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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**

Public

Urgent

With one public annex and two confidential *ex parte* annexes

**Decision on Victims' Participation at the Confirmation of Charges Hearing and in
the Related Proceedings**

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

The Office of the Prosecutor

Fatou Bensouda, Prosecutor
James Stewart, Deputy Prosecutor

Counsel for the Defence

Marc Desalliers

Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

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

States Representatives

Amicus Curiae

REGISTRY

Registrar & Deputy Registrar

Herman von Hebel, Registrar

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Fiona McKay

Other

Judge Ekaterina Trendafilova, acting as Single Judge on behalf of Pre-Trial Chamber II (the “Chamber”) of the International Criminal Court (the “Court”),¹ hereby renders this decision on victims’ participation at the confirmation of charges hearing and in the related proceedings.

I. Introduction

1. The Single Judge clarifies that the present decision is classified as “public” although it refers to the existence and, to some extent, to the content of documents that have been submitted and are currently treated as “confidential”. The Single Judge considers that the references made to these documents are required by the principle of publicity and judicial reasoning and are kept to the minimum in order to preserve the safety of the victim applicants and the confidentiality of the information.

2. The present decision addresses in a comprehensive manner all issues related to the admission of victims to participate in the confirmation of charges hearing in the present case and in the related proceedings. The decision is structured as follows: after recalling the relevant procedural background and the applicable law, the Single Judge will explain the definition and interpretation of the notion of victim under the applicable law. Thereafter, the Single Judge will summarize and entertain the main observations submitted by the parties on the victims’ applications for participation. Subsequently, the conclusions of the Single Judge on the victims’ applications for participation will be drawn. Further, the Single Judge will deal with the individuals who have the dual status of victims and witnesses in the case. Lastly, the Single Judge will set the modalities for participation in the proceedings of the victims admitted through the present decision and the procedural rights granted to them, which will be exercised by their respective legal representatives.

3. The individual assessment made by the Single Judge on each application for participation received is contained in the two confidential annexes attached to the

¹ Pre-Trial Chamber II, 21 March 2013, ICC-01/04-02/06-40.

present decision. More specifically, Annex A contains the Single Judge's individual assessment of all applications submitted by the victim applicants who alleged to have suffered personal harm as a result of their victimization as child soldiers. Annex B contains the Single Judge's individual assessment of all applications presented by the victim applicants who alleged to have suffered personal harm as a result of crimes allegedly committed by the *Union Patriotique Conglaise* ("UPC)/*Forces Patriotiques pour la libération du Congo* ("FPLC"). In addition, Annex C, classified as "public", contains the list of victim applicants' codes whose applications for participation have been accepted, rejected or deferred.

II. Procedural History

4. On 22 August 2006, Pre-Trial Chamber I to which the situation in the Democratic Republic of the Congo (the "DRC") has been assigned, issued a warrant of arrest for Bosco Ntaganda ("Mr. Ntaganda") for his alleged responsibility for the war crimes of conscripting, enlisting children under the age of fifteen and using them to participate actively in hostilities under either article 8(2)(b)(xxvi) or article 8(2)(e)(vii) of the Rome Statute (the "Statute"), committed from July 2002 to December 2003 at various locations in the Democratic Republic of the Congo (the "DRC").² On 13 July 2012, Pre-Trial Chamber II (the "Chamber") to which the same situation has been reassigned,³ issued a second warrant of arrest for Mr. Ntaganda for his alleged responsibility for the crimes against humanity of murder under article 7(1)(a) of the Statute, rape and sexual slavery under article 7(1)(g) of the Statute and persecution under article 7(1)(h) of the Statute, and for the war crimes of murder under article 8(2)(c)(i) of the Statute, attack against a civilian population under article 8(2)(e)(i) of the Statute, rape and sexual slavery under article 8(2)(e)(vi) of the Statute, and

² ICC-01/04-02/06-2-Corr-tENG-Red.

³ Presidency, "Decision on the constitution of Pre-Trial Chambers and on the assignment of the Democratic Republic of the Congo, Darfur, Sudan and Côte d'Ivoire situations", 15 March 2012, ICC-01/04-02/06-32.

pillaging under article 8(2)(e)(v) of the Statute, all committed in various locations of the DRC between 1 September 2002 and the end of September 2003.⁴

5. On 22 March 2013, Mr. Ntaganda voluntarily surrendered to the Court. During his first appearance before the Chamber, on 26 March 2013,⁵ the Single Judge scheduled the commencement of the confirmation of the charges hearing for 23 September 2013 which was rescheduled, upon request of the Prosecutor, for Monday, 10 February 2014.⁶

6. On 28 May 2013, the Single Judge issued the “Decision Establishing Principles on the Victims’ Application Process” (the “28 May 2013 Decision”)⁷ in which she organized the victims’ application process in the present case. In particular, she provided detailed guidance as to the principles to be followed by the specialized organs of the Court involved in the victims’ application process, including the Victim Participation and Reparation Section (the “VPRS”) and the sections tasked with outreach activities. She also provided specific instructions as to the operative steps to be taken by those sections. The ultimate goal of the 28 May 2013 Decision was to rationalize the victims’ application process in the present case and to enhance its predictability, efficiency and expeditiousness.⁸ In addition, the Single Judge developed a simplified one-page individual application form (the “Simplified Form”). It has been tailored to the specific features of the case against Mr. Ntaganda and confined to the requirements as specified in rule 85 of the Rules of Procedure and Evidence (the “Rules”) for victim applicants to satisfy in order to be awarded the procedural standing of victim participants in the case. Thus, the Simplified Form entails that victim applicants provide solely the information relevant to said

⁴ ICC-01/04-02/06-36-Red.

