements for *prima facie* admission under Rule 85 of the Rules. In all the circumstances, it is submitted that the application should be rejected.¹⁰⁶¹

The observations of the prosecution

The prosecution submits that the applicant does not meet the criteria for victims participating in the case because he was either over the age of 15 at the time of his recruitment or had turned 15 by September 2002.¹⁰⁶²

The observations of the victim's legal representative

The legal representatives submit in their reply that there are certain contradictions or possible inaccuracies in this application due to the ongoing problems in the DRC and the extreme difficulties in obtaining the documents to support the application. Nevertheless, the applicant is ready to submit supplementary information to support his application and to respond to any request from the Court.¹⁰⁶³ The legal representatives also submit that the applicant has suffered harm directly linked with the charges brought against the accused, and therefore the applicant should be granted the status of victim and admitted as a participant in the proceedings.¹⁰⁶⁴

¹⁰⁵⁸ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 197-198 and Annex 98.

¹⁰⁵⁹ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, page 198 and Annex 98.

¹⁰⁶⁰ Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008, 10 June 2008, ICC-01/04-01/06-1388, paragraph 13.

¹⁰⁶¹ Observations de la Défense sur les 15 demandes de participation à la procédure et les 30 demandes de participation complémentaires communiquées le 27 novembre 2008 ; Réponse de la Défense aux observations des représentants légaux relatives aux 105 demandes de participation communiquées le 20 mai 2008 ; et Observations de la Défense relatives aux victimes indirectes, 5 December 2008, ICC-01/04-01/06-1536, paragraph 26

¹⁰⁶² Prosecution's Observations on 105 Redacted Applications for Victim Participation to the Case, 9 June 2008, ICC-01/04-01/06-1386, paragraph 27, paragraphs 36 and 41.

¹⁰⁶³ Réponse aux "Prosecution's Observations on 105 Applications for Victim Participation to the Case" du 9 juin 2008 et aux « Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008 » du 10 juin 2008, 28 November, ICC-01/04-01/06/1522, paragraphs 19-22, page 14.

¹⁰⁶⁴ Réponse aux "Prosecution's Observations on 105 Applications for Victim Participation to the Case" du 9 juin 2008 et aux « Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008 » du 10 juin 2008, 28 November, ICC-01/04-01/06/1522, paragraph 25.

Legal representation

The applicant has been represented thus far by Mr Joseph Keta and Mr Jean Louis Gilissen.¹⁰⁶⁵

The Chamber's analysis and conclusions

The Trial Chamber has not been provided with any identification documents in accordance with its Decision on victims' participation.¹⁰⁶⁶ Although a lack of documents may be justified for applicants who are or have been confronted with particular difficulties, no explanation has been provided for the absence of any identifying documents to support this application. Consequently, the application form is materially incomplete. The Chamber instructs the VPRS to contact the applicant and his legal representative in order to seek appropriate documentation.

Moreover, on the present information it appears that the applicant was over 15 years of age at the relevant time.

Applicant a/0182/07 [Annex 103]**The means of identification**

The Trial Chamber has not been provided with any identification document for the applicant. The Trial Chamber has been provided with the election card of the person acting on behalf of the applicant (his father). No document proving the relationship between the two has been provided to the Chamber and the applicant has not signed the application.¹⁰⁶⁷

The claim to victim status

The applicant states that on [REDACTED] 2002 he was recruited by Thomas Lubanga's UPC militia, at the age of [REDACTED]. He was taken to a military training camp and was allegedly demobilised on [REDACTED] 2005. He suffered psychological problems, and his father has referred to the human and material loss to his family. The applicant suffered psychological and material harm.¹⁰⁶⁸

The phases of the proceedings

The applicant is interested in participating in all phases of the proceedings.¹⁰⁶⁹

¹⁰⁶⁵ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, page 198 and Annex 98.

¹⁰⁶⁶ Decision on victims' participation, 18 January 2008, ICC-01/04-01/06-1119.

¹⁰⁶⁷ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 210-211 and Annex 103.

¹⁰⁶⁸ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 210-211 and Annex 103.

¹⁰⁶⁹ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, page 211 and Annex 103

The observations of the defence

The defence, in its first filing, submits that the applicant is among a group of applicants who have stated that they were recruited between 2000 and May 2002. However, the defence argue that this group of applicants has not stated precisely the duration of their recruitment or the date on which they were demobilised. Accordingly, the defence submits there is nothing to establish, *prima facie*, that the alleged events occurred during the period between September 2002 and 13 August 2003. The defence also argue that the applicant has not provided any identification document to support his age or identity.¹⁰⁷⁰ The defence submits in a further filing that the applicant has mentioned a different date of birth from that indicated in his initial application, and as a result, the application does not meet the requirements for *prima facie* admission under Rule 85 of the Rules. In all the circumstances, it is submitted that the application should be rejected.¹⁰⁷¹

The observations of the prosecution

The prosecution submits that the applicant meets, *prima facie*, the necessary requirements for victim participation.¹⁰⁷²

The observations of the victim's legal representative

The legal representatives submit in their reply that there are certain contradictions or possible inaccuracies in this application due to the ongoing problems in the DRC and the extreme difficulties in obtaining the documents to support the application.¹⁰⁷³ The legal representatives also submit that the applicant has given enough information to show that he has suffered harm directly linked with the charges brought against the accused, and therefore the applicant should be granted the status of victim and admitted as a participant in the proceedings.¹⁰⁷⁴

Legal representation

¹⁰⁷⁰ Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008, 10 June 2008, ICC-01/04-01/06-1388, page 9.

¹⁰⁷¹ Observations de la Défense sur les 15 demandes de participation à la procédure et les 30 demandes de participation complémentaires communiquées le 27 novembre 2008 ; Réponse de la Défense aux observations des représentants légaux relatives aux 105 demandes de participation communiquées le 20 mai 2008 ; et Observations de la Défense relatives aux victimes indirectes, 5 December 2008, ICC-01/04-01/06-1536, paragraph 26.

¹⁰⁷² Prosecution's Observations on 105 Redacted Applications for Victim Participation to the Case, 9 June 2008, ICC-01/04-01/06-1386, paragraph 27.

¹⁰⁷³ Réponse aux "Prosecution's Observations on 105 Applications for Victim Participation to the Case" du 9 juin 2008 et aux « Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008 » du 10 juin 2008, 28 November, ICC-01/04-01/06/1522, paragraph 22, page 18.

¹⁰⁷⁴ Réponse aux "Prosecution's Observations on 105 Applications for Victim Participation to the Case" du 9 juin 2008 et aux « Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008 » du 10 juin 2008, 28 November, ICC-01/04-01/06/1522, paragraph 25, page 18.

The applicant has been represented thus far by Mr Joseph Keta and Mr Jean Louis Gilissen.¹⁰⁷⁵

The Chamber's analysis and conclusions

The Trial Chamber has not been provided with any identification documents in accordance with its Decision on victims' participation.¹⁰⁷⁶ Although a lack of documents may be justified for applicants who are or have been confronted with particular difficulties, no explanation has been provided for the absence of any identifying documents to support this application. Consequently, the application form is materially incomplete. The Chamber instructs the VPRS to contact the applicant and his legal representative in order to seek appropriate documentation.

Application lacks proof of relationship and consent

Applicant a/0174/07 [Annex 64]

The means of identification

The Trial Chamber has been provided with the demobilisation certificate of the applicant and the election card for the person acting on his behalf. No proof of their relationship has been provided to the Chamber, and the applicant has not signed the application form giving his consent to his father to act on his behalf.¹⁰⁷⁷

The claim to victim status

The applicant states that around 2002 he was recruited by the UPC, when he was [REDACTED] or [REDACTED] years old. His parents were threatened with death if they resisted his recruitment. The applicant was demobilized in [REDACTED] 2004. As a result of these events he lost [REDACTED] family members: [REDACTED]. His schooling was interrupted and his father was a victim of looting. The applicant suffered psychological harm and serious violations of his fundamental rights.¹⁰⁷⁸

The phases of the proceedings

The applicant submits he has an interest in participating in all phases of the proceedings.¹⁰⁷⁹

The observations of the defence

¹⁰⁷⁵ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, page 211 and Annex 103.

¹⁰⁷⁶ Decision on victims' participation, 18 January 2008, ICC-01/04-01/06-1119.

¹⁰⁷⁷ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 127-128 and Annex 64.

¹⁰⁷⁸ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 127-128 and Annex 64.

¹⁰⁷⁹ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 127-128 and Annex 64.

The defence, in its original filing, submits that the applicant should not be granted status to participate in the proceedings, because the applicant has not specified the exact dates of the alleged events, as the only date provided is 'around 2002'. As a result, it is submitted there is nothing that allows a *prima facie* assessment as to whether the events took place between September 2002 and August 13th 2003.¹⁰⁸⁰ The defence submits in a further filing that the applicant has mentioned a different date of birth from that stated in his initial application, and as a result, the application does not meet the requirements for *prima facie* admission under Rule 85 of the Rules. In all the circumstances, it is submitted that the application should be rejected.¹⁰⁸¹

The observations of the prosecution

The prosecution submits that this applicant meets, *prima facie*, the necessary requirements for victim participation. The application forms and the further information received by the Registry suggest that this applicant was under the age of 15 at the time of his enlistment, conscription or use by the armed forces of the UPC, during the relevant time frame. The Prosecutor supports the application.¹⁰⁸²

The observations of the victim's legal representative

The legal representatives submit in their reply that there are certain contradictions or possible inaccuracies in this application due to the ongoing problems in the DRC and the extreme difficulties in obtaining the documents to support the application.¹⁰⁸³ The legal representatives also submit that the applicant has given enough information to show that he has suffered harm directly linked with the charges brought against the accused, and therefore the applicant should be granted the status of victim and admitted as a participant in the proceedings.¹⁰⁸⁴

Legal representation

The applicant has been represented thus far by Mr Joseph Keta Orwinyo and Mr Jean Louis Gilissen.¹⁰⁸⁵

¹⁰⁸⁰ Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008, 10 June 2008, ICC-01/04-01/06-1388, paragraph 13 and pages 12-13.

¹⁰⁸¹ Observations de la Défense sur les 15 demandes de participation à la procédure et les 30 demandes de participation complémentaires communiquées le 27 novembre 2008 ; Réponse de la Défense aux observations des représentants légaux relatives aux 105 demandes de participation communiquées le 20 mai 2008 ; et Observations de la Défense relatives aux victimes indirectes, 5 December 2008, ICC-01/04-01/06-1536, paragraph 26.

¹⁰⁸² Prosecution's Observations on 105 Redacted Applications for Victim Participation to the Case, 9 June 2008, ICC-01/04-01/06-1386, paragraph 27, pages 14-15.

¹⁰⁸³ Réponse aux "Prosecution's Observations on 105 Applications for Victim Participation to the Case" du 9 juin 2008 et aux « Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008 » du 10 juin 2008, 28 November, ICC-01/04-01/06/1522, paragraph 22, page 15.

¹⁰⁸⁴ Réponse aux "Prosecution's Observations on 105 Applications for Victim Participation to the Case" du 9 juin 2008 et aux « Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008 » du 10 juin 2008, 28 November, ICC-01/04-01/06/1522, paragraph 25, page 15.

¹⁰⁸⁵ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 127-128 and Annex 64.

The Chamber's analysis and conclusions

The Chamber considers the documents provided prove, *prima facie*, the identity of the applicant and the person acting on his behalf in accordance with the Trial Chamber's Decision on victims' participation. The Chamber considers that the demobilisation certificate proves, *prima facie*, that the applicant was under 18 years of age at the time when it was issued, in ██████████ 2004.¹⁰⁸⁶ The applicant has stated precisely in his application that he was born ██████████ 1991 and that he was approximately ██████ or ██████ years old during the material events. Thus, the Chamber considers that it has been provided with enough information to determine, *prima facie*, that the applicant was under the age of 15 during the material events.

No document has been submitted proving the relationship between the applicant and the person acting on his behalf (it is suggested this is his father) and the applicant has not signed the relevant document to indicate he consents to his father acting on his behalf. The Chamber thus instructs the VPRS to contact the applicant so that he can provide the Chamber with a document proving kinship between himself and the person acting on his behalf, or the applicant should sign the application form giving his consent to his father to act on his behalf.

Once the Chamber is provided with these further documents it will determine the application.

Applicant a/0176/07 [Annex 65]

The means of identification

The Chamber has been provided with the applicant's demobilisation certificate and an election card for the person acting on his behalf. No proof of their relationship has been submitted, and the applicant has not signed the application form. The dates of birth on the election card and the application form differ, although the VPRS has indicated that this is due to a typographical error.¹⁰⁸⁷

The claim to victim status

The applicant states that in 2001 he and his older brother were recruited by the UPC when he was ██████ or ██████ years old and they were then trained by an armed group. The applicant chose to join the UPC, driven by insecurity and a lack of food. The applicant left the militia in 2004. As a consequence of his recruitment, his education

¹⁰⁸⁶ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, Annex 64, page 18.

¹⁰⁸⁷ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 129-130 and Annex 65.

was interrupted and he has suffered psychological harm and serious violations of his fundamental rights.¹⁰⁸⁸

The phases of the proceedings

The applicant has submitted he has an interest in participating in all phases of the proceedings.¹⁰⁸⁹

The observations of the defence

The defence originally made no observations with respect to this applicant.¹⁰⁹⁰ However, the defence submits in a later filing that the applicant has mentioned a different date of birth from that indicated in his initial application, and as a result, the application does not meet the requirements for *prima facie* admission under Rule 85 of the Rules. In all the circumstances, it is submitted that the application should be rejected.¹⁰⁹¹

The observations of the prosecution

The prosecution submits that this applicant meets, *prima facie*, the necessary requirements for victim participation. The prosecution contends that the application form and the further information received by the Registry suggest that this applicant was under the age of 15 at the time of his enlistment, conscription or use by the armed forces of the UPC during the relevant time frame. The Prosecutor supports this application.¹⁰⁹²

The observations of the victim's legal representative

The legal representatives submit in their reply that there are certain contradictions or possible inaccuracies in this application due to the ongoing problems in the DRC and the extreme difficulties in obtaining the documents to support the application.¹⁰⁹³ The legal representatives also submit that the applicant has given enough information to show that he suffered harm directly linked with the charges brought against the

¹⁰⁸⁸ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 129-130 and Annex 65.

¹⁰⁸⁹ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 129-130 and Annex 65.

¹⁰⁹⁰ Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008, 10 June 2008, ICC-01/04-01/06-1388.

