

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 23 July 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 confidential and public redacted versions of Annex A to the
“Decision on the applications by 7 victims to participate in the proceedings” of 10
July 2009 (ICC-01/04-01/06-2035)**

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

The Office of the Prosecutor

Mr Luis Moreno Ocampo
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
Mr Jean Louis Gilissen
Mr Jean Chrysostome Mulamba
Nsokoloni
Mr Paul Kabongo Tshibangu
Mr Hervé Diakiese

Legal Representatives of the Applicants

Unrepresented Victims

Unrepresented Applicants for Participation/Reparation

The Office of Public Counsel for Victims

Ms Paolina Massidda

The Office of Public Counsel for the Defence

States Representatives

Amicus Curiae

REGISTRY

Registrar

Ms Silvana Arbia

Defence Support Section

Victims and Witnesses Unit

Ms Maria Luisa Martinod Jacome

Detention Section

Victims Participation and Reparations Section

Ms Fiona McKay

Other

1. On 10 July 2009, Trial Chamber I (“Chamber”) issued a public “Decision on the applications by 7 victims to participate in the proceedings” (“Decision”) with a confidential *ex parte* Registry only Annex A.¹
2. On that same day, the Chamber instructed the Registry to propose redactions in order to issue a public and a confidential version of Annex A to the Decision. The Registry submitted a proposed public redacted version of Annex A to the Decision on 15 July 2009, and a proposed confidential redacted version on 20 July 2009.² The Chamber has reviewed the proposed redactions, which are based on an assessment of the individual circumstances of the persons concerned, and it is persuaded that they are necessary for their protection, in accordance with Articles 64(6)(e) and 68(1) of the Rome Statute.
3. The Chamber hereby issues:
 - 1) A confidential redacted version of Annex A to the Decision (attached as Annex 1) to be notified to the parties and participants in the case, and
 - 2) A public redacted version of Annex A to the Decision (attached as Annex 2).

¹ Decision on the applications by 7 victims to participate in the proceedings, 10 July 2009, ICC-01/04-01/06-2035, with a confidential *ex parte* Annex A.

² Email communications to and from the Trial Chamber to and from the Registry through the Legal Adviser to the Trial Division on 10, 15, 20, 22 and 23 July 2009.


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



Judge Adrian Fulford



Judge Elizabeth Odio Benito



Judge René Blattmann

Dated this 23 July 2009

At The Hague, The Netherlands

PUBLIC ANNEX 2

Annex A

Confidential *ex parte* Registry only

Application of victim a/0523/08 [Annex 2]

The means of identification

The Chamber has been provided with a demobilisation card for the applicant¹

The claim to victim status

The applicant claims that in [REDACTED] 2003 UPC combatants forcibly recruited him and his [REDACTED] siblings. The applicant is the sole survivor, since his siblings died during the training or during the hostilities [REDACTED] of his siblings were [REDACTED], [REDACTED] and [REDACTED] years old at the time of their recruitment or death, whilst the applicant was [REDACTED] years old. He also states that his parents were killed. As a result of these events, the applicant suffers psychologically from the loss of his entire family and the loss of their property. He experiences hypertension and loss of memory, and he has alcohol problems. He wishes to achieve justice for his family and his lost property.²

The phases of the proceedings

The applicant submits he has an interest in participating in all phases of the proceedings.³

The observations of the Defence

In general, the defence argues that due to the redactions to essential information, such as the relevant locations, and the exact date of – along with the age of the applicants at the time of – the relevant events, it is unable to make substantive submissions on the admissibility of the applications. The defence also contends that all the applications are vague and lack documentation, thus affecting the accused's rights under Rule 89(1) and the Chamber's ability to make informed decisions.⁴ As regards this victim, the defence opposes his application since the applicant failed to specify the age of his relatives at the time of the relevant events.⁵

The observations of the Prosecution

The prosecution observes that the applicant was over the age of 15 at the time of his alleged recruitment and there is no information indicating that his siblings were under the age of 15 at the time of their alleged recruitment. The prosecution submits

¹ Third Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, 22 April 2009, ICC-01/04-01/06-1823-Conf-Exp, Anx2, page 18

² Third Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, 22 April 2009, ICC-01/04-01/06-1823-Conf-Exp, Anx2, pages 9-11

