

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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No. ICC-01/04-01/06 A 4 A 5 A 6

Date: 27 August 2013

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

Decision on 32 applications to participate in the proceedings

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

The Office of the Prosecutor
Ms Fatou Bensouda, Prosecutor
Mr Fabricio Guariglia

Counsel for the Defence
Ms Catherine Mabilie
Mr Jean-Marie Biju Duval

Legal Representatives of Victims V01
Mr Luc Walley
Mr Franck Mulenda

Legal Representative of the Applicants
Mr Joseph Keta Orwinyo

Legal Representatives of Victims V02
Ms Carine Bapita Buyangandu
Mr Paul Kabongo Tshibangu
Mr Joseph Keta Orwinyo

The Office of Public Counsel for Victims
Ms Paolina Massidda

REGISTRY

Registrar
Mr Herman von Hebel



The Appeals Chamber of the International Criminal Court,

In the appeal of Mr Thomas Lubanga Dyilo against the decision of Trial Chamber I entitled “Judgment pursuant to Article 74 of the Statute” of 14 March 2012 (ICC-01/04-01/06-2842), and

In the appeals of Mr Thomas Lubanga Dyilo and the Prosecutor against the decision of Trial Chamber I entitled “Decision on Sentence pursuant to Article 76 of the Statute” of 10 July 2012 (ICC-01/04-01/06-2901),

Having before it the “Transmission to the Appeals Chamber of a report on 32 applications to participate in the proceedings”, filed by the Registrar on 20 May 2013 (ICC-01/04-01/06-3029-Conf),

Having before it the “Requête de la Défense de M. Thomas Lubanga aux fins de tenue d’une conférence de mise en état” dated 22 July 2013 and registered on 23 July 2013 (ICC-01/04-01/06-3043),

Renders the following

DECISION

1. Applicants a/0032/10, a/0034/10, a/0036/10, a/0189/07, a/0198/09, a/0241/06, a/0737/10, a/2015/11, a/2016/11, a/2017/11, a/2018/11, a/2019/11, a/2020/11, a/2899/11, a/2901/11, a/2916/11, a/2917/11, a/2918/11, a/2919/11, a/2920/11, a/2921/11, a/2923/11, a/2924/11, a/2925/11, a/2926/11, a/2927/11, a/2928/11, a/2929/11, a/2930/11, and a/2931/11 are authorised to participate in the present appeals proceedings for the purpose of presenting their views and concerns in respect of their personal interests in the issues on appeal.
2. The application to participate in the proceedings by applicant a/0062/07 is rejected.
3. The Registrar shall request clarifications from applicant a/2922/11 and victim a/0333/10 as to the significant differences between the narrative of events appearing in their respective application forms and shall submit a



report on the outcome of this enquiry by 16h00 on Friday, 30 September 2013.

4. The Registrar shall reclassify ICC-01/04-01/06-3029-Conf and ICC-01/04-01/06-3029-Conf-Anx4-Red, as well as ICC-01/04-01/06-3033 and its 32 confidential annexes as available to the Legal Representatives of Victims V01 and V02.
5. The Registrar shall file in a separate confidential document the names of the staff members of the Victims Participation and Reparations Section that were redacted from the victims' applications by 16h00 on Friday, 6 September 2013.
6. The Registrar shall choose either the Legal Representatives of Victims V01 or V02 to represent victims a/0198/09, a/2899/11 and a/2917/11 and shall file a report indicating the legal representatives to which each victim has been assigned by Friday, 6 September 2013.
7. The Legal Representatives of Victims V01 and V02 may provide consolidated observations on behalf of the 30 victims hereby authorised to participate on the documents in support of the appeals (ICC-01/04-01/06-2948-Conf; ICC-01/04-01/06-2949; ICC-01/04-01/06-2950). These observations must be filed by 16h00 on Friday, 23 September 2013 and shall not repeat the observations that have already been filed on behalf of victims in the present proceedings. Mr Lubanga and the Prosecutor may respond thereto by 16h00 on Friday, 30 September 2013.
8. Mr Thomas Lubanga Dyilo's request to convene a status conference is rejected.

REASONS

I. PROCEDURAL HISTORY

1. On 13 December 2012, the Appeals Chamber decided that the 120 victims who participated in the trial proceedings in this case and whose right to participate in the proceedings was not withdrawn may, through their legal representatives, participate in the present appeal proceedings for the purpose of presenting their views and concerns



in respect of their personal interests in the issues on appeal (hereinafter: “Decision of 13 December 2012”).¹

2. On 7 February 2013, the Registrar sought the guidance of the Appeals Chamber on whether to transmit to it 29 applications for participation under article 68 (3) of the Statute that had not been assessed by either Pre-Trial Chamber I or Trial Chamber I (hereinafter: “Trial Chamber”), and three applications that had been rejected by the Trial Chamber because they were, at that time, incomplete.² The Registrar indicated that applicants a/0198/09, a/2899/11, a/2901/11 and a/2917/11 did not yet have legal representation, whereas the other 28 applicants were represented by Mr Joseph Keta Orwinyo (hereinafter: “Mr Keta”).³

3. On 6 May 2013, having appointed the Office of Public Counsel for victims (hereinafter: “OPCV”) to represent applicants a/0198/09, a/2899/11, a/2901/11 and a/2917/11,⁴ the Appeals Chamber ordered the Registrar to transmit to it the applications by 20 May 2013, together with a report thereon, as provided for in regulation 86 of the Regulations of the Court.⁵ The Appeals Chamber also ordered the Registrar to notify Mr Thomas Lubanga Dyilo (hereinafter: “Mr Lubanga”) and the Prosecutor of the applications and report, redacted as necessary for protection purposes,⁶ and authorised Mr Lubanga and the Prosecutor to submit their responses to the applications by 17 June 2013.