¹⁰⁹¹ Observations de la Défense sur les 15 demandes de participation à la procédure et les 30 demandes de participation complémentaires communiquées le 27 novembre 2008 ; Réponse de la Défense aux observations des représentants légaux relatives aux 105 demandes de participation communiquées le 20 mai 2008 ; et Observations de la Défense relatives aux victimes indirectes, 5 December 2008, ICC-01/04-01/06-1536, paragraph 26.

¹⁰⁹² Prosecution's Observations on 105 Redacted Applications for Victim Participation to the Case, 9 June 2008, ICC-01/04-01/06-1386, paragraph 27, pages 14-15.

¹⁰⁹³ Réponse aux "Prosecution's Observations on 105 Applications for Victim Participation to the Case" du 9 juin 2008 et aux « Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008 » du 10 juin 2008, 28 November, ICC-01/04-01/06/1522, paragraph 22, page 16.

accused, and therefore the applicant should be granted the status of victim and admitted as a participant in the proceedings.¹⁰⁹⁴

Legal representation

The applicant has been represented thus far by Mr Joseph Keta Orwinyo and Mr Jean Louis Gilissen.¹⁰⁹⁵

The Chamber's analysis and conclusions

This application was not before Pre-Trial Chamber I.

The Chamber considers that the documents provided prove, *prima facie*, the identity of the applicant and the person acting on his behalf in accordance with the Trial Chamber's Decision on victims' participation. The Chamber considers that the demobilisation certificate proves, *prima facie*, that the applicant was under 18 years of age at the time when it was issued, in ██████ 2005.¹⁰⁹⁶ The applicant has stated precisely and unequivocally in his application that he was born ██████ 1992 and that he was approximately ██████ or ██████ years old when he was recruited. Thus, the Chamber considers that it has been provided with enough information to determine, *prima facie*, that the applicant was under the age of 15 during the material events

There is no document proving the relationship between the applicant and the person acting on his behalf (his mother) nor has the applicant consented to his mother acting on his behalf.

The Trial Chamber instructs the VPRS to contact the applicant and to resubmit this application once the applicant has signed the application form consenting that the mother acts on his behalf or when he has provided proof of kinship between himself and the person acting on his behalf.

Once the Chamber is provided with these further documents it will determine this application.

Applicant a/0185/07 [Annex 68]

The means of identification

The Chamber has been provided with the applicant's demobilisation certificate and an election card for the person acting on his behalf. The applicant has not provided

¹⁰⁹⁴ Réponse aux "Prosecution's Observations on 105 Applications for Victim Participation to the Case" du 9 juin 2008 et aux « Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008 » du 10 juin 2008, 28 November, ICC-01/04-01/06/1522, paragraph 25, page 16.

¹⁰⁹⁵ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 129-130 and Annex 65

¹⁰⁹⁶ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, Annex 65, page 18.

any proof of kinship between the applicant and the person acting on his behalf (his [REDACTED]), neither has he signed any document giving his consent to this person acting on his behalf.¹⁰⁹⁷

The claim to victim status

The applicant states that in [REDACTED] 2002 he was recruited by UPC militia when he was [REDACTED] years old. The applicant joined the UPC militia out of necessity and in order to find refuge and food. As a result of these events, he has been traumatised and is generally unhappy; his education has been interrupted; and his house was destroyed. The applicant suffered psychological harm and serious violations of his fundamental rights.¹⁰⁹⁸

The phases of the proceedings

The applicant submits he has an interest in participating in all phases of the proceedings.¹⁰⁹⁹

The observations of the defence

The defence, in its original filing, notes the applicant has not provided confirmation as to his date of birth, and submits that this applicant should not be permitted to participate in the proceedings because he states that he was born in January 1987 and was, therefore, 15 years old in September 2002.¹¹⁰⁰ The defence submits in a further filing that the applicant has mentioned a different date of birth to that given in his initial application, and as a result, the application does not meet the requirements for *prima facie* admission under Rule 85 of the Rules. In all the circumstances, it is submitted that the application should be rejected.¹¹⁰¹

The observations of the prosecution

The prosecution submits that this applicant meets, *prima facie*, the necessary requirements for victim participation. In the contention of the prosecution, the application forms and the further information received by the Registry suggest that this applicant was under the age of 15 at the time of his enlistment, conscription or

¹⁰⁹⁷ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 135-136 and Annex 68.

¹⁰⁹⁸ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 135-136 and Annex 68.

¹⁰⁹⁹ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 135-136 and Annex 68.

¹¹⁰⁰ Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008, 10 June 2008, ICC-01/04-01/06-1388, paragraph 13 and pages 12-13.

¹¹⁰¹ Observations de la Défense sur les 15 demandes de participation à la procédure et les 30 demandes de participation complémentaires communiquées le 27 novembre 2008 ; Réponse de la Défense aux observations des représentants légaux relatives aux 105 demandes de participation communiquées le 20 mai 2008 ; et Observations de la Défense relatives aux victimes indirectes, 5 December 2008, ICC-01/04-01/06-1536, paragraph 26.

use by the armed forces of the UPC, during the relevant time frame. The Prosecutor supports this application.¹¹⁰²

The observations of the victim's legal representative

The legal representatives submit in their reply that there are certain contradictions or possible inaccuracies in this application due to the ongoing problems in the DRC and the extreme difficulties in obtaining the documents to support the application.¹¹⁰³ The legal representatives also submit that the applicant has given enough information to show that he has suffered harm directly linked with the charges brought against the accused, and therefore the applicant should be granted the status of victim and admitted as a participant in the proceedings.¹¹⁰⁴

Legal representation

The applicant has been represented thus far by Mr Joseph Keta Orwinyo and Mr Jean Louis Gilissen.¹¹⁰⁵

The Chamber's analysis and conclusions:

The Chamber considers that the documents provided prove, *prima facie*, the identity of the applicant and the person acting on his behalf in accordance with the Trial Chamber's Decision on victims' participation. The Chamber considers that the demobilisation certificate proves, *prima facie*, that the applicant was under 18 years of age at the time when it was issued, in ██████ 2005.¹¹⁰⁶ The applicant has stated precisely and unequivocally in his application that he was born on ██████ 1992 and that he was approximately ██████ or ██████ years old at the time of the relevant events. Thus, the Chamber rejects the submission of the defence and determines that it has been provided with enough information to determine, *prima facie*, that the applicant was under the age of 15 at the relevant time.

However there is no document proving the relationship between the applicant and the person acting on his behalf (who is said to be his ██████), nor has the applicant consented to his ██████ acting on his behalf.

The Trial Chamber instructs the VPRS to contact the applicant and to resubmit the application once the applicant has signed it consenting that his ██████ acts on his

¹¹⁰² Prosecution's Observations on 105 Redacted Applications for Victim Participation to the Case, 9 June 2008, ICC-01/04-01/06-1386, paragraph 27, pages 14-15.

¹¹⁰³ Réponse aux "Prosecution's Observations on 105 Applications for Victim Participation to the Case" du 9 juin 2008 et aux « Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008 » du 10 juin 2008, 28 November, ICC-01/04-01/06/1522, paragraph 22, page 18.

¹¹⁰⁴ Réponse aux "Prosecution's Observations on 105 Applications for Victim Participation to the Case" du 9 juin 2008 et aux « Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008 » du 10 juin 2008, 28 November, ICC-01/04-01/06/1522, paragraph 25, pages 18-19.

¹¹⁰⁵ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 135-136 and Annex 68.

¹¹⁰⁶ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, Annex 68, page 18.

behalf or has provided proof of the relationship between himself and the person acting on his behalf.

Once the Chamber is provided with these further documents it will determine this application.

Applicant a/0189/07 [Annex 70]

The means of identification

The Chamber has been provided with the applicant's demobilisation certificate and an election card for the person who is acting on his behalf. No proof of their relationship has been provided to the Chamber and the applicant has not signed the application form.¹¹⁰⁷

The claim to victim status

The applicant states that in [REDACTED] 2003 he was recruited by the UPC militia, when he was [REDACTED] years old. The applicant joined the militia out of fear for his life and he underwent military training. As a result of his recruitment, the applicant lives in fear. Members of his family died during the conflict. The applicant suffered psychological harm and serious violations of his fundamental rights.¹¹⁰⁸

The phases of the proceedings

The applicant submits he has an interest in participating in all phases of the proceedings.¹¹⁰⁹

The observations of the defence

The defence, in its original filing, submits that the harm the applicant suffered is the result of crimes that do not fall for determination by the Chamber and that as a result the applicant should not be granted status to participate in the proceedings.¹¹¹⁰ The defence submits in a further filing that the applicant has given a different date of birth from that indicated in his initial application, and, as a result, the application does not meet the requirements for *prima facie* admission under Rule 85 of the Rules. In all the circumstances, it is submitted that the application should be rejected.¹¹¹¹

¹¹⁰⁷ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 139-140 and Annex 70.

¹¹⁰⁸ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 139-140 and Annex 70.

¹¹⁰⁹ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 139-140 and Annex 70.

¹¹¹⁰ Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008, 10 June 2008, ICC-01/04-01/06-1388, paragraph 21, pages 12-13.

¹¹¹¹ Observations de la Défense sur les 15 demandes de participation à la procédure et les 30 demandes de participation complémentaires communiquées le 27 novembre 2008 ; Réponse de la Défense aux observations des représentants légaux relatives aux 105 demandes de participation communiquées le 20 mai 2008 ; et Observations de la Défense relatives aux victimes indirectes, 5 December 2008, ICC-01/04-01/06-1536, paragraph 26.

The observations of the prosecution

The prosecution submits that this applicant meets, *prima facie*, the necessary requirements for victim participation and that the application forms and further information received by the Registry suggest that this applicant was under the age of 15 at the time of his enlistment, conscription or use by the armed forces of the UPC, during the relevant time frame. The Prosecutor supports this application.¹¹¹²

The observations of the victim's legal representative

The legal representatives submit in their reply that there are certain contradictions or possible inaccuracies in this application due to the ongoing problems in the DRC and the extreme difficulties in obtaining the documents to support the application.¹¹¹³ The legal representative also submit that the applicant has given enough information to show that he has suffered harm directly linked with the charges brought against the accused, and therefore the applicant should be granted the status of victim and admitted as a participant in the proceedings.¹¹¹⁴

Legal representation

The applicant has been represented thus far by Mr Joseph Keta Orwinyo and Mr Jean Louis Gilissen.¹¹¹⁵

The Chamber's analysis and conclusions:

The Chamber considers the documents provided prove, *prima facie*, the identity of the applicant and the person acting on his behalf in accordance with the Trial Chamber's Decision on victims' participation. The Chamber considers that the demobilisation certificate proves, *prima facie*, that the applicant was under 18 years of age at the time when it was issued, in ██████████ 2004.¹¹¹⁶ The applicant has stated precisely and unequivocally in his application that he was born on ██████████ 1990 and that he was approximately ██████████ years old when he was recruited. Thus, the Chamber considers that it has been provided with enough information to determine, *prima facie*, that the applicant was under the age of 15 at the relevant time

There is no document proving the relationship between the applicant and the person acting on his behalf (who is said to be his mother), neither is there a signature for the

¹¹¹² Prosecution's Observations on 105 Redacted Applications for Victim Participation to the Case, 9 June 2008, ICC-01/04-01/06-1386, paragraph 27, pages 14-15.

¹¹¹³ Réponse aux "Prosecution's Observations on 105 Applications for Victim Participation to the Case" du 9 juin 2008 et aux « Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008 » du 10 juin 2008, 28 November, ICC-01/04-01/06/1522, paragraph 22, page 19.

¹¹¹⁴ Réponse aux "Prosecution's Observations on 105 Applications for Victim Participation to the Case" du 9 juin 2008 et aux « Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008 » du 10 juin 2008, 28 November, ICC-01/04-01/06/1522, paragraph 25, page 19.

¹¹¹⁵ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 139-140 and Annex 70.

¹¹¹⁶ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, Annex 70, page 18.

applicant giving consent to his mother acting on his behalf. The Chamber notes, however, the applicant was a child at the time when the application form was completed but he is now an adult. The Chamber thus instructs the VPRS to contact the applicant so that he can make a decision as to whether he wants to participate on his own or through his mother, and if the latter, he is to provide the Chamber with a document proving kinship between himself and the person acting on his behalf. Furthermore, if relevant, he should sign the application form giving his consent to his mother acting on his behalf.

The applicant's mother also alleges she suffered harm. The Trial Chamber therefore instructs the VPRS to corroborate whether she wishes to participate on her own behalf for the personal harm she allegedly suffered.

Once the Chamber is provided with these further documents it will determine the application.

Applicant a/0064/07 [Annex 84]

The means of identification

The Trial Chamber has been provided with the applicant's demobilisation card. No identification document has been provided as regards the person acting on behalf of the applicant (his guardian).¹¹¹⁷

The claim to victim status

The applicant states that he was recruited on an unknown date by the UPC militia, when he was ■ years old. The applicant was made to carry heavy loads and he was thereafter trained in UPC camps. Subsequently he allegedly participated in fighting and killed a number of civilians and militia members. His demobilisation card indicates he was demobilised on ■ 2005. The applicant's family home was looted and these events led to a situation of insecurity for his parents. In addition, his schooling was disrupted. The applicant suffered physical and material harm as a consequence of his recruitment.¹¹¹⁸

The phases of the proceedings

The applicant has expressed an interest in participating in all phases of the proceedings.¹¹¹⁹

The observations of the defence

¹¹¹⁷ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 168-169 and Annex 84.

¹¹¹⁸ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 168-169 and Annex 84.

¹¹¹⁹ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, page 169 and Annex 84.

The defence submits that the date of birth in the demobilisation card (1986) means the applicant was over 15 during the material events in 2002.¹¹²⁰ The defence submits in a further filing that the applicant has mentioned a different date of birth from that indicated in his initial application, and as a result, the application does not meet the requirements for *prima facie* admission under Rule 85 of the Rules. In all the circumstances, it is submitted that the application should be rejected.¹¹²¹

The observations of the prosecution

The prosecution submits that the applicant has provided insufficient information as to the time when the relevant crimes were allegedly committed. The prosecution states that although the applicant may have been recruited by the UPC whilst he was under the age of 15, his application provides insufficient information to conclude, *prima facie*, that this happened during the time-frame relevant to the charges. The prosecution requests the trial Chamber to seek further information from the applicant.¹¹²²

The observations of the victim's legal representative

The legal representatives submit in their reply that there are certain contradictions or possible inaccuracies in this application due to the ongoing problems in the DRC and the extreme difficulties in obtaining the documents to support the application. Nevertheless, the applicant is ready to submit supplementary information to support his application and to respond to any request from the Court.¹¹²³ The legal representatives also submit that the applicant has suffered harm directly linked with the charges brought against the accused, and therefore the applicant should be granted the status of victim and admitted as a participant in the proceedings.¹¹²⁴

Legal representation

The applicant has been represented thus far by Mr Joseph Keta and Mr Jean Louis Gilissen.¹¹²⁵

The Chamber's analysis and conclusions

¹¹²⁰ Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008, 10 June 2008, ICC-01/04-01/06-1388, page 6.