³ Third Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, 22 April 2009, ICC-01/04-01/06-1823-Conf-Exp, Anx2, page 9

⁴ Observations de la Défense sur les 7 demandes de participation à la procédure transmises le 12 mai 2009, 16 June 2009, ICC-01/04-01/06-1969, paragraphs 4 and 5

⁵ Observations de la Défense sur les 7 demandes de participation à la procédure transmises le 12 mai 2009, 16 June 2009, ICC-01/04-01/06-1969, paragraph 7

that further information is therefore required before participating status is granted to the applicant⁶

Legal representation

The applicant has been represented thus far by the OPCV⁷

The Chamber's analysis and decision

The documents and other material provided have assisted the Chamber in determining the identity of the applicant in accordance with the Trial Chamber's Decision on victims' participation

Although there are no documents to prove the exact age of the applicant's siblings at the time of the relevant events, the Trial Chamber determines that the applicant has provided sufficient information in his application form to establish, *prima facie*, that he is a victim under Rules 85(a) of the Rules he suffered personal harm as a result of the crimes confirmed against the accused, namely the alleged conscription, enlistment or use of at least three of his siblings by the UPC when they were under 15 to participate actively in hostilities, between September 2002 and 13 August 2003.⁸

Application of victim a/0611/08 [Annex 3]

The means of identification

The Chamber has been provided with a birth certificate and a school certificate for the applicant as well as a copy of a court judgment of guardianship relevant to him⁹

The claim to victim status

The applicant states that in [REDACTED] 2003 he was recruited by force by the UPC when he was [REDACTED] or [REDACTED] years old This occurred after the death of his father and other family members He was then taken to [REDACTED] for a period of [REDACTED] weeks in order to receive military training Later, he was sent to [REDACTED] to fight the Lendus and then to [REDACTED] again to fight the Lendus as well as to attack civilians In 2004 he was demobilised when the UN arrived The applicant claims he suffers psychologically as a result of these events, and particularly from the death of his relatives as well as from his current situation He lives on the streets, without parental assistance, although people of good-will sometimes help him He hopes the Court will dispense justice, establish criminal responsibility and compensate him¹⁰

⁶ Prosecution's Observations on Seven Redacted Applications for Victim Participation to the Case, concerning applicants a/0523/08, a/0609/08, a/0610/08, a/0611/08, a/0053/09, a/0060/09 and a/0249/09, 18 May 2009, ICC-01/04-01/06-1880, paragraph 6

⁷ Désignation du Bureau du conseil public pour les victimes pour la représentation légale du demandeur a/0523/08, 18 May 2009, ICC-01/04-01/06-1879

⁸ 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

⁹ Third Report to Trial Chamber I on Victims' Applications under Regulation 86 5 of the Regulations of the Court, 22 April 2009, ICC-01/04-01/06-1823-Conf-Exp, Anx3, pages 18-22

¹⁰ Third Report to Trial Chamber I on Victims' Applications under Regulation 86 5 of the Regulations of the Court, 22 April 2009, ICC-01/04-01/06-1823-Conf-Exp, Anx1, page 7 and Anx3, pages 9-11

The phases of the proceedings

The applicant submits he has an interest in participating in all phases of the proceedings ¹¹

The observations of the defence

In general, the defence argues that due to the redactions to essential information, such as the relevant locations, and the exact date of – along with the age of the applicants at the time of – the relevant events, it is unable to make substantive submissions on the admissibility of the applications. The defence also contends that all the applications are vague and lack documentation, thus affecting the accused's rights under Rule 89(1) and the Chamber's ability to make informed decisions ¹². As regards this victim, the defence opposes his application since there is a contradiction between the date of birth indicated in the application (1994) and that given on his birth certificate (1995), thus providing serious doubts as to his identity. ¹³

The observations of the prosecution

The prosecution observes that the information provided suggests that the applicant was under the age of 15 at the time of the events and that he has provided sufficient proof of his identity. The prosecution highlights that the applicant and applicant a/0610/08 are brothers and both are under the age of 18. Their uncle is acting on their behalf. The prosecution submits that the applicant is entitled to be granted participating status as a victim in the proceedings ¹⁴.