4. On 20 May 2013, the Registrar transmitted to the Appeals Chamber the 32 applications for participation, together with the report thereon.⁷

¹ “Decision on the participation of victims in the appeals against Trial Chamber I’s conviction and sentencing decisions”, ICC-01/04-01/06-2951 (A 4 A 5 A 6).

² “Request for guidance regarding applicants for participation in the appeal phase”, ICC-01/04-01/06-2977 (A 4 A 5 A 6) (hereinafter: “Request for Guidance”).

³ Request for Guidance, p. 3.

⁴ “Order on the filing of submissions on new applications to participate as victims in the proceedings”, 14 February 2013, ICC-01/04-01/06-2978 (A 4 A 5 A 6).

⁵ “Decision on the request of the Registrar relating to the transmission of applications for participation in the appeal proceedings and on related issues”, ICC-01/04-01/06-3026 (A 4 A 5 A 6).

⁶ On 27 May 2013, redacted versions of the applications were transmitted to Mr Lubanga and the Prosecutor. See ICC-01/04-01/06-3033 with confidential annexes 1 to 32 (A 4 A 5 A 6). Document ICC-01/04-01/06-3029, the report, was reclassified as available to Mr Lubanga and the Prosecutor. See “Order on the reclassification of documents”, 30 May 2013, ICC-01/04-01/06-3036 (A 4 A 5 A 6).

⁷ “Transmission to the Appeals Chamber of a report on 32 applications to participate in the proceedings”, ICC-01/04-01/06-3029-Conf (A 4 A 5 A 6) (hereinafter: “Registrar’s Transmission of Victims’ Applications”).

5. On 14 June 2013 and 17 June 2013, Mr Lubanga and the Prosecutor respectively submitted their responses to the victims' applications.⁸

6. On 22 July 2013, Mr Lubanga requested that a status conference be convened with a view to establishing a schedule for the proceedings.⁹

II. MERITS

A. Submissions of the parties

1. *The Prosecutor*

7. The Prosecutor highlights a number of inconsistencies between the identification information provided in the application forms and the identity documents of applicants a/0036/10, a/0189/07, a/2017/11, a/2018/11 and a/2928/11, as well as between the application forms of a/2921/11 and that of his child, a/0059/07.¹⁰ The Prosecutor also notes some discrepancies in the narrative of events provided by applicant a/0036/10, as regards the identity of the group responsible for the applicant's abduction; applicant a/2018/11, as regards the length of time the applicant spent in the camp; and applicant a/2019/11, as regards the length of time spent in the camp and the identity of the group responsible for the applicant's abduction.¹¹

8. The Prosecutor nevertheless concludes that there is sufficient information to be satisfied that all of the applicants, with the exception of applicant a/0062/07, meet the requirements of rule 85 of the Rules of Procedure and Evidence.¹² With respect to applicant a/0062/07, the Prosecutor submits that it is not clear whether the applicant meets the requirements of rule 85 of the Rules of Procedure and Evidence in light of (i) material inconsistencies between the application form and the identification documents as to the applicant's date of birth, (ii) uncertainty as to whether the events described by the applicant fall within the temporal scope of the present case and (iii)

⁸ "Observations of Mr Thomas Lubanga's Defence regarding the 32 applications for participation transmitted on 27 May 2013", ICC-01/04-01/06-3041-tENG (A 4 A 5 A 6) (hereinafter: "Defence Response"); "Prosecution's Response to Victims Applications", ICC-01/04-01/06-3042-Conf (A 4 A 5 A 6) (hereinafter: "Prosecutor's Response").

⁹ "Requête de la Défense de M. Thomas Lubanga aux fins de tenue d'une conférence de mise en état", ICC-01/04-01/06-3043.

¹⁰ Prosecutor's Response, paras 17-19, 21-22, 25-27.

¹¹ Prosecutor's Response, paras 17, 20, 24.

¹² Prosecutor's Response, para. 32.

the fact that the applicant did not describe any harm that resulted from his enlistment in the *Union des Patriotes Congolais* (hereinafter: “UPC”).¹³

2. Mr Lubanga

9. Mr Lubanga claims that he “cannot usefully speak to the admissibility of the majority of the applications, because the current redactions are too extensive”.¹⁴ He argues that he “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 [...] 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”.¹⁵ Mr Lubanga takes issue with the fact that certain information was redacted from the application forms transmitted to him, which in his view should be disclosed, namely the month of birth of the applicants, the names of the Victims Participation and Reparations Section’s (hereinafter: “VPRS”) legal officers who received supplementary information about the applicants, information concerning applicants that had previously been disclosed and an excerpt of one of the Trial Chamber’s decisions on victims’ applications for participation that had already been notified to Mr Lubanga.¹⁶ He submits that the overly extensive redactions applied to the 32 applications for participation conceal crucial information about the applicants and prevent him from submitting meaningful observations thereon.¹⁷

10. Mr Lubanga submits that all of the applications for participation contain imprecise, brief allegations from the applicants, which are not corroborated by any documents or testimony and fail to establish, *prima facie*, the alleged facts. Mr Lubanga argues that, as a result, he is unable to verify the information provided by the applicants.¹⁸ Specifically, Mr Lubanga submits that the vagueness of the information provided by 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, and a/2930/11, compounded by the

¹³ Prosecutor’s Response, paras 28-30.

¹⁴ Defence Response, paras 6-13.

¹⁵ Defence Response, paras 6-9.

¹⁶ Defence Response, paras 12-13, referring to “Decision on the applications by 7 victims to participate in the proceedings”, ICC-01/04-01/06-2035-RSC.