⁵ ICC-01/04-02/06-T-2-ENG, page 12, lines 2-3.

⁶ Pre-Trial Chamber II, 17 June 2013, ICC-01/04-02/06-73.

⁷ Pre-Trial Chamber II, 28 May 2013, ICC-01/04-02/06-67.

⁸ Pre-Trial Chamber II, 28 May 2013, ICC-01/04-02/06-67, para. 1.

- requirements so that the Chamber be in a position to determine whether or not they qualify as victim pursuant to rule 85 of the Rules.⁹

7. On 13 September 2013,¹⁰ 9 October 2013,¹¹ 31 October 2013,¹² 22 November 2013,¹³ and 13 December 2013,¹⁴ the Registry submitted to the Chamber and the Prosecutor reports under regulation 86(5) of the Regulations of the Court (the “Regulations”) together with copies of the Simplified Forms, and transmitted redacted copies thereof to the Defence. Pursuant to the 28 May 2013 Decision, in order to ensure consistency and uniformity in the large amount of applications received, the Registry has grouped all applications transmitted to the Chamber and to the parties in accordance with appropriate criteria, such as the victimization suffered and the incidents in which the victim applicants were involved.

8. On 1 October 2013,¹⁵ 24 October 2013,¹⁶ 15 November 2013,¹⁷ 9 December 2013¹⁸ and 2 January 2014,¹⁹ the Defence and the Prosecutor submitted, pursuant to rule 89(1) of the Rules, their observations on the victims’ applications for participation received.

9. On 13 November 2013, the Chamber received a report from the Registry concerning the preference expressed by a considerable number of victim applicants with regard to their legal representation as well as the evaluation of the Registry in

⁹ ICC-01/04-02/06-67, paras 17-25.

¹⁰ ICC-01/04-02/06-106-Conf-Exp and its confidential redacted version.

¹¹ ICC-01/04-02/06-122-Conf and its confidential *ex parte* annexes.

¹² ICC-01/04-02/06-132-Conf and its confidential *ex parte* annexes.

¹³ ICC-01/04-02/06-154-Conf and its confidential *ex parte* annexes.

¹⁴ ICC-01/04-02/06-179-Conf and its confidential *ex parte* annexes.

¹⁵ ICC-01/04-02/06-118-Conf (Defence observations), ICC-01/04-02/06-119-Conf (Prosecutor’s observations).

¹⁶ ICC-01/04-02/06-127-Conf (Defence observations), ICC-01/04-02/06-128-Conf (Prosecutor’s observations).

¹⁷ ICC-01/04-02/06-143-Conf (Defence observations), ICC-01/04-02/06-146-Conf (Prosecutor’s observations).

¹⁸ ICC-01/04-02/06-169-Conf (Defence observations), ICC-01/04-02/06-168-Conf (Prosecutor’s observations).

¹⁹ ICC-01/04-02/06-196-Conf (Defence observations), ICC-01/04-02/06-195-Conf (Prosecutor’s observations).

this respect.²⁰ The Registry recommended “the creation of two distinct victims groups, each represented by a legal team: a group consisting of UPC/FPLC child soldiers and another consisting of victims of UPC/FPLC attacks”.²¹

10. On 2 December 2013, taking into consideration the submissions of the Registry and with a view to properly organizing the legal representation of victims at the confirmation of charges hearing and the proceedings related thereto, the Single Judge issued the “Decision Concerning the Organisation of Common Legal Representation of Victims” (the “2 December 2013 Decision”).²² In this decision, the Single Judge decided to appoint “two counsels from the OPCV as common legal representatives for the two groups of victims as identified by the Registry for the purposes of the confirmation of charges hearing and the related proceedings”.²³

11. On 12 December 2013, the Single Judge received the “Joint Report on the organization of common legal representation of victims” (the “Joint Report”),²⁴ in which the Registrar and the Office of Public Counsel for Victims (the “OPCV”) informed the Chamber of the composition of the two legal teams representing the two distinct groups of victims foreseen by the Registry and endorsed by the Single Judge.²⁵ In addition, the OPCV indicates the practical arrangement that will be put in place in order for the two teams to perform their duties with full respect for the confidentiality of information related to the two groups that they will represent.²⁶

12. On 9 January 2014, the Single Judge received the “Prosecution’s Provision of Information related to DRC-OTP-P-0758 and request to Redact Information in three Victim Applications” (the “Request on Redactions”),²⁷ in which the Prosecutor requests authorization to lift certain redactions and to maintain others applied by the

²⁰ ICC-01/04-02/06-141-Conf-Exp.

²¹ ICC-01/04-02/06-141-Conf-Exp, paras 16,18.

²² Pre-Trial Chamber II, 2 December 2013, ICC-01/04-02/06-160.

²³ Pre-Trial Chamber II, 2 December 2013, ICC-01/04-02/06-160, p. 11.

²⁴ ICC-01/04-02/06-176 and its confidential *ex parte* annex.

²⁵ ICC-01/04-02/06-176, paras 2-9.

²⁶ ICC-01/04-02/06-176, paras 10-13.

²⁷ ICC-01/04-02/06-199-Conf-Exp and its three confidential *ex parte* annexes.

VPRS in three victims' applications concerning individuals who are also Prosecution's witnesses in the present case.²⁸

13. On 10 January 2014, the OPCV submitted its "Observations on the 'Prosecution's Provision of Information related to DRC-OTP-P-0758 and Request to redact Information in three Victims Applications'",²⁹ in which it supports the requests made by the Prosecutor in respect of victim applicant a/01308/13.³⁰

14. On 10 January 2014, the Prosecutor filed the document containing the charges (the "DCC"), together with a list of evidence and a translation into Kinyarwanda of both documents.³¹

III. Applicable Law

15. The Single Judge notes articles 21(1)(a), (2) and (3), 57(3)(c), 61, 67 and 68(3) of the Statute, rules 85(a), 89 to 92 and 121(10) of the Rules and regulation 86 of the Regulations.