Legal representation

The applicant has been represented thus far by Mr Hervé Diakiese ¹⁵.

The Chamber's analysis and decision

The documents and other material provided have assisted the Chamber in determining the identity of the applicant in accordance with the Trial Chamber's Decision on victims' participation. Although there appear to be contradictions as to the exact year of birth of the applicant (1994 or 1995), the Chamber considers that the information provided (particularly the applicant's birth certificate) result in a *prima facie* determination that the applicant was approximately ■ or ■ years old at the time of the relevant events.

¹¹ Third Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, 22 April 2009, ICC-01/04-01/06-1823-Conf-Exp, Anx3, page 9.

¹² Observations de la Défense sur les 7 demandes de participation à la procédure transmises le 12 mai 2009, 16 June 2009, ICC-01/04-01/06-1969, paragraphs 4 and 5.

¹³ Observations de la Défense sur les 7 demandes de participation à la procédure transmises le 12 mai 2009, 16 June 2009, ICC-01/04-01/06-1969, paragraph 8.

¹⁴ Prosecution's Observations on Seven Redacted Applications for Victim Participation to the Case, concerning applicants a/0523/08, a/0609/08, a/0610/08, a/0611/08, a/0053/09, a/0060/09 and a/0249/09, 18 May 2009, ICC-01/04-01/06-1880, paragraphs 2-3.

¹⁵ Third Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, 22 April 2009, ICC-01/04-01/06-1823-Conf-Exp, Anx3, page 12.

It is to be noted that although the applicant is still a child, he is now aged between ■ and ■ years old. Although the prosecution has suggested that the applicant and his brother are represented by their uncle, the Chamber notes that this is not the case and that applicants a/0610/08, a/0611/08 and a/0609/08 are each acting on their own behalf.

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 a 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 suggestion 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.¹⁶

There is no evidence to conclude the applicant is particularly immature or that he does not understand the nature of this application. Although the Chamber would normally expect someone to act on behalf of a minor, the fact that the applicant is a child should not, of itself, prevent him from participating on his own behalf.

On these particular facts, the absence of a person acting for the applicant does not act as a bar to his participation in these proceedings.

The applicant has provided sufficient evidence to establish, *prima facie*, that he is a victim under Rules 85(a) of the Rules: the applicant suffered personal harm as a result of the crimes confirmed against the accused, namely his alleged conscription, enlistment or use to participate actively in the hostilities, between September 2002 and 13 August 2003.¹⁷

¹⁶ 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.

¹⁷ 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.

Application of victim a/0610/08 [Annex 4]

The means of identification

The Chamber has been provided with a birth certificate and a school certificate for the applicant as well as with a copy of a relevant court judgment of guardianship¹⁸

The claim to victim status

The applicant states that in [REDACTED] 2003 he was recruited by force by the UPC when he was [REDACTED] years old, while working in [REDACTED] after the death of his father and uncles at the hands of the UPC. He was sent by the UPC to [REDACTED] to receive military training where he learned how to shoot and to engage in combat. He was drugged to give him courage. He was then sent to [REDACTED] to guard the town and he participated in combat in [REDACTED] and [REDACTED] against the FNI. As a result of these events, the applicant claims he lost relatives and he was drugged. He hopes the ICC will establish the truth¹⁹

The phases of the proceedings

The applicant submits he has an interest in participating in all phases of the proceedings²⁰

The observations of the defence

In general, the defence argues that due to the redactions to essential information, such as the relevant locations, and the exact date of – along with the age of the applicants at the time of – the relevant events, it is unable to make substantive submissions on the admissibility of the applications. The defence also contends that all the applications are vague and lack documentation, thus affecting the accused's rights under Rule 89(1) and the Chamber's ability to make informed decisions²¹. The defence did not make any observations as regards this applicant.

