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THE APPEALS CHAMBER

Before: Judge Erkki Kourula, Presiding Judge
Judge Sang-Hyun Song
Judge Sanji Mmasenono Monageng
Judge Anita Ušacka
Judge Ekaterina Trendafilova

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

Public Document

Observations of Mr Thomas Lubanga's Defence regarding the 32 applications for participation transmitted on 27 May 2013

Source: Defence Team for Mr Thomas Lubanga Dyilo

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

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1. Pursuant to the Appeals Chamber's Decision of 6 May 2013,¹ the Defence submits the following observations on the 32 applications for participation transmitted on 27 May 2013:²

GENERAL OBSERVATIONS

- The brevity of information in the applications for participation transmitted to the Defence

2. In view of the importance of the rights afforded to victims who are authorised to participate in the proceedings, it is presupposed that the Chamber will carry out a sufficiently thorough verification, even if confined to a *prima facie* evaluation, of the conditions that applicants must meet in order to be granted victim status in accordance with the provisions under rules 85 and 89 and regulation 86 of the Regulations of the Court.
3. This verification requires applicants' allegations to be adequately detailed and corroborated by sufficiently reliable supporting material.
4. However, all of the applications for participation transmitted to the Defence rely solely on imprecise, brief allegations from the applicants, uncorroborated by any documents or testimony to establish, *prima facie*, the actuality of the alleged facts.
5. As a result, the Defence is unable to verify the information provided by the applicants and submit meaningful observations on the content of their applications to the Appeals Chamber.

¹ ICC-01/04-01/06-3026.

² ICC-01/04-01/06-3028-Conf-Red-Anxs.

- *The anonymity of victims who have submitted applications for participation*

6. The Defence refers to the observations it made in its appellate brief against the *Decision establishing the principles and procedures to be applied to reparations*, issued by the Trial Chamber on 7 August 2012.³
7. In particular, the Defence submits that in no circumstances must the fairness of proceedings be compromised at any stages of the proceedings, including the appeal and reparations stages, where effect is given to victim participation.⁴
8. The Defence must be allowed to review the applications for participation submitted by the alleged victims and must be provided with the information necessary to verify the truth of the allegations made by the persons presenting themselves as victims, particularly with regard to their particulars. Furthermore, the Defence must be afforded the opportunity to submit the result of its analyses and verifications to the Appeals Chamber.
9. This verification can only be effective if the Defence is able to familiarise itself with all of the information provided by the victims, particularly their identity, their particulars and any information concerning the circumstances cited in support of their applications.
10. However, the redactions applied to the 32 participation applications transmitted to the Defence on 27 May 2013 conceal from the Defence crucial information on the applicants' particulars, as well as information which is necessary for establishing the truth of the allegations, such as, for example, the locations of the alleged events, enlistment and demobilisation dates, the names of identified commanders and the dates of various events.

³ ICC-01/04-01/06-2972, section 1.2.5, paras. 48 *et seq.*

⁴ Articles 67 and 68 and rule 97(3): The participation of victims at the reparations stage must occur in a manner which is not prejudicial to or inconsistent with the rights of the Defence and a fair and impartial trial.

11. Accordingly, the Defence cannot usefully speak to the admissibility of the majority of the applications, because the current redactions are too extensive.
12. Furthermore, the Defence notes that certain information has been redacted in the forms transmitted on 27 May 2013 and in the Registry's Report, contrary to the established practice in the instant case:
 - Contrary to the Trial Chamber's decision of 16 May 2008,⁵ the Registry has redacted the applicants' birth months;
 - The names of the VPRS Legal Officers who received supplementary information is redacted, contrary to the established practice in the present case;⁶
 - Excerpts from a decision have been redacted from the Registry's Report,⁷ although they do not appear to have been redacted in the redacted version of the decision notified to the Defence;
 - Information concerning applicants which has already been transmitted to the Defence has now been redacted.⁸
13. The Defence considers that, at a minimum, the information referred to in the previous paragraph must be disclosed to it.