16. The Single Judge underlines the specific scope of the present decision, namely to determine which victim applicants qualify as victims pursuant to rule 85 of the Rules for the purpose of participating at the confirmation of charges hearing and in the related proceedings. In this respect, the Single Judge points out that any finding made in respect of the events alleged by the victim applicants in their applications for participation has no bearing on the decision to be taken by the Chamber on the basis of the confirmation of charges hearing. The proceedings leading to the admission or the rejection of the victims' application for participation, on the one hand, and the confirmation of charges hearing, on the other hand, are distinct proceedings. The latter has a specific subject matter confined to the charges presented in the DCC, namely that "[t]he Pre-Trial Chamber shall, on the basis of the hearing, determine whether there is sufficient evidence to establish substantial

²⁸ ICC-01/04-02/06-199-Conf-Exp, paras 6-17.

²⁹ ICC-01/04-02/06-202-Conf-Exp.

³⁰ ICC-01/04-02/06-202-Conf-Exp, para. 11.

³¹ ICC-01/04-02/06-203, ICC-01/04-02/06-203-AnxA, ICC-01/04-02/06-203-Conf-AnxB, ICC-01/04-02/06-203-AnxC.

grounds to believe that the person committed each of the crimes charged" (article 61(7) of the Statute).

IV. The Definition of Victims under Rule 85(a) of the Rules

17. In order to participate in the present proceedings, it must be first determined whether a victim applicant qualifies as a victim of the case, in accordance with rule 85 of the Rules. The Single Judge notes that all victim applicants who have submitted applications to participate in the confirmation of charges hearing and in the related proceedings of the present case are natural persons. Therefore, they fall within the domain of rule 85(a) of the Rules, which defines victims as "natural persons who have suffered harm as a result of the commission of any crime within the jurisdiction of the Court".

18. The Single Judge recalls the interpretation given to this provision by the different Chambers of the Court,³² according to which a victim applicant qualifies as "victim" in the present case, provided that: (i) his or her identity as a natural person is duly established; (ii) the events described in the application for participation constitute the crime(s) within the jurisdiction of the Court with which the suspect is charged; and (iii) the victim applicant has suffered harm "as a result" of the crime(s) charged.³³

³² See e.g. Pre-Trial Chamber I, "Decision on the Applications for Participation in the Proceedings of VPRS 1, VPRS 2, VPRS 3, VPRS 4, VPRS 5 and VPRS 6", ICC-01/04-101-tEN-Corr, para. 79; Pre-Trial Chamber I, "Décision sur les demandes de participation à la procédure a/0004/06 à a/0009/06, a/0016/06 à a/0063/06, a/0071/06 à a/0080/06 et a/0105/06 dans le cadre de l'affaire le Procureur c. Thomas Lubanga Dyilo", p. 8; Pre-Trial Chamber II, "Public Redacted Version of 'Decision on victims' applications for participation a/0010/06, a/0064/06 to a/0070/06, a/0081/06 to a/0104/06 and a/0111/06 to a/0127/06'", ICC-02/04-01/05-252, para. 12; Pre-Trial Chamber I, "Public Redacted Version of the 'Decision on the 97 Applications for Participation at the Pre-Trial Stage of the Case'", para. 65; Pre-Trial Chamber III, "Fourth Decision on Victims' Participation", ICC-01/05-01/08-320, para. 30; Pre-Trial Chamber I, "Decision on the 34 Applications for Participation at the Pre-Trial Stage of the Case", ICC-02/05-02/09-121, para. 11; Pre-Trial Chamber I, "Decision on Victims' Participation at the Hearing on the Confirmation of the Charges", ICC-02/05-03/09-89, para. 2; Trial Chamber III, "Decision on 772 applications by victims to participate in the proceedings", ICC-01/05-01/08-1017, para. 38.

³³ The Single Judge notes that various Chambers have interpreted this as four requirements, but considers that, in substance, their understanding of the requirements of rule 85(a) does not depart from that taken in the present decision.

19. The Single Judge underlines that she will assess whether each victim applicant has provided sufficient information to prove the above criteria. In this respect, she recalls that the Appeals Chamber has held, *inter alia*, that “the Pre-Trial Chamber is in the best position to determine the nature and the quantum of evidence it deems necessary and adequate at that stage of the proceedings to establish the elements of rule 85(a) of the Rules of Procedures and Evidence. What evidence (be it documentary or otherwise) may be sufficient cannot be determined in the abstract, but must be assessed on a case-by-case basis and taking into account all relevant circumstances, including the context in which the Court operates”.³⁴ Such assessment will not result in “a process of corroboration *stricto sensu*”³⁵ but will be based on the merits of the applications’ intrinsic coherence, taking into consideration all the information available to the Chamber.³⁶

20. The Single Judge will hereunder briefly recall the interpretation of these requirements.

1. The Applicants’ identity as *natural* persons

21. The Single Judge recalls that in the 28 May 2013 Decision, she established that the victim applicants can provide one of the identification documents available in the DRC in order to demonstrate their identity as natural persons.³⁷ These include, *inter alia*: (i) national identity card; (ii) certificate of nationality or attestation in lieu;

³⁴ Appeals Chamber, “Judgment on the appeals of the Defence against the decisions entitled “Decision on victims’ applications for participation a/0010/06, a/0064/06 to a/0070/06, a/0081/06, a/0082/06, a/0084/06 to a/0089/06, a/0091/06 to a/0097/06, a/0099/06, a/0100/06, a/0102/06 to a/0104/06, a/0111/06, a/0113/06 to a/0117/06, a/0120/06, a/0121/06 and a/0123/06 to a/0127/06” of Pre-Trial Chamber II”, 23 February 2009, ICC-02/04-179, para. 38; see also Pre-Trial Chamber I, “Decision on Victims’ Participation and Victims’ Common Legal Representation at the Confirmation of Charges Hearing and in the Related Proceedings”, 4 June 2012, ICC-02/11-01/11-138, para. 21.

