

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: ICC-01/04-02/06
Date: 15 November 2013

PRE-TRIAL CHAMBER II

Before: Judge Ekaterina Trendafilova, Single Judge

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

**IN THE CASE OF
*THE PROSECUTOR v. BOSCO NTAGANDA***

Confidential - Prosecution, Defence and VPRS only

**Prosecution's Observations on 258 Applications for Victim Participation in the
Pre-Trial Proceedings**

Source: Office of the Prosecutor

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

The Office of the Prosecutor

Ms. Fatou Bensouda
Mr. James Stewart
Ms. Nicole Samson

Counsel for the Defence

Mr. Marc Desalliers
Ms. Caroline Buteau
Ms. Andrea Valdivia

Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

**The Office of Public Counsel for
Victims**

**The Office of Public Counsel for the
Defence**

States' Representatives

Amicus Curiae

Other

REGISTRY

Registrar

Mr. Herman von Hebel

Defence Support Section

Deputy Registrar

**Victims Participation and Reparations
Section**

Ms. Fiona McKay

Detention Section

Introduction

1. The Prosecution submits observations on 258 applications for victim participation, pursuant to rule 89(1) of the Rules of Procedure and Evidence ("Rules") and the Single Judge's "Decision Establishing Principles on the Victims' Application Process".¹ Based on its assessment, the Prosecution supports all applications to participate as victims in the proceedings.
2. The Prosecution notes that its assessment relies in part on the summary provided by the Victims Participation and Reparation Section ("VPRS") relating to the proof of identity and kinship of applicants whose identity documentation has not been transmitted to the Prosecution. Should the Single Judge determine, based on a review of the supporting documentation, that the identity of applicants or, where applicable, kinship between the applicants and their family members has not been sufficiently established, the applicants concerned should be requested to provide further information.

Confidentiality

3. The Prosecution files its observations as "Confidential - Prosecution, Defence and VPRS only" pursuant to regulation 23 *bis* (2) of the Regulations of the Court, in accordance with the Confidential Redacted version of the filing by the VPRS.

Procedural background

4. On 28 May 2013, the Single Judge ordered the parties to submit observations on victim applications within fourteen days of their transmission by VPRS.²

¹ ICC-01/04-02/06-67.

² *Ibid*, page 21.

5. On 13 September 2013, the Registry provided the Prosecution with 29 unredacted victim applications.³ The parties submitted their observations on 1 October 2013.⁴
6. On 8 October 2013, the Registry provided the Prosecution with 172 unredacted victim applications.⁵ The parties submitted their observations on 24 October 2013.⁶
7. On 31 October 2013, the Registry provided the Prosecution with 258 unredacted victim applications.⁷

Legal criteria for victim participation in the proceedings

8. The Prosecution considers that victim participation before the Court is an essential feature of the Statute and the Rules as well as an important contribution to international justice. Under the Statute, victims are actors in the administration of international justice rather than its passive subjects. Their participation is a statutory right, not a privilege bestowed on a case-by-case basis.
9. The Prosecution supports victim participation when all statutory requirements are met. Consistent with its view of the unique and necessary perspective victims lend to the proceedings, the Prosecution supports a liberal approach in permitting applicants to amend or clarify incomplete applications, where possible.
10. According to the Appeals Chamber, a person has the right to participate as a victim in the proceedings under article 68(3) if (i) he/she qualifies as a victim

³ ICC-01/04-02/06-106-Conf-Exp.

⁴ ICC-01/04-02/06-119-Conf, ICC-01/04-02/06-118-Conf.

⁵ ICC-01/04-02/06-122-Conf-Exp.

⁶ ICC-01/04-02/06-128-Conf, ICC-01/04-2/06-127-Conf.

⁷ ICC-01/04-02/06-132-Conf-Exp.

pursuant to rule 85; and (ii) his/her personal interests are affected by the issues, legal or factual, raised in the proceedings at hand.⁸

11. With respect to the first requirement of article 68(3)—qualification as a victim under rule 85—the established jurisprudence of the Court provides that the following four criteria must be satisfied *prima facie* for victim status to be granted,⁹ regardless of the stage of the proceedings in which the applicants wish to participate: (i) the applicant must be a natural person as set forth in rule 85(a) or an organisation or institution as set forth in rule 85(b); (ii) the applicant must have suffered harm; (iii) the crime from which the harm resulted must fall within the jurisdiction of the Court; and (iv) there must be a causal link between the crime and the harm.¹⁰

12. In reviewing applications, Chambers do generally not delve into the credibility of applicants' statements or require rigorous corroboration.¹¹ Rather, Chambers "assess the applicants' statements first and foremost on the merits of their intrinsic coherence, as well as on the basis of the information otherwise available" to the Chamber.¹²

13. The second requirement of article 68(3)—that the applicant's personal interests are affected by legal or factual issues raised in the proceedings at hand—is considered separately from the victim status.¹³ As indicated by the Appeals Chamber, "[c]lear examples of where the personal interests of victims are affected are when their protection is in issue and in relation to proceedings for

⁸ See, e.g., ICC-01/04-556, para. 45; ICC-01/04-01/06-1335, para. 36.