The observations of the prosecution

The prosecution submits that the information provided suggests that the applicant was under the age of 15 at the time of the relevant events and that he has provided sufficient proof of identity. The prosecution observes that the applicant and applicant a/0611/08 are brothers, both are under the age of 18 and their uncle is acting on their behalf. The prosecution submits that the applicant is entitled to be granted participating status in the proceedings²²

¹⁸ Third Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, 22 April 2009, ICC-01/04-01/06-1823-Conf-Exp, Anx4, pages 18-22

¹⁹ Third Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, 22 April 2009, ICC-01/04-01/06-1823-Conf-Exp, Anx4, pages 9-11

²⁰ Third Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, 22 April 2009, ICC-01/04-01/06-1823-Conf-Exp, Anx4, page 9

²¹ Observations de la Défense sur les 7 demandes de participation à la procédure transmises le 12 mai 2009, 16 June 2009, ICC-01/04-01/06-1969, paragraphs 4 and 5

²² Prosecution's Observations on Seven Redacted Applications for Victim Participation to the Case, concerning applicants a/0523/08, a/0609/08, a/0610/08, a/0611/08, a/0053/09, a/0060/09 and a/0249/09, 18 May 2009, ICC-01/04-01/06-1880, paragraphs 2-3

Legal representation

The applicant has been represented thus far by Mr Hervé Diakiese²³

The Chamber's analysis and decision

The documents and the other material provided to the Chamber have assisted in determining the identity of the applicant in accordance with the Trial Chamber's Decision on victims' participation. In all the circumstances, (particularly bearing in mind the applicant's birth certificate) the Chamber concludes *prima facie* that the applicant was approximately ■■■ years old at the time of the relevant events.

It is to be noted that although the applicant is still a child, he is currently approximately ■ years old. Although the prosecution has suggested that the applicant and his brother are represented by their uncle, the Chamber notes that this is not the case, and applicants a/0610/08, a/0611/08 and a/0609/08 are each acting on their own behalf.

The question that arises is whether it is a precondition of his participation that someone acts 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 a 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 suggestion 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 Child²⁴.

There is no evidence to conclude the applicant is particularly immature or that he does not understand the nature of this application. Although the Chamber would normally expect someone to act on behalf of a minor, the fact that the applicant is a child should not, of itself, prevent him from participating on his own behalf.

²³ Third Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, 22 April 2009, ICC-01/04-01/06-1823-Conf-Exp, Anx4, page 12.

²⁴ 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.

In all the circumstances, the absence of someone acting on his behalf does not act as a bar to the applicant's participation in these proceedings

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 suggests the applicant suffered personal harm as a result of crimes confirmed against the accused, namely his alleged conscription, enlistment or use to participate actively in the hostilities, between September 2002 and 13 August 2003²⁵

Application of victim a/0609/08 [Annex 5]

The means of identification

The Chamber has been provided with an election card of the applicant as well as with a copy of a court judgement of guardianship related him²⁶

The claim to victim status

The applicant states that when in [REDACTED] in [REDACTED] 2002 his [REDACTED] children (alternatively, [REDACTED] son and [REDACTED] nephews) were recruited by force by the UPC. He also describes other events in [REDACTED] 2003 and [REDACTED] 2003 at [REDACTED] and [REDACTED] without giving details as to what occurred, save that there was pillaging. As a result of these events, he and others ran away to [REDACTED], returning to [REDACTED] only when calm was restored. The oldest son of the applicant, who was [REDACTED] years old at the time when the application was filed, has disappeared, although his other [REDACTED] sons or nephews now live with him. Since the applicant appears to be the guardian of these [REDACTED] children it is more likely that they are his nephews (applicants a/0610/08 and a/0611/08, see above). Indeed the applicant states that as a result of the events he has taken care of these [REDACTED] children, who are the sons of his sister, who lives in [REDACTED] but has no means to take care of them²⁷

Phases of the proceedings

The applicant submits he has an interest in participating in all phases of the proceedings²⁸

The observations of the defence

In general, the defence argues that due to the redactions to essential information, such as the relevant locations, and the exact date of – along with the age of the applicants at the time of – the relevant events, it is unable to make substantive

²⁵ 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

²⁶ Third Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, 22 April 2009, ICC-01/04-01/06-1823-Conf-Exp, Anx5, pages 19-23

²⁷ Third Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, 22 April 2009, ICC-01/04-01/06-1823-Conf-Exp, Anx5, page 9-11