SPECIFIC OBSERVATIONS ON THE 32 APPLICATIONS FOR PARTICIPATION

14. Only direct victims of the crimes imputed to Mr Lubanga are authorised to participate in the proceedings, that is to say, individuals, who are able to prove, *prima facie*, that they suffered personal harm as a result of the

⁵ ICC-01/04-01/06-1333, para. 16.

⁶ See, for example: Supplementary information concerning a/0105/06, ICC-01/04-01/06-1817-Conf-Exp-Anx6; Supplementary information concerning a/0238/06, ICC-01/04-01/06-1506-Conf-Anx17.

⁷ See excerpts from decision ICC-01/04-01/06-2035 concerning Victim a/0053/09 (ICC-01/04-01/06-2065-Conf-Anx1, pp. 14 *et seq.*), Registry's Report, p. 33/65.

⁸ For example, the information concerning the Legal Representative, on page 12 of Victim a/0062/07's form (see ICC-01/04-01/06-1339-Conf-Anx25 20-05-2008 p. 12/17); Victim a/0198/09's month of birth (see ICC-01/04-01/06-2270-Conf-Exp-Anx5, disclosed 27 January 2010). See also the two versions of form a/0198/09: ICC-01/04-01/06-3028-Conf-Anx6-Red, p. 20/21 and ICC-01/04-01/06-2270-Conf-Exp-Anx5, p. 20/21.

enlistment, conscription or participation in hostilities within the FPLC of a child under the age of 15 years during the period of the charges confirmed by the Pre-Trial Chamber, that is, between September 2002 and 13 August 2003.

- 15 On this point, the Defence wishes to submit the following observations to the Appeals Chamber:

	SPECIFIC OBSERVATIONS
a/0032/10	The applicant victim claims to have spent time at the Mandro camp, after being enlisted in March 2003; yet the Mandro camp was no longer under FPLC control in March 2003.⁹ There is a discrepancy between the date of birth given on the form and the date of birth on the statement of loss of identification documents. The Legal Representative has provided a vague explanation, which does not appear to have been verified with the applicant. The Defence notes that the attestation of loss of identification documents provided bears the signature of the same person who signed the attestations of loss of Applicants a/0034/10 and a/0036/10. This discrepancy in the stated dates of birth raises serious doubts about the applicant's identity. Furthermore, as the Registry notes in its report,¹⁰ the applicant has not provided any details about the armed group in which she was allegedly enlisted in March 2003. However, in the instant case, it has been demonstrated that many commanders deserted from the FPLC in 2003.¹¹ Merely mentioning Mr Lubanga at question 2 of page 10/42 does not suffice. The Defence notes that the names of the identified commanders have been redacted, thereby preventing the Defence from submitting specific observations on this point.

⁹ *Judgment*, paras. 787 and 809.

¹⁰ Registry's Report on the 32 applications for participation, ICC-01/04-01/06-3029-Conf-Anx4-Red, p. 3/65 (hereinafter "Registry's Report").

¹¹ For example, *Judgment*, para. 1167.

a/0034/10	The Defence notes that the attestation of loss of identification documents provided seems to have been signed by the same person who signed the <i>attestations</i> of Applicants a/0032/10 and a/0036/10. At page 22 of the form, the Registry notes the following: - Pages 18 and 19 do not appear to correspond to the account given by the applicant; - The information provided in the additional statement, in particular the location and the date of recruitment, is different from the information provided in the initial account. These significant discrepancies raise serious doubts about the sincerity and the accuracy of the applicant's statements.
a/0036/10	The applicant claims to have undergone training in Bogoro after March 2003.¹² This allegation is implausible given that the UPC and the FPLC were forced to flee the region on 6 March 2003.¹³ Furthermore, the applicant provides contradictory information, stating, on the one hand, that Mr Ngudjolo was in charge¹⁴ and, on the other, that it was a UPC camp.¹⁵ The attestation of loss of identification documents submitted with the application¹⁶ seems to have been prepared by the same person who prepared the <i>attestations</i> of Applicants a/0032/10 and a/0034/10. Although the attestation of loss of identification documents attached by the applicant states that she lost her identity cards during the war, an

¹² Form a/0036/10, ICC-01/04-01/06-3028-Conf-Anx3-Red, Section D-1 p. 9/48.