⁹ See, e.g., ICC-02/05-01/07-58, para. 7; ICC-01/04-01/07-579, para. 67.

¹⁰ See, e.g., ICC-01/04-556, para. 45; ICC-01/04-01/06-1335, para. 36.

¹¹ See ICC-01/04-01/07-579, para. 67.

¹² ICC-01/04-01/07-579, para. 67, 132.

¹³ See, e.g., ICC-01/04-556, para. 45; ICC-01/04-101-tEN-Corr, para. 62 (indicating that "personal interests" requirement constitutes an additional criterion to be met by victims, over and above the victim status accorded them).

reparations.”¹⁴ “An assessment will need to be made in each case as to whether the interests asserted by victims do not, in fact, fall outside their personal interests and belong instead to the role assigned to the Prosecutor”.¹⁵

14. The established jurisprudence additionally requires that the harm suffered and the personal interests of the victim must be linked to the charges confirmed against the accused or, at earlier stages in the proceedings, the offences alleged in the warrant of arrest or summons to appear or the document containing the charges.¹⁶

15. The first step in the determination of whether the applicant is a “natural person” within the meaning of rule 85 is an inquiry into whether the applicant has provided adequate proof of identity. Chambers have recognized that a balance must be achieved between the need to establish an applicant’s identity with certainty, on the one hand, and the applicant’s personal circumstances, on the other. Bearing in mind that the chaotic circumstances present in a given situation may preclude applicants from obtaining or producing copies of official identity papers and to ensure that victims are not unfairly deprived of the opportunity to participate, Chambers have considered non-official identification documents or, in appropriate cases, a statement signed by two credible witnesses attesting to the identity of the applicant as being sufficient proof of identity.

16. Further, “when assessing whether an applicant has suffered harm as a result of the loss of a family member, the Court requires proof of the identity of the family member and of his or her relationship with the applicant.”¹⁷

¹⁴ ICC-01/04-01/06-925, para. 28.

¹⁵ *Ibid.*

¹⁶ ICC-01/04-01/06-1432, paras. 2, 62-65 (“For the purposes of participation in the trial proceedings, the harm alleged by a victim and the concept of personal interests under article 68(3) of the Statute must be linked with the charges confirmed against the accused.”).

¹⁷ ICC-02/05-02/09-147-Red, para. 6; see also ICC-02/04-179, paras. 35-38.

17. The Appeals Chamber has defined “harm” within the meaning of rule 85(a) as “loss, injury or damage”¹⁸ and explained that cognizable harm include material, physical and psychological injuries.¹⁹ The single most important requirement isolated by the Appeals Chamber for identifying “harm” is that the loss or injury must be suffered personally by the applicant.²⁰ A qualifying injury may be direct or indirect, so long as it is the applicant who experiences it.²¹ Direct victims are those whose injury or loss is the “result of the commission of a crime within the jurisdiction of the Court,” while indirect victims are “those who suffer harm as a result of the harm suffered by the direct victims.”²² Indirect harm can arise, *inter alia*, where persons endure psychological suffering or material deprivation when a family member is killed as a result of the crimes for which the Suspect is called to answer.²³

Factual analysis of the applications

Natural persons, harm derived from crimes within the jurisdiction of the Court

18. All 258 applicants are natural persons acting on their own behalf.²⁴ The 258 applicants have personally suffered direct and/or indirect physical, material and/or psychological harm. Their individual accounts sufficiently establish that the harm suffered resulted from crimes falling within the jurisdiction of the Court. The underlying acts attributed to the UPC constitute one or more of the following crimes relevant to the second warrant of arrest:²⁵ directing attacks

¹⁸ ICC-01/04-01/06-1432, para. 31.

¹⁹ ICC-01/04-01/06-1432, para. 32. *See also* ICC-02/04-164, para. 8 (treating “‘psychological trauma’ and ‘emotional harm’ as falling within the concept of ‘mental harm’”).

