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PRE-TRIAL CHAMBER I

Before: Judge Anita Ušacka, Single Judge

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

Public Document

Prosecution's Observations on the Re-submission of Applications a/0004/06, a/0005/06, a/0006/06, a/0039/06, a/0049/06, a/0050/06, a/0073/06, a/0076/06, a/0078/06, a/0079/06, a/0110/06, a/0144/06, a/0155/06, a/0157/06, a/0160/06, a/0203/06, a/0221/06, a/0224/06, a/0225/06, a/0226/06, a/0227/06, a/0229/06, a/0230/06, a/0236/06, a/0237/06, a/0238/06, a/0239/06, a/0240/06 for Victim Participation at the Investigation Phase of the Situation in the DRC

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Background

1. On 30 November 2006, the Prosecution filed the "Prosecution's Observations on the applications for Participation of Applicants a/0004/06 to a/0009/06, a/0016/06 to a/0063/06, a/0071/06, a/0072/06 to a/0080/06 and a/0105/06"¹ in the record of the investigation of the situation in the Democratic Republic of the Congo ("DRC").
2. On 25 June 2007, the Prosecution submitted its "Prosecution's Reply under Rule 89(1) to the applications for Participation of Applicants a/0106/06 to a/0110/06, a/0128/06 to a/0162/06, a/0188/06, a/0199/06, a/0203/06, a/0209/06, a/0214/06, a/0220/06 to a/0222/06 and a/0224/06 to a/0250/06"².
3. On 31 January 2008, the Single Judge filed the "Corrigendum to the 'Decision on the applications for Participation Filed in Connection with the Investigation in the Democratic Republic of the Congo by a/0004/06 to a/0009/06, a/0016/06 to a/0063/06, a/0071/06 to a/0080/06 and a/0105/06 to a/0110/06, a/0188/06, a/0128/06 to a/0162/06, a/0199/06, a/0203/06, a/0209/06, a/0214/06, a/0220/06 to a/0222/06, a/0224/06, a/0227/06 to a/0230/06, a/0234/06 to a/0236/06, a/0240/06, a/0225/06, a/0226/06, a/0231/06 to a/0233/06, a/0237/06 to a/0239/06 and a/0241/06 to a/0250/06'"³ issued on 24 December 2007 (hereinafter "24 December 2007 Decision"). In the Decision of 24 December 2007, the Single Judge decided not to rule on applications a/0049/06, a/0050/06, a/0221/06, a/0225/06, a/0226/06, a/0237/06, a/0238/06 and a/0239/06 amongst others, since they had also been filed in the case and were pending

¹ ICC-O 1/04-315 and ICC-01/04-315-Conf-Exp-Anx.

² CC-01/04-346.

³ ICC-01/04-423-Corr-tENG.

decision before the Trial Chamber.⁴ Furthermore, the Single Judge dismissed all other applications.⁵

4. On 3 July 2008, the Single Judge rendered the "Decision on the applications for participation filed in connection with the investigation in the Democratic Republic of Congo by Applicants a/0047/06 to a/0052/06, a/0163/06 to a/0187/06, a/0221/06, a/0225/06, a/0226/06, a/0231/06 to a/0233/06, a/0237/06 to a/0239/06, and a/0241/06 to a/0250/06" (hereinafter "3 July 2008 Decision")⁶, in which she dismissed, amongst others, applications a/0049/06 and a/0050/06 for lack of consent of a legal guardian, thus rendering the application incomplete.⁷ Further, the Single Judge dismissed applications a/0221/06, a/0225/06, a/0226/06, a/0237/06, a/0238/06 and a/0239/06 as incomplete for lack of proof of identity.⁸
5. In the 3 July 2008 Decision, the Single Judge further noted "that the appeals (...) are still pending before the Appeals Chamber. However, the Appeals Chamber has not ordered suspensive effect as to these decisions pursuant to article 82(3) of the Statute".⁹ The Single Judge decided to proceed with examining and deciding upon victim applications in the situation based on the current jurisprudence of the Pre-Trial Chamber, acknowledging that "the Single Judge's decision may later require modification in accordance with the Appeals Chamber's judgment"¹⁰.

⁴ ICC-01/04-423-Corr-tENG, at para 144.