¹¹²¹ Observations de la Défense sur les 15 demandes de participation à la procédure et les 30 demandes de participation complémentaires communiquées le 27 novembre 2008 ; Réponse de la Défense aux observations des représentants légaux relatives aux 105 demandes de participation communiquées le 20 mai 2008 ; et Observations de la Défense relatives aux victimes indirectes, 5 December 2008, ICC-01/04-01/06-1536, paragraph 26.

¹¹²² Prosecution's Observations on 105 Redacted Applications for Victim Participation to the Case, 9 June 2008, ICC-01/04-01/06-1386, paragraph 27, paragraphs 34 and 40.

¹¹²³ Réponse aux "Prosecution's Observations on 105 Applications for Victim Participation to the Case" du 9 juin 2008 et aux « Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008 » du 10 juin 2008, 28 November, ICC-01/04-01/06/1522, paragraphs 19-22, page 13.

¹¹²⁴ Réponse aux "Prosecution's Observations on 105 Applications for Victim Participation to the Case" du 9 juin 2008 et aux « Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008 » du 10 juin 2008, 28 November, ICC-01/04-01/06/1522, paragraph 25

¹¹²⁵ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, page 169 and Annex 84.

The Chamber considers that the documents provided prove, *prima facie*, the identity of the applicant in accordance with the Trial Chamber's Decision on victims' participation. However, the Chamber notes that it has not been provided with an identification document of the person acting on behalf of the applicant.

Although the Trial Chamber notes that the year of birth of the applicant as established in the application form (1990) and the demobilisation card (1988) are different,¹¹²⁶ the Chamber considers that these documents prove, *prima facie*, that the applicant may have been under the age of 15 during the material events as covered by the charges (September 2002 through 13 August 2003).

On the basis of the documents provided to the Chamber, the applicant was born either in 1988 or in 1990, and according to the application form he was ■ years old at the time of his alleged recruitment. The Trial Chamber can thus infer that the applicant was recruited at some point between 1999 and 2001. Furthermore, the demobilisation card establishes, *prima facie*, that the applicant was demobilised in 2005. Thus, although the Trial Chamber cannot determine the exact age of the applicant at the time of his recruitment or the precise date of his recruitment, it can conclude, *prima facie*, that the applicant was under the age of fifteen when he was used in hostilities, and this occurred within the timeframe of the charges brought against the accused.

The Trial Chamber consequently considers that the applicant has given sufficient evidence to establish, *prima facie*, that he is a victim under Rule 85(a) of the Rules, as the Chamber has been provided with enough information to conclude that the applicant suffered personal harm as a result of crimes included in the charges brought against the accused, namely his alleged enlistment and/or conscription and/or use to participate actively in the hostilities by the UPC between September 2002 and 13 August 2003.¹¹²⁷

However, the application was made by the guardian of the applicant on his behalf. Since no identification document for the person acting on his behalf or any proof of relationship between the applicant and that person have been provided to the Chamber, and the applicant has not signed the application form authorising the person to act on his behalf, the Trial Chamber is unable to grant this application.

The Trial Chamber observes that the applicant was a child when the application was filed but he is now an adult; accordingly, the applicant may participate on his own behalf if he wishes to do so.

¹¹²⁶ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 164-165 and Annex 82.

¹¹²⁷ Decision on victims' participation, 18 January 2008, ICC-01/04-01/06-1119, as confirmed, amended and reversed by the Appeals Chamber's 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.

The Chamber thus instructs the VPRS to ascertain whether the applicant wishes to participate on his own behalf or through his guardian. Once the Chamber has been provided with the consent of the applicant either to participate on his own behalf or through his guardian, the Chamber will determine the application. If the applicant wishes to participate through his guardian, he is to submit to the Chamber the appropriate identification document for the person acting on his behalf and should submit his consent in this regard.

Applicant a/0175/07 [Annex 85]

The means of identification

The Trial Chamber has been provided with the applicant's demobilisation card and the election card for the person acting on his behalf. No document has been provided proving the relationship between the applicant and the person acting on his behalf (his mother).¹¹²⁸

The claim to victim status

The applicant states that he was recruited in 2001 by the UPC militia at the age of ■ or ■. The applicant was then given military training for ■ months and he stayed with the UPC until 2004. As a result of his recruitment, the applicant has difficulty in complying with any instructions that he is given, and his schooling was disrupted. He also alleges psychological harm.¹¹²⁹

The phases of the proceedings

The applicant has expressed an interest in participating in all phases of the proceedings.¹¹³⁰

The observations of the defence

The defence, in its original filing, submits that the date of birth in the demobilisation card (1986) means that the applicant was older than 15 during the material events in 2002.¹¹³¹ The defence submits in a further filing that the applicant has mentioned a different date of birth from that indicated in his initial application, and as a result, the application does not meet the requirements for *prima facie* admission under Rule 85 of the Rules. In all the circumstances, it is submitted that the application should be rejected.¹¹³²

¹¹²⁸ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 170-171 and Annex 85.

¹¹²⁹ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 170-171 and Annex 85.

¹¹³⁰ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, page 171 and Annex 85.

¹¹³¹ Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008, 10 June 2008, ICC-01/04-01/06-1388, page 6.

¹¹³² Observations de la Défense sur les 15 demandes de participation à la procédure et les 30 demandes de participation complémentaires communiquées le 27 novembre 2008 ; Réponse de la Défense aux observations des représentants légaux relatives aux 105 demandes de participation communiquées le 20

The observations of the prosecution

The prosecution argues that the applicant's date of birth as set out in the demobilisation card of the applicant differs from that provided in his application and the former indicates he was over the age of 15 at the time of his recruitment. The prosecution requests the trial Chamber to order further information from the applicant.¹¹³³

The observations of the victim's legal representative

The legal representatives submit in their reply that there are certain contradictions or possible inaccuracies in this application due to the ongoing problems in the DRC and the extreme difficulties in obtaining the documents to support the application. Nevertheless, the applicant states that he is ready to submit supplementary information to support his application and to respond to any request from the Court.¹¹³⁴ The legal representatives also submit that the applicant has suffered harm directly linked with the charges brought against the accused, and therefore the applicant should be granted the status of victim and admitted as a participant in the proceedings.¹¹³⁵

Legal representation

The applicant has been represented thus far by Mr Joseph Keta and Mr Jean Louis Gilissen.¹¹³⁶

The Chamber's analysis and conclusions

The Chamber considers that the documents provided prove, *prima facie*, the identity of the applicant and the person acting on his behalf in accordance with the Trial Chamber's Decision on victims' participation.

The Trial Chamber observes that although no document has been provided to prove the relationship between the applicant and the person acting on his behalf, the applicant has signed all the pages of the application form and has consented to this person (his mother) acting on his behalf. The Trial Chamber also notes that the applicant may now be an adult. In the result, the Chamber instructs the VPRS to contact the applicant in order to ascertain his precise age, if possible, and, subject to

mai 2008 ; et Observations de la Défense relatives aux victimes indirectes, 5 December 2008, ICC-01/04-01/06-1536, paragraph 26.

¹¹³³ Prosecution's Observations on 105 Redacted Applications for Victim Participation to the Case, 9 June 2008, ICC-01/04-01/06-1386, paragraph 27, paragraphs 29 and 40.

¹¹³⁴ Réponse aux "Prosecution's Observations on 105 Applications for Victim Participation to the Case" du 9 juin 2008 et aux « Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008 » du 10 juin 2008, 28 November, ICC-01/04-01/06/1522, paragraphs 19-22, pages 15-16.

¹¹³⁵ Réponse aux "Prosecution's Observations on 105 Applications for Victim Participation to the Case" du 9 juin 2008 et aux « Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008 » du 10 juin 2008, 28 November, ICC-01/04-01/06/1522, paragraph 25

¹¹³⁶ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, page 171 and Annex 85.

the matters set out below, whether he wishes to participate on his own behalf or by his mother.

The Trial Chamber notes however that the year of birth of the applicant set out in the application form (1989) and the demobilisation card (1986) are different.¹¹³⁷ The demobilisation card provided seems to indicate that the applicant may have been older than 15 during the material events.

In light of the above matters, the Trial Chamber considers that the applicant has not given sufficient evidence to establish, *prima facie*, that he is a victim under Rule 85(a) of the Rules, as the Chamber has not been provided with sufficiently clear or reliable information in order to conclude whether or not the applicant was under the age of 15 at the time of his alleged recruitment and whether he was over the age of 15 during the period covered by the charges (September 2002 to 13 August 2003).¹¹³⁸

The Trial Chamber instructs the VPRS to contact the applicant in order to provide the Chamber with further information in order to make a decision.

Date of birth unknown

Applicant a/0177/07 [Annex 86]

The means of identification

The Trial Chamber has been provided with the applicant's demobilisation card.¹¹³⁹

The claim to victim status

The applicant indicated that in 2001 she was allegedly recruited by UPC militia in an unknown place when he was ■ or ■ years old. She underwent military training and was allegedly demobilised in 2006. Her ■ was injured whilst fleeing and she suffered considerably during training. Her house was looted and her schooling was disrupted. The applicant suffered psychological, physical and material harm.¹¹⁴⁰

The phases of the proceedings

¹¹³⁷ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 170-171 and Annex 85.

¹¹³⁸ Decision on victims' participation, 18 January 2008, ICC-01/04-01/06-1119, as confirmed, amended and reversed by the Appeals Chamber's 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.

¹¹³⁹ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 172-173 and Annex 86.

¹¹⁴⁰ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 172-173 and Annex 86.

The applicant has expressed an interest to participate in all phases of the proceedings.¹¹⁴¹

The observations of the defence

The defence, in its original filing, submits that the date of birth in the demobilisation card (1986) means that the applicant was over 15 during the material events in 2001.¹¹⁴² The defence submits in a further filing that the applicant has given a different date of birth from that indicated in her initial application, and as a result, the application does not meet the requirements for *prima facie* admission under Rule 85 of the Rules. In all the circumstances, it is submitted that the application should be rejected.¹¹⁴³

The observations of the prosecution

The prosecution submits that the date of birth in the demobilisation card of the applicant differs from that stated in her application. The prosecution supports the defence argument, namely that the date of birth indicated in the card means that the applicant was over 15 at the time of his recruitment. The prosecution requests the Trial Chamber to order further information from the applicant.¹¹⁴⁴

The observations of the victim's legal representative

The legal representatives submit in their reply that there are certain contradictions or possible inaccuracies in this application due to the ongoing problems in the DRC and the extreme difficulties in obtaining the documents to support the application. Nevertheless, the applicant states that she is ready to submit supplementary information to support her application and to respond to any request from the Court.¹¹⁴⁵ The legal representatives of this applicant also submit that she has suffered harm directly linked with the charges brought against the accused, and therefore the applicant should be granted the status of victim and admitted as a participant in the proceedings.¹¹⁴⁶

Legal representation

¹¹⁴¹ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, page 173 and Annex 86

¹¹⁴² Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008, 10 June 2008, ICC-01/04-01/06-1388, page 6.

¹¹⁴³ Observations de la Défense sur les 15 demandes de participation à la procédure et les 30 demandes de participation complémentaires communiquées le 27 novembre 2008 ; Réponse de la Défense aux observations des représentants légaux relatives aux 105 demandes de participation communiquées le 20 mai 2008 ; et Observations de la Défense relatives aux victimes indirectes, 5 December 2008, ICC-01/04-01/06-1536, paragraph 26.

¹¹⁴⁴ Prosecution's Observations on 105 Redacted Applications for Victim Participation to the Case, 9 June 2008, ICC-01/04-01/06-1386, paragraph 27, paragraphs 29 and 40.

¹¹⁴⁵ Réponse aux "Prosecution's Observations on 105 Applications for Victim Participation to the Case" du 9 juin 2008 et aux « Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008 » du 10 juin 2008, 28 November, ICC-01/04-01/06/1522, paragraph 19-22, page 15.

¹¹⁴⁶ Réponse aux "Prosecution's Observations on 105 Applications for Victim Participation to the Case" du 9 juin 2008 et aux « Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008 » du 10 juin 2008, 28 November, ICC-01/04-01/06/1522, paragraph 25.

The applicant has been represented thus far by Mr Joseph Keta and Mr Jean Louis Gilissen.¹¹⁴⁷

The Chamber's analysis and conclusions

The Chamber considers that the documents provided prove, *prima facie*, the identity of the applicant in accordance with the Trial Chamber's Decision on victims' participation.

However the year of birth of the applicant as set out in the application form (1988) and the identification document (1986) are different.¹¹⁴⁸ The identification document seems to indicate that the applicant was over 15 at the time of the relevant events.

In light of the above, the Trial Chamber considers that the applicant has not provided sufficient evidence to establish, *prima facie*, that she is a victim under Rule 85(a) of the Rules

The Trial Chamber instructs the VPRS to contact the applicant in order to provide the Chamber with further information to determine the applicant's age at the time of her recruitment, and particularly by reference to the period covered by the charges.

Applicant a/0178/07 [Annex 87]

The means of identification

The Trial Chamber has been provided with the applicant's demobilisation card.¹¹⁴⁹

The claim to victim status

The applicant states that in 2002 when he was ■ he was recruited by the UPC militia, in an unknown place. He enrolled because of the recurring massacres. Members of his family lost their lives in the conflict and his possessions were looted and burnt. He underwent military training and was demobilised in ■ 2006. The applicant suffered psychological and material harm.¹¹⁵⁰

The phases of the proceedings

The applicant has expressed an interest in participating in all phases of the proceedings.¹¹⁵¹

¹¹⁴⁷ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, page 173 and Annex 86.

¹¹⁴⁸ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 172-173 and Annex 86.

¹¹⁴⁹ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 174-175 and Annex 87.

¹¹⁵⁰ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 174-175 and Annex 87.

¹¹⁵¹ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, page 175 and Annex 87.