²⁰ ICC-01/04-01/06-1432, para. 32.

²¹ ICC-01/04-01/06-1432, paras. 32, 34-35.

²² ICC-01/04-01/06-1813, para. 44.

²³ ICC-01/04-01/06-1813, paras. 50-51.

²⁴ Even if the box “acting on behalf of a victim” was tagged in several applications, the facts described relate to the applicant him- or herself.

²⁵ ICC-01/04-02/06-36-Red, page 36, (i), (iii), (iv), (v), (vii).

against a civilian population, murder, pillaging, rape, sexual slavery, and persecution.²⁶ Further, Pre-Trial Chamber II made specific findings with regard to the incidents (crimes, dates and locations) common to this group of applicants.²⁷

Indirect harm suffered from murder of extended family members

19. Applicants a/00052/13,²⁸ a/00067/13,²⁹ a/00380/13,³⁰ a/01006/13³¹ and a/01027/13³² have suffered indirect harm as a result of the murders of their family members (nephew, aunt, uncles or grandparents). These applicants have provided letters from local authorities that confirm their kinship with the deceased persons. In addition, their claims of loss for either financial support, support in the form of assistance with physical work, or claims of mental suffering, all sufficiently demonstrate personal harm. The Prosecution considers that personal harm has been sufficiently established.

Dates of the crimes

20. Applicants a/00115/13,³³ a/00131/13,³⁴ a/00429/13³⁵ and a/00934/13³⁶ state that the alleged crimes occurred during operation “*Shika na mukono*”. According to the Prosecution’s information, this term was used by the UPC to designate the UPC attacks on Lipri, Bambu, Kobu and surrounding villages during the period of 17 February to 2 March 2003.³⁷ The Prosecution notes that applicants a/00389/13³⁸

²⁶ Articles 7(1)(a), 7(1)(g)-1, 7(1)(g)-2, 7(1)(h), 8(2)(c)(i), 8(2)(e)(i), 8(2)(e)(v), 8(2)(e)(vi)-1 and 8(2)(e)(vi)-2 of the Statute.

²⁷ ICC-01/04-02/06-36-Red, paras. 43, 61.

²⁸ ICC-01/04-02/06-132-Conf-AnxB-8-Red.

²⁹ ICC-01/04-02/06-132-Conf-AnxB-14-Red.

³⁰ ICC-01/04-02/06-132-Conf-AnxB-73-Red.

³¹ ICC-01/04-02/06-132-Conf-AnxB-245-Red.

³² ICC-01/04-02/06-132-Conf-AnxB-255-Red.

³³ ICC-01/04-02/06-132-Conf-AnxB-31-Red.

³⁴ ICC-01/04-02/06-132-Conf-AnxB-32-Red.

³⁵ ICC-01/04-02/06-132-Conf-AnxB-113-Red.

³⁶ ICC-01/04-02/06-132-Conf-AnxB-199-Red.

³⁷ See ICC-01/04-02/06-119-Conf, para. 18.

and a/00945/13³⁹ indicate that the events occurred in February 2002, and also refer to operation "*Shika na mukono*". The Prosecution is of the view that the date discrepancy appears to be the result of an inadvertent error in the filing of their applications. The Prosecution also notes that applicants a/00405/13,⁴⁰ a/00416/13,⁴¹ a/00418/13,⁴² a/00419/13,⁴³ a/00420/13,⁴⁴ a/00421/13,⁴⁵ a/00422/13,⁴⁶ a/00423/13,⁴⁷ a/00424/13,⁴⁸ a/00425/13,⁴⁹ a/00426/13,⁵⁰ a/00427/13,⁵¹ a/00430/13,⁵² a/00915/13,⁵³ a/00918/13,⁵⁴ a/00920/13,⁵⁵ a/00921/13,⁵⁶ a/00924/13,⁵⁷ a/00926/13,⁵⁸ a/00927/13,⁵⁹ a/00937/13,⁶⁰ a/00943/13,⁶¹ a/00944/13,⁶² a/00952/13,⁶³ a/00956/13,⁶⁴ a/00959/13,⁶⁵ a/00960/13,⁶⁶ a/00961/13,⁶⁷ a/00966/13⁶⁸ and a/00974/13⁶⁹ indicate that the events occurred in the beginning of 2003. They also all refer to operation "*Shika na*