¹⁷ Defence Response, paras 6-13.

¹⁸ Defence Response, paras 2-5.

redaction of essential elements, should preclude the applicants from being granted victim status.¹⁹

11. Mr Lubanga outlines specific objections to a number of applications based on the following considerations: (i) discrepancies between the date of birth or spelling of the name in the application form and on the identity document provided by the applicant;²⁰ (ii) inconsistencies between the age and educational level of the applicant as described in the application form and the student card provided as proof of identity;²¹ (iii) lack of information clearly identifying the UPC as the armed group responsible for the applicant's conscription;²² (iv) discrepancies between the applicant's account at different times, or in different parts of the application form,²³ or, in the case of applicants who allege that they have suffered harm as a result of the conscription or enlistment of close family members, discrepancies between the applications currently under consideration and the applications previously submitted by their family members;²⁴ (v) implausible narrative of events;²⁵ (vi) lack of clarity as to whether the events as a result of which the applicant claims to have suffered harm fall within the temporal scope of the charges against Mr Lubanga;²⁶ and (vii) incompleteness of the application forms.²⁷

12. Mr Lubanga notes that the *attestations de carence* provided as proof of identity by a number of applicants were signed by the same official, but does not indicate how this should impact on the Appeals Chamber's assessment of their applications.²⁸

B. Determination by the Appeals Chamber

13. The Appeals Chamber recalls that the 32 applications to be assessed in the present decision were either submitted or completed with supplementary information

¹⁹ Defence Response, para. 16.

²⁰ Defence Response, pp. 6, 7, 8-9, 11-13, 18, referring to applicants a/0032/10, a/0036/10, a/0062/07, a/0189/07, a/2017/11, a/2018/11, and a/2928/11.

²¹ Defence Response, pp. 11, 14, referring to applicants a/0737/10 and a/2916/11.

²² Defence Response, pp. 6, 7-8, 13, 17-18, referring to applicants a/0032/10; a/0036/10, a/2019/11, and a/2926/11.

²³ Defence Response, pp. 7-8, 10-13, referring to applicants a/0034/10; a/0036/10, a/0241/06, a/0737/10, a/2018/11, and a/2019/11.

²⁴ Defence Response, pp. 14-16, 18-19, referring to applicants a/2921/11, a/2922/11, and a/2931/11.

²⁵ Defence Response, pp. 6-10, 12-14, 17-18, referring to applicants a/2017/11, a/2016/11, a/2925/11, a/0032/10, a/0036/10, a/0198/09, a/2018/11, a/2918/11, and a/2926/11.

²⁶ Defence Response, pp. 11, 14, referring to applicants a/0737/10 and a/2917/11.

²⁷ Defence Response, p. 17, referring to applicant a/2923/11.

²⁸ Defence Response, pp. 6-7, referring to applicants a/0032/10, a/0034/10 and a/0036/10.

during the trial phase of proceedings, yet, through no fault of the applicants, were never transmitted to the Trial Chamber.²⁹ Under these specific circumstances, the Appeals Chamber considered that it would be in the interests of the proper administration of justice to conduct an assessment of the applications for participation during the appeal phase of the present proceedings.³⁰

14. In determining its approach to the assessment of the 32 applications for participation, the Appeals Chamber has considered the general criteria established by the Trial Chamber in the “Decision on victims’ participation”³¹ (hereinafter: “Decision on Victims’ Participation”), as confirmed, amended or reversed in relevant part by the Appeals Chamber,³² as well as the practical assessment of applications for participation undertaken by the Trial Chamber as set out below.³³

15. The Appeals Chamber notes that the decisions of the Trial Chamber admitting victims to participate in the proceedings were not the subject of an appeal. However, in order to ensure that there is no prejudice to the 32 applicants whose applications were submitted, but not assessed during the trial phase, the Appeals Chamber has, for the purposes of the present decision, followed the assessment criteria set out by the Trial Chamber in its decisions on victims’ applications for participation.³⁴ This is without prejudice to the grounds of appeal raised by Mr Lubanga against the

²⁹ Request for Guidance, p. 3.

³⁰ ICC-01/04-01/06-3026 (A 4 A 5 A 6).

³¹ 18 January 2008, ICC-01/04-01/06-1119.

³² “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 (OA 9 OA 10).

³³ “Decision on the applications by victims to participate in the proceedings”, 15 December 2008, corrigendum issued on 13 January 2009, ICC-01/04-01/06-1556-Corr-Anx1; “Decision on the applications by 3 victims to participate in the proceedings”, 18 December 2008, ICC-01/04-01/06-1562; “Decision on the applications by 7 victims to participate in the proceedings”, 10 July 2009, ICC-01/04-01/06-2035-RSC; “Decision on the supplementary information relevant to the applications of 21 victims”, 21 July 2009, ICC-01/04-01/06-2063; “Decision on the applications by 15 victims to participate in the proceedings”, 13 December 2010, ICC-01/04-01/06-2659-Conf-Corr (public redacted version filed on 8 February 2011, ICC-01/04-01/06-2659-Corr-Red); “Decision on the applications by 7 victims to participate in the proceedings”, 30 June 2011, ICC-01/04-01/06-2764-Conf (public redacted version filed on 25 July 2011, ICC-01/04-01/06-2764-Red).

³⁴ ICC-01/04-01/06-1119; ICC-01/04-01/06-1556-Corr-Anx1; ICC-01/04-01/06-1562; ICC-01/04-01/06-2035-RSC; ICC-01/04-01/06-2063; ICC-01/04-01/06-2659-Corr-Red; ICC-01/04-01/06-2764-Red.