³⁵ Pre-Trial Chamber I, “Decision on the Applications for Participation in the Proceedings of VPRS 1, VPRS 2, VPRS 3, VPRS 4, VPRS 5, VPRS 6, 17 January 2006, ICC-01/04-101-tEN-Corr, para. 101.

³⁶ Pre-Trial Chamber II, “Decision on victims’ applications for participation a/0010/06, a/0064/06 to a/0070/06, a/0081/06 to a/0104/06 and a/0111/06 to a/0127/06”, 10 August 2007, ICC-02/04-101, para. 15; Pre-Trial Chamber III, 12 December 2008, ICC-01/05-01/08-320, para. 31; Pre-Trial Chamber I, “Decision on the 97 Applications for Participation at the Pre-Trial Stage of the Case”, ICC-01/04-01/07-579, para. 67; Pre-Trial Chamber I, “Decision on the 34 Applications for Participation at the Pre-Trial Stage of the Case”, ICC-02/05-02/09-121, para. 14.

³⁷ Pre-Trial Chamber II, ICC-01/04-02/06-67, para. 30.

(iii) passport; (iv) driving license; (v) pension booklet; (vi) student/pupil identity cards; (vii) employee identity cards; (viii) voting card; (ix) civil status acts; (x) documents issued in rehabilitation centres for children associated with armed groups; and (xi) letter from a local authority.³⁸

22. The Single Judge adds that an application for victims' participation may also be made by "a person acting with the consent of the victim, or a person acting on behalf of a victim, in the case of a victim who is a child or when necessary, a victim who is disabled", in accordance with rule 89(3) of the Rules. In such case, the identity of both the victim and the person acting with his/her consent or on his/her behalf must be established by any of the documentation referred to in the previous paragraph. Furthermore, in case of an application submitted on behalf of a victim who is a child or is disabled, the link between the victim and the person acting on his or her behalf must also be satisfactorily proven through any of the above-mentioned documentation.

23. The Single Judge underlines that, unless otherwise stated in her individual assessment contained in Annex A and Annex B, she has considered minor inconsistencies in the information provided by the victim applicants as not affecting the establishment of their identity as natural persons. With the expression "minor inconsistencies", the Single Judge identifies discrepancies in the spelling of the first and/or last name of the victim applicant between the identification documents provided and the Simplified Form,³⁹ or any missing information not capable, by itself, to cast doubts on the identity of the victim applicants (such as the date or place of birth⁴⁰ or the ethnicity of the victim applicants⁴¹ or the name of the local authority attesting the identity of the victim applicants).⁴² The same holds true for the

³⁸ ICC-01/04-02/06-53-Anx1.

³⁹ See for example victim applicants a/00045/13, a/00060/13, a/00101/13, a/00049/13, a/00107/13, a/00109/13, a/00123/13, a/00134/13.

⁴⁰ See for example victim applicants a/00600/13, a/00101/13, a/00178/13.

⁴¹ See for example victim applicants a/00642/13, a/00654/13, a/01042/13.

⁴² See for example victim applicants a/00942/13, a/00654/13, a/01042/13.

establishment of the identity of a family member in respect of whom the victim applicant claims to have suffered personal harm.

2. The events described by the applicants constitute *at least one of the crimes with which the suspect is charged*

24. The second requirement that must be fulfilled pursuant to rule 85(a) of the Rules is that the events described by the victim applicants constitute “[a] crime within the jurisdiction of the Court”, namely one of those referred to in article 5(1) of the Statute, when committed in accordance with the temporal and territorial framework provided for in articles 11 and 12 of the Statute, respectively.

25. Furthermore, for the purpose of victims’ participation in any given case, it is necessary that a link between the events described by the victim applicants and the case brought by the Prosecutor against the suspect be established. At this stage of the proceedings, the scope of the case against Mr. Ntaganda is shaped by the charges presented by the Prosecutor in her DCC. Therefore, it is the duty of the Single Judge to assess whether the events described by each victim applicant fall within the scope of the case to be examined by the Chamber at the confirmation of charges hearing.

26. The Single Judge observes that Mr. Ntaganda is charged with the crimes against humanity of murder pursuant to article 7(1)(a) of the Statute, rape pursuant to article 7(1)(g) of the Statute, sexual slavery pursuant to article 7(1)(g) of the Statute, persecution on ethnic grounds pursuant to article 7(1)(h) of the Statute, forcible transfer of population pursuant to article 7(1)(d) of the Statute, and with the war crimes of murder pursuant to article 8(2)(c)(i) of the Statute, attack against civilians pursuant to article 8(2)(e)(i) of the Statute, rape pursuant to article 8(2)(e)(vi) of the Statute, sexual slavery pursuant to article 8(2)(e)(vi) of the Statute, pillaging pursuant to article 8(2)(e)(v) of the Statute, displacement of civilians pursuant to article 8(2)(e)(viii) of the Statute, conscription, enlistment and use of children under the age of 15 in hostilities pursuant to article 8(2)(e)(vii) of the Statute, attacks against

protected objects pursuant to article 8(2)(e)(iv) of the Statute and destruction of property pursuant to article 8(2)(e)(xii) of the Statute.⁴³

27. The Single Judge recalls that for a victim applicant to qualify under rule 85(a) of the Rules, it suffices that he or she is a victim of *at least one* crime with which Mr. Ntaganda is charged. The status of victims in the present proceedings does not differ in nature between victim applicants who have been recognized as victims of *one* of the crimes allegedly committed by the suspect and victim applicants who have been recognized as victims of *more than one* crime with which the suspect is charged. Once admitted, they are all equally considered as victims participating in the present case. However, to the extent possible, in her individual assessment of each claim, the Single Judge has attempted to reflect the full range of victimization suffered by the victim applicants, provided that they have furnished sufficient information to this effect.