¹³ Nor has it been proven that there was an FPLC training camp in Bogoro in 2003, *Judgment*, para. 819.

¹⁴ Form a/0036/10, ICC-01/04-01/06-3028-Conf-Anx3-Red, Section D-2, p. 10/48.

¹⁵ Additional undated and unsigned statement: Form a/0036/10, ICC-01/04-01/06-3028-Conf-Anx3-Red, p. 20/48.

¹⁶ Form a/0036/10, ICC-01/04-01/06-3028-Conf-Anx3-Red, p. 18/48.

	identity card bearing the date of 1992 is included in the additional information.¹⁷ There are major inconsistencies between the applicant's various accounts: she says that she was enlisted in March 2003,¹⁸ but then states that she returned home in March 2003.¹⁹ The date of birth stated on the form (1990) is different from the date of birth appearing on the two identity documents (1992) appended to the application. There is a discrepancy in the way in which the applicant was injured (scar): the form states that the applicant was injured during fighting "[REDACTED] km" from Bule,²⁰ whereas her application for reparations states that the applicant was injured whilst performing gymnastics during training.²¹ The Registry notes in its report that there are discrepancies between the information recorded in the application form for participation and the additional information provided at a later date, in particular concerning the period spent in training camps.²² This application, as transmitted to the Defence, contains significant discrepancies on essential elements, raising serious doubts about the sincerity and the accuracy of the applicant's statements.
a/0062/07	The applicant states that he was born on 1 January 1987. He was therefore 15 years old at the beginning of the period material to the charges against Mr Lubanga, that is, 1 September 2002. According to the information received by VPRS on 1 July 2011, the

¹⁷ Form a/0036/10, ICC-01/04-01/06-3028-Conf-Anx3-Red, p. 24/48.

¹⁸ Form a/0036/10, ICC-01/04-01/06-3028-Conf-Anx3-Red, p. 9/48 and p. 21/48.

¹⁹ Form a/0036/10, ICC-01/04-01/06-3028-Conf-Anx3-Red, p. 20/48.

²⁰ Form a/0036/10, ICC-01/04-01/06-3028-Conf-Anx3-Red, p. 26/48.

²¹ Form a/0036/10, ICC-01/04-01/06-3028-Conf-Anx3-Red, p. 41/48.

²² Registry's Report, p. 7/65.

	applicant submitted a pupil identity card showing that he was younger than 15 years old at the material time.²³ However, the photocopy of the card provided at p. 19/41 is not clear, and the date of birth seems to have been erased. In its report, the Registry noted the discrepancy between the applicant's statement and the identity card.²⁴ This discrepancy raises serious doubts about the applicant's identity.
a/0189/07	The Registry notes that the voting card appended to the application for reparations²⁵ states a date of birth which is different from the date of birth shown on the participation form.²⁶ The following remark was made in this regard: "[TRANSLATION] the applicant is not sure of his date of birth and states that the correct date is the one given on the voting card". However, the Registry does not indicate the source of this information.²⁷ If this applicant was born in April 1988, as indicated on the voting card, he would have been 15 years old at the time of his enlistment in May 2003.²⁸ In these circumstances, the applicant cannot be considered a victim of the crimes imputed to Mr Lubanga. Lastly, in its report the Registry emphasises that there is a discrepancy of 2 years and 4 months between the date recorded in the participation form and the date appearing on the applicant's voting card.²⁹ These discrepancies raise serious doubts about the applicant's identity.
a/0198/09	The chronological order of events as presented by the applicant is implausible: - He claims to have been enlisted in January 2003, and that, after at

²³ Form a/0062/07, ICC-01/04-01/06-3028-Conf-Anx4-Red, p. 18/41.

²⁴ Registry's Report, p. 9/65.