“Judgment pursuant to Article 74 of the Statute”, in particular as regards the specificity of the factual allegations underlying the charges.³⁵

1. Standard of proof

16. With regard to the applicable standard of proof, the Appeals Chamber notes that the Trial Chamber carried out a *prima facie* analysis of the victims’ applications to ensure that they fulfilled the criteria of a victim under rule 85 (a) of the Rules of Procedure and Evidence and indicated that, in carrying out its assessment, it would “merely ensure that there are, *prima facie*, credible grounds for suggesting that the applicant has suffered harm as a result of a crime committed within the jurisdiction of the Court” through assessing the information included in a victim’s application form and his or her statements (if available).³⁶

2. Whether the applicant’s identity has been established

17. In reaching this determination, the Trial Chamber sought to achieve “a balance between the need to establish an applicant’s identity with certainty, on the one hand, and the applicant’s personal circumstances, on the other” and found:

87. [...] Bearing in mind the current situation in the Democratic Republic of Congo and the difficulties that applicants may often have in obtaining or producing copies of official identity documents, and the need in consequence of ensuring that victims are not unfairly deprived of an opportunity to participate for reasons beyond their control, the Trial Chamber will consider, *inter alia*, the following range of documents by which a “natural person” may establish proof of his or her identity:

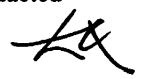
i) Official identification documents, such as a national identity card, a passport, a birth certificate, a death certificate, a marriage certificate, a family registration booklet, a will, a driving licence or a card from a humanitarian agency;

ii) Non-official identification documents, such as a voting card, a student identity card, a pupil identity card, a letter from local authority, a camp registration card, documents relating to medical treatment, an employee identity card or a baptism card;

iii) Other documents, such as a certificate or attestation of loss of specified official documents, school documents, a church membership card, an association or political party membership card, documents issued in

³⁵ “Mr Thomas Lubanga’s appellate brief against the 14 March 2012 Judgment pursuant to Article 74 of the Statute”, 3 December 2012, ICC-01/04-01/06-2948-Conf-tENG (A 5) with a public redacted version filed on 18 December 2012, ICC-01/04-01/06-2948-Red (A 5).

³⁶ Decision on Victims’ Participation, para. 99.



rehabilitation centres for children associated with armed groups, certificates of nationality or a pension booklet [footnote omitted].

88. In those instances where it is not possible for an applicant to acquire or produce documents of the kind set out above, the [Trial] Chamber will consider a statement signed by two credible witnesses attesting to the identity of the applicant and including, where relevant, the relationship between the victim and the person acting on his or her behalf, providing there is consistency between the statement and the application. The statement should be accompanied by proof of identity of the two witnesses. In assessing the credibility of the witnesses, the Trial Chamber will consider, *inter alia*, the nature and length of the relationship with the applicant, the proof of identity of the witnesses and their standing in the community. In these instances the Trial Chamber will welcome any information the Victims Participation and Reparations Section considers relevant. This information should be included in the reports provided to the [Trial] Chamber.³⁷

3. Whether the applicant has suffered personal harm as a result of the commission of crimes included in the charges against the accused

18. The Trial Chamber, in assessing whether the harm suffered by applicants was linked to the charges confirmed against the accused, defined the charges against Mr Lubanga as “the alleged conscription and/or enlistment and/or use of children under the age of 15 to participate actively in hostilities, between September 2002 and 13 August 2003”.³⁸ In its “Judgment pursuant to Article 74 of the Statute” (hereinafter: “Conviction Decision”), the Trial Chamber convicted Mr Lubanga of the “crimes of conscripting and enlisting children under the age of fifteen years into the [*Force Patriotique pour la Libération du Congo*] FPLC and using them to participate actively in hostilities [...] from early September 2002 to 13 August 2003”.³⁹

19. As Mr Lubanga was convicted of all charges against him and his appeal is directed against the entirety of the Conviction Decision, the Appeals Chamber will follow the approach of the Trial Chamber and assess whether the victims’ applications establish, *prima facie*, grounds to believe that the applicant suffered harm that is linked to the charges against Mr Lubanga, namely “the alleged conscription and/or enlistment and/or use of children under the age of 15 to participate actively in hostilities, between September 2002 and 13 August 2003”.⁴⁰

³⁷ Decision on Victims’ Participation, paras 87-88.

³⁸ ICC-01/04-01/06-1556-Corr-Anx1, para. 57.

³⁹ 14 March 2012, ICC-01/04-01/06-2842, para. 1358.

⁴⁰ ICC-01/04-01/06-1556-Corr-Anx1, para. 57.

4. Redaction of information from the application forms

20. Article 68 (1) of the Statute provides that the “Court shall take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses. [...] These measures shall not be prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial. Rule 81 (3) of the Rules of Procedure and Evidence provides that “[w]here steps have been taken to ensure the confidentiality of information in accordance with article 68, to protect the safety of witnesses and victims and members of their families, such information shall not be disclosed, except in accordance with those articles”. Rule 87 of the Rules of Procedure and Evidence provides that “[u]pon the motion of the Prosecutor or the defence or upon the request of a witness or a victim or his or her legal representative, if any, or on its own motion, and after having consulted with the Victims and Witnesses Unit, as appropriate, a Chamber may order measures to protect a victim, a witness or another person at risk on account of testimony given by a witness pursuant to article 68, paragraphs 1 and 2”.