3. The applicants have suffered *harm* as a result of the alleged commission of at least one crime

28. The third requirement to be considered is the “harm” that the victim applicants claim to have suffered, which is in line with the established jurisprudence of the Court, includes physical injury, emotional suffering and economic loss.⁴⁴

29. According to rule 85(a) of the Rules the harm must: (i) ensue from the crime(s) with which the suspect is charged; and (ii) be personal, *i.e.* it must have been personally suffered by the victim applicant. In this regard, the Single Judge holds that the standard of causation between the crime and the harm relevant for the

⁴³ ICC-01/04-02/06-203-AnxA, pp. 56-60.

⁴⁴ Appeals Chamber, “Judgment on the appeals of the Prosecutor and The Defence against Trial Chamber I’s Decision on Victims’ Participation of 18 January 2008”, ICC-01/04-01/06-1432, para. 32. See also Pre-Trial Chamber I, “Decision on Victims’ Applications for Participation in the Proceedings”, ICC-01/04-101-tEN-Corr; Pre-Trial Chamber II, “Decision on Victims’ Applications for Participation”, ICC-02/04-01/05-252; Pre-Trial Chamber I, “Decision on the Applications for Participation in the Proceedings”, ICC-02/05-111; Pre-Trial Chamber III, “Fourth Decision on Victims’ Participation” ICC-01/05-01/08-320; Trial Chamber I, “Decision on Victims’ Participation”, ICC-01/04-01/06-1119; Pre-Trial Chamber I, “Decision on the 34 Applications for Participation at the Pre-Trial Stage of the Case”, ICC-02/05-02/09-121.

purposes of the present decision cannot be established with precision *in abstracto*. It shall be assessed on a *case-by-case* basis in light of all the circumstances of the events as described in the applications.⁴⁵

30. The second element that qualifies the harm within the meaning of rule 85(a) of the Rules is that it be *personally* suffered by the victim applicants. In this respect, the Single Judge recalls the findings of other Chambers of the Court, including the Appeals Chamber, to the effect that “the notion of victim necessarily implies the existence of personal harm”.⁴⁶

31. With respect to the definition of harm, the Single Judge considers that the relevant harm within the meaning of rule 85(a) of the Rules could also be indirect under certain conditions. Indeed, as held by the Appeals Chamber, “[h]arm suffered by one victim as a result of the commission of a crime within the jurisdiction of the Court can give rise to harm suffered by other victims”.⁴⁷ In particular, the Single Judge takes the view that victim applicants may be admitted to participate in the present proceedings also in case they suffered harm: (i) as a result of the harm suffered by the direct victim; or (ii) whilst intervening to help direct victims of the case or to prevent the latter from becoming victims because of the commission of these crimes.⁴⁸

⁴⁵ Pre-Trial Chamber II, “Decision on Victims’ Participation at the Confirmation of Charges Hearing and in the Related Proceedings”, 26 August 2011, ICC-01/09-02/11-267, para. 66.

⁴⁶ Appeals Chamber, 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, para. 38. See also Pre-Trial Chamber III, “Fourth Decision on Victims’ Participation” ICC-01/05-01/08-320, para. 71.

⁴⁷ Appeals Chamber, “Judgment on the appeals of The Prosecutor and The Defence against Trial Chamber I’s Decision on Victims’ Participation of 18 January 2008”, ICC-01/04-01/06-1432, para. 32.

⁴⁸ Pre-Trial Chamber II, 26 August 2011, ICC-01/09-02/11-267, para. 68; Pre-Trial Chamber I, “Decision on the Applications for Participation in the Proceedings Submitted by VPRS 1 to VPRS 6 in the Case the Prosecutor v. Thomas Lubanga Dyilo”, ICC-01/04-01/06-172-t-EN, pp. 7-8; Pre-Trial Chamber I, “Public Redacted Version of the ‘Decision on the 97 Applications for Participation at the Pre-Trial Stage of the Case’”, ICC-01/04-01/07-579, para 66; Trial Chamber I, Redacted Version of “Decision on indirect victims”, ICC-01/04-01/06-1813, para. 51; Pre-Trial Chamber I, “Decision on the 34 Applications for Participation at the Pre-Trial Stage of the Case”, ICC-02/05-02/09-121, para. 13.

32. With respect to indirect victims as described in the preceding paragraph, *sub (i)*, the Single Judge underlines that personal harm may be claimed by an immediate family member of the direct victim, only insofar as the relationship between them has been sufficiently established. This could be, for example, the case where the victim applicant claims to have suffered personal harm as a result of the death of an immediate family member, which in turn occurred as a result of the crimes with which the suspect is charged. It is therefore required that a proof of the identity of both the direct victim and the victim applicant as well as a proof of the link between them be provided in accordance with paragraph 21 above in order for the present requirement to be met.⁴⁹

33. The Single Judge stresses that it is sufficient that any given victim applicant has personally suffered one of the recognized harms. Regardless of whether a victim applicant has suffered only physical, psychological or material harm or all three harms, his or her status of victim does not change. Nevertheless, the Single Judge has attempted in her individual assessment to recognize all the appropriate harms allegedly suffered by the victim applicants, in the event they have provided sufficient information in this regard.