The observations of the defence

The defence, in its original filing, submits that the date of birth in the demobilisation card (1986) means that the applicant was over 15 during the material events in 2001.¹¹⁵² The defence submits in a further filing that the applicant has given a different date of birth from that indicated in his initial application, and as a result, the application does not meet the requirements for *prima facie* admission under Rule 85 of the Rules. In all the circumstances, it is submitted that the application should be rejected.¹¹⁵³

The observations of the prosecution

The prosecution argue that the date of birth in the demobilisation card of the applicant differs from that stated in her application, and the former mean that he was over 15 at the time of her recruitment. The prosecution requests the trial Chamber to order further information from the applicant.¹¹⁵⁴

The observations of the victim's legal representative

The legal representatives submit in their reply that there are certain contradictions or possible inaccuracies in this application due to the ongoing problems in the DRC and the extreme difficulties in obtaining the documents to support the application. Nevertheless, the applicant is ready to submit supplementary information to support his application and to respond to any request from the Court.¹¹⁵⁵ The legal representatives also submit that the applicant has suffered harm directly linked with the charges brought against the accused, and therefore the applicant should be granted the status of victim and admitted as a participant in the proceedings.¹¹⁵⁶

Legal representation

The applicant has been represented thus far by Mr Joseph Keta and Mr Jean Louis Gilissen.¹¹⁵⁷

¹¹⁵² Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008, 10 June 2008, ICC-01/04-01/06-1388, page 6.

¹¹⁵³ Observations de la Défense sur les 15 demandes de participation à la procédure et les 30 demandes de participation complémentaires communiquées le 27 novembre 2008 ; Réponse de la Défense aux observations des représentants légaux relatives aux 105 demandes de participation communiquées le 20 mai 2008 ; et Observations de la Défense relatives aux victimes indirectes, 5 December 2008, ICC-01/04-01/06-1536, paragraph 26.

¹¹⁵⁴ Prosecution's Observations on 105 Redacted Applications for Victim Participation to the Case, 9 June 2008, ICC-01/04-01/06-1386, paragraph 27, paragraphs 29 and 40.

¹¹⁵⁵ Réponse aux "Prosecution's Observations on 105 Applications for Victim Participation to the Case" du 9 juin 2008 et aux « Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008 » du 10 juin 2008, 28 November, ICC-01/04-01/06/1522, paragraphs 19-22, pages 16-17.

¹¹⁵⁶ Réponse aux "Prosecution's Observations on 105 Applications for Victim Participation to the Case" du 9 juin 2008 et aux « Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008 » du 10 juin 2008, 28 November, ICC-01/04-01/06/1522, paragraph 25.

¹¹⁵⁷ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, page 175 and Annex 87.

The Chamber's analysis and conclusions

The Chamber considers that the documents provided prove, *prima facie*, the identity of the applicant in accordance with the Trial Chamber's Decision on victims' participation.

However the year of birth of the applicant as set out in the application form (1987) and the identification document (1986) are different.¹¹⁵⁸ The latter indicates that the applicant may have been ■ years old at the time of the relevant events.

In light of the above, the Trial Chamber considers that the applicant has not given sufficient evidence to establish, *prima facie*, that he is a victim under Rule 85(a) of the Rules, as the Chamber has not been provided with reliable information as to his age at the time of his alleged recruitment and he may have been over the age of 15 during the period covered by the charges, September 2002 to 13 August 2003.¹¹⁵⁹

The Trial Chamber instructs the VPRS to contact the applicant in order to provide the Chamber with further information on these issues.

Applicant a/0180/07 [Annex 99]

The means of identification

The Chamber has been provided with the applicant's demobilisation card. No identification document has been provided for the person acting on his behalf.¹¹⁶⁰

The claim to victim status

The applicant states that he was recruited by the UPC militia of Thomas Lubanga when aged ■ or ■ in 2001. He was trained and he was eventually demobilised on ■ 2005. His house was looted and these events disrupted his schooling and his behaviour. He suffered psychological and material harm.¹¹⁶¹

The phases of the proceedings

The applicant is interested in participating in all phases of the proceedings.¹¹⁶²

¹¹⁵⁸ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 174-175 and Annex 87.

¹¹⁵⁹ Decision on victims' participation, 18 January 2008, ICC-01/04-01/06-1119, as confirmed, amended and reversed by the Appeals Chamber's 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.

¹¹⁶⁰ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 199-200 and Annex 99.

¹¹⁶¹ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 199-200 and Annex 99.

¹¹⁶² First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, page 200 and Annex 99.

The observations of the defence

The defence, in its original filing, submits that the demobilisation card provided indicates that the applicant was born in May 1987 and he was thus 15 years old in September 2002.¹¹⁶³ The defence submits in a further filing that the applicant has mentioned a different date of birth from that indicated in his initial application, and as a result, the application does not meet the requirements for *prima facie* admission under Rule 85 of the Rules. In all the circumstances, it is submitted that the application should be rejected.¹¹⁶⁴

The observations of the prosecution

The prosecution submits that the date of birth in the demobilisation card of the applicant differs from that stated in his application and the former indicates the applicant was above the age of 15 at the time of his recruitment. Furthermore, the prosecution notes that the applicant has not indicated the date of his recruitment in his application and demobilisation certificate. The prosecution requests the Trial Chamber to seek further information from the applicant.¹¹⁶⁵

The observations of the victim's legal representative

The legal representatives submit in their reply that there are certain contradictions or possible inaccuracies in this application due to the ongoing problems in the DRC and the extreme difficulties in obtaining the documents to support the application. Nevertheless, the applicant is ready to submit supplementary information to support his application and to respond to any request from the Court.¹¹⁶⁶ The legal representative also submit that the applicant has suffered harm directly linked with the charges brought against the accused, and therefore the applicant should be granted the status of victim and admitted as a participant in the proceedings.¹¹⁶⁷

Legal representation

The applicant is represented by Mr Joseph Keta and Mr Jean Louis Gilissen.¹¹⁶⁸

¹¹⁶³ Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008, 10 June 2008, ICC-01/04-01/06-1388, paragraph 13.

¹¹⁶⁴ Observations de la Défense sur les 15 demandes de participation à la procédure et les 30 demandes de participation complémentaires communiquées le 27 novembre 2008 ; Réponse de la Défense aux observations des représentants légaux relatives aux 105 demandes de participation communiquées le 20 mai 2008 ; et Observations de la Défense relatives aux victimes indirectes, 5 December 2008, ICC-01/04-01/06-1536, paragraph 26.

¹¹⁶⁵ Prosecution's Observations on 105 Redacted Applications for Victim Participation to the Case, 9 June 2008, ICC-01/04-01/06-1386, paragraph 27, paragraphs 29 and 40.

¹¹⁶⁶ Réponse aux "Prosecution's Observations on 105 Applications for Victim Participation to the Case" du 9 juin 2008 et aux « Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008 » du 10 juin 2008, 28 November, ICC-01/04-01/06/1522, paragraphs 19-22, page 17.

¹¹⁶⁷ Réponse aux "Prosecution's Observations on 105 Applications for Victim Participation to the Case" du 9 juin 2008 et aux « Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008 » du 10 juin 2008, 28 November, ICC-01/04-01/06/1522, paragraph 25.

¹¹⁶⁸ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, page 200 and Annex 99.

The Chamber's analysis and conclusions

The Chamber notes that the applicant has not provided any document proving the relationship with the person acting on his behalf, and the applicant has not given his consent to the person acting on his behalf.

The Chamber notes that the applicant suggests he was born in [REDACTED] 1990, but the only identification document provided states that his date of birth is [REDACTED] 1987.

In light of the above, the Trial Chamber is unable to grant this application, as the Chamber has not been provided with sufficiently reliable information as to applicant's age at the time of his alleged recruitment, and by reference to the period covered by the charges, September 2002 to 13 August 2003.¹¹⁶⁹

¹¹⁶⁹ Decision on victims' participation, 18 January 2008, ICC-01/04-01/06-1119, as confirmed, amended and reversed by the Appeals Chamber's 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.

Group 2(b): Incidents outside the timeframe of the charges or applicants older than 15 at the time of their alleged recruitment

Applicant a/0228/06 [Annex 88]

The means of identification

The Trial Chamber has been provided with the applicant's demobilisation certificate.¹¹⁷⁰

The claim to victim status

The applicant states he was recruited by UPC militia in 2003, although the application form suggests that this occurred in █████ 2002. The organisation which assisted the applicant subsequently clarified that he was enrolled in █████ 2003. This occurred in █████, Ituri, when the applicant was approximately █████ years old. He was allegedly taken to a training camp and was taught to use arms and drugs, and to engage in fetishism, and he and others were used as porters, cooks and for reconnaissance purposes. The applicant states that they were taught to kill and were subjected to physical mistreatment if they did not carry out their assigned tasks. The applicant was tortured, drugged and forced to loot during the █████ months he was with the armed group. As a consequence, his schooling was disrupted and these events have caused him to have violent verbal and physical outbursts and psychiatric problems. He has had pain in his █████ and suffered from the drugs, the fetishism and the deafening noise of automatic arms. The applicant states he suffered psychological and physical harm.¹¹⁷¹

The phases of the proceedings

The applicant has an interest in participating in all phases of the proceedings.¹¹⁷²

The observations of the defence

The defence, in its original filing, submits that the applicant has stated in his application that he was born in 1987, and thus would have been 15 years old in 2002. The defence contends that although the applicant sought to suggest in a later declaration that he was born in 1989, there is no document that proves his identity and age.¹¹⁷³ The defence reiterates in a further filing that the applicant has given a different date of birth from that indicated in his initial application, and as a result,

¹¹⁷⁰ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 177-178 and Annex 88.

¹¹⁷¹ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 177-178 and Annex 88.

¹¹⁷² First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, page 178 and Annex 88.

¹¹⁷³ Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008, 10 June 2008, ICC-01/04-01/06-1388, pages 5-6 and 12.

the application does not meet the requirements for *prima facie* admission under Rule 85. In all the circumstances, it is submitted that the application should be rejected.¹¹⁷⁴

The observations of the prosecution

The prosecution submits that the applicant does not meet the criteria for participation in the case because he was either over the age of 15 at the time of his recruitment or had turned 15 by September 2002.¹¹⁷⁵

The observations of the victim's legal representative

The legal representatives submit in their reply that the applicant has set out that he was recruited for the FPLC as a child soldier when he was under 15 years old and thus there is direct link with the charges brought against the accused, and therefore the applicant should be granted the status of victim and admitted as a participant in the proceedings.¹¹⁷⁶

Legal representation

The applicant has been represented thus far by Mr Joseph Keta and Mr Jean Louis Gilissen.¹¹⁷⁷

The Chamber's analysis and conclusions

The Trial Chamber notes that the applicant has also applied to participate in the DRC situation and his application form has been transmitted to Pre-Trial Chamber I. In its decision of 31 January 2008, the Pre-Trial Chamber concluded that the applicant is not a victim of recruitment under the jurisdiction of the Court, as he was older than 15 at the time of the relevant events. However, the Pre-Trial Chamber affirmed that the applicant had suffered moral and physical harm as a result of inhumane treatment and torture to which he was submitted during his training. The Pre-Trial Chamber thus granted the applicant status to participate in the DRC Situation.¹¹⁷⁸

¹¹⁷⁴ Observations de la Défense sur les 15 demandes de participation à la procédure et les 30 demandes de participation complémentaires communiquées le 27 novembre 2008 ; Réponse de la Défense aux observations des représentants légaux relatives aux 105 demandes de participation communiquées le 20 mai 2008 ; et Observations de la Défense relatives aux victimes indirectes, 5 December 2008, ICC-01/04-01/06-1536, paragraph 26.

¹¹⁷⁵ Prosecution's Observations on 105 Redacted Applications for Victim Participation to the Case, 9 June 2008, ICC-01/04-01/06-1386, paragraph 27, paragraphs 36 and 41.

¹¹⁷⁶ Réponse aux "Prosecution's Observations on 105 Applications for Victim Participation to the Case" du 9 juin 2008 et aux « Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008 » du 10 juin 2008, 28 November, ICC-01/04-01/06/1522, paragraph 25, page 10.

¹¹⁷⁷ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, page 178 and Annex 88.

¹¹⁷⁸ Corrigendum à la "Décision sur les demandes de participation à la procédure déposées dans le cadre de l'enquête en République démocratique du Congo par a/0004/06 à a/0009/06, a/0016/06 à a/0063/06, a/0071/06 à a/0080/06 et a/0105/06 à a/0110/06, a/0188/06, a/0128/06 à a/0162/06, a/0199/06, a/0203/06, a/0209/06, a/0214/06, a/0220/06 à a/0222/06, a/0224/06, a/0227/06 à a/0230/06, a/0234/06 à a/0236/06, a/0240/06, a/0225/06, a/0226/06, a/0231/06 à a/0233/06, a/0237/06 à a/0239/06 et a/0241/06 à a/0250/06", ICC-01/04-423-Corr, 31 January 2008, paragraph 134.

The Chamber considers that the documents provided prove, *prima facie*, the identity of the applicant in accordance with the Trial Chamber's Decision on victims' participation.

However the year of birth of the applicant as set out in the application form (1987) indicates that the applicant may have been ■ years old at the time of the relevant events. This has been confirmed in the report submitted by the VPRS.¹¹⁷⁹

In light of the above, the Trial Chamber rejects the application, as the Chamber has not been provided with sufficient information to conclude, *prima facie*, that the applicant was under the age of 15 at the time of the alleged recruitment and during the period covered by the charges, September 2002 to 13 August 2003.¹¹⁸⁰

Applicant a/0252/07 [Annex 89]

The means of identification

The Trial Chamber has been provided with the applicant's demobilisation certificate.¹¹⁸¹

The claim to victim status

The applicant states that he was recruited by UPC militia in 2002 when he was barely ■ years old. The militia forced his parents to accept his recruitment and stole some money. He alleges psychological and material harm as a result.¹¹⁸²

The phases of the proceedings

The applicant has expressed an interest in participating in all phases of the proceedings except the preliminary examination stage.¹¹⁸³

The observations of the defence

The defence contends that the applicant was born in June 1987 and was thus 15 years old in September 2002.¹¹⁸⁴

¹¹⁷⁹ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 177-178 and Annex 88.

¹¹⁸⁰ Decision on victims' participation, 18 January 2008, ICC-01/04-01/06-1119, as confirmed, amended and reversed by the Appeals Chamber's 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.

¹¹⁸¹ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 179-180 and Annex 89.

¹¹⁸² First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 179-180 and Annex 89.

¹¹⁸³ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, page 180 and Annex 89

¹¹⁸⁴ Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008, 10 June 2008, ICC-01/04-01/06-1388, page 7.