²⁵ Form a/0189/07, ICC-01/04-01/06-3028-Conf-Anx13-Red, p. 21/46.

²⁶ Form a/0189/07, ICC-01/04-01/06-3028-Conf-Anx13-Red, p. 3/46.

²⁷ Form a/0189/07, ICC-01/04-01/06-3028-Conf-Anx13-Red, p. 20/46.

²⁸ Form a/0189/07, ICC-01/04-01/06-3028-Conf-Anx13-Red, p. 10/46.

²⁹ Registry's Report, p. 11/65.

	least three weeks, he was sent to Mandro for training.³⁰ However, the FPLC did not have a training camp in Mandro at that time;³¹ - He claims that after several months of training, he was sent to Rwampara in 2003,³² whereas Rwampara was no longer under UPC control at that time.³³ These implausibilities raise serious doubts about the truth of the events as reported in the applicant's form.
a/0241/06	As the Registry notes in its report,³⁴ the applicant has provided contradictory information about his date of birth. The applicant states that he was 12 years old at the time he was enlisted in February 2003,³⁵ but he states on his form that he was born in May 1988.³⁶ The discrepancy concerning the applicant's date of birth raises serious doubts about the applicant's identity.

³⁰ Form a/0198/09, ICC-01/04-01/06-3028-Conf-Anx6-Red, Section D-1, p. 9/21 and p. 18/21.

³¹ *Judgment*, paras. 787 and 809.

³² Form a/0198/09, ICC-01/04-01/06-3028-Conf-Anx6-Red, p. 18 and 19/21.

³³ From March 2003, Rwampara was under the control of the UPDF. See *Judgment*, para. 799.

³⁴ Registry's Report, p. 15/65.

³⁵ Form a/0241/06, ICC-01/04-01/06-3028-Conf-Anx7-Red, Section E-1, p. 32/43 and Section D-1, p. 9/43.

³⁶ He would therefore have been 14 years old when he was enlisted. Form a/0241/06, ICC-01/04-01/06-3028-Conf-Anx7-Red, p. 3.

a/0737/10	The applicant claims to have been born in 1992, and thus was at the most 9 years old at the beginning of the 2001-2002 school year. However, the pupil identity card appended to the application³⁷ shows that the pupil was in secondary school between 2001 and 2002. However, the victim states that she resumed her primary school studies during the 2003-2004 school year.³⁸ The applicant states that she was enlisted in May 2002. The chronology of events available to the Defence does not allow the Defence to confirm that the applicant was actually present within the FPLC during the period of the charges, which commences on 1 September 2002. The Registry's Report notes the discrepancies between the version of events given in the application for participation and the additional information provided at a later date, in particular in relation to the length of time spent in the camps.³⁹ As transmitted to the Defence, this application contains significant discrepancies in the applicant's date of birth and version of events, raising serious doubts about the sincerity and the accuracy of her statements.
a/2016/11	The applicant states that she was enlisted in May 2002 by UPC soldiers⁴⁰ whereas the UPC did not have an armed wing at that time. This implausibility raises serious doubts about the sincerity and accuracy of the applicant's statements.
a/2017/11	The application contains discrepancies with regard to the applicant's

³⁷ Form a/0737/10, ICC-01/04-01/06-3028-Conf-Anx8-Red, p. 22/49.

³⁸ Form a/0737/10, ICC-01/04-01/06-3028-Conf-Anx8-Red, p. 25/49.

³⁹ Registry's Report, p. 17/65.