V. The Issues Raised by the Parties in their Observations on the Victims' Applications

34. Pursuant to rule 89(1) of the Rules, the parties have had the opportunity to submit observations on all 982 applications for victims' participation transmitted by the Registry in the present case. The Single Judge points out that observations to be submitted by the parties under rule 89(1) of the Rules are not mandatory and serve the purpose of assisting the Single Judge in her determination as to whether or not

⁴⁹ See Appeals Chamber, "Judgment on the appeals of the Defence Judgment on the appeals of the Defence against the decisions entitled 'Decision on victims' applications for participation a/0010/06, a/0064/06 to a/0070/06, a/0081/06, a/0082/06, a/0084/06 to a/0089/06, a/0091/06 to a/0097/06, a/0099/06, a/0100/06, a/0102/06 to a/0104/06, a/0111/06, a/0113/06 to a/0117/06, a/0120/06, a/0121/06 and a/0123/06 to a/0127/06' of Pre-Trial Chamber II", ICC-02/04-01/05-371, para. 1 ("[W]hen a Pre-Trial Chamber is considering whether an applicant fulfils the criteria of rule 85 (a) of the Rules of Procedure and Evidence because he or she suffered emotional harm as the result of the loss of a family member, it must require proof of the identity of the family member and his or her relationship with the applicant").

each victim applicant qualifies as victim pursuant to rule 85 of the Rules. The Single Judge clarifies that observations of a general nature or that pertain to a significant number of applications will be addressed in the present decision, while specific submissions with regard to certain applications are addressed more appropriately, as the case may be, in Annex A and Annex B attached to the present decision.

1. The Prosecutor's Observations

35. In her observations, the Prosecutor submits that all victim applicants should be granted authorisation to participate as victims in the proceedings as they meet all relevant requirements for participation.⁵⁰

36. The Prosecutor notes that some victim applicants submitted duplicate applications that have not been transmitted to the Prosecutor and observes that the discrepancies raised by the VPRS between the applications and their duplicates are minor.⁵¹ In addition, the Prosecutor observes that some victim applicants claim to have suffered indirect harm as a result only of the murders of their nephews, nieces, aunts, uncles, sons-in-law or grandparents. However, the Prosecutor submits that the relevant requirements for participation are met since: (i) letters from local authorities confirm the kinship with the deceased; and (ii) "their claims of loss for either financial support, support in the form of assistance with physical work or claims of mental suffering sufficiently demonstrate personal harm".⁵²

37. In relation to the dates of the crimes, the Prosecutor notes that some victim applicants solely refer to the operation "Shika na mukono"⁵³ or to various dates, such as the beginning of 2003, February 2003, between January and February 2003 or between February and March 2003 in the course of the operation "Shika na

⁵⁰ ICC-01/04-02/06-119-Conf, para. 2; ICC-01/04-02/06-128-Conf, para. 1; ICC-01/04-02/06-146-Conf, para. 1; ICC-01/04-02/06-168-Conf, para. 1 and ICC-01/04-02/06-195-Conf, para. 1.

⁵¹ ICC-01/04-02/06-128-Conf, para. 18; ICC-01/04-02/06-168-Conf, para. 21 and ICC-01/04-02/06-195-Conf, para. 21.

⁵² ICC-01/04-02/06-128-Conf, para. 20; ICC-01/04-02/06-146-Conf, para. 19; ICC-01/04-02/06-168-Conf, para. 23 and ICC-01/04-02/06-195-Conf, para. 22.

⁵³ ICC-01/04-02/06-117-Conf, para. 18; ICC-01/04-02/06-128-Conf, para. 21 and ICC-01/04-02/06-146-Conf, para. 20.

mukono”.⁵⁴ According to the Prosecutor, “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”. Therefore, the Prosecutor submits that “it has been sufficiently established that the crimes alleged have occurred within the relevant time frame of the charges.”⁵⁵ The Prosecutor also notes that some victim applicants refer to February 2003, March 2003, between February and March 2003 or 2003 only as the date of events, without referring to the operation “Shika na mukono”. On the basis of “the overall account provided by the applicants,” the Prosecutor submits that “it has been sufficiently established that the crimes alleged have occurred within the relevant time frame of the charges.”⁵⁶

38. Moreover, the Prosecutor notes that “the VPRS has raised several inconsistencies between application forms and the documents presented to prove identity or/and kinship”. The Prosecutor “does not oppose the VPRS conclusion that the identities and kinship are sufficiently established”.⁵⁷ Furthermore, the Prosecutor observes that “the VPRS also noted miscellaneous missing administrative data in the letters of local authorities or the application forms”.⁵⁸ In this respect, the Prosecutor “leaves it to the Single Judge to make a determination on the consistency of such documentation with the information provided in the application forms and to assess the impact of the identified discrepancies to the applications” and submits, furthermore, that “should discrepancies require further clarification, the applicants

⁵⁴ ICC-01/04-02/06-146-Conf, para. 20; ICC-01/04-02/06-168-Conf, para. 25 and ICC-01/04-02/06-195-Conf, para. 23.

⁵⁵ ICC-01/04-02/06-119-Conf, para. 18; ICC-01/04-02/06-128-Conf, paras. 21-22; ICC-01/04-02/06-146-Conf, para. 20 ; ICC-01/04-02/06-168-Conf, para. 25 and ICC-01/04-02/06-195-Conf, para. 23.

⁵⁶ ICC-01/04-02/06-195-Conf, para. 24.