³⁸ ICC-01/04-02/06-132-Conf-AnxB-81-Red.
³⁹ ICC-01/04-02/06-132-Conf-AnxB-209-Red.
⁴⁰ ICC-01/04-02/06-132-Conf-AnxB-95-Red.
⁴¹ ICC-01/04-02/06-132-Conf-AnxB-101-Red.
⁴² ICC-01/04-02/06-132-Conf-AnxB-103-Red.
⁴³ ICC-01/04-02/06-132-Conf-AnxB-104-Red.
⁴⁴ ICC-01/04-02/06-132-Conf-AnxB-105-Red.
⁴⁵ ICC-01/04-02/06-132-Conf-AnxB-106-Red.
⁴⁶ ICC-01/04-02/06-132-Conf-AnxB-107-Red.
⁴⁷ ICC-01/04-02/06-132-Conf-AnxB-108-Red.
⁴⁸ ICC-01/04-02/06-132-Conf-AnxB-109-Red.
⁴⁹ ICC-01/04-02/06-132-Conf-AnxB-110-Red.
⁵⁰ ICC-01/04-02/06-132-Conf-AnxB-111-Red.
⁵¹ ICC-01/04-02/06-132-Conf-AnxB-112-Red.
⁵² ICC-01/04-02/06-132-Conf-AnxB-114-Red.
⁵³ ICC-01/04-02/06-132-Conf-AnxB-185-Red.
⁵⁴ ICC-01/04-02/06-132-Conf-AnxB-187-Red.
⁵⁵ ICC-01/04-02/06-132-Conf-AnxB-188-Red.
⁵⁶ ICC-01/04-02/06-132-Conf-AnxB-189-Red.
⁵⁷ ICC-01/04-02/06-132-Conf-AnxB-191-Red.
⁵⁸ ICC-01/04-02/06-132-Conf-AnxB-192-Red.
⁵⁹ ICC-01/04-02/06-132-Conf-AnxB-193-Red.
⁶⁰ ICC-01/04-02/06-132-Conf-AnxB-202-Red.
⁶¹ ICC-01/04-02/06-132-Conf-AnxB-207-Red.
⁶² ICC-01/04-02/06-132-Conf-AnxB-208-Red.
⁶³ ICC-01/04-02/06-132-Conf-AnxB-215-Red.
⁶⁴ ICC-01/04-02/06-132-Conf-AnxB-216-Red.
⁶⁵ ICC-01/04-02/06-132-Conf-AnxB-219-Red.
⁶⁶ ICC-01/04-02/06-132-Conf-AnxB-220-Red.
⁶⁷ ICC-01/04-02/06-132-Conf-AnxB-221-Red.
⁶⁸ ICC-01/04-02/06-132-Conf-AnxB-225-Red.
⁶⁹ ICC-01/04-02/06-132-Conf-AnxB-228-Red.

mukono". On this basis, the Prosecution submits that it has been sufficiently established that the crimes alleged occurred within the relevant time frame of the charges.

21. The Prosecution notes that applicant a/00469/13⁷⁰ indicates that the events occurred in 2013. This may be a transcription error, because the description of events is consistent with the crimes which occurred in 2003. On this basis, the Prosecution submits that it has been sufficiently established that the crimes alleged have occurred within the relevant time frame of the charges. The Prosecution also notes that applicants a/00114/13⁷¹ and a/01030/13⁷² indicate two different dates for the events in their applications. Taking into account the nature of the discrepancies and the overall account provided by the applicants, the Prosecution is of the view that this may be the result of an inadvertent error in the filing in of the application.

Locations of the crimes

22. Some applicants refer to locations of crimes other than Lipri, Bambu or Kobu. The VPRS was able to confirm that some of these locations are the villages surrounding Lipri, Bambu or Kobu. Moreover, for most of the locations, applicants have specified themselves that the villages are close to Lipri, Bambu or Kobu. Some applicants further add that the crimes occurred during the operation "*shika na mukono*".

23. According to the Prosecution's independent information, the locations at which the following applicants suffered harm are indeed close to Lipri, Bambu or Kobu:

⁷⁰ ICC-01/04-02/06-132-Conf-AnxB-141-Red.

⁷¹ ICC-01/04-02/06-132-Conf-AnxB-30-Red.