⁴⁰ Form a/2016/11, ICC-01/04-01/06-3028-Conf-Anx10-Red, p. 18/42.

	date of birth: it is indicated on the attestation serving as an identity document that the applicant was born in 1988,⁴¹ whereas the applicant stated on her form that she was born in 1989.⁴² The applicant's account contains several implausibilities. For example: - She claims to have been enlisted in April 2002 by a group which, in October 2002, allegedly changed names to become the FAPC;⁴³ - She claims that after each attack, Thomas Lubanga came personally to give them encouragement.⁴⁴ The Registry notes that it is difficult to determine whether this applicant is a victim of the crimes attributed to Mr Lubanga within the meaning of rule 85.⁴⁵ The Defence considers that the discrepancies regarding the applicant's date of birth and the implausibilities contained in her account raise serious doubts about the sincerity and accuracy of her statements.
a/2018/11	The applicant states that she was enlisted in March 2003, and then spent several months in Bule before being transferred to the Mandro camp.⁴⁶ This account is implausible, since the Mandro camp was no longer under UPC control from the end of 2002.⁴⁷ The Registry states that it is difficult to determine whether this applicant is a victim of the crimes attributed to Mr Lubanga within the meaning of rule 85.⁴⁸ The Registry notes that:⁴⁹ - There are discrepancies between the version of events presented

⁴¹ Form a/2017/11, ICC-01/04-01/06-3028-Conf-Anx11-Red, p. 24/46.

⁴² Form a/2017/11, ICC-01/04-01/06-3028-Conf-Anx11-Red, p. 3/46.

⁴³ Form a/2017/11, ICC-01/04-01/06-3028-Conf-Anx11-Red, pp. 18-19/46.

⁴⁴ Form a/2017/11, ICC-01/04-01/06-3028-Conf-Anx11-Red, p. 23/46.

⁴⁵ Registry's Report, p. 23/65.

⁴⁶ Form a/2018/11, ICC-01/04-01/06-3028-Conf-Anx12-Red, p. 18/40.

⁴⁷ *Judgment*, paras. 787 and 809.

⁴⁸ Registry's Report, p. 25/65.

⁴⁹ Registry's Report, p. 25/65.

	in the participation application and the information provided at a later date, in particular concerning the period spent at Mandro; - There is a discrepancy between the way in which the applicant has written her name and the name given on the identity document provided in support of the application; - There is a discrepancy of two months between the date of birth given on the application for participation and the date of birth shown on the identity document provided in support of the application. Further, the place of birth is not the same. These elements raise serious doubts about the sincerity and accuracy of the applicant's statements.
a/2019/11	The Registry notes that between the application for participation and the application for reparations, there is a difference with regard to the <i>loci in quo</i> of the alleged events and the period in which they took place.⁵⁰ Although in March 2010 the applicant stated that she was enlisted by UPC soldiers,⁵¹ she stated in July 2011 that the soldiers who abducted her spoke Lendu. She says that she "[TRANSLATION] heard the name Thomas Lubanga in the army and thinks that he was the head of the army".⁵² In its report, the Registry notes that there are discrepancies between the different versions provided by the applicant in two different participation forms. The Registry emphasises, in particular, the discrepancies concerning the periods spent in different places.⁵³ These discrepancies raise serious doubts about the sincerity and

⁵⁰ Form a/2019/11, ICC-01/04-01/06-3028-Conf-Anx13-Red, p. 18/29.

⁵¹ Form a/2019/11, ICC-01/04-01/06-3028-Conf-Anx13-Red, p. 9/29, Section D-1.

⁵² Form a/2019/11, ICC-01/04-01/06-3028-Conf-Anx13-Red, p. 23/29, question 26.

⁵³ Registry's Report, p. 27/65.

	accuracy of the applicant's statements.
a/2916/11	Like Victim a/0737/10, ⁵⁴ this applicant submitted a pupil identity card for the 2001-2002 school year. ⁵⁵ The card seems to have been issued by the same person, for the same school year, and it seems that this card confirms that the pupil is attending secondary school. If this is the case, the card contradicts the version given by the applicant, who claims that he attended primary school during the 2001-2002 school year. ⁵⁶
a/2917/11	The period of the alleged enlistment is not clearly specified. It is therefore difficult to verify whether the enlistment took place during the period of the charges (1 September 2002-13 August 2003). ⁵⁷
a/2918/11	Applicant a/2918/11's account is implausible: she claims to have been enlisted before Christmas 2002, and then to have spent nine months in two different camps before being sent to Rwampara. ⁵⁸ She was therefore allegedly at the Rwampara camp around September 2003. However, after March 2003, this camp was no longer under UPC control. ⁵⁹ This significant implausibility raises serious doubts about the sincerity and accuracy of the applicant's statements.
a/2921/11	None of the voting cards provided on page 9 of the application seem to correspond to the applicant's son who was, according to the applicant's statements, born in 1988. The Defence notes that there are several discrepancies between this applicant's version and the version submitted by the guardian of the applicant's son, authorised to participate as a victim under number

⁵⁴ Form a/0737/10, ICC-01/04-01/06-3028-Conf-Anx8-Red, p. 22/49.