21. As regards the individuals hereby authorised to participate as victims, the Appeals Chamber notes that 26 have requested anonymity vis-à-vis Mr Lubanga.⁴¹ The Victims and Witnesses Unit (hereinafter: “VWU”) has provided an assessment of the protective measures requested by the applicants and recommended that any information that could lead to the identification and precise location of the victims who requested anonymity (or their families) be redacted.⁴² This assessment was based on the actual security situation in the areas in which the applicants currently reside and the capacity of the Court to respond to security issues that victims could face in those areas.⁴³ The VWU indicated that the respective legal representatives of the victims have not provided any information in response to a request for information regarding any threats towards their clients due to their interaction with the Court.⁴⁴

22. The Appeals Chamber notes Mr Lubanga’s objection to the extensive redactions applied to the applications for participation that were transmitted to him.⁴⁵ However, from the VWU’s assessment, it appears that it is necessary at this point to maintain

⁴¹ Annex 2 to Registrar’s Transmission of Victims’ Applications, p. 8.

⁴² Annex 2 to Registrar’s Transmission of Victims’ Applications, pp. 2-7.

⁴³ Annex 2 to Registrar’s Transmission of Victims’ Applications, pp. 2-7.

⁴⁴ Annex 2 to Registrar’s Transmission of Victims’ Applications, p. 2.

⁴⁵ See *supra*, para. 9.

the anonymity of the victims hereby authorised to participate and that redaction of identifying information from their applications for participation is the only available protective measure. The Appeals Chamber notes that the redactions applied by the VPRS were aimed at information which would create a risk of identifying the applicant or persons who assisted the applicant in completing the form.⁴⁶ In certain instances, it appears that the information redacted seems to have gone beyond this aim. The Appeals Chamber specifically notes that, as also pointed out by Mr Lubanga,⁴⁷ the names of the VPRS legal officers who received supplementary information from applicants were redacted. The Appeals Chamber could not discern the reasons for such redactions. Therefore, the Registrar is requested to provide in a separate confidential document the names of the staff members of the VPRS that were redacted from the application forms transmitted to the parties. However, the Appeals Chamber does not consider that the disclosure of the names of staff members of the VPRS would have led to different submissions by the parties. Therefore, the Appeals Chamber does not consider it necessary to give the parties a second opportunity to make submissions on the applications. Furthermore, the Appeals Chamber reminds the Registrar that redactions to victims' applications for participation transmitted to the parties should be limited to those that are justified for the purposes of protection and strictly necessary.

23. The Appeals Chamber is of the view that Mr Lubanga has not been prejudiced in his ability to meaningfully assess the victims' applications, notwithstanding the redactions applied, and that there is no material benefit to be gained by ordering the transmission to Mr Lubanga of the other information which he identifies as having been unnecessarily redacted. The Appeals Chamber will bear in mind the rights of Mr Lubanga and any prejudice that may be caused by the participation of anonymous victims in determining the appropriate modalities of participation.

5. Assessment of the applications

24. The 32 applications for participation before the Appeals Chamber are all presented by natural persons. Of the 32 applicants, 27 claim to have suffered harm as a result of their enlistment or conscription by the UPC within the period of time relevant to the crimes with which Mr Lubanga was charged (1 September 2002 – 13

⁴⁶ Annex 3 to Registrar's Transmission of Victims' Applications.

⁴⁷ Defence Response, para. 12.

August 2003),⁴⁸ while five applicants claim to have suffered harm as a result of the conscription of family members by the UPC.⁴⁹ In the case of each of these five applicants, the relevant family member has already been authorised to participate as a victim by the Trial Chamber and continues to participate in the appeal phase pursuant to the Decision of 13 December 2012.⁵⁰

25. The Appeals Chamber has evaluated each application in accordance with the criteria applied by the Trial Chamber as set out above. An individual analysis of each application is set out below.

(a) Application a/0032/10⁵¹

26. [REDACTED].

27. [REDACTED].

⁴⁸ Applicant a/0032/10, ICC-01/04-01/06-3028-Conf-Exp-Anx1; Applicant a/0034/10, ICC-01/04-01/06-3028-Conf-Exp-Anx2; Applicant a/0036/10, ICC-01/04-01/06-3028-Conf-Exp-Anx3; Applicant a/0062/07, ICC-01/04-01/06-3028-Conf-Exp-Anx4; Applicant a/0189/07, ICC-01/04-01/06-3028-Conf-Exp-Anx5; Applicant a/0198/09, ICC-01/04-01/06-3028-Conf-Exp-Anx6; Applicant a/0241/06, ICC-01/04-01/06-3028-Conf-Exp-Anx7; Applicant a/0737/10, ICC-01/04-01/06-3028-Conf-Exp-Anx8; Applicant a/2015/11, ICC-01/04-01/06-3028-Conf-Exp-Anx9; Applicant a/2016/11, ICC-01/04-01/06-3028-Conf-Exp-Anx10; Applicant a/2017/11, ICC-01/04-01/06-3028-Conf-Exp-Anx11; Applicant a/2018/11, ICC-01/04-01/06-3028-Conf-Exp-Anx12; Applicant a/2019/11, ICC-01/04-01/06-3028-Conf-Exp-Anx13; Applicant a/2020/11, ICC-01/04-01/06-3028-Conf-Exp-Anx14; Applicant a/2899/11, ICC-01/04-01/06-3028-Conf-Exp-Anx15; Applicant a/2916/11, ICC-01/04-01/06-3028-Conf-Exp-Anx17; Applicant a/2917/11, ICC-01/04-01/06-3028-Conf-Exp-Anx18; Applicant a/2918/11, ICC-01/04-01/06-3028-Conf-Exp-Anx19; Applicant a/2919/11, ICC-01/04-01/06-3028-Conf-Exp-Anx20; Applicant a/2920/11, ICC-01/04-01/06-3028-Conf-Exp-Anx21; Applicant a/2924/11, ICC-01/04-01/06-3028-Conf-Exp-Anx25; Applicant a/2925/11, ICC-01/04-01/06-3028-Conf-Exp-Anx26; Applicant a/2926/11, ICC-01/04-01/06-3028-Conf-Exp-Anx27; Applicant a/2927/11, ICC-01/04-01/06-3028-Conf-Exp-Anx28; Applicant a/2928/11, ICC-01/04-01/06-3028-Conf-Exp-Anx29; Applicant a/2929/11, ICC-01/04-01/06-3028-Conf-Exp-Anx30; Applicant a/2930/11, ICC-01/04-01/06-3028-Conf-Exp-Anx31.