The observations of the prosecution

The prosecution argues that the applicant does not meet the criteria for participation because he was either over the age of 15 at the time of his recruitment or had turned 15 by September 2002.¹¹⁸⁵

The observations of the victim's legal representative

The legal representative did not make observations as regard this applicant.

Legal representation

The applicant has been represented thus far by Ms Carine Bapita Buyangandu.¹¹⁸⁶

The Chamber's analysis and conclusions

The Chamber considers that the documents provided prove, *prima facie*, the identity of the applicant in accordance with the Trial Chamber's Decision on victims' participation.

The Trial Chamber notes however that the year of birth of the applicant as established in the application form (████ 1987) indicates that the applicant may have been █████ years old during the material events.¹¹⁸⁷

In light of the above, the Trial Chamber rejects the application, as the Chamber has not been provided with sufficient information to conclude, *prima facie*, that the applicant was under the age of 15 at the time of the alleged recruitment and during the period covered by the charges, September 2002 to 13 August 2003.¹¹⁸⁸

Applicant a/0278/07 [Annex 90]**The means of identification**

The Trial Chamber has been provided with the applicant's demobilisation certificate.¹¹⁸⁹

The claim to victim status

¹¹⁸⁵ Prosecution's Observations on 105 Redacted Applications for Victim Participation to the Case, 9 June 2008, ICC-01/04-01/06-1386, paragraph 27, paragraphs 36 and 41.

¹¹⁸⁶ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, page 180 and Annex 89.

¹¹⁸⁷ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 179-180 and Annex 89.

¹¹⁸⁸ Decision on victims' participation, 18 January 2008, ICC-01/04-01/06-1119, as confirmed, amended and reversed by the Appeals Chamber's 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.

¹¹⁸⁹ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 181-182 and Annex 90.

The applicant alleges that he was recruited and trained by the UPC in 2000, when he was [REDACTED] or [REDACTED] years old. He was demobilised in [REDACTED] 2005. The applicant claims to have suffered serious harm to his fundamental rights.¹¹⁹⁰

The phases of the proceedings

The applicant has expressed an interest in participating in all phases of the proceedings.¹¹⁹¹

The observations of the defence

The Defence submits that the applicant is among a group of applicants who have stated that they were recruited between 2000 and May 2002. However, the defence argue that this group of applicants does not state precisely the duration of their recruitment or the date on which they were demobilised. Accordingly, the Defence submits, there is nothing to establish, *prima facie*, that the alleged events occurred during the period between September 2002 and 13 August 2003. The defence further contends that the applicant has not alleged any harm.¹¹⁹²

The observations of the prosecution

The prosecution argues that the applicant does not meet the criteria for participation because the applicant was either over the age of 15 at the time of his recruitment or had turned 15 by September 2002.¹¹⁹³

The observations of the victim's legal representative

The legal representatives made no observations as regard this applicant.

Legal representation

The applicant has been represented thus far by Mr Joseph Keta and Mr Jean Louis Gilissen.¹¹⁹⁴

The Chamber's analysis and conclusions

The Chamber considers that the documents provided prove, *prima facie*, the identity of the applicant in accordance with the Trial Chamber's Decision on victims' participation.

The year of birth of the applicant as set out in the application form ([REDACTED] 1987) indicates that the applicant may have been [REDACTED] years old at the time of his alleged

¹¹⁹⁰ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 181-182 and Annex 90.

¹¹⁹¹ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, page 182 and Annex 90.

¹¹⁹² Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008, 10 June 2008, ICC-01/04-01/06-1388, p. 9.

¹¹⁹³ Prosecution's Observations on 105 Redacted Applications for Victim Participation to the Case, 9 June 2008, ICC-01/04-01/06-1386, paragraph 27, paragraphs 36 and 41.

¹¹⁹⁴ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, page 182 and Annex 90.

recruitment but older than 15 during the period covered by the charges (September 2002 to 13 August 2003).¹¹⁹⁵

In light of the above, the Trial Chamber rejects the application to participate in the proceedings, as the Chamber has not been provided with sufficient information to conclude, *prima facie*, that the applicant was under the age of 15 at the time of the alleged recruitment and during the period covered by the charges, September 2002 to 13 August 2003.¹¹⁹⁶

Applicant a/0281/07 [Annex 91]

The means of identification

The Trial Chamber has been provided with the applicant's demobilisation certificate.¹¹⁹⁷

The claim to victim status

The applicant states he was recruited and trained by the UPC in 2001 when he was ■ years old. He fought against the UPDF in 2002 and was demobilised in 2004. As a result, the applicant suffered psychological harm from his recruitment and is behind in his schooling. The applicant suffered psychological and physical harm.¹¹⁹⁸

The phases of the proceedings

The applicant is interested in participating in all phases of the proceedings.¹¹⁹⁹

The observations of the defence

The defence did not refer to the applicant in its observations.¹²⁰⁰

The observations of the prosecution

The prosecution argues that the applicant does not meet the criteria for participation because the applicant was either over the age of 15 at the time of his recruitment or had turned 15 by September 2002.¹²⁰¹

¹¹⁹⁵ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 181-182 and Annex 90.

¹¹⁹⁶ Decision on victims' participation, 18 January 2008, ICC-01/04-01/06-1119, as confirmed, amended and reversed by the Appeals Chamber's 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.

¹¹⁹⁷ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 183-184 and Annex 91.

¹¹⁹⁸ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 183-184 and Annex 91.

¹¹⁹⁹ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, page 184 and Annex 91.

¹²⁰⁰ Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008, 10 June 2008, ICC-01/04-01/06-1388

The observations of the victim's legal representative

The legal representatives did not submit observations as regards this applicant.

Legal representation

The applicant has been represented thus far by Mr Joseph Keta and Mr Jean Louis Gilissen.¹²⁰²

The Chamber's analysis and conclusions

The Chamber considers that the documents provided prove, *prima facie*, the identity of the applicant in accordance with the Trial Chamber's Decision on victims' participation.

However the year of birth of the applicant as set out in the application form (██████████ 1987) indicates that the applicant may have been █████ years old during the material events.¹²⁰³

In light of the above, the Trial Chamber rejects the application to participate in the proceedings, as the Chamber has not been provided with sufficient information to conclude, *prima facie*, that the applicant was under the age of 15 at the time of the alleged recruitment and during the period covered by the charges, September 2002 to 13 August 2003.¹²⁰⁴

Applicant a/0284/07 [Annex 92]**The means of identification**

The Trial Chamber has been provided with the applicant's demobilisation certificate.¹²⁰⁵

The claim to victim status

The applicant states that the UPC militia recruited him in ██████████ 2002 at age █████, following the death of his parents, who were killed by Lendus. He fought alongside

¹²⁰¹ Prosecution's Observations on 105 Redacted Applications for Victim Participation to the Case, 9 June 2008, ICC-01/04-01/06-1386, paragraph 27, paragraphs 36 and 41.

¹²⁰² First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, page 184 and Annex 91.

¹²⁰³ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 183-184 and Annex 91.

¹²⁰⁴ Decision on victims' participation, 18 January 2008, ICC-01/04-01/06-1119, as confirmed, amended and reversed by the Appeals Chamber's 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.

¹²⁰⁵ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 185-186 and Annex 92.

the UPC in █████ 2003 in █████. As a consequence, he claims he has suffered emotionally and from moral harm.¹²⁰⁶

The phases of the proceedings

The applicant is interested to participate in all phases of the proceedings.¹²⁰⁷

The observations of the defence

The defence submits that the applicant does not allege harm that is directly linked to the charges confirmed against the accused.¹²⁰⁸

The observations of the prosecution

The prosecution argues that the applicant does not meet the criteria to participate in the case because he either was over the age of 15 at the time of his recruitment or had turned 15 by September 2002.¹²⁰⁹

The observations of the victim's legal representative

The legal representatives made no observations as regards this applicant.

Legal representation

The applicant has been represented by thus far by Mr Joseph Keta and Mr Jean Louis Gilissen.¹²¹⁰

The Chamber's analysis and conclusions

The Chamber considers that the documents provided prove, *prima facie*, the identity of the applicant in accordance with the Trial Chamber's Decision on victims' participation.

The Trial Chamber notes however that the year of birth of the applicant as set out in the application form (█████ 1987) indicates that the applicant could have been █████ years old during the material events.¹²¹¹

In light of the above, the Trial Chamber rejects the application to participate, as the Chamber has not been provided with sufficient information to conclude, *prima facie*,

¹²⁰⁶ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 185-186 and Annex 92.

¹²⁰⁷ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, page 186 and Annex 92.

¹²⁰⁸ Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008, 10 June 2008, ICC-01/04-01/06-1388, paragraph 21.

¹²⁰⁹ Prosecution's Observations on 105 Redacted Applications for Victim Participation to the Case, 9 June 2008, ICC-01/04-01/06-1386, paragraph 27, paragraphs 36 and 41.

¹²¹⁰ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, page 186 and Annex 92.

¹²¹¹ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 185-186 and Annex 92.

that the applicant was under the age of 15 at the time of the alleged recruitment and during the period covered by the charges, September 2002 to 13 August 2003.¹²¹²

Applicant a/0242/06 [Annex 100]

The means of identification

The Trial Chamber has been provided with a certificate of a former child soldier (EAFGA), a family search certificate, a family reunification certificate, and a demobilisation certificate for the applicant, as well as with an election card for the person acting on his behalf.¹²¹³

The claim to victim status

The applicant states that she was recruited at aged [REDACTED] in [REDACTED] 2003 by the UPC militia of Thomas Lubanga in order to be a "wife". In consequence she [REDACTED] and was unable to return to school and has not been readily accepted by her community. She alleges psychological and physical harm.¹²¹⁴

The phases of the proceedings

The applicant is interested in participate in all phases of the proceedings.¹²¹⁵

The observations of the defence

The defence argues that the applicant relies on an alleged crime that is outside the time frame of the charges confirmed against the accused.¹²¹⁶

The observations of the prosecution

The prosecution argues that although the applicant was under the age of 15 when she allegedly suffered harm, the information provided confirms that the crimes took place outside the timeframe of the charges.¹²¹⁷

The observations of the victim's legal representative

The legal representative submits that the defence must have made an error when it states that the recruitment of the applicant in December 2003 is outside the

¹²¹² Decision on victims' participation, 18 January 2008, ICC-01/04-01/06-1119, as confirmed, amended and reversed by the Appeals Chamber's 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.

¹²¹³ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 204-205 and Annex 100.

¹²¹⁴ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 204-205 and Annex 100.

¹²¹⁵ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, page 205 and Annex 100.

¹²¹⁶ Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008, 10 June 2008, ICC-01/04-01/06-1388, paragraph 13, page 7.

¹²¹⁷ Prosecution's Observations on 105 Redacted Applications for Victim Participation to the Case, 9 June 2008, ICC-01/04-01/06-1386, paragraph 27, paragraphs 37 and 41.

timeframe of the charges. The legal representative requests that the applicant is granted status to participate in the proceedings.¹²¹⁸

Legal representation

The applicant has been represented thus far by Ms Carine Bapita Buyangandu.¹²¹⁹

The Chamber's analysis and conclusions

The Trial Chamber notes that the applicant has also applied to participate in the DRC Situation. In its decision of 31 January 2008, the Pre-Trial Chamber determined it would not resolve the applicant's status, stating that since the application was also pending before the Trial Chamber, the applicant's recognition as a victim in the "case" would automatically result in her recognition in the "situation".¹²²⁰ In a more recent decision of 3 July 2008, the Pre-Trial Chamber granted the applicant status to participate in the DRC Situation.¹²²¹

The Chamber considers that the documents provided prove, *prima facie*, the identity of the applicant and the person acting on her behalf in accordance with the Trial Chamber's Decision on victims' participation. These documents also prove, *prima facie*, the relationship between the applicant and the person acting on her behalf.

The Trial Chamber considers that the applicant has also provided sufficient information to conclude, *prima facie*, that she suffered from the crimes of enlistment and/or conscription and/or enlistment of children under the age of 15.

However the Trial Chamber rejects the application to participate, as the Chamber has not been provided with sufficient information to conclude, *prima facie*, that the applicant suffered harm as a result of her alleged recruitment during the period covered by the charges, September 2002 to 13 August 2003.¹²²²

¹²¹⁸ Réponse des demandeurs a/0105/06, a/0231/06, a/0232/06, a/0233/06, a/0242/06, a/0243/06, a/0244/06, a/0245/06, a/0246/06, a/0247/06, a/0248/06, a/0249/06, a/0250/06, a/0001/07, a/0002/07, a/0003/07, a/0004/07, a/0005/07, a/0006/07, a/0251/07, a/0253/07 et a/0254/07 aux observations du Procureur et de la Défense quant à leur demande de participation à la procédure dans l'affaire Le Procureur contre Thomas Lubanga, 28 November 2008, ICC-01/04-01/06-1514, paragraphs 7, 16, 25.

¹²¹⁹ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, page 205 and Annex 100

¹²²⁰ Corrigendum à la "Décision sur les demandes de participation à la procédure déposées dans le cadre de l'enquête en République démocratique du Congo par a/0004/06 à a/0009/06, a/0016/06 à a/0063/06, a/0071/06 à a/0080/06 et a/0105/06 à a/0110/06, a/0188/06, a/0128/06 à a/0162/06, a/0199/06, a/0203/06, a/0209/06, a/0214/06, a/0220/06 à a/0222/06, a/0224/06, a/0227/06 à a/0230/06, a/0234/06 à a/0236/06, a/0240/06, a/0225/06, a/0226/06, a/0231/06 à a/0233/06, a/0237/06 à a/0239/06 et a/0241/06 à a/0250/06", ICC-01/04-423-Corr, 31 January 2008, paragraph 144.

¹²²¹ Decision on the applications for participation file in connection with the investigation in the Democratic Republic of Congo by Applicants a/0047/06 to a/0052/06, a/163/06 to a/0187/06, a/0221/06, a/0226/06, a/0231/06 to a/0233/06, a/0237/06 to a/0239/06, and a/0241 to a/0250/06, 3 July 2008, ICC-01/04-505, paragraph 98 and page 41.

¹²²² Decision on victims' participation, 18 January 2008, ICC-01/04-01/06-1119, as confirmed, amended and reversed by the Appeals Chamber's 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.