⁵⁷ ICC-01/04-02/06-119-Conf, para. 20 ICC-01/04-02/06-128-Conf, para. 24; ICC-01/04-02/06-146-Conf, para. 27; ICC-01/04-02/06-168-Conf, para. 31 and ICC-01/04-02/06-195-Conf, para. 28.

⁵⁸ ICC-01/04-02/06-128-Conf, para. 25; ICC-01/04-02/06-146-Conf, para. 28; ICC-01/04-02/06-168-Conf, para. 32 and ICC-01/04-02/06-195-Conf, para. 32.

should be requested to submit further information in order to establish identity and kinship".⁵⁹

2. The Defence Observations

39. The Defence submit that all applications for participation in the proceedings should be rejected.⁶⁰

2.1. *Redactions to Victims' Applications*

40. The Defence argues that, because of the redactions applied to the application forms, it cannot effectively utilise its right to submit observations thereon as foreseen by rule 89(1) of the Rules.⁶¹ In this regard, the Defence specifies that it has not received identifying information concerning any of the victim applicants, even though some of them have indicated that they do not have any concerns as to their safety.⁶² In addition, the Defence submits that it has not been provided, even in redacted form, with identification documents or any other documents presented in support of the application, depriving it of the possibility to submit observations on certain essential aspects of the applications.⁶³ Further, pieces of information that cannot compromise the safety of the victim applicants or lead to their identification have been redacted, such as their ethnicity and the day and month of birth of all victim applicants, the date and place of signature of all applications, the date and place of the alleged events in several applications, and elements pertaining to the alleged prejudice suffered, in particular with regard to the number and type of items allegedly stolen and the number of family members of the victim applicant.⁶⁴ Lastly, the Defence alleges that it does not dispose of any information concerning the

⁵⁹ ICC-01/04-02/06-119-Conf, para. 21; ICC-01/04-02/06-128-Conf, para. 25; ICC-01/04-02/06-146-Conf, para. 28; ICC-01/04-02/06-168-Conf, para. 32 and ICC-01/04-02/06-195-Conf, para. 32.

⁶⁰ ICC-01/04-02/06-118-Conf, para. 42 and ICC-01/04-02/06-127-Conf, para. 35.

⁶¹ ICC-01/04-02/06-118-Conf, para. 6; ICC-01/04-02/06-127-Conf, para. 7; ICC-01/04-02/06-143-Conf, para. 9; ICC-01/04-02/06-169-Conf, para. 12 and ICC-01/04-02/06-196-Conf, para. 14.

⁶² ICC-01/04-02/06-118-Conf, paras 9-12; ICC-01/04-02/06-127-Conf, paras 9-10; ICC-01/04-02/06-143-Conf, paras 11-13; ICC-01/04-02/06-169-Conf, paras 14-16 and ICC-01/04-02/06-196-Conf, paras 16-18.

⁶³ ICC-01/04-02/06-118-Conf, paras 13-17; ICC-01/04-02/06-127-Conf, paras 11-12; ICC-01/04-02/06-143-Conf, paras 14-15; ICC-01/04-02/06-169-Conf, paras 17-18 and ICC-01/04-02/06-196-Conf, paras 19-21.

⁶⁴ ICC-01/04-02/06-118-Conf, paras 20-24; ICC-01/04-02/06-127-Conf, paras 14-20; ICC-01/04-02/06-143-Conf, paras 16-29; ICC-01/04-02/06-169-Conf, paras 19-27 and ICC-01/04-02/06-196-Conf, paras 22-32.

identity of the persons and/or organisations that have assisted the victim applicants in completing the application forms, nor of any detail as to the language used in the course of the meetings between intermediaries and victim applicants, the duration and the number of those meetings.⁶⁵

41. At first, the Single Judge recalls the responsibility of the Court, pursuant to articles 57(3)(c) and 68(1) of the Statute, to take appropriate measures to protect the safety, privacy, physical and psychological well-being of victims. These measures must, however, take into account and be balanced with the rights of the Defence under article 67(1) of the Statute. The Single Judge recalls that measures taken in accordance with article 68(1) of the Statute may restrict the rights of the Defence only to the extent necessary.

42. The Single Judge notes that the submissions of the Defence concerning the disproportionate redactions applied to the Simplified Forms relate to two different types of information: (i) information directly relevant to the determination under rule 85(a) of the Rules, such as time and place of the alleged crimes as well as a description thereof; and (ii) information not directly related to such determination (i.e. details of the identity of intermediaries and their meetings with victim applicants, place and date of signature of the applications forms, ethnicity of the victim applicants).

43. In this respect, the Single Judge wishes to clarify that the application system developed for the purposes of the present case, including the Simplified Form, is aimed at streamlining the entire process of victims' application by focusing on those pieces of information that are directly relevant to the assessment as to whether or not any given victim applicant qualifies as a victim pursuant to rule 85(a) of the Rules. Accordingly, although every redaction shall abide by the principles of proportionality and necessity as recalled above, redactions applied to information

⁶⁵ ICC-01/04-02/06-118-Conf, paras 25-28; ICC-01/04-02/06-127-Conf, paras 21; ICC-01/04-02/06-143-Conf, para. 30; ICC-01/04-02/06-169-Conf, para. 28 and ICC-01/04-02/06-196-Conf, para. 33.

that are not directly relevant to the rule 85(a) determination will inevitably have a more limited impact on the rights of the Defence, as their observations should focus exclusively on whether the victim applicants fulfil the criteria for victim status provided by law.