⁴⁹ Applicant a/2901/11, ICC-01/04-01/06-3028-Conf-Exp-Anx16; Applicant a/2921/11, ICC-01/04-01/06-3028-Conf-Exp-Anx22; Applicant a/2922/11, ICC-01/04-01/06-3028-Conf-Exp-Anx23; Applicant a/2923/11, ICC-01/04-01/06-3028-Conf-Exp-Anx24; Applicant a/2931/11, ICC-01/04-01/06-3028-Conf-Exp-Anx32.

⁵⁰ Applicant a/2901/11 states that he is the uncle of victim a/2899/11 (*see* ICC-01/04-01/06-1823-Conf-Exp-Anx8), whose participation was authorised by the Trial Chamber on 28 June 2011 (*see* ICC-01/04-01/06-2035-RSC); applicant a/2921/11 states that he is the father of victim a/0059/07 (*see* ICC-01/04-01/06-1275-Conf-Exp-Anx21), whose participation was authorised by the Trial Chamber on 15 December 2008 (*see* ICC/04-01/06-1556-Corr-Anx1); applicant a/2922/11 states that she is the mother of victim a/0333/10 (*see* ICC-01/04-01/06-2474-Conf-Exp-Anx11), whose participation was authorised by the Trial Chamber on 13 December 2010 (*see* ICC/04-01/06-2659-Conf-Corr); applicant a/2923/11 states that she is the mother of victim a/0026/10 (*see* ICC-01/04-01/06-2474-Conf-Exp-Anx2), whose application for participation was granted by the Trial Chamber on 13 December 2010 (*see* ICC-01/04-01/06-2659-Conf-Corr); applicant a/2931/11 states that she is the mother of victim a/0029/10, (*see* ICC-01/04-01/06-2474-Conf-Exp-Anx5) who was previously authorised to participate as a victim by the Trial Chamber on 13 December 2010 (*see* ICC-01/04-01/06-2659-Conf-Corr).

⁵¹ *See* ICC-01/04-01/06-3028-Conf-Exp-Anx1.

28. [REDACTED].

29. [REDACTED].

(b) Application a/0034/10⁵²

30. [REDACTED].

31. [REDACTED].

32. [REDACTED].

33. [REDACTED].

34. [REDACTED].

(c) Application a/0036/10⁵³

35. [REDACTED].

36. [REDACTED].

37. [REDACTED].

38. [REDACTED].

39. [REDACTED].

(d) Application a/0062/07⁵⁴

40. [REDACTED].

41. [REDACTED].

42. [REDACTED].

43. [REDACTED].

(e) Application a/0189/07⁵⁵

44. [REDACTED].

⁵² See ICC-01/04-01/06-3028-Conf-Exp-Anx2.

⁵³ See ICC-01/04-01/06-3028-Conf-Exp-Anx3.

⁵⁴ See ICC-01/04-01/06-3028-Conf-Exp-Anx4.

⁵⁵ See ICC-01/04-01/06-3028-Conf-Exp-Anx5.



45. [REDACTED].

46. [REDACTED].

47. [REDACTED].

(f) Application a/0198/09⁵⁶

48. [REDACTED].

49. [REDACTED].

50. [REDACTED].

51. [REDACTED].

52. [REDACTED].

(g) Application a/0241/06⁵⁷

53. [REDACTED].

54. [REDACTED].

55. [REDACTED].

56. [REDACTED].

(h) Application a/0737/10⁵⁸

57. [REDACTED].

58. [REDACTED].

59. [REDACTED].

60. [REDACTED].

61. [REDACTED].

62. [REDACTED].

⁵⁶ See ICC-01/04-01/06-3028-Conf-Exp-Anx6.

⁵⁷ See ICC-01/04-01/06-3028-Conf-Exp-Anx7.

⁵⁸ See ICC-01/04-01/06-3028-Conf-Exp-Anx8.

(i) Application a/2015/11⁵⁹

63. [REDACTED].

64. [REDACTED].

65. [REDACTED].

66. [REDACTED].

(j) Application a/2016/11⁶⁰

67. [REDACTED].

68. [REDACTED].

69. [REDACTED].

70. [REDACTED].

(k) Application a/2017/11⁶¹

71. [REDACTED].

72. [REDACTED].

73. [REDACTED].

74. [REDACTED].

(l) Application a/2018/11⁶²

75. [REDACTED].

76. [REDACTED].

77. [REDACTED].

78. [REDACTED].

79. [REDACTED].

⁵⁹ See ICC-01/04-01/06-3028-Conf-Exp-Anx9.⁶⁰ See ICC-01/04-01/06-3028-Conf-Exp-Anx10.⁶¹ See ICC-01/04-01/06-3028-Conf-Exp-Anx11.⁶² See ICC-01/04-01/06-3028-Conf-Exp-Anx12.

(m) Application a/2019/11⁶³

80. [REDACTED].

81. [REDACTED].

82. [REDACTED].

83. [REDACTED].

84. [REDACTED].

(n) Application a/2020/11⁶⁴

85. [REDACTED].