Applicant a/0243/06 [Annex 101]**The means of identification**

The Trial Chamber has been provided with a certificate of a former child soldier (EAFGA), a family search certificate, a family reunification certificate, and a demobilisation certificate of the applicant, as well as with an election card for the person acting on his behalf.¹²²³ Although the first name of the applicant is not the same on all the documents attached to the application, additional information submitted has provided clarification in this regard. This declaration was given by her legal representative.¹²²⁴

The claim to victim status

The applicant states that in [REDACTED] 2003 she was recruited into the UPC when she was [REDACTED] years old and was "married" to [REDACTED]. [REDACTED]. She has been rejected by her parents, [REDACTED], and she currently lives with her [REDACTED]. She has suffered psychological and physical harm.¹²²⁵

The phases of the proceedings

The applicant is interested in participating in all phases of the proceedings.¹²²⁶

The observations of the defence

The defence argues that the applicant relies on a crime that falls outside the time frame of the charges brought against the accused.¹²²⁷

The observations of the prosecution

The prosecution, in its original filing, argues that although the applicant was under the age of 15 when she allegedly suffered harm, the information provided indicates

¹²²³ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 206-207 and Annex 101.

¹²²⁴ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 206-207 and Annex 101; Report on supplementary information received and missing information concerning the applications for participation dealt with in the "First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court" dated 11 April 2008 (ICC-01/04-01/06-1275), 6 June 2008, ICC-01/04-01/06-1380-Conf, Annex 5.

¹²²⁵ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 206-207 and Annex 101.

¹²²⁶ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, page 207 and Annex 101.

¹²²⁷ Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008, 10 June 2008, ICC-01/04-01/06-1388, paragraph 13, page 7.

that the crimes took place outside the timeframe of the charges.¹²²⁸ This was reiterated in a subsequent filing.¹²²⁹

The observations of the victim's legal representative

The legal representative submits that the defence must have made an error when it suggests that the recruitment of the applicant in December 2003 is outside the timeframe of the charges. The legal representative requests that the applicant is granted status to participate in the proceedings.¹²³⁰

Legal representation

The applicant has been represented thus far by Ms Carine Bapita Buyangandu.¹²³¹

The Chamber's analysis and conclusions

The Trial Chamber notes that the applicant has also applied to participate in the DRC Situation. In its decision of 31 January 2008, the Pre-Trial Chamber determined it would not resolve the applicant's status, stating that since the application was also pending before the Trial Chamber, the applicant's recognition as a victim in the "case" would automatically result in his recognition in the "situation".¹²³² In a more recent decision of 3 July 2008, the Pre-Trial Chamber concluded that the application was incomplete since the first names appearing on the proof of identity did not match the names appearing on Part A of the application form.¹²³³

The Chamber considers that the documents provided prove, *prima facie*, the identity of the applicant and the person acting on her behalf in accordance with the Trial Chamber's Decision on victims' participation. These documents also prove, *prima facie*, the relationship between the applicant and the person acting on her behalf.

¹²²⁸ Prosecution's Observations on 105 Redacted Applications for Victim Participation to the Case, 9 June 2008, ICC-01/04-01/06-1386, paragraph 27, paragraphs 37 and 41.

¹²²⁹ Prosecution's Observations on supplementary information for victim applications a/0002/06, a/0047/06, a/0048/06, a/0051/06, a/0052/06, a/0077/06, a/0221/06, a/0224/06, a/0225/06, a/0227/06, a/0229/06, a/0230/06, a/0236/06, a/0237/06, a/0238/06, a/0239/06, a/0240/06, a/0243/06, a/0055/07, a/0056/07, a/0057/07, a/0058/07, a/0060/07, a/0155/07, a/0156/07, a/0172/07, a/0187/07, a/0007/08, ICC-01/04-01/06-1540-Conf, paragraph 33.

¹²³⁰ Réponse des demandeurs a/0105/06, a/0231/06, a/0232/06, a/0233/06, a/0242/06, a/0243/06, a/0244/06, a/0245/06, a/0246/06, a/0247/06, a/0248/06, a/0249/06, a/0250/06, a/0001/07, a/0002/07, a/0003/07, a/0004/07, a/0005/07, a/0006/07, a/0251/07, a/0253/07 et a/0254/07 aux observations du Procureur et de la Défense quant à leur demande de participation à la procédure dans l'affaire Le Procureur contre Thomas Lubanga, 28 November 2008, ICC-01/04-01/06-1514, paragraphs 7, 16, 25.

¹²³¹ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, page 207 and Annex 101.

¹²³² Corrigendum à la "Décision sur les demandes de participation à la procédure déposées dans le cadre de l'enquête en République démocratique du Congo par a/0004/06 à a/0009/06, a/0016/06 à a/0063/06, a/0071/06 à a/0080/06 et a/0105/06 à a/0110/06, a/0188/06, a/0128/06 à a/0162/06, a/0199/06, a/0203/06, a/0209/06, a/0214/06, a/0220/06 à a/0222/06, a/0224/06, a/0227/06 à a/0230/06, a/0234/06 à a/0236/06, a/0240/06, a/0225/06, a/0226/06, a/0231/06 à a/0233/06, a/0237/06 à a/0239/06 et a/0241/06 à a/0250/06", ICC-01/04-423-Corr, 31 January 2008, paragraph 144.

¹²³³ Decision on the applications for participation file in connection with the investigation in the Democratic Republic of Congo by Applicants a/0047/06 to a/0052/06, a/163/06 to a/0187/06, a/0221/06, a/0226/06, a/0231/06 to a/0233/06, a/0237/06 to a/0239/06, and a/0241 to a/0250/06, 3 July 2008, ICC-01/04-505, paragraph 34.

The Trial Chamber considers that the applicant has also provided sufficient information to conclude, *prima facie*, that she suffered from the crimes of enlistment and/or conscription and/or enlistment of children under the age of 15.

However the Trial Chamber rejects the application, as the Chamber has not been provided with sufficient information to conclude, *prima facie*, that the applicant suffered harm as a result of her alleged recruitment during the period covered by the charges, September 2002 to 13 August 2003.¹²³⁴

Applicant a/0004/06 [Annex 104]

The means of identification

The Trial Chamber has been provided with the applicant's election card.¹²³⁵

The claim to victim status

The applicant states that in [REDACTED] 2004 the UPC allegedly attacked the applicant's village and killed all the men and some women. The applicant's husband and [REDACTED] children were allegedly killed in the attack. The applicant was taken to a UPC camp in [REDACTED] along with her [REDACTED] and other women and they were continually beaten and raped by the militia for [REDACTED] months. During this time they were forced to remain [REDACTED]; they were left [REDACTED]; and they were [REDACTED]. The militia poured [REDACTED] over them and forced them to [REDACTED]. During this time the applicant lost weight, suffered pain in her [REDACTED] and experienced a [REDACTED]. The applicant alleges moral and physical harm.¹²³⁶

The phases of the proceedings

The applicant is interested in participating in all phases of the proceedings.¹²³⁷

The observations of the defence

The defence argues that the events relied on by the applicant – the murder of her husband and children, and her rape and degrading treatment – are outside the timeframe of the charges brought against the accused.¹²³⁸

¹²³⁴ Decision on victims' participation, 18 January 2008, ICC-01/04-01/06-1119, as confirmed, amended and reversed by the Appeals Chamber's 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.

¹²³⁵ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 214-215 and Annex 104.

¹²³⁶ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 214-215 and Annex 104.

¹²³⁷ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, page 215 and Annex 104.

¹²³⁸ Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008, 10 June 2008, ICC-01/04-01/06-1388, paragraph 13, page 10.

The observations of the prosecution

The prosecution highlights that the applicant has previously been denied the status of victim in the case by the Pre-Trial Chamber. The prosecution also states that the harm suffered by the applicant does not relate to the charges brought against the accused. The prosecution notes however that the daughter of the applicant may meet the criteria for victim participation in the case, if she was under the age of 15 at the time of alleged crimes. However, the prosecution observes that the applicant explicitly filed the application on behalf of herself, and not on behalf of her daughter.¹²³⁹

The observations of the victim's legal representative

The legal representatives submit in their reply that according to Rule 89(2) of the Rules a victim whose application has been rejected may file a fresh application later in the proceedings. Thus, nothing in the Statute prevents a victim, whose application has been rejected by the Pre-Trial Chamber, from submitting a new application or expanding his or her previous application.¹²⁴⁰

Legal representation

The applicant has been represented thus far by the OPCV.¹²⁴¹

The Chamber's analysis and conclusions

The Trial Chamber observes that Pre-Trial Chamber I previously rejected the application for participation of the applicant in the present case. In its decision, the Pre-Trial Chamber stated that the applicant had not provided sufficient evidence to show that there were reasonable grounds to believe that the harm she suffered was directly link to the charges brought against the accused.¹²⁴²

The Chamber considers that the document provided prove, *prima facie*, the identity of the applicant in accordance with the Trial Chamber's Decision on victims' participation.

However, the applicant alleges she suffered personal harm as a result of her own alleged abduction by the UPC, and does not provide any information as to the harm she suffered as a result of the conscription, enlistment or use of children under the age of 15. The Trial Chamber accepts the observations of the prosecution, however, that the applicant may be entitled to participate on account of her [REDACTED] alleged recruitment. That said, in the absence of clear information in this regard, and

¹²³⁹ Prosecution's Observations on 105 Redacted Applications for Victim Participation to the Case, 9 June 2008, ICC-01/04-01/06-1386, paragraph 34.

¹²⁴⁰ Observations du BPCV en tant que représentant légal des demandeurs a/0004/06, a/0047/06 à a/0052/06, a/0077/06, a/0078/06 et a/0240/06, sur leurs demandes de participation dans le cadre de l'affaire *Le Procureur c. Thomas Lubanga Dyilo*, 28 November 2008, ICC-01/04-01/06-1510, paragraph 22.

¹²⁴¹ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, page 215 and Annex 104.

¹²⁴² Decision on applications for participation in proceedings a/0004/06 to a/0009/06, a/0016/06, a/0063/06, a/0071/06 to a/0080/06 and a/0105/06 in the case of *The Prosecutor v Thomas Lubanga Dyilo*, 20 October 2006, ICC-01/04-01/06-601, pages 9-10.

particularly, first, whether the applicant's [REDACTED] was under the age of 15 at the time of the relevant events and, second, whether the [REDACTED] and/or the [REDACTED] suffered harm as a result thereof, this possibility remains theoretical.

Moreover, the Trial Chamber accepts the defence submission that the events described by the applicant fall outside the timeframe of the charges brought against the accused.

Consequently, the Trial Chamber considers that it has not been provided with sufficient information to conclude, *prima facie*, that the applicant has suffered personal harm as a result of crimes included in the charges brought against the accused, namely the alleged enlistment and/or conscription and/or use to participate actively in the hostilities of children under 15 between September 2002 and 13 August 2003.¹²⁴³

Applicant a/0077/06 [Annex 106]

The means of identification

The Trial Chamber was not provided with any identification document for this applicant in the original application form.¹²⁴⁴ However, in a subsequent filing, the Chamber was provided with the election card of the applicant.¹²⁴⁵

The claim to victim status

The applicant states that she was arrested in [REDACTED] 2002 in [REDACTED] by the UPC militia of Thomas Lubanga and she was detained for [REDACTED] at [REDACTED]. She was raped every day, tortured and insulted on account of her ethnic origin. As an example of the torture, the militia poured [REDACTED] on her and beat her with [REDACTED]. She was told [REDACTED] as the instrument of her death, and [REDACTED] gave an order for her to be beaten. She has [REDACTED] as a result of her treatment, and she has been infected [REDACTED]. She was unable to eat whilst in detention, and she lost weight as a result. [REDACTED] of her children died as a result of [REDACTED]. The applicant is traumatised and she suffered psychological and physical harm.¹²⁴⁶

The phases of the proceedings

¹²⁴³ Decision on victims' participation, 18 January 2008, ICC-01/04-01/06-1119, as confirmed, amended and reversed by the Appeals Chamber's 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.

¹²⁴⁴ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 218-219 and Annex 106.

¹²⁴⁵ Second report on supplementary information concerning application for participation filed with the "First Report to Trial Chamber I on Victims' Applications under Regulation 86(5) of the Regulations of the Court", dated 11 April 2008 (ICC-01/04-01/06-1275-Conf-Exp), 21 November 2008, page 6 and Anx2.

¹²⁴⁶ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 218-219 and Annex 106.

The applicant is interested in participating in all phases of the proceedings.¹²⁴⁷

The observations of the defence

The defence submits that the applicant has not provided any proof of her date of birth and it is submitted that the crimes she has alleged are not linked to the charges brought against the accused and, moreover, they are outside their timeframe.¹²⁴⁸ In a further filing, the defence submits that the applicant alleged that she was abducted by the UPC forces in August 2003 and raped. Nevertheless, the defence notes that the crime of rape is not part of the charges confirmed against the accused. As a result, the defence contends that the application does not meet the *prima facie* conditions required by Rule 85 of the Rules, and therefore the applicant's participation in the proceedings should be rejected.¹²⁴⁹

The observations of the prosecution

The prosecution, in its original filing, observes that an application to participate on behalf of this individual has already been rejected by Pre-Trial Chamber I. The prosecution contends that the applicant has not indicated her date of birth in the application form, nor has she provided an identification document. Further, the prosecution argues that the application contains information relating to crimes which fall outside the timeframe of the crimes allegedly committed by the accused, and thus the application does not provide a sufficient link to the charges brought against the accused and should be dismissed.¹²⁵⁰ This was reiterated in a subsequent filing.¹²⁵¹

The observations of the victim's legal representative

The legal representatives submit in their reply that under Rule 89(2) of the Rules a victim whose application has been rejected may file a fresh application later in the proceedings. Thus, nothing in the Statute prevents a victim, whose application has been rejected by the Pre-Trial Chamber, from presenting a further application or supplementing its previous application.¹²⁵²

¹²⁴⁷ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, page 219 and Annex 106.

¹²⁴⁸ Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008, 10 June 2008, ICC-01/04-01/06-1388, paragraph 13, page 5.

¹²⁴⁹ Observations de la Défense sur les 15 demandes de participation à la procédure et les 30 demandes de participation complémentaires communiquées le 27 novembre 2008 ; Réponse de la Défense aux observations des représentants légaux relatives aux 105 demandes de participation communiquées le 20 mai 2008 ; et Observations de la Défense relatives aux victimes indirectes, 5 December 2008, ICC-01/04-01/06-1536, paragraph 48.