²⁸ Third Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, 22 April 2009, ICC-01/04-01/06-1823-Conf-Exp, Anx5, page 9

submissions on the admissibility of the applications. The defence also contends that all the applications are vague and lack documentation, thus affecting the accused's rights under Rule 89(1) and the Chamber's ability to make informed decisions.²⁹ As regards this applicant, the defence opposes the application since it is suggested he does not allege any harm as a result of the charges against the accused. The defence argues that acts of pillage are not included in the charges confirmed against the accused, and that any harm suffered as a result of taking care for the children described above should not be regarded as a consequence of their alleged recruitment. The defence also submits that the applicant has insufficiently established his kinship with the children allegedly recruited.³⁰

The observations of the prosecution

The prosecution observes that the applicant appears to be the uncle of applicants a/0610/08 and a/0611/08. It argues, however, that the applicant has not provided sufficient information as to whether the disappearance of his son occurred during the relevant time period or whether he was under the age of 15 at the time of the relevant events. The prosecution highlights that the applicant does not claim personal harm deriving from the recruitment of his son or his nephews but instead relies on financial harm due to other events, such as instances of pillaging and his care of his nephews. The prosecution submits the applicant should provide further information in order to be granted status to participate in the proceedings.³¹

Legal representation

The applicant has been represented thus far by Mr Hervé Diakiese.³²

The Chamber's analysis and decision

The documents and the other material provided have assisted the Chamber in determining the identity of the applicant in accordance with the Trial Chamber's Decision on victims' participation. The documents provided to the Chamber in relation to applicants a/0610/08 and a/0611/08 in Annexes 3 and 4 analysed above, demonstrate that the applicant's relatives (his nephews, on the available evidence) were under the age of 15 at the time of the relevant events.

The Chamber has carefully reviewed the information provided by the applicant, along with the details provided for applicants a/0610/08 and a/0611/08, given these applications are closely linked. The Chamber observes that there are several significant contradictions between the present application and the applications of a/0610/08 and a/0611/08. First, the applicant refers to the date of recruitment as

²⁹ Observations de la Défense sur les 7 demandes de participation à la procédure transmises le 12 mai 2009, 16 June 2009, ICC-01/04-01/06-1969, paragraphs 4 and 5.

³⁰ Observations de la Défense sur les 7 demandes de participation à la procédure transmises le 12 mai 2009, 16 June 2009, ICC-01/04-01/06-1969, paragraphs 10-11.

³¹ Prosecution's Observations on Seven Redacted Applications for Victim Participation to the Case, concerning applicants a/0523/08, a/0609/08, a/0610/08, a/0611/08, a/0053/09, a/0060/09 and a/0249/09, 18 May 2009, ICC-01/04-01/06-1880, paragraph 5.

³² Third Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, 22 April 2009, ICC-01/04-01/06-1823-Conf-Exp, Anx.5, page 12.

2002, while his "nephews" state that they were allegedly recruited in 2003. Whilst this may be the result of confusion between the various young people concerned or a consequence of other events that affected the applicant during the armed conflict, the Chamber considers that clarification is needed as regards the dates of the events in relation to which the applicant wishes to participate in the proceedings. Likewise, while one of the applicant's nephews (applicant a/0611/08) has stated that he lives on the streets and has no family, this applicant (a/0609/08) maintains that both nephews live in his house with his family. Furthermore, while the nephews stated that their father was killed prior to their recruitment, the applicant is described in the official judgment attached to his application as having declared that his nephews' parents are alive (although they are irresponsible and cannot take care of these two children). In all the circumstances, the Chamber considers that it requires further information on these contradictions, which could very well affect the merits of this application to participate.

Consequently, the Chamber rejects the application. The Chamber instructs the VPRS to contact the applicant and his legal representative to give them an opportunity to address the matters set out above.