⁷² ICC-01/04-02/06-132-Conf-AnxB-257-Red.

a/00153/13,⁷³ a/00115/13,⁷⁴ a/00132/13,⁷⁵ a/00949/13,⁷⁶ a/00982/13,⁷⁷ a/00980/13,⁷⁸
a/00973/13,⁷⁹ a/00975/13,⁸⁰ a/00976/13,⁸¹ a/00978/13,⁸² a/00984/13,⁸³ a/00985/13,⁸⁴
a/00986/13,⁸⁵ a/00979/13,⁸⁶ a/00067/13,⁸⁷ a/00068/13,⁸⁸ a/00071/13,⁸⁹ a/00066/13,⁹⁰
a/00651/13,⁹¹ a/00653/13,⁹² a/00654/13,⁹³ a/00655/13,⁹⁴ a/00640/13,⁹⁵ and a/00641/13,⁹⁶
(close to Lipri); a/00056/13,⁹⁷ a/00216/13,⁹⁸ a/00219/13,⁹⁹ a/00638/13,¹⁰⁰ a/00029/13,¹⁰¹
a/00197/13,¹⁰² a/00458/13,¹⁰³ a/00215/13,¹⁰⁴ a/00467/13,¹⁰⁵ a/00471/13,¹⁰⁶ a/00137/13,¹⁰⁷

⁷³ ICC-01/04-02/06-132-Conf-AnxB-36-Red.
⁷⁴ ICC-01/04-02/06-132-Conf-AnxB-31-Red.
⁷⁵ ICC-01/04-02/06-132-Conf-AnxB-33-Red.
⁷⁶ ICC-01/04-02/06-132-Conf-AnxB-212-Red.
⁷⁷ ICC-01/04-02/06-132-Conf-AnxB-235-Red.
⁷⁸ ICC-01/04-02/06-132-Conf-AnxB-233-Red.
⁷⁹ ICC-01/04-02/06-132-Conf-AnxB-227-Red.
⁸⁰ ICC-01/04-02/06-132-Conf-AnxB-229-Red.
⁸¹ ICC-01/04-02/06-132-Conf-AnxB-230-Red.
⁸² ICC-01/04-02/06-132-Conf-AnxB-231-Red.
⁸³ ICC-01/04-02/06-132-Conf-AnxB-237-Red.
⁸⁴ ICC-01/04-02/06-132-Conf-AnxB-238-Red.
⁸⁵ ICC-01/04-02/06-132-Conf-AnxB-239-Red.
⁸⁶ ICC-01/04-02/06-132-Conf-AnxB-232-Red.
⁸⁷ ICC-01/04-02/06-132-Conf--AnxB-14-Red.
⁸⁸ ICC-01/04-02/06-132-Conf--AnxB-15-Red.
⁸⁹ ICC-01/04-02/06-132-Conf--AnxB-16-Red.
⁹⁰ ICC-01/04-02/06-132-Conf--AnxB-13-Red.
⁹¹ ICC-01/04-02/06-132-Conf--AnxB-176-Red.
⁹² ICC-01/04-02/06-132-Conf--AnxB-178-Red.
⁹³ ICC-01/04-02/06-132-Conf--AnxB-179-Red.
⁹⁴ ICC-01/04-02/06-132-Conf--AnxB-180-Red.
⁹⁵ ICC-01/04-02/06-132-Conf--AnxB-167-Red.
⁹⁶ ICC-01/04-02/06-132-Conf--AnxB-168-Red.
⁹⁷ ICC-01/04-02/06-132-Conf-AnxB-10-Red.
⁹⁸ ICC-01/04-02/06-132-Conf-AnxB-42-Red.
⁹⁹ ICC-01/04-02/06-132-Conf-AnxB-43-Red.
¹⁰⁰ ICC-01/04-02/06-132-Conf-AnxB-166-Red.
¹⁰¹ ICC-01/04-02/06-132-Conf-AnxB-5-Red.
¹⁰² ICC-01/04-02/06-132-Conf-AnxB-38-Red.
¹⁰³ ICC-01/04-02/06-132-Conf-AnxB-131-Red.
¹⁰⁴ ICC-01/04-02/06-132-Conf-AnxB-41-Red.
¹⁰⁵ ICC-01/04-02/06-132-Conf-AnxB-139-red.
¹⁰⁶ ICC-01/04-02/06-132-Conf-AnxB-142-Red.
¹⁰⁷ ICC-01/04-02/06-132-Conf--AnxB-34-Red.

a/00480/13,¹⁰⁸ a/00085/13,¹⁰⁹ a/00089/13,¹¹⁰ a/00981/13¹¹¹ and a/00945/13¹¹² (close to Kobu or Bambu).