86. [REDACTED].

87. [REDACTED].

88. [REDACTED].

(o) Application a/2899/11⁶⁵

89. [REDACTED].

90. [REDACTED].

91. [REDACTED].

92. [REDACTED].

(p) Application a/2901/11⁶⁶

93. [REDACTED].

94. [REDACTED].

95. [REDACTED].

96. [REDACTED].

⁶³ See ICC-01/04-01/06-3028-Conf-Exp-Anx13.⁶⁴ See ICC-01/04-01/06-3028-Conf-Exp-Anx14.⁶⁵ See ICC-01/04-01/06-3028-Conf-Exp-Anx15.⁶⁶ See ICC-01/04-01/06-3028-Conf-Exp-Anx16.

(q) Application a/2916/11⁶⁷

97. [REDACTED].

98. [REDACTED].

99. [REDACTED].

100. [REDACTED].

(r) Application a/2917/11⁶⁸

101. [REDACTED].

102. [REDACTED].

103. [REDACTED].

104. [REDACTED].

105. [REDACTED].

(s) Application a/2918/11⁶⁹

106. [REDACTED].

107. [REDACTED].

108. [REDACTED].

109. [REDACTED].

110. [REDACTED].

(t) Application a/2919/11⁷⁰

111. [REDACTED].

112. [REDACTED].

113. [REDACTED].

⁶⁷ See ICC-01/04-01/06-3028-Conf-Exp-Anx17.⁶⁸ See ICC-01/04-01/06-3028-Conf-Exp-Anx18.⁶⁹ See ICC-01/04-01/06-3028-Conf-Exp-Anx19.⁷⁰ See ICC-01/04-01/06-3028-Conf-Exp-Anx20.

114. [REDACTED].

(u) Application a/2920/11⁷¹

115. [REDACTED].

116. [REDACTED].

117. [REDACTED].

118. [REDACTED].

(v) [REDACTED].Application a/2921/11⁷²

119. [REDACTED].

120. [REDACTED].

121. [REDACTED].

122. [REDACTED].

(w) Application a/2922/11⁷³

123. [REDACTED].

124. [REDACTED].

125. [REDACTED].

126. [REDACTED].

(x) Application a/2923/11⁷⁴

127. [REDACTED].

128. [REDACTED].

129. [REDACTED].

130. [REDACTED].

⁷¹ See ICC-01/04-01/06-3028-Conf-Exp-Anx21.

⁷² See ICC-01/04-01/06-3028-Conf-Exp-Anx22.

⁷³ See ICC-01/04-01/06-3028-Conf-Exp-Anx23.

⁷⁴ See ICC-01/04-01/06-3028-Conf-Exp-Anx24.

131. [REDACTED].

(y) Application a/2924/11⁷⁵

132. [REDACTED].

133. [REDACTED].

134. [REDACTED].

135. [REDACTED].

(z) Application a/2925/11⁷⁶

136. [REDACTED].

137. [REDACTED].

138. [REDACTED].

139. [REDACTED].

(aa) Application a/2926/11⁷⁷

140. [REDACTED].

141. [REDACTED].

142. [REDACTED].

143. [REDACTED].

(bb) Application a/2927/11⁷⁸

144. [REDACTED].

145. [REDACTED].

146. [REDACTED].

147. [REDACTED].

⁷⁵ See ICC-01/04-01/06-3028-Conf-Exp-Anx25.

⁷⁶ See ICC-01/04-01/06-3028-Conf-Exp-Anx26.

⁷⁷ See ICC-01/04-01/06-3028-Conf-Exp-Anx27.

⁷⁸ See ICC-01/04-01/06-3028-Conf-Exp-Anx28.

(cc) Application a/2928/11⁷⁹

148. [REDACTED].

149. [REDACTED].

150. [REDACTED].

(dd) Application a/2929/11⁸⁰

151. [REDACTED].

152. [REDACTED].

153. [REDACTED].

154. [REDACTED].

(ee) Application a/2930/11⁸¹

155. [REDACTED].

156. [REDACTED].

157. [REDACTED].

158. [REDACTED].

(ff) Application a/2931/11⁸²

159. [REDACTED].

160. [REDACTED].

161. [REDACTED].

162. [REDACTED].

163. [REDACTED].

⁷⁹ See ICC-01/04-01/06-3028-Conf-Exp-Anx29.⁸⁰ See ICC-01/04-01/06-3028-Conf-Exp-Anx30.⁸¹ See ICC-01/04-01/06-3028-Conf-Exp-Anx31.⁸² See ICC-01/04-01/06-3028-Conf-Exp-Anx32.

6. Summary of determination

164. The Appeals Chamber finds that applicants a/0032/10, a/0034/10, a/0036/10, a/0189/07, a/0198/09, a/0241/06, a/0737/10, a/2015/11, a/2016/11, a/2017/11, a/2018/11, a/2019/11, a/2020/11, a/2899/11, a/2901/11, a/2916/11, a/2917/11, a/2918/11, a/2919/11, a/2920/11, a/2921/11, a/2923/11, a/2924/11, a/2925/11, a/2926/11, a/2927/11, a/2928/11, a/2929/11, a/2930/11, and a/2931/11 have established, *prima facie*, that they are victims within the meaning of rule 85 (a) of the Rules of Procedure and Evidence for the purposes of participating in the present appeal proceedings. This brings the total number of victims participating in the appeal phase of the proceedings to 150.

165. The Appeals Chamber rejects the application of applicant a/0062/07 on the basis that it has not been established that the applicant suffered harm linked to the crimes with which Mr Lubanga was charged.