Application of victim a/0249/09 [Annex 6]

Means of identification

The Chamber has been provided with a school certificate from the applicant³³

The claim to victim status

The applicant states that in 2003 he was recruited by force by UPC militia when he was years old. This was soon after his's death during the war. The applicant claims he had lost all hope of living and that when the UPC militia passed from house to house, arresting everyone they found, he was obliged to become a soldier. He was taken to where he was trained for weeks and subjected to ill treatment. He was drugged, and he was forced to kill and to "see blood". The applicant states that he was victim of pillage and torture, and he refers to the loss of his family³⁴

Phases of the proceedings

The applicant submits he has an interest in participating in all phases of the proceedings³⁵

The observations of the defence

In general, the defence argues that due to the redactions to essential information, such as the relevant locations, and the exact date of – along with the age of the

³³ Third Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, 22 April 2009, ICC-01/04-01/06-1823-Conf-Exp, Anx6, page 18

³⁴ Third Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, 22 April 2009, ICC-01/04-01/06-1823-Conf-Exp, Anx6, pages 9-11

³⁵ Third Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, 22 April 2009, ICC-01/04-01/06-1823-Conf-Exp, Anx6, page 9

applicants at the time of – the relevant events, it is unable to make substantive submissions on the admissibility of the applications. The defence also contends that all the applications are vague and lack documentation, thus affecting the accused's rights under Rule 89(1) and the Chamber's ability to make informed decisions.³⁶ The defence does not make observations on this application.

The observations of the prosecution

The prosecution submits that the information provided suggests that the applicant was under the age of 15 at the time of the relevant events, and that he has provided sufficient proof of identity. The prosecution also observes that the applicant was an adult when the application was submitted to the Court. The prosecution submits that the applicant is entitled to participate as a victim in the proceedings.³⁷

Legal representation

The applicant has been represented thus far by Mr Hervé Diakiese.³⁸

The Chamber's analysis and decision

The documents and the other material provided have assisted the Chamber in determining 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 to determine, *prima facie*, that the applicant was approximately ■ years old at the time of the relevant events.

The applicant has provided sufficient evidence to establish, *prima facie*, that he is a victim under Rules 85(a) of the Rules, on the basis that he suffered personal harm as a result of crimes confirmed against the accused, namely his alleged conscription, enlistment or use to participate actively in the hostilities, between September 2002 and 13 August 2003.³⁹

Application of victim a/0060/09 [Annex 7]

The means of identification

The Chamber has been provided with a driving licence for the applicant.⁴⁰

³⁶ Observations de la Défense sur les 7 demandes de participation à la procédure transmises le 12 mai 2009, 16 June 2009, ICC-01/04-01/06-1969, paragraphs 4 and 5.

³⁷ Prosecution's Observations on Seven Redacted Applications for Victim Participation to the Case, concerning applicants a/0523/08, a/0609/08, a/0610/08, a/0611/08, a/0053/09, a/0060/09 and a/0249/09, 18 May 2009, ICC-01/04-01/06-1880, paragraphs 2-3.

³⁸ Third Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, 22 April 2009, ICC-01/04-01/06-1823-Conf-Exp, Anx6, page 12.

³⁹ 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.

⁴⁰ Third Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, 22 April 2009, ICC-01/04-01/06-1823-Conf-Exp, Anx7, page 18.

The claim to victim status

The applicant states that in [REDACTED] 2002 he was recruited into the FPLC/UPC when he was [REDACTED] years old. He states that [REDACTED] himself gave the order to detain him, along with [REDACTED] of his friends, when they were leaving school and were forced into a jeep. He was taken to [REDACTED] for training until [REDACTED] 2002. He was tortured and he was involved in killing during combat. As a result of these events, he suffers from psychological problems and he is traumatised from having killed at such a young age. His abduction has caused him suffering.⁴¹

Phases of the proceedings

The applicant submits he has an interest in participating in all phases of the proceedings.⁴²

The observations of the defence

In general, the defence argues that due to the redactions to essential information, such as the relevant locations, and the exact date of – along with the age of the applicants at the time of – the relevant events, it is unable to make substantive submissions on the admissibility of the applications. The defence also contends that all the applications are vague and lack documentation, thus affecting the accused's rights under Rule 89(1) and the Chamber's ability to make informed decisions.⁴³ As regards this applicant, the defence resists his application because the date of birth on the identity card, attached to the application form, is illegible.⁴⁴

The observations of the prosecution

The prosecution submits that the information provided suggests that the applicant was under the age of 15 at the time of the relevant events and that there is sufficient proof of identity. It also observes that the applicant was an adult when the application was submitted to the Court. The prosecution submits that the applicant is entitled to participate.⁴⁵

Legal representation

The applicant has been represented thus far by Mr Joseph Keta.⁴⁶

⁴¹ Third Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, 22 April 2009, ICC-01/04-01/06-1823-Conf-Exp, Anx7, pages 9-11