⁵ Applications a/0004/06, a/0005/06, a/0006/06, a/0039/06, a/0073/06, a/0076/06, a/0078/06, a/0079/06, a/0110/06, a/0144/06, a/0155/06, a/0157/06, a/0160/06, a/0203/06, a/0224/06, a/0227/06, a/0229/06, a/0230/06, a/0236/06 and a/0240/06 were dismissed for lack of completeness.

⁶ ICC-01/04-505.

⁷ ICC-01/04-505, at para 31.

⁸ ICC-01/04-505, at para 32.

⁹ ICC-01/04-505, at paras 2 to 4; Regarding the procedural history of the appeals, the Prosecution makes reference to its filing of 12 June 2008 (ICC-01/04-501, "Prosecution's Observations on 28 Applications for Victim Participation at the Investigation Stage of the Situation in the DRC"). There are currently four issues pending appeal; See ICC-01/04-525, "Prosecution's Observations on Applications a/0332/07, a/0334/07 to a/0337/07, a/0001/08, a/0030/08 and a/0031/08 for Victim Participation at the Investigation Phase of the Situation in the DRC, at para 10.

¹⁰ ICC-01/04-505, at para 4.

6. On 20 August 2008, the Registry notified the Prosecution and the Office of Public Counsel for the Defence (OPCD) with updated applications for applicants a/0004/06, a/0005/06, a/0006/06, a/0039/06, a/0049/06, a/0050/06, a/0073/06, a/0076/06, a/0078/06, a/0079/06, a/0110/06, a/0144/06, a/0155/06, a/0157/06, a/0160/06, a/0203/06, a/0221/06, a/0224/06, a/0225/06, a/0226/06, a/0227/06, a/0229/06, a/0230/06, a/0236/06, a/0237/06, a/0238/06, a/0239/06, a/0240/06, containing the original applications along with supplementary information. In its filing the Registry makes reference to an *ex-parte* hearing of 21 July 2008 in which the Chamber established the appropriate procedure applicable to applications that had previously been subject to a decision of the Chamber: "for VPRS, pursuant to Rule 89(2) of the Rules, to file 'new' applications on behalf of these applicants, either by filing an entirely new application or by filing the original application together with any essential supporting information necessary for the Chamber's decision on the applications, and to notify the complete application with supporting information to the Prosecution and the OPCD".¹¹
7. The Prosecution hereby responds to the applications within the thirty day deadline established by the Pre-Trial Chamber¹² notwithstanding and without prejudice to its position in the pending appeals, and on the understanding that, as was recognised in the 3 July 2008 Decision, any determination may require modification in accordance with the judgements of the Appeals Chamber.

Criteria for determining "Victim" status in the context of the Situation

8. To determine whether an applicant may participate in the proceedings pursuant to Rule 89 (2) of the Rules of Procedure and Evidence ("Rules"), the

¹¹ ICC-01/04-526-Conf-Exp.

¹² ICC-01/04-374, at para 52.

Pre-Trial Chamber must first consider whether the applicant qualifies as a "victim" as defined in Rule 85.

9. Pursuant to Rule 85 (a) of the Rules, "'victims' means natural persons who have suffered harm as a result of the commission of any crime within the jurisdiction of the Court".
10. The Pre-Trial Chamber has previously established that it will make this assessment on a *prima facie* basis.¹³ The Pre-Trial Chamber has held that, for an individual to be granted victim status, four criteria must be satisfied: (a) the victim must be a natural person; (b) he or she must have suffered harm; (c) the crime from which the harm resulted must fall within the jurisdiction of the Court; and (d) a causal link between the crime and the harm must exist.¹⁴
11. In addition, Article 68(3) of the Statute provides that the Pre-Trial Chamber shall permit participation of an individual (as defined by Rule 85) where the personal interests of the individual are affected. The Prosecution submits that Article 68(3) of the Statute and Rule 85, viewed together, establish two cumulative requirements for an individual to participate in the proceedings as a victim: First, the applicant must fulfil the criteria set out in Rule 85; and second, the Pre-Trial Chamber must also be satisfied that the personal interests of the victim are directly affected by the proceedings.¹⁵
12. Furthermore, the Pre-Trial Chamber, in its 17 August 2007 Decision, established criteria that need to be fulfilled in order to guarantee completeness of the applications.¹⁶

¹³ ICC-01/04-444, pages 10 and 11.

¹⁴ See ICC-01/04-101, para. 94.