166. The Appeals Chamber finds that the differences between the account presented by applicant a/2922/11, who claims to have suffered harm as a result of the conscription of her daughter, and the account presented by her daughter, victim a/0333/10,⁸³ raise serious doubts about the overall credibility of both applications. Accordingly, the Registrar shall request clarifications from applicant a/2922/11 and victim a/0333/10 as to the significant differences between the narrative of events appearing in their respective application forms. The Registrar shall file a report on the outcome of these enquiries by 30 September 2013, at which point the Appeals Chamber shall consider the application further.

7. Legal representation and modalities of participation of participating victims

167. With respect to the legal representation of victims, the Registrar indicates that 26 of the 30 victims hereby authorised to participate in the appeals proceedings mention Mr Keta as their legal representative, and that the Legal Representatives of Victims V02, of which Mr Keta is a member, have stated that they are available to represent the applicants in these proceedings.⁸⁴ Accordingly, victims a/0032/10, a/0034/10, a/0036/10, a/0189/07, a/0241/06, a/0737/10, a/2015/11, a/2016/11,

⁸³ ICC-01/04-01/06-2474-Conf-Exp-Anx11, whose participation was authorised by the Trial Chamber on 13 December 2010 (*see* ICC/04-01/06-2659-Conf-Corr).

⁸⁴ Registrar's Transmission of Victims' Applications, paras 6-7.

a/2017/11, a/2018/11, a/2019/11, a/2020/11, a/2916/11, a/2918/11, a/2919/11, a/2920/11, a/2921/11, a/2923/11, a/2924/11, a/2925/11, a/2926/11, a/2927/11, a/2928/11, a/2929/11, a/2930/11 and a/2931/11 are represented by the Legal Representatives of Victims V02. In order to ensure that the Legal Representatives of Victims V02 are aware of the information provided to the Appeals Chamber and the parties in respect of their clients, the Registrar shall reclassify the report on the 32 applications to participate in the proceedings and the redacted versions of the victims' applications for participation as available to the Legal Representatives of Victims V02.⁸⁵

168. With regard to victims a/0198/09, a/2899/11, a/2901/11 and a/2917/11, who did not mention a legal representative in their application forms and are currently represented by the OPCV,⁸⁶ the Appeals Chamber notes that the Legal Representatives of Victims V01 and V02 have both confirmed their availability to represent the victims. The Appeal Chamber further notes that steps have been taken to contact the four victims in order to inquire as to whether they would agree to be represented by the Legal Representatives of Victims V01 or V02.⁸⁷

169. One of the victims, victim a/2901/11, already participates in the present proceedings on behalf of his deceased nephew and, in this capacity, is represented by the Legal Representatives of Victims V01.⁸⁸ Accordingly, victim a/2901/11 shall be represented by the Legal Representatives of Victims V01. In order to ensure that the Legal Representatives of Victims V01 are aware of the information provided to the Appeals Chamber and the parties in respect of their client, the Registrar shall reclassify the report on the 32 applications to participate in the proceedings and the redacted versions of the victims' applications for participation as available to the Legal Representatives of Victims V01.⁸⁹

170. With a view to appointing a permanent legal representative for the other three victims concerned as soon as possible, the Appeals Chamber considers it necessary to

⁸⁵ Registrar's Transmission of Victims' Applications; ICC-01/04-01/06-3029-Conf-Anx4-Red; ICC-01/04-01/06-3033 and annexes.

⁸⁶ a/0198/09, a/2899/11, a/2901/11 and a/2917/11.

⁸⁷ Registrar's Transmission of Victims' Applications, para. 8.

⁸⁸ ICC-01/04-01/06-2959-Conf-Exp-Anx1-Corr, p. 5.

⁸⁹ Registrar's Transmission of Victims' Applications; ICC-01/04-01/06-3029-Conf-Anx4-Red; ICC-01/04-01/06-3033 and annexes.

request the Registrar to choose a legal representative for them. Accordingly, the Registrar is instructed to choose either of the Legal Representatives of Victims V01 or V02 to represent victims a/0198/09, a/2899/11 and a/2917/11 under rule 90 (3) of the Rules of Procedure and Evidence and to file a report identifying the legal representatives of each of the three victims by Friday, 6 September 2013.

171. The Appeals Chamber recalls that the Trial Chamber should have decided these applications, latest at the sentencing stage of the proceedings. The Appeals Chamber finds that these victims would have been subject to the Decision of 13 December 2012. Therefore, the Appeals Chamber also finds it appropriate to allow the 30 victims hereby authorised to participate in the proceedings the opportunity to file observations on the three documents in support of the appeals A 4 A 5 A 6. To this end, the Legal Representatives of Victims V01 and V02 are requested to contact the victims whom they represent and who are hereby authorised to participate in order to ascertain their views and concerns with respect to their personal interests in the issues on appeal in the present proceedings. Should the 30 victims express views and concerns that are different to those that have already been submitted in the consolidated observations of the 120 participating victims, the Legal Representatives of Victims V01 and V02 are requested to file a short submission presenting these views and concerns by 23 September 2013. Mr Lubanga and the Prosecutor have a right to respond to any additional submissions by 30 September 2013.

8. Mr Lubanga's request for a status conference

172. Finally, the Appeals Chamber notes that Mr Lubanga has requested that a status conference be convened with a view to establishing the schedule of proceedings.⁹⁰ At this stage, the Appeals Chamber does not consider it necessary to convene a status conference for this purpose. Should it be deemed appropriate to hold an oral hearing in these proceedings, the parties and participants will be informed accordingly.



⁹⁰ ICC-01/04-01/06-3043.

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



Judge Erkki Kourula
Presiding Judge

Dated this 27th day of August 2013

At The Hague, The Netherlands