⁴² Third Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, 22 April 2009, ICC-01/04-01/06-1823-Conf-Exp, Anx7, page 9

⁴³ Observations de la Défense sur les 7 demandes de participation à la procédure transmises le 12 mai 2009, 16 June 2009, ICC-01/04-01/06-1969, paragraphs 4 and 5

⁴⁴ Observations de la Défense sur les 7 demandes de participation à la procédure transmises le 12 mai 2009, 16 June 2009, ICC-01/04-01/06-1969, paragraph 7

⁴⁵ Prosecution's Observations on Seven Redacted Applications for Victim Participation to the Case, concerning applicants a/0523/08, a/0609/08, a/0610/08, a/0611/08, a/0053/09, a/0060/09 and a/0249/09, 18 May 2009, ICC-01/04-01/06-1880, paragraphs 2-3

⁴⁶ Third Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, 22 April 2009, ICC-01/04-01/06-1823-Conf-Exp, Anx7, page 12

The Chamber's analysis and decision

The documents and other material provided have assisted the Chamber in determining the identity of the applicant in accordance with the Trial Chamber's Decision on victims' participation. In all the circumstances, the Chamber concludes, *prima facie*, that the applicant was approximately [REDACTED] years old at the time of the relevant events.

The Trial Chamber concludes that the applicant has provided sufficient evidence to establish, *prima facie*, that he is a victim under Rules 85(a) of the Rules, since he suffered personal harm as a result of crimes confirmed against the accused, namely his alleged conscription, enlistment or use to participate actively in the hostilities, between September 2002 and 13 August 2003.⁴⁷

Application of victim a/0053/09 [Annex 8]

The means of identification

The Chamber has been provided with a death certificate for the applicant and the passport and election card of the person acting on his behalf (his [REDACTED] uncle).⁴⁸

The claim to victim status

The person acting on behalf of the applicant (his [REDACTED] uncle) states that in [REDACTED] 2002 his nephew (now deceased) was recruited by force by FPLC militia, and thereafter he was killed in [REDACTED] 2003, when he was [REDACTED] years old. The deceased and his friends were recruited on their way to school and they were trained in [REDACTED] [REDACTED], where they were tortured and drugged. The applicant participated in combat in [REDACTED] ([REDACTED] 2002), in [REDACTED] ([REDACTED] 2003), in [REDACTED] ([REDACTED] 2003) and in [REDACTED] ([REDACTED] 2003), where he was killed. His uncle (person acting on behalf of the victim) was also captured, when [REDACTED] his nephew's (the victim applicant) [REDACTED]. As a result of these events, the victim's uncle (the person acting on his behalf) suffers psychologically (particularly given the loss of his nephew, who was [REDACTED] of [REDACTED], who in turn died [REDACTED] [REDACTED]). The nephew, as a result, was raised by his uncle.⁴⁹

Phases of the proceedings

The applicant submits he has an interest in participating in all phases of the proceedings.⁵⁰

⁴⁷ 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.

⁴⁸ Third Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, 22 April 2009, ICC-01/04-01/06-1823-Conf-Exp, Anx8, pages 18-23.

⁴⁹ Third Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, 22 April 2009, ICC-01/04-01/06-1823-Conf-Exp, Anx8, pages 9-11.

⁵⁰ Third Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, 22 April 2009, ICC-01/04-01/06-1823-Conf-Exp, Anx8, page 9.

The observations of the defence

In general, the defence argues that due to the redactions to essential information, such as the relevant locations, and the exact date of – along with the age of the applicants at the time of – the relevant events, it is unable to make substantive submissions on the admissibility of the applications. The defence also contends that all the applications are vague and lack documentation, thus affecting the accused's rights under Rule 89(1) and the Chamber's ability to make informed decisions.⁵¹ As regards this applicant, the defence resists the application to participate on the basis that the applicant, who claims to be the uncle of the deceased, has not established his guardianship at the time of the relevant events or provided the Chamber with documentation proving their kinship.⁵²