⁵⁵ Form a/2916/11, ICC-01/04-01/06-3028-Conf-Anx17-Red, p. 32/36.

⁵⁶ Form a/2916/11, ICC-01/04-01/06-3028-Conf-Anx17-Red, p. 4/36, question 26.

⁵⁷ Form a/2917/11, ICC-01/04-01/06-3028-Conf-Anx18-Red, p. 4/10, question 26 and handwritten additional statement, p. 10/10.

⁵⁸ Form a/2918/11, ICC-01/04-01/06-3028-Conf-Anx19-Red, p. 4/12, question 26, and p. 9/9.

⁵⁹ From March 2003, Rwampara was under UPDF control. See *Judgment*, para. 799.

a/0059/07:

Form a/0059/07 was submitted by the person claiming to be the guardian of the son of Applicant a/2921/11. He states that the victim was enlisted twice: once while he was going to visit someone who was unwell and a second time, one month later, when he was at the market.⁶⁰ However, the person who claims to be the victim's father says that his son was only enlisted once, on his way back from school.⁶¹

Further, the guardian, who claims to be the victim's paternal uncle, does not mention the child's father at any point. He claims that the child could not find his family after his demobilisation, and that, in the absence of the child's father, he takes care of the child.⁶² However, the father claims, for his part, that the child returned home after he was demobilised.⁶³ In addition, a family reunification certificate appended to Victim a/0059/07's application seems to indicate that the child was reunited with his family in December 2004.⁶⁴ Lastly, the certificate of guardianship provided as an annex to Victim a/0059/07's application does not mention the son's date of birth, but states that his father was born in 1962.⁶⁵ The father, Applicant a/2921/11, claims however to have been born in 1967. The Registry also notes the discrepancy of five years between the applicant's date of birth, as stated on the birth certificate provided in support of Victim a/0059/07's application, and the date of birth recorded on the voting card provided with application a/2921/11.

Furthermore, the Registry notes a discrepancy of three days between the date of birth of the applicant's son as mentioned in a/2921/11's

⁶⁰ Form a/0059/07, ICC-01/04-01/06-1339-Conf-Anx22, p. 9, Section D-1 and p. 27/39.

⁶¹ Form a/2921/11, ICC-01/04-01/06-3028-Conf-Anx22-Red, p. 4, question 26.

⁶² Form a/0059/07, ICC-01/04-01/06-1339-Conf-Anx22, p. 28/39 and additional statement dated 14/11/2007, pp. 38 and 39/39.

⁶³ Form a/2921/11, ICC-01/04-01/06-3028-Conf-Anx22-Red, p. 10/12.

⁶⁴ Form a/0059/07, ICC-01/04-01/06-1339-Conf-Anx22, p. 19/39

⁶⁵ Form a/0059/07, ICC-01/04-01/06-1339-Conf-Anx22, p. 24/39.