¹⁵ ICC-01/04-101, para. 62.

¹⁶ ICC-01/04-374, para 12 to 14

Factual analysis of the applications

13. All applications had been dismissed by the Single Judge in either the 24 December 2007 Decision or the 3 July 2008 Decision on the basis that they were incomplete. The updated versions of the applications contain additional supportive information. The Prosecution will first examine whether the updated applications meet the criteria for completeness established by the Pre-Trial Chamber, and will subsequently discuss whether the criteria of Rule 85 (a) are met *prima facie*.

Whether the applications are complete

Application a/0004/06

14. Application a/0004/06 was submitted by a person acting on behalf of the victim applicant. The application was determined to be incomplete by the Single Judge in her 24 December 2007 Decision on the basis that “no express consent from the alleged victim” was given and “that no proof of identity is provided for either the alleged victim or the person acting on the victims’ behalf.”¹⁷

15. The additional information provided by applicant a/0004/06 contains a declaration of the applicant to act in his/her own name and contains a copy of the applicant’s identity card. The Prosecution submits that application a/0004/06 is now complete.

Applications a/0005/06, a/0155/06, a/0157/06, a/0203/06, a/0224/06, a/0227/06, a/0229/06, a/0230/06, a/0236/06 and a/0240/06

16. These applications were submitted by persons acting on their own behalf and were all dismissed for not including any identity documents.¹⁸

¹⁷ ICC-01/04-423-Corr-tENG, at para 20.

¹⁸ ICC-01/04-423-Corr-tENG, at para 17.

17. The Prosecution submits that the supplementary information to all applications now contains proof of identity. In several cases the supplementary information corrects the date of birth of the applicant, making him/her a minor at the time of submission of the application.¹⁹ For all but one of these applications a declaration of consent by the legal guardian was attached.²⁰

18. The Prosecution submits that applicants a/0005/06, a/0155/06, a/0157/06, a/0203/06, a/0224/06, a/0227/06, a/0229/06, a/0230/06, a/0236/06 and a/0240/06 can now be considered complete.

Applications a/0006/06, a/0039/06, a/0144/06 and a/0160/06

19. In the 24 December 2007 Decision, the Single Judge noted that “a number of applications for participation were submitted on behalf of deceased close relations of the applicants. Furthermore, some of these applicants are acting not only on behalf of deceased close relations, but also allege in their applications for participation that they themselves personally suffered harm.”²¹ The latter category of applications was found to be admissible by the Single Judge.²² However, applications a/0006/06, a/0039/06, a/0144/06 and a/0160/06 were found to be incomplete since “no document attesting to their identity in support of their application” was provided.²³

20. The Prosecution submits that the supplementary information to all applications now contains a copy of an identification document, rendering the applications complete.

¹⁹ Applicants a/0224/06, a/0227/06, a/0229/06, a/0230/06 and a/0240/06.

²⁰ Applicants a/0224/06, a/0227/06, a/0229/06, and a/0230/06. The Prosecution notes, however, that applicant a/0240/06, for whom such proof of legal-guardianship was missing, re-submitted his/her application in form of an additional declaration, at a time where he/she was eighteen years of age.

²¹ ICC-01/04-423-Corr-tENG, at para 23. Amongst the applications cited in this paragraph are applicants a/0006/06, a/0039/06, a/0144/06 and a/0160/06.

²² ICC-01/04-423-Corr-tENG, at para 25.

²³ ICC-01/04-423-Corr-tENG, at para 26.

Applications a/0073/06, a/0076/06, a/0078/06, a/0079/06 and a/0110/06

21. According to the Single Judge's Decision of 24 December 2007 these applications "were submitted by persons acting with the express consent of the alleged victim". Applications a/0073/06, a/0076/06, a/0078/06, a/0079/06 and a/0110/06 were nevertheless deemed incomplete, since "they are not supported by any identification document of the victim and/or the person acting on his or her behalf".²⁴

22. The Prosecution submits that all applications have now been rendered complete by submission of an adequate proof of identification and a declaration that the applicant is acting in his or her own name.²⁵

Applications a/0049/06, a/0050/06, a/0221/06, a/0225/06, a/0226/06, a/0237/06, a/0238/06, a/0239/06