24. The VPRS was unable to assess the distance between some of the villages mentioned by the applicants and Lipri, Bambu and Kobu. According to information available to the Prosecution, the locations of crimes mentioned by a/00012/13,¹¹³ a/00013/13,¹¹⁴ a/00024/13,¹¹⁵ a/00048/13,¹¹⁶ a/00058/13,¹¹⁷ a/00460/13,¹¹⁸ a/00463/13,¹¹⁹ a/00464/13,¹²⁰ a/00468/13,¹²¹ a/00465/13,¹²² and a/00459/13¹²³ are situated within a radius of two to ten kilometres from Kobu or Bambu. The village mentioned by applicant a/00055/13¹²⁴ is in the immediate vicinity of Bambu and the crime suffered by applicants a/00355/13¹²⁵ and a/00383/13¹²⁶ occurred at a location less than ten kilometres from Lipri. The Prosecution notes that applicant a/00956/13¹²⁷ states to have suffered crimes in Lipri and not at the locations referred to in the VPRS's report.¹²⁸

25. The Prosecution submits that all applicants have sufficiently established the locations of the crimes.

¹⁰⁸ ICC-01/04-02/06-132-Conf-AnxB-146-Red.

¹⁰⁹ ICC-01/04-02/06-132-Conf-AnxB-24-Red.

¹¹⁰ ICC-01/04-02/06-132-Conf-AnxB-25-Red.

¹¹¹ ICC-01/04-02/06-132-Conf-AnxB-234-Red.

¹¹² ICC-01/04-02/06-132-Conf--AnxB-209-Red.

¹¹³ ICC-01/04-02/06-132-Conf-AnxB-2-Red.

¹¹⁴ ICC-01/04-02/06-132-Conf-AnxB-3-Red.

¹¹⁵ ICC-01/04-02/06-132-Conf-AnxB-4-Red.

¹¹⁶ ICC-01/04-02/06-132-Conf-AnxB-7-Red.

¹¹⁷ ICC-01/04-02/06-132-Conf-AnxB-11-Red.

¹¹⁸ ICC-01/04-02/06-132-Conf-AnxB-133-Red.

¹¹⁹ ICC-01/04-02/06-132-Conf-AnxB-135-Red.

¹²⁰ ICC-01/04-02/06-132-Conf-AnxB-136-Red.

¹²¹ ICC-01/04-02/06-132-Conf-AnxB-140-Red.

¹²² ICC-01/04-02/06-132-Conf-AnxB-137-Red.

¹²³ ICC-01/04-02/06-132-Conf-AnxB-132-Red.

¹²⁴ ICC-01/04-02/06-132-Conf--AnxB-9-Red.

¹²⁵ ICC-01/04-02/06-132-Conf-AnxB-48-Red.

¹²⁶ ICC-01/04-02/06-132-Conf-AnxB-76-Red.

¹²⁷ ICC-01/04-02/06-132-Conf-AnxB-216-Red.

¹²⁸ ICC-01/04-02/06-132-Conf-AnxA, page 79.

Proof of identity and kinship

26. The applications transmitted all bear the signature or thumbprint of the applicants. The identification documents have not been transmitted to the Prosecution. As such, the Prosecution has only had access to the analysis of completeness and sufficiency done by the VPRS.¹²⁹ According to the VPRS's report, almost all applicants have provided voting cards or identity cards as proof of identity and some provide an additional letter from local authorities as proof of identity and kinship. Applicants a/00475/13,¹³⁰ a/00490/13,¹³¹ a/00638/13,¹³² a/00936/13¹³³ and a/00938/13¹³⁴ only provide a letter from local authorities. Applicant a/00167/13¹³⁵ also provides a letter from local authorities and a *laissez-passer*; and applicant a/01030/13¹³⁶ only provides an *attestation*. All identification documents provided are of the type listed in the Registry's report on proof of identity documents available in the DRC and considered by the Single Judge as sufficient proof of an applicant's identity.¹³⁷

27. In its report, the VPRS noted several inconsistencies between the application forms and the documents submitted as proof of identity and/or kinship.¹³⁸ For instance, there are slight variations in: (i) the spelling of the names of applicants a/00071/13,¹³⁹ a/00074/13,¹⁴⁰ a/00197/13,¹⁴¹ a/00216/13,¹⁴² a/00432/13,¹⁴³ a/00441/13,¹⁴⁴

¹²⁹ ICC-01/04-02/06-132-Conf-AnxA.

¹³⁰ ICC-01/04-02/06-132-Conf-AnxB-145-Red.

¹³¹ ICC-01/04-02/06-132-Conf-AnxB-152-Red.