	application and the date mentioned on the identity document appended to Victim a/0059/07's application.⁶⁶ A comparison between the applications of Victim a/0059/07 and Applicant a/2921/11 reveals numerous contradictions, raising serious doubts about the sincerity and accuracy of their statements.
a/2922/11	According to the information provided by the Registry, the applicant is the mother of Victim a/0333/10, who is authorised to participate in proceedings.⁶⁷ The versions given by Victim a/0333/10 and the version given by the victim's mother diverge. Victim a/0333/10 states in her reparations form that she was enlisted in March 2003;⁶⁸ she states that she was enlisted in May 2003 in her participation form.⁶⁹ Applicant a/2922/11 claims that her daughter was enlisted in early 2003.⁷⁰ Further, the mother indicates that her daughter and her son returned home after two months,⁷¹ while her daughter, Victim a/0333/10, claims that her brother died after being tortured and that he never returned.⁷² Lastly, the Registry notes that there are discrepancies between the various accounts of events, in particular between the information included in this application for participation and the information provided by Victim a/0333/10 in her applications for participation and reparations, in particular concerning the month of enlistment.⁷³ A comparison of the applications of Victim a/0333/10 and Applicant a/2922/11 reveals numerous contradictions, raising serious

⁶⁶ Registry's Report, p. 45/65.

⁶⁷ *Decision*, ICC-01/04-01/06-2659.

⁶⁸ Reparations form, Victim a/0333/10, ICC-01/04-01/06-2841-Conf-Exp-Anx23, p. 9/18, Section D-1.

⁶⁹ Participation form, Victim a/0333/10, ICC-01/04-01/06-2509-Conf-Anx10, p. 9/20, Section D-1.

⁷⁰ Form a/2922/11, ICC-01/04-01/06-3028-Conf-Anx23-Red, p. 4, question 26.

⁷¹ Form a/2922/11, ICC-01/04-01/06-3028-Conf-Anx23-Red, p. 4, question 26.

⁷² Reparations form, Victim a/0333/10, ICC-01/04-01/06-2841-Conf-Exp-Anx23, p. 10/18, Section D-4.

⁷³ Registry's Report, p. 47/65.

	doubts about the sincerity and accuracy of both the applicant and Victim a/0333/10.
a/2923/11	According to information provided by the Registry, the applicant is the mother of a/0026/10.⁷⁴ She states that her daughter was born in 1990,⁷⁵ but no document that has been provided in support of this application mentions this date. A voting card appended to the form shows 1989.⁷⁶ She claims that the person in charge was “[TRANSLATION] Thomas Lubanga because the Hema belonged to that group”.⁷⁷ This statement is insufficient to demonstrate that this applicant is a victim of one of the crimes imputed to Mr Lubanga. Further, the date and the length of time of the enlistment are not sufficiently precise. It is therefore difficult to determine whether her child was enlisted during the period of the charges.⁷⁸ The Registry notes that the establishment of parentage and the abduction date are provided in Victim a/0026/10’s application.⁷⁹ This application is incomplete and therefore should be rejected.
a/2925/11	Contrary to Applicant a/2925/11’s allegation, the UPC was a political party and did not have an armed wing in 2001. She can therefore not have been abducted by the Lendu during a Lendu/UPC battle in late 2001.⁸⁰ This significant implausibility raises serious doubts about the sincerity and accuracy of her statements.
a/2926/11	The applicant claims to have been taken to Ngote camp. The Defence

⁷⁴ Form a/2923/11, ICC-01/04-01/06-3028-Conf-Anx24-Red, p. 13/13.

⁷⁵ Form a/2923/11, ICC-01/04-01/06-3028-Conf-Anx24-Red, p. 11/13.

⁷⁶ Form a/2923/11, ICC-01/04-01/06-3028-Conf-Anx24-Red, p. 9/13.

⁷⁷ Form a/2923/11, ICC-01/04-01/06-3028-Conf-Anx24-Red, question 29, p. 4/13.

⁷⁸ Form a/2923/11, ICC-01/04-01/06-3028-Conf-Anx24-Red, questions 27-29, p. 4/13.

⁷⁹ Registry’s Report, p. 49/65.