¹²⁵⁰ Prosecution's Observations on 105 Redacted Applications for Victim Participation to the Case, 9 June 2008, ICC-01/04-01/06-1386, paragraph 35 and 41

¹²⁵¹ Prosecution's Observations on supplementary information for victim applications a/0002/06, a/0047/06, a/0048/06, a/0051/06, a/0052/06, a/0077/06, a/0221/06, a/0224/06, a/0225/06, a/0227/06, a/0229/06, a/0230/06, a/0236/06, a/0237/06, a/0238/06, a/0239/06, a/0240/06, a/0243/06, a/0055/07, a/0056/07, a/0057/07, a/0058/07, a/0060/07, a/0155/07, a/0156/07, a/0172/07, a/0187/07, a/0007/08, ICC-01/04-01/06-1540-Conf, paragraphs 31-32.

¹²⁵² Observations du BPCV en tant que représentant légal des demandeurs a/0004/06, a/0047/06 à a/0052/06, a/0077/06, a/0078/06 et a/0240/06, sur leurs demandes de participation dans le cadre de l'affaire *Le Procureur c Thomas Lubanga Dyilo*, 28 November 2008, ICC-01/04-01/06-1510, paragraph 22.

Legal representation

The applicant has been represented thus far by the OPCV.¹²⁵³

The Chamber's analysis and conclusions

The Trial Chamber notes the decision of Pre-Trial Chamber I rejecting the application stating that the applicant had “not provided sufficient evidence to show that there are reasonable grounds to believe that the harm they suffered is directly linked to the crimes set forth in the warrant of arrest against Thomas Lubanga Dyilo, or that they suffered harm in intervening to assist direct victims in the case or to prevent their victimisation as a result of the commission of these crimes”.¹²⁵⁴

The applicant also applied to participate in the DRC situation. In its decision of 31 January 2008, the Pre-Trial Chamber determined that it was unable to determine the identity of the victim since it had not been provided with any identification document and concluded that the application form was incomplete.¹²⁵⁵

The Trial Chamber considers that the documents and other information provided in the application form and in the subsequent filing with additional information prove, *prima facie*, the identity of the applicant in accordance with the Trial Chamber's Decision on victims' participation. The Chamber considers that the overall information (namely the election card and the application form and the additional information provided to the Chamber) prove, *prima facie*, that the applicant was [REDACTED] years old during the material events.¹²⁵⁶

In light of the above, the Trial Chamber rejects the application to participate, as the Chamber has not been provided with sufficient information to conclude, *prima facie*, that the applicant was under the age of 15 at the time of the alleged recruitment and during the period covered by the charges, September 2002 to 13 August 2003.¹²⁵⁷

Applicant a/0256/07 [Annex 45]

¹²⁵³ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, page 219 and Annex 106.

¹²⁵⁴ Décision sur les demandes de participation à la procédure a/0004/06 à a/0009/06, a/0016/06 à a/0063/06, a/0071/06 à a/0080/06 et a/0105/06 dans le cadre de l'affaire le Procureur c. Thomas Lubanga Dyilo, 20 October 2006, ICC-01/04-01/06-601, pages 9-10 and 13.

¹²⁵⁵ Corrigendum à la “Décision sur les demandes de participation à la procédure déposées dans le cadre de l'enquête en République démocratique du Congo par a/0004/06 à a/0009/06, a/0016/06 à a/0063/06, a/0071/06 à a/0080/06 et a/0105/06 à a/0110/06, a/0188/06, a/0128/06 à a/0162/06, a/0199/06, a/0203/06, a/0209/06, a/0214/06, a/0220/06 à a/0222/06, a/0224/06, a/0227/06 à a/0230/06, a/0234/06 à a/0236/06, a/0240/06, a/0225/06, a/0226/06, a/0231/06 à a/0233/06, a/0237/06 à a/0239/06 et a/0241/06 à a/0250/06”, ICC-01/04-423-Corr, 31 January 2008, paragraph 22.

¹²⁵⁶ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 185-186 and Annex 92.

¹²⁵⁷ Decision on victims' participation, 18 January 2008, ICC-01/04-01/06-1119, as confirmed, amended and reversed by the Appeals Chamber's 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.

The means of identification

The Chamber has been provided with the applicant's child demobilisation certificate, together with the reunification certificate and the election card for the person acting on his behalf.¹²⁵⁸

The claim to victim status

The applicant states that he was recruited by the UPC, along with other children, in 2003, when aged ■ or ■. He describes how the UPC militia entered his family's house and took their clothing. The applicant was recruited by the militia whilst he was ■. The applicant suffered psychological and material harm, as well as serious violations of his fundamental rights as a consequence of his recruitment. His studies were interrupted and property owned by his family was pillaged by the UPC.¹²⁵⁹

The phases of the proceedings

The applicant submits he has an interest in participating in all phases of the proceedings, save for the preliminary examination stage.¹²⁶⁰

The observations of the defence

The Defence submit that the applications submitted by a/0255/07 and a/0256/07 present disturbing similarities; indeed it is suggested they are essentially indistinguishable, particularly with regard to the applicants' identities and affiliations. In addition, the Defence submit that the alleged period of recruitment is extremely vague, and there is insufficient *prima facie* indication that the alleged recruitment fell between September 2002 and 13 August 2003.¹²⁶¹

The observations of the prosecution

The Prosecution contends that the applicant should provide further information before this application is determined.¹²⁶² The Prosecution highlight that the applicant merely refers to his recruitment as having taken place in 2003 which may fall outside the relevant period, given that the period relevant to the charges ends on 13 August 2003. Therefore, the prosecution suggest more precise information is called for.¹²⁶³

The observations of the victim's legal representative

The legal representative of this applicant did not submit observations.

¹²⁵⁸ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 89-90 and Annex 45.

¹²⁵⁹ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 89-90 and Annex 45.

¹²⁶⁰ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 89-90 and Annex 45.

¹²⁶¹ Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008, 10 June 2008, ICC-01/04-01/06-1388, p. 8.

¹²⁶² Prosecution's Observations on 105 Redacted Applications for Victim Participation to the Case, 9 June 2008, ICC-01/04-01/06-1386, paragraph 40.

¹²⁶³ Prosecution's Observations on 105 Redacted Applications for Victim Participation to the Case, 9 June 2008, ICC-01/04-01/06-1386, paragraph 32

Legal representation

The applicant has been represented thus far by Mr Paul Kabongo Tshibango.¹²⁶⁴

The Chamber's analysis and conclusions

The Chamber considers that the documents and the other material provided prove, *prima facie*, the identity of the applicant and the person acting on his behalf in accordance with the Trial Chamber's Decision on victims' participation. These documents also prove the kinship between the applicant and the person acting on his behalf. The demobilisation certificate proves, *prima facie*, that the applicant was under 18 years of age when it was issued in ██████████ 2005.¹²⁶⁵ Moreover, the applicant has stated precisely and unequivocally in his application that his date of birth is ██████████ 1992. This has been set out by his father (who is the person acting on his behalf and who signed the application form), and it is reflected in the VPRS report. In all the circumstances, the Chamber considers that it has been provided with enough information to determine, *prima facie*, that the applicant was under the age of 15 at the time of his alleged recruitment.

The Trial Chamber has given special attention to the observations of the defence as to the similarities between the applications submitted by this applicant and applicant a/0255/07. Upon careful review, the Chamber has established that these applicants are siblings who were recruited at the same time and who suffered the same material harm (in particular, pillage). Furthermore, their father represents their joint interests. In all the circumstances, the similarities between the applications are unsurprising and do not in any way undermine their credibility.¹²⁶⁶

As regards the defence and prosecution's submission that the alleged date of the applicant's recruitment is insufficiently identified to justify a *prima facie* conclusion that it fell within the period covered by the charges, whilst the Trial Chamber does not consider that it is necessary for the applicant to indicate "exact dates of recruitment" in order to reach a *prima facie* determination, on the material currently before the Chamber, it is impossible to determine whether or not the applicant's recruitment fell outside the period covered by the charges. .

The Trial Chamber therefore concludes that the applicant has presently given insufficient evidence to establish, *prima facie*, that he is a victim under Rule 85(a) of the Rules, as the Chamber has been provided with insufficient information that the applicant has suffered personal harm as a result of crimes included in the charges brought against the accused, namely his alleged enlistment and/or conscription

¹²⁶⁴ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 89-90 and Annex 45.

¹²⁶⁵ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, Annex 45, page 18.

¹²⁶⁶ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, Annex 45 and Annex 74.

and/or use to participate actively in the hostilities by the UPC between September 2002 and 13 August 2003.¹²⁶⁷

The applicant is entitled, however, to submit further information on the issue.

Applicant a/0255/07 [Annex 74]

The means of identification

The Trial Chamber has been provided with the applicant's demobilisation certificate and the election card for the person acting on his behalf (his father).¹²⁶⁸ No proof of their relationship has been provided to the Chamber. The applicant has fingerprinted the application form consenting to his father acting on his behalf.¹²⁶⁹

The claim to victim status

The applicant states that in 2003 he was recruited by the UPC, when he was [redacted] or [redacted] years old. The applicant was recruited when he was trying to [redacted] by the UPC. His education was interrupted as result of his recruitment; he suffered psychological harm; and he experienced serious violations of his fundamental rights.¹²⁷⁰

The phases of the proceedings

The applicant submits he has an interest in participating in all phases of the proceedings other than the pre-trial phase.¹²⁷¹

The observations of the defence

The defence submits that the applicant should not be permitted to participate in the proceedings, *inter alia*, because his application and that of a/0256/07 contain troubling similarities, which the defence cannot resolve in the absence of their details. Further it is suggested that the period of this applicant's alleged recruitment is extremely imprecise ("in 2003"), which prevents a *prima facie*, conclusion that he was recruited between September 2002 and August 13 2003.¹²⁷²

¹²⁶⁷ Decision on victims' participation, 18 January 2008, ICC-01/04-01/06-1119, as confirmed, amended and reversed by the Appeals Chamber's 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.

¹²⁶⁸ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 147-148 and Annex 74.

¹²⁶⁹ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 147-148 and Annex 74, 15 and 16.

¹²⁷⁰ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 147-148 and Annex 74.

¹²⁷¹ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 147-148 and Annex 74.

¹²⁷² Observations de la Défense sur les 105 demandes de participation à la procédure communiquées le 20 mai 2008, 10 June 2008, ICC-01/04-01/06-1388, paragraph 13 and pages 12-13.

The observations of the prosecution

The prosecution submits that the application requires further clarification. It is noted that the applicant refers to his recruitment as having taken place in 2003, while the relevant time frame ends on 13 August 2003. It is submitted that further information should be provided.¹²⁷³

The observations of the victim's legal representative

The victim's legal representative did not submit any observations.

Legal representation

The applicant has been represented thus far by Mr Paul Kabongo Tshibangu.¹²⁷⁴

The Chamber's analysis and conclusions

This application was not before the Pre-Trial Chamber I.

The Chamber notes that one of the names of the applicant differs between the application form (the "prénom(s)/alias") and the demobilisation certificate (the "prénom").¹²⁷⁵ However, the Chamber has considered the other three names of the applicant in the documentation ("noms de famille" and "nom") which are used consistently. The Trial Chamber therefore considers that the weight of the evidence in the material provided establishes, *prima facie*, the identity of the applicant and the person acting on his behalf (his father) in accordance with the Trial Chamber's Decision on victims' participation.

The Chamber considers that the demobilisation certificate proves, *prima facie*, that the applicant was under 18 years of age at the time when it was issued, that is [REDACTED] 2005.¹²⁷⁶ Moreover, the applicant has stated in his application that his date of birth is 1989 and this has been corroborated by his father (who is the person acting on his behalf and has accordingly signed the application form) and the VPRS in the report submitted to the Chamber. Thus, although the Chamber cannot confirm the exact date of birth of the applicant, the Chamber considers it has been provided with enough information to determine, *prima facie*, that the applicant was under the age of 15 at the relevant time.

The Trial Chamber has given particular attention to the observations of the defence on the similarities between the applications submitted by the applicant and applicant a/0256/07. Upon review, the Chamber has established that the applicants are siblings

¹²⁷³ Prosecution's Observations on 105 Redacted Applications for Victim Participation to the Case, 9 June 2008, ICC-01/04-01/06-1386, paragraph 32, pages 14-15.

¹²⁷⁴ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 147-148 and Annex 74.

¹²⁷⁵ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, pages 147-148 and Annex 74.

¹²⁷⁶ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, Annex 74, page 19.

who were allegedly recruited at the same time, experiencing the same material harm (pillage). Furthermore, their father is acting on behalf of both of them. Thus, the similarities between both applications are explicable and their accounts are understandably consistent.¹²⁷⁷

However, currently there is no sufficient proof that the alleged period of recruitment began before 13 August 2003. Although it is not necessary for the applicant to indicate the "exact dates of (his) recruitment" in order for the Chamber to come to a *prima facie* determination, nonetheless there has to be sufficient evidence to justify a *prima facie* finding that it was within the time frame of the charges. Accordingly, the VPRS is asked to revert to the Applicant, seeking his assistance as to when in 2003 his recruitment occurred and particularly whether it was before or after 13 August 2003.

The Chamber notes that the applicant was a child when the application was filed but is now an adult. The Chamber thus instructs the VPRS to ascertain whether the applicant wishes to participate on his own behalf or through the person acting on his behalf.

¹²⁷⁷ First Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1275-Conf-Exp, 14 April, 2008, Annex 2, Annex 45 and Annex 74.

PUBLIC ANNEX A2

Annex A

Application of victim a/0403/08 [Annex 11]

Means of identification

The Chamber was not provided with any identification document in the original application.¹ In a supplementary filing, the Chamber was provided with a signed declaration of a single witness as to the identity of the applicant, including the election card of the person making the statement.²

Claim to victim status

The applicant claims that in [REDACTED] 2003 he was recruited by force by the UPC militia of Thomas Lubanga, when he was [REDACTED] years old. He was then trained in [REDACTED] for [REDACTED] weeks where he learnt to use weapons. He was then sent to fight against the FNI. He killed and committed pillage. He was demobilised in [REDACTED] 2003. His father was killed in [REDACTED] 2003. The applicant states that as a result of his recruitment he lost everything, and he suffers in consequence of having been left without assistance or a family.³

Phases of the proceedings

The applicant submits he has an interest in participating in all phases of the proceedings.⁴

Defence observations

The defence submits that the application does not include any identity documents. As a result, the application does not meet the *prima facie* conditions required by Rule 85 of the Rules of the Rules, and therefore the applicant's request to participate in the proceedings should be rejected.⁵ The defence further contends that the applicant is a minor and in his case the application should be presented by his parent or legal guardian. As a result, the defence suggests that the applicant does not meet the *prima*

¹ Second Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1501-Conf-Exp, 21 November 2008, Annex 2, pages 17-18 and Annex 11.