¹³² ICC-01/04-02/06-132-Conf-AnxB-166-Red.

¹³³ ICC-01/04-02/06-132-Conf-AnxB-201-Red.

¹³⁴ ICC-01/04-02/06-132-Conf-AnxB-203-Red.

¹³⁵ ICC-01/04-02/06-132-Conf-AnxB-37-Red.

¹³⁶ ICC-01/04-02/06-132-Conf-AnxB-257-Red.

¹³⁷ ICC-01/04-02/06-67, para. 30, point (V) referring to ICC-01/04/02/06-53-Anx1.

¹³⁸ ICC-01/04-02/06-132-Conf-AnxA.

¹³⁹ ICC-01/04-02/06-132-Conf-AnxB-16-Red.

¹⁴⁰ ICC-01/04-02/06-132-Conf-AnxB-19-Red.

¹⁴¹ ICC-01/04-02/06-132-Conf-AnxB-38-Red.

¹⁴² ICC-01/04-02/06-132-Conf-AnxB-42-Red.

¹⁴³ ICC-01/04-02/06-132-Conf-AnxB-116-Red.

a/00455/13,¹⁴⁵ a/00492/13,¹⁴⁶ a/00564/13,¹⁴⁷ a/00642/13,¹⁴⁸ a/00643/13,¹⁴⁹ a/00646/13,¹⁵⁰ a/00659/13,¹⁵¹ a/00939/13,¹⁵² a/00975/13,¹⁵³ a/00982/13¹⁵⁴ and a/00983/13¹⁵⁵; (ii) the spelling of the names of family members of applicants a/00073/13,¹⁵⁶ a/00100/13,¹⁵⁷ a/00131/13,¹⁵⁸ a/00153/13,¹⁵⁹ a/00240/13,¹⁶⁰ a/00359/13,¹⁶¹ a/00366/13,¹⁶² a/00370/13,¹⁶³ a/00371/13,¹⁶⁴ a/00410/13,¹⁶⁵ a/00415/13,¹⁶⁶ a/00431/13,¹⁶⁷ a/00641/13,¹⁶⁸ a/00983/13¹⁶⁹ and a/00985/13¹⁷⁰; (iii) the date of birth of applicants a/00065/13,¹⁷¹ a/00420/13,¹⁷² a/00621/13,¹⁷³ a/00956/13¹⁷⁴ and a/01026/13¹⁷⁵; and (iv) the date of birth or age of relatives of applicants a/00153/13¹⁷⁶ and a/00475/13¹⁷⁷. The Prosecution does not oppose the VPRS's conclusion that these are minor discrepancies caused by

¹⁴⁴ ICC-01/04-02/06-132-Conf-AnxB-121-Red.

¹⁴⁵ ICC-01/04-02/06-132-Conf-AnxB-128-Red.

¹⁴⁶ ICC-01/04-02/06-132-Conf-AnxB-154-Red.

¹⁴⁷ ICC-01/04-02/06-132-Conf-AnxB-159-Red.

¹⁴⁸ ICC-01/04-02/06-132-Conf-AnxB-169-Red.

¹⁴⁹ ICC-01/04-02/06-132-Conf-AnxB-170-Red.

¹⁵⁰ ICC-01/04-02/06-132-Conf-AnxB-172-Red.

¹⁵¹ ICC-01/04-02/06-132-Conf-AnxB-184-Red.

¹⁵² ICC-01/04-02/06-132-Conf-AnxB-204-Red.

¹⁵³ ICC-01/04-02/06-132-Conf-AnxB-229-Red.

¹⁵⁴ ICC-01/04-02/06-132-Conf-AnxB-235-Red.

¹⁵⁵ ICC-01/04-02/06-132-Conf-AnxB-236-Red.

¹⁵⁶ ICC-01/04-02/06-132-Conf-AnxB-18-Red.

¹⁵⁷ ICC-01/04-02/06-132-Conf-AnxB-28-Red.

¹⁵⁸ ICC-01/04-02/06-132-Conf-AnxB-32-Red.

¹⁵⁹ ICC-01/04-02/06-132-Conf-AnxB-36-Red.

¹⁶⁰ ICC-01/04-02/06-132-Conf-AnxB-46-Red.

¹⁶¹ ICC-01/04-02/06-132-Conf-AnxB-52-Red.

¹⁶² ICC-01/04-02/06-132-Conf-AnxB-59-Red.

¹⁶³ ICC-01/04-02/06-132-Conf-AnxB-63-Red.

¹⁶⁴ ICC-01/04-02/06-132-Conf-AnxB-64-Red.