⁸⁰ Form a/2925/11, ICC-01/04-01/06-3028-Conf-Anx26-Red, p. 4/10, question 26.

	disputes the existence of an FPLC military camp there. It has never been alleged in the instant case that such a camp existed and no finding has been made in this regard by the Chamber.⁸¹ Furthermore, the applicant states that the person in charge was Commander Jérôme,⁸² adding: “[TRANSLATION] she is not sure, between the APC and the UPC, which group took her, but she does know that it was Commander Jérôme’s group. She heard the name Lubanga, saying that he was their Chief”.⁸³ In this regard, the Registry notes that the applicant is not certain of the identity of the men who allegedly abducted her.⁸⁴ In the light of this information, the application must be rejected.
a/2928/11	In its report, the Registry notes a discrepancy of two days between the date of birth mentioned on the participation form and the date of birth given on the identity document appended to the application.⁸⁵ This discrepancy in relation to the applicant’s date of birth raises serious doubts about the sincerity and accuracy of the applicant’s statements.
a/2931/11	The applicant claims to be the mother of Victim a/0029/10, who is already participating in the proceedings.⁸⁶ The mother provides no identification in proof of her daughter’s age, which as with the date of birth, is not specified anywhere on her application form. There are major discrepancies between the versions provided by the mother and her daughter: the mother (a/2931/11) claims that her daughter was abducted when she sent her to the market.⁸⁷ The daughter

⁸¹ *Judgment*, para. 819.

⁸² Form a/2926/11, ICC-01/04-01/06-3028-Conf-Anx27-Red, question 29, p. 4/10.

⁸³ Form a/2926/11, ICC-01/04-01/06-3028-Conf-Anx27-Red, handwritten statement, p. 9/10.

⁸⁴ Registry’s Report, p. 55/65.

⁸⁵ Registry’s Report, p. 59/65.

⁸⁶ *Decision*, ICC-01/04-01/06-2659.

⁸⁷ Form a/2931/11, ICC-01/04-01/06-3028-Conf-Anx32-Red, question 26, p. 4/11.

	claims that she was abducted on her way to the river.⁸⁸ A/2931/11 states that her daughter returned home with two children after her time within the FPLC, while Victim a/0029/10 does not mention them. The Registry notes in this regard that there are discrepancies between the mother's and Victim a/0029/10's accounts of enlistment in regard to the place where Victim a/0029/10 was enlisted.⁸⁹ The Registry further notes that some information is missing. Accordingly, the form submitted by a/2931/11 can only be analysed with the aid of the form submitted by a/0029/10,⁹⁰ particularly in order to establish parentage. A comparison of the applications made by Victim a/0029/10 and Applicant a/2931/11 reveal numerous discrepancies, which raise serious doubts about the sincerity and accuracy of their statements.
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- 16 The Defence objects to Applicants a/2015/11, a/2020/11, a/2899/11, a/2901/11, a/2919/11, a/2920/11, a/2924/11, a/2927/11, a/2929/11, a/2930/11 being granted victim status; the vagueness of the information provided in their application forms for participation and/or reparations, compounded by the redaction of essential elements in the versions transmitted to the Defence, precludes them, even *prima facie*, from being granted their victim status.
- 17 Lastly, the Defence notes that numerous applicants refer to harm which is not linked to the crimes, or harm which is occasionally inconsistent with that which children under the age of 15 years might have suffered. By way of example, applicants who claim that they were less than 15 years of age in 2002 or 2003 have stated that they lost a motorbike,⁹¹ a house and cattle.⁹²

⁸⁸ Form a/0029/10, ICC-01/04-01/06-2509-Conf-Anx4, p. 9/18, section D-1.

⁸⁹ Registry's Report, p. 65/65.

⁹⁰ Registry's Report, p. 65/65.

⁹¹ For example, a/0036/10, ICC-01/04-01/06-3028-Conf-Anx3-Red, Section F-6 p. 43/48.

⁹² For example: a/0032/10, a/0034/10, etc.

18 In light of the foregoing, the Defence objects to the participation of all of the applicants in the proceedings.

FOR THESE REASONS, MAY IT PLEASE THE APPEALS CHAMBER:

TO FIND that the applicants do not satisfy the conditions of rule 85 for the reasons given above;

And accordingly,

TO REJECT their applications to participate in the proceedings.

_____[signed]____

Catherine Mabilie, Counsel

Dated this 14 June 2013, at The Hague