² Report on Supplementary information concerning applications for participation filed with the "Second Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court", dated 21 November 2008 (ICC-01/04-01/06-1501-Conf-Exp), 3 December 2008, pages 3-4 and Anx I.

³ Second Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1501-Conf-Exp, 21 November 2008, Annex 2, pages 17-18 and Annex 11.

⁴ Second Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1501-Conf-Exp, 21 November 2008, Annex 2, pages 17-18 and Annex 11.

⁵ Observations de la Défense sur les 15 demandes de participation à la procédure et les 30 demandes de participation complémentaires communiquées le 27 novembre 2008 ; Réponse de la Défense aux observations des représentants légaux relatives aux 105 demandes de participation communiquées le 20 mai 2008 ; et Observations de la Défense relatives aux victimes indirectes, 5 December 2008, ICC-01/04-01/06-1536, paragraph 35.

facie conditions under Rule 85 of the Rules, and therefore his application to participate in the proceedings should be rejected.⁶

Prosecution observations

The prosecution submits that the application is insufficiently complete under the criteria established by the Trial Chamber and Pre-Trial Chamber I, since it does not include adequate proof of identification, and the signed statement of a single person does not meet the requirements established by the Court. The prosecution also submits that the applicant is a minor and the consent of a parent or legal guardian is required. In all the circumstances, the prosecution submits that the application is incomplete.⁷

Victim's legal representative observations

The legal representative did not file a reply.

Legal representation

The applicant has been represented thus far by Mr Hervé Diakiese.⁸

Chamber's analysis and decision

The Chamber considers that the documents and other material provided to the Chamber do not fulfil the requirements as established in the Trial Decision on victims' participation, namely that in those instances where it is not possible for an applicant to acquire or produce the necessary documents, the Chamber will consider a statement signed by two credible witnesses attesting to the identity of the applicant and including, where relevant, the relationship between the victim and the person acting on his or her behalf, providing there is consistency between the statement and the application. The Chamber stated that the statement should be accompanied by proof of the identity of the two witnesses.⁹

Although a lack of documents may be justified for applicants who are or have been confronted with particular difficulties, no explanation has been provided for the absence of a second declaration signed by a witness to support this application. Consequently, the application is materially incomplete. The Chamber instructs the VPRS to contact the applicant and his legal representative in order to seek appropriate documentation.

⁶ Observations de la Défense sur les 15 demandes de participation à la procédure et les 30 demandes de participation complémentaires communiquées le 27 novembre 2008 ; Réponse de la Défense aux observations des représentants légaux relatives aux 105 demandes de participation communiquées le 20 mai 2008 ; et Observations de la Défense relatives aux victimes indirectes, 5 December 2008, ICC-01/04-01/06-1536, paragraph 38.

⁷ Prosecution's Observations on 3 Redacted Applications for Victim Participation to the Case of Applicants a/0403/08, a/0407/08, a/0408/08, 10 December 2008, ICC-01/04-01/06-1550, paragraphs 6-7.

⁸ Second Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1501-Conf-Exp, 21 November 2008, Annex 2, pages 17-18 and Annex 11.

⁹ Decision on victims' participation, 18 January 2008, ICC-01/04-01/06-1119, paragraph 88.

Application of victim a/0407/08 [Annex 15]

Means of identification

The Chamber has been provided with a school certificate for the applicant.¹⁰ In a supplementary filing, the Chamber was provided with a signed declaration of a single witness as to the identity of the applicant, including the election card of the person making the statement.¹¹

Claim to victim status

The applicant states that in ██████ 2002 he was recruited by force by the UPC of Thomas Lubanga when he was ██████ years old. He was trained and he learnt to use weapons, and he was given a military uniform. He was used as ██████, and he participated in rapes and acts of pillage against civilians. He was also used in combat against the FNI. In ██████ and ██████ 2003 he participated in battles in ██████. His house was burned by the UPC and since demobilisation he has been living in wholly deprived circumstances and he suffers morally and physically.¹²

Phases of the proceedings

The applicant submits he has an interest in participating in all phases of the proceedings.¹³

Defence observations

The defence submits that the applicant is a minor and in this case the application should be presented by his parent or legal guardian. As a result, the defence states that the applicant does not meet the *prima facie* conditions under Rule 85 of the Rules, and therefore the application should be rejected.¹⁴

Prosecution observations

The prosecution submits that the application is insufficiently complete under the criteria established by the Trial Chamber and Pre-Trial Chamber I, since it does not include adequate proof of identification, and the signed statement of a single person does not meet the requirements established by the Court. The prosecution also

¹⁰ Second Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1501-Conf-Exp, 21 November 2008, Annex 2, pages 25-26 and Annex 15.

¹¹ Report on Supplementary information concerning applications for participation filed with the "Second Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court", dated 21 November 2008 (ICC-01/04-01/06-1501-Conf-Exp), 3 December 2008, page 4 and Anx2.

¹² Second Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1501-Conf-Exp, 21 November 2008, Annex 2, pages 25-26 and Annex 15.

¹³ Second Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1501-Conf-Exp, 21 November 2008, Annex 2, pages 25-26 and Annex 15.

¹⁴ Observations de la Défense sur les 15 demandes de participation à la procédure et les 30 demandes de participation complémentaires communiquées le 27 novembre 2008 ; Réponse de la Défense aux observations des représentants légaux relatives aux 105 demandes de participation communiquées le 20 mai 2008 ; et Observations de la Défense relatives aux victimes indirectes, 5 December 2008, ICC-01/04-01/06-1536, paragraph 38.

submits that the applicant is a minor and the consent of a parent or legal guardian is required. In all the circumstances, the prosecution submits that the application is incomplete.¹⁵

Victim's legal representative observations

The legal representative did not file a reply.

Legal representation

The applicant has been represented thus far by Mr Hervé Diakiese.¹⁶

Chamber's analysis and decision

The Chamber considers that the documents and other material provided to the Chamber assist in demonstrating the identity of the applicant in accordance with the Trial Chamber's Decision on victims' participation. Although the school certificate does not provide information in relation to his date of birth and his age at the time of the relevant events, the applicant has precisely and unequivocally indicated in his application that he was born on [REDACTED] 1992, and thus was [REDACTED] years old at the time of the relevant events. Furthermore, the community leader who signed the additional declaration submitted to the Chamber certifies that [REDACTED] was born on [REDACTED] 1992.

The Chamber notes that the applicant has consented to someone else acting on his behalf. The question that arises is whether the applicant needs to establish that the person acting on his behalf is either a relative or legal guardian, in order to participate in the proceedings. Alternatively, is the Chamber entitled to act on the application that has been submitted "by a person" on the applicant's behalf, which indicates clearly that the victim wishes to participate in these proceedings.

The Rome Statute framework is clear on this issue. There are no provisions establishing categories of people who alone are allowed to act for victims, whether the latter are adults or children. Rule 89(3) of the Rules simply states that "(a)n 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 ...". It follows that the person acting on behalf of a victim does not have to be a relative or a legal guardian because, within the Rules, the "person acting" is undefined and unrestricted.

In support of this approach, the inevitable experience of most, if not all, children who were recruited in the circumstances alleged in this trial, is that they will have been separated from their parents and other adult relatives at a relatively young age. Many of them have been living, to put it at its lowest, disjointed and very unsettled lives for a number of years. Some children have still not been reunited with their

¹⁵ Prosecution's Observations on 3 Redacted Applications for Victim Participation to the Case of Applicants a/0403/08, a/0407/08, a/0408/08, 10 December 2008, ICC-01/04-01/06-1550, paragraphs 6-7.

¹⁶ Second Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1501-Conf-Exp, 21 November 2008, Annex 2, pages 25-26 and Annex 15.

families and they do not have legal guardians. To the extent that they have managed to find representation at all, they are often assisted by people such as schoolteachers and other similar community figures.

In this regard, the Chamber notes the General Comment No. 6(2005) of the Committee on the Rights of the Child in which it was recognised that separated or unaccompanied children (defined as children who have been separated from both parents, other relatives or from any previous legal or customary primary caregiver), in some situations “have no access to proper and appropriate identification, registration, age assessment, documentation family tracing, guardianship systems or legal advice”.¹⁷ The Committee further noted that “in large-scale crises, where it will be difficult to establish guardianship arrangements on an individual basis, the rights and best interests of separated children should be safeguarded and promoted by States and organizations working on behalf of these children”.¹⁸

The Chamber has paid careful attention to the experience of the Registry in the field in the DRC, and particularly its opinion that “legal guardianship is very rare in Eastern Congo and many children who do not live with their parents, for instance because they have not yet been reunited with their families after being demobilised from an armed group or because they experience difficulties in reintegration, are looked after by persons such as school principals, transition centres for demobilised children, who do not have a formal status in relation to the child”.

The real possibility exists, therefore, that a number of applicants who seek to participate in these proceedings will be living in circumstances where they cannot be represented by their parents, other family relatives or a legal guardian. In relation to these victims, who are over 18 years of age or are close thereto, they have individually applied through a person acting on their behalf (who is not their next-of-kin or their legal guardian) to participate in this trial as a victim. In each instance, the application accords with the express requirements of Rule 89 (3) of the Rules.

All of the matters set out above provide strong support for the approach that the Rules have not restricted the types of people who are able to act on behalf of all victims and including child victims.

Moreover, in this case, the Chamber notes that the applicant was [REDACTED] years old at the time the application was completed, and in the additional declaration submitted to the Chamber the person signing the declaration states that he is acting as [REDACTED]. Thus, the Chamber considers

¹⁷ Committee on the Rights of the Child, General Comment No. 6 (2005), 1 September 2005, CRC/GC/2005/6, paragraphs 3, 7 and 8. Although this General Comment applies to children that have crossed and international border, the Committee has acknowledged that there are many similar challenges related to internally displaced unaccompanied and separated children and encourages States Parties to adopt the relevant aspects of the General Comment in relation to internally displaced unaccompanied and separated children (paragraph 5).

¹⁸ Committee on the Rights of the Child, General Comment No. 6 (2005), 1 September 2005, CRC/GC/2005/6, paragraph 38.

that this person has at least *de facto* authority in the community and is in all probability acting as *de facto* guardian of the applicant. The Chamber also notes that it has been provided with a certificate stating that the person signing the declaration is the [REDACTED] in the village.¹⁹

In all the circumstances, the Trial Chamber determines that the applicant has given sufficient evidence to establish, *prima facie*, that he is a victim under Rules 85(a) of the Rules, as the Chamber has been provided with information that leads it to conclude that the applicant has suffered personal harm as a result of crimes confirmed against the accused, namely his alleged conscription and/or enlistment and/or use to participate actively in the hostilities, between September 2002 and 13 August 2003.²⁰

Application of victim a/0408/08 [Annex 16]

Means of identification

The Chamber was not provided with any identification document for the applicant in the original application form.²¹ In a supplementary filing, the Chamber was provided with a single signed declaration of a witness as to the identity of the applicant, along with the election card of the person making the statement.²²

Claim to victim status

The applicant states that he was recruited by force by the UPC in [REDACTED] 2002, when he was [REDACTED] or [REDACTED] years old. He witnessed the murder of his relatives. He was trained and used in combat against the FNI. He killed people and committed pillage. He was demobilised in [REDACTED] 2003. He claims that as a result of his recruitment he is very anxious and has recurring nightmares.²³

Phases of the proceedings

¹⁹ Report on Supplementary information concerning applications for participation filed with the "Second Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court", dated 21 November 2008 (ICC-01/04-01/06-1501-Conf-Exp), 3 December 2008, page 4 and Annex 2.

²⁰ Decision on victims' participation, 18 January 2008, ICC-01/04-01/06-1119, as confirmed, amended and reversed by the Appeals Chamber's 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.

²¹ Second Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1501-Conf-Exp, 21 November 2008, Annex 2, pages 27-28 and Annex 16.

²² Report on Supplementary information concerning applications for participation filed with the "Second Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court", dated 21 November 2008 (ICC-01/04-01/06-1501-Conf-Exp), 3 December 2008, page 4 and Annex 3.

²³ Second Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1501-Conf-Exp, 21 November 2008, Annex 2, pages 27-28 and Annex 16.

The applicant submits he has an interest in participating in all phases of the proceedings.²⁴

Defence observations

The defence submits that the application does not include any identity documents. As a result, the application does not meet the *prima facie* conditions required by Rule 85 of the Rules of the Rules, and therefore the applicant's request to participate in the proceedings should be rejected.²⁵

Prosecution observations

The prosecution submits that the applicant has stated he was born in 1990, therefore it should be assumed that the applicant was not a minor when the application was submitted. However, since the application does not contain a copy of an identity document and only includes a written declaration by one witness, it is incomplete.²⁶

Victim's legal representative observations

The legal representative did not file a reply.

Legal representation

The applicant has been represented thus far by Mr Hervé Diakiese.²⁷

Chamber's analysis and decision

The Chamber considers that the documents and other material provided to the Chamber do not fulfil the requirements as established in the Trial Decision on victims' participation, namely that in those instances where it is not possible for an applicant to acquire or produce documents the Chamber will consider a statement signed by two credible witnesses attesting to the identity of the applicant and including, where relevant, the relationship between the victim and the person acting on his or her behalf, providing there is consistency between the statement and the application. The Chamber stated that the statement should be accompanied by proof of identity of the two witnesses.²⁸

Although a lack of documents may be justified for applicants who are or have been confronted with particular difficulties, no explanation has been provided for the

²⁴ Second Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1501-Conf-Exp, 21 November 2008, Annex 2, pages 27-28 and Annex 16

²⁵ Observations de la Défense sur les 15 demandes de participation à la procédure et les 30 demandes de participation complémentaires communiquées le 27 novembre 2008 ; Réponse de la Défense aux observations des représentants légaux relatives aux 105 demandes de participation communiquées le 20 mai 2008 ; et Observations de la Défense relatives aux victimes indirectes, 5 December 2008, ICC-01/04-01/06-1536, paragraph 35.

²⁶ Prosecution's Observations on 3 Redacted Applications for Victim Participation to the Case of Applicants a/0403/08, a/0407/08, a/0408/08, 10 December 2008, ICC-01/04-01/06-1550, paragraphs 8-9.

²⁷ Second Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1501-Conf-Exp, 21 November 2008, Annex 2, pages 27-28 and Annex 16.

²⁸ Decision on victims' participation, 18 January 2008, ICC-01/04-01/06-1119, paragraph 88.

absence of a second declaration signed by a witness to support this application. Consequently, the application is materially incomplete. The Chamber instructs the VPRS to contact the applicant and his legal representative in order to seek appropriate documentation.