¹⁶⁵ ICC-01/04-02/06-132-Conf-AnxB-99-Red.

¹⁶⁶ ICC-01/04-02/06-132-Conf-AnxB-100-Red.

¹⁶⁷ ICC-01/04-02/06-132-Conf-AnxB-115-Red.

¹⁶⁸ ICC-01/04-02/06-132-Conf-AnxB-168-Red.

¹⁶⁹ ICC-01/04-02/06-132-Conf-AnxB-236-Red.

¹⁷⁰ ICC-01/04-02/06-132-Conf-AnxB-238-Red.

¹⁷¹ ICC-01/04-02/06-132-Conf-AnxB-12-Red.

¹⁷² ICC-01/04-02/06-132-Conf-AnxB-105-Red.

¹⁷³ ICC-01/04-02/06-132-Conf-AnxB-162-Red.

¹⁷⁴ ICC-01/04-02/06-132-Conf-AnxB-216-Red.

¹⁷⁵ ICC-01/04-02/06-132-Conf-AnxB-254-Red.

¹⁷⁶ ICC-01/04-02/06-132-Conf-AnxB-36-Red.

¹⁷⁷ ICC-01/04-02/06-132-Conf-AnxB-145-Red.

transcription or copying errors and that the identity and kinship are sufficiently established for these applicants.

28. The VPRS also noted miscellaneous missing administrative data in the application forms or in the letters from local authorities submitted by applicants a/00029/13,¹⁷⁸ a/00056/13,¹⁷⁹ a/00058/13,¹⁸⁰ a/00065/13,¹⁸¹ a/00068/13,¹⁸² a/00071/13,¹⁸³ a/00072/13,¹⁸⁴ a/00089/13,¹⁸⁵ a/00099/13,¹⁸⁶ a/00370/13,¹⁸⁷ a/00371/13,¹⁸⁸ a/00372/13,¹⁸⁹ a/00490/13,¹⁹⁰ a/00655/13,¹⁹¹ a/00962/13,¹⁹² a/00966/13,¹⁹³ a/00978/13¹⁹⁴ and a/00980/13¹⁹⁵. Given that the Prosecution does not have access to the supporting documentation, it defers to the Single Judge's determination on the consistency of such documentation with the information provided in the application forms and on the impact of the missing data on the applications. The Prosecution submits that should the absence of certain data require further clarification, the applicants should be requested to submit further information in order to establish their identity and kinship.

¹⁷⁸ ICC-01/04-02/06-132-Conf-AnxB-5-Red.

¹⁷⁹ ICC-01/04-02/06-132-Conf-AnxB-10-Red.

¹⁸⁰ ICC-01/04-02/06-132-Conf-AnxB-11-Red.

¹⁸¹ ICC-01/04-02/06-132-Conf-AnxB-12-Red.

¹⁸² ICC-01/04-02/06-132-Conf-AnxB-15-Red.

¹⁸³ ICC-01/04-02/06-132-Conf-AnxB-16-Red.

¹⁸⁴ ICC-01/04-02/06-132-Conf-AnxB-17-Red.

¹⁸⁵ ICC-01/04-02/06-132-Conf-AnxB-25-Red.

¹⁸⁶ ICC-01/04-02/06-132-Conf-AnxB-27-Red.

¹⁸⁷ ICC-01/04-02/06-132-Conf-AnxB-63-Red.

¹⁸⁸ ICC-01/04-02/06-132-Conf-AnxB-64-Red.

¹⁸⁹ ICC-01/04-02/06-132-Conf-AnxB-65-Red.

¹⁹⁰ ICC-01/04-02/06-132-Conf-AnxB-152-Red.

¹⁹¹ ICC-01/04-02/06-132-Conf-AnxB-180-Red.

¹⁹² ICC-01/04-02/06-132-Conf-AnxB-222-Red.

¹⁹³ ICC-01/04-02/06-132-Conf-AnxB-225-Red.

¹⁹⁴ ICC-01/04-02/06-132-Conf-AnxB-231-Red.

¹⁹⁵ ICC-01/04-02/06-132-Conf-AnxB-233-Red.

Conclusion

29. The Prosecution submits that all 258 applicants meet the requirements under article 68(3) to participate as victims in the pre-trial proceedings in this case, provided that the Single Judge is satisfied that the attached identity documentation sufficiently proves their identity and kinship.



Fatou Bensouda, Prosecutor

Dated this 15th day of November 2013
At The Hague, The Netherlands