23. In the Decision of 24 December 2007, the Single Judge decided not to rule on applications a/0049/06, a/0050/06, a/0221/06, a/0225/06, a/0226/06, a/0237/06, a/0238/06 and a/0239/06, amongst others, since they had also been filed in the case and were pending decision before the Trial Chamber.²⁶ The Single Judge in her 3 July 2008 Decision nevertheless considered these applications and dismissed applications a/0049/06 and a/0050/06 (which were submitted by minors) as incomplete for lack of consent of a legal guardian.²⁷ Further, the Single Judge dismissed applications a/0221/06, a/0225/06, a/0226/06, a/0237/06, a/0238/06 and a/0239/06 as incomplete, for lack of proof of identity.²⁸

24. The Prosecution submits that the applicants a/0049/06 and a/0050/06 re-submitted their application forms by signing an additional declaration at a

²⁴ ICC-01/04-423-Corr-tENG, at para 22.

²⁵ Although the name used by applicant a/0076/06 in the application form is not identical to that on the identity card, an overarching similarity can be found allowing conclusion that the documents refer to the same person.

²⁶ ICC-01/04-423-Corr-tENG, at para 144.

²⁷ ICC-01/04-505, at para 31.

²⁸ ICC-01/04-505, at para 32.

time were they were eighteen years of age. Therefore, the Prosecution submits that the applications meet the criteria for completeness.

25. The additional information included in the updated applications for applicants a/0221/06, a/0225/06, a/0226/06, a/0237/06, a/0238/06 and a/0239/06 contains proof of identity for each applicant. Since applicants a/0225/06, a/0237/06, a/0238/06 and a/0239/06 were minors at the time of the application, a declaration of consent by the legal guardian is attached.
26. The Prosecution notes, as has been laid out in paragraph 16 above, that in the case of applicant a/0221/06 the supplementary information obtained corrected his/her date of birth, making him/her a minor at the time of the application. The proof of legal guardianship is also included.
27. Finally, applicant a/0226/06 provided differing dates of birth. While the application and birth certificate state that the applicant was born in 1988, the student card and additional declaration state that the applicant was born in 1989. Applying the reasoning of the Pre-Trial Chamber,²⁹ this application remains incomplete.³⁰

Whether the elements of Rule 85 (a) are met

28. The Prosecution submits that applicants a/0004/06, a/0005/06, a/0006/06, a/0039/06, a/0049/06, a/0050/06, a/0073/06, a/0076/06, a/0078/06, a/0079/06, a/0110/06, a/0144/06, a/0155/06, a/0157/06, a/0160/06, a/0203/06, 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 qualify as natural persons within the meaning of Rule 85 (a). Although some applicants had at first submitted applications for deceased family members, all now act in their own name and invoke harm they personally suffered.

²⁹ ICC-01/04-423-Corr-tENG, at para 18.

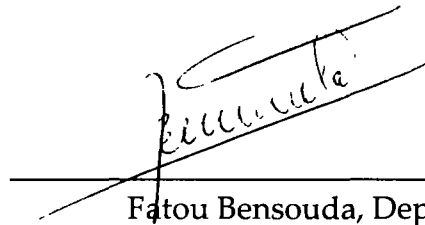
³⁰ The Prosecution notes, however, that in its experience, it is a common feature that DRC identity documents referring to the same person quite often differ with regard to the date of birth of that person.

29. The Prosecution submits that the applications referred to in paragraph 28 above, *prima facie* meet the necessary requirements for the definition of victim under Rule 85(a) in connection with the situation, since the applicants claim to have suffered personal harm from crimes committed in the territory of the DRC after July 2002.

Conclusion

30. Since applicant a/0226/06 provided differing dates of birth, the Prosecution submits that in light of Pre-Trial Chamber's respective jurisprudence the applicant should be requested to provide clarification before the application can be considered complete.

31. The Prosecution submits that the remaining applications (a/0004/06, a/0005/06, a/0006/06, a/0039/06, a/0049/06, a/0050/06, a/0073/06, a/0076/06, a/0078/06, a/0079/06, a/0110/06, a/0144/06, a/0155/06, a/0157/06, a/0160/06, a/0203/06, 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) are complete and *prima facie* meet the necessary requirements for the definition of victim in Rule 85(a) in connection with the Situation in the DRC.



Fatou Bensouda, Deputy Prosecutor
on behalf of
Luis Moreno-Ocampo, Prosecutor

Dated this 22nd day of September 2008
At The Hague, The Netherlands