The observations of the prosecution

The prosecution observes that the applicant is an adult acting on behalf of himself and his deceased nephew, whom he claims was conscripted by the UPC. The prosecution notes that the death certificate of the nephew has been submitted with the application, and that the applicant claims to have suffered physical and emotional pain and suffering as a result of the events surrounding his nephew's alleged conscription. The prosecution thus submits that the applicant is entitled to participate in the proceedings as an indirect victim.⁵³

Legal representation

The applicant has been represented thus far by the OPCV.⁵⁴

Chamber's analysis and decision

It is important to note that there seems to be a confusion in the application, and consequently in the parties' submissions, as regards the identity of the applicant on the one hand, and the person acting on behalf of the applicant, on the other. The Chamber deems it necessary to clarify that the uncle, who is the "person acting on behalf of the victim", has applied on behalf of his deceased nephew, who appears in the application form as the "victim or applicant". Thus, the information on page 1 of the application form namely "informations concernant la victime" refers to the nephew who was allegedly recruited when he was under the age of 15. This is further confirmed on page 2 of the application form (the "situation familiale" of the victim) where it is written "deceased". On page 7 of the application form ("informations concernant une personne agissant au nom de la victime") the uncle has appropriately filled in the form (giving his own identity). He states that he is acting on behalf of his nephew since the latter is deceased and he has attached to the

⁵¹ Observations de la Défense sur les 7 demandes de participation à la procédure transmises le 12 mai 2009, 16 June 2009, ICC-01/04-01/06-1969, paragraphs 4 and 5

⁵² Observations de la Défense sur les 7 demandes de participation à la procédure transmises le 12 mai 2009, 16 June 2009, ICC-01/04-01/06-1969, paragraph 9

⁵³ Prosecution's Observations on Seven Redacted Applications for Victim Participation to the Case, concerning applicants a/0523/08, a/0609/08, a/0610/08, a/0611/08, a/0053/09, a/0060/09 and a/0249/09, 18 May 2009, ICC-01/04-01/06-1880, paragraph 5

⁵⁴ Third Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, 22 April 2009, ICC-01/04-01/06-1823-Conf-Exp, Anx8, page 12

application form a death certificate. However, as has frequently occurred, when the uncle (the person "acting on behalf" of the child) was asked about the harm suffered (on page 11 of the application form), he has written the harm that he, the uncle, personally has suffered (e.g. loss of his nephew, moral harm, etc.), and not what the victim actually suffered (e.g. loss of schooling, loss of life, etc.)⁵⁵ The Chamber considers however that this confusion does not prevent the Chamber from assessing the application form.

The documents and the other material provided prove, *prima facie*, the identity of the applicant (the deceased) and the person acting on his behalf (the deceased's uncle) in accordance with the Trial Chamber's Decision on victims' participation. They prove, *prima facie*, that the applicant was approximately ■ years old at the time of the relevant events.

As set out above, the Chamber has been provided with a death certificate of the applicant.

The question that arises is whether it is necessary for the person acting on behalf of a deceased victim to establish the link of kinship or guardianship in order to participate in the proceedings. Rule 89(3) of the Rules 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 or, when necessary, a victim who is disabled". 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 relation to the present application, the victim's uncle has applied on behalf of his deceased nephew, and the information provided to the Chamber has enabled it to establish that the uncle of the victim was his next-of-kin. Although the Chamber notes that there is no reference to the deceased's father, and that his mother died ■ the uncle was apparently acting as the *de facto* guardian of his nephew before the latter's alleged recruitment and death. In all the circumstances, for each element, the application accords with the express requirements of Rule 89(3) of the Rules.

The Trial Chamber has been provided with sufficient information to conclude, *prima facie*, that the applicant (the deceased) is a victim under Rule 85(a) of the Rules, since he suffered personal harm as a result of the commission of crimes included in the charges brought against the accused, namely his alleged enlistment, conscription or use to participate actively in the hostilities by the UPC between September 2002 and 13 August 2003.⁵⁶

⁵⁵ Third Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, 22 April 2009, ICC-01/04-01/06-1823-Conf-Exp, Anx8.

⁵⁶ 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.

Furthermore, since the uncle of the victim (the person acting on his behalf) also alleges he suffered personal harm a result of his nephew's recruitment, the Chamber refers to the Registry the issue of whether wishes to participate separately, on his own behalf