44. However, the Single Judge recalls the submissions of the Registry in its reports pursuant to regulation 86(5) of the Regulations with regard to the precarious security situation existing in Ituri, in particular in the locations included in the DCC, where former militia of the UPC/FPLC, sympathizers and supporters of both Thomas Lubanga Dyilo and Mr. Ntaganda are concentrated.⁶⁶

45. In these circumstances, the Single Judge is of the view that the redactions applied to the applications for participation, even those presented by victim applicants who had no concern with regard to their identity being disclosed to the Defence, are necessary, at this stage of the proceedings, in light of the volatile security situation in the region. The Single Judge also notes that most of the victim applicants returned to the villages where the crimes allegedly took place.⁶⁷ In addition, the redactions applied are proportionate to the rights of the Defence, as the latter has been able to submit meaningful observations even in the absence of certain pieces of information. These observations have been taken into account by the Single Judge and have been of assistance in her determination under rule 85(a) of the Rules. Moreover, the redactions applied were the only measure available to protect the victim applicants concerned.

46. The Single Judge considers that redactions applied to the application forms of victims admitted to participate by the present decision may be lifted, should the circumstances surrounding the security situation in the region change.

⁶⁶ ICC-01/04-02/06-106-Conf-Exp, para. 9, ICC-01/04-02/06-132-Conf, paras 9-10.

⁶⁷ ICC-01/04-02/06-132-Conf, para. 9.

2.2. Indirect Victims

47. In respect of indirect victims, the Defence asserts that a number of applications should be rejected, as the victim applicants cannot be considered immediate family of direct victims who alleged to have suffered harm.⁶⁸

48. As recalled above, a victim applicant may participate as victim in the proceedings if he or she has suffered personal harm as a result of a crime committed against an immediate family member. The Single Judge agrees with the submissions of the Defence that not every member of the family may claim to have suffered personal harm as a result of crimes committed against other members of the same family nucleus. The Single Judge considers that immediate family members of a victim applicant are, in principle, parents, children, siblings and spouses.

49. With regard to other members of the family, such as uncles, aunts, nephews, nieces or grandparents, the Single Judge considers that it would be arbitrary to assume that they are automatically excluded from the notion of “immediate family” on account of their second degree familiarisation with the victim applicant. However, the Single Judge considers that, in order to claim victim status within the meaning of rule 85(a) of the Rules, the victim applicant must establish that at the time of the victimization, a sufficient proximity existed between him- or herself and the family member(s) who directly suffered harm as a result of one or more crimes with which the suspect is charged. The Single Judge is of the view that such proximity necessarily depends on the particular circumstances of each case and may, for instance, be the case where the victim applicant grew up with the family member in question or where he or she raised such a family member.⁶⁹ Conversely, instances where the victim applicant was assisting the family member or *vice versa* in economic activities will not suffice as such to demonstrate the required kinship between

⁶⁸ ICC-01/04-02/06-118-Conf, paras 29-32; ICC-01/04-02/06-127-Conf, paras 25-27; ICC-01/04-02/06-143-Conf, paras 35-37; ICC-01/04-02/06-169-Conf, paras 32-34 and ICC-01/04-02/06-196-Conf, paras 40-42.

⁶⁹ See for examples victim applicants a/00380/13, a/00052/13, a/00049/13, a/01006/13, a/00994/13.

them.⁷⁰ By the same token, stating that the victim applicant considered his or her family members in question as a father will not be sufficient, in the absence of further information as to the reason of such perception by the victim applicant.⁷¹

50. Therefore, absent the type of information exemplified above, the Single Judge may not be satisfied that a sufficiently close degree of kinship is established between the victim applicant and the family member, in order for the former to be in a position to claim personal harm as a result of crimes committed against the latter. However, the Single Judge recalls that such victim applicants may still qualify as victims under rule 85(a) of the Rules, if they provided sufficient information to demonstrate that they have directly suffered personal harm as a result of the commission of crimes with which the suspect is charged.

2.3. Imprecise temporal framework of the events provided by the applicants

51. The Defence submits that a number of victim applicants have provided incomplete and imprecise information. More specifically, according to the Defence, certain victim applicants failed to specify the temporal framework entirely, refer only to the year 2003 or to the operation “Shika na mukono” or refer to a date falling outside the scope of the arrest warrants.⁷²

52. With regard to the temporal framework of the events as alleged in the applications, the Single Judge notes that a number of victim applicants have provided a variety of references in order to date the events in the course of which they claim to have suffered personal harm. These references include, *inter alia*, between the end of 2002 and March 2003, February/March 2003, the operation “Shika na mukono” on its own, the operation “Shika na mukono” in February/March 2003, the year 2003 on its own, or the beginning of 2003.⁷³

⁷⁰ See for examples victim applicants a/00051/13.

⁷¹ See for examples victim applicants a/00130/13, a/00067/13, a/00066/13.

⁷² ICC-01/04-02/06-118-Conf, paras 33-41 and ICC-01/04-02/06-127-Conf, paras 22-24 and 28-31.

⁷³ Victim applicants a/01240/13, a/1138/13, a/00104/13, a/01080/13, a/00647/13, a/1157/13.

53. The Single Judge considers the various temporal references provided by the victim applicants to be the natural consequence of the recollection of traumatic events that took place more than ten years ago. In addition, while the determination of each application for participation under rule 85(a) of the Rules remains necessarily individual, the Single Judge recalls that the applications have been grouped by the VPRS according to appropriate criteria, mostly based on the victimization suffered and the incidents in which the victim applicants were involved. This grouping exercise aimed at organizing the considerable amount of applications received with a view not to adversely affect the right of alleged victims to apply for participation in the proceedings of the case, and at facilitating the Single Judge's determination pursuant to rule 85(a) of the Rules.

54. In this respect, the Single Judge observes that the narrative of victim applicants who provided less precise temporal references is consistent with the description of facts given by several victim applicants belonging to the same group, who provided specific dates falling precisely within the temporal parameters of the charges. Therefore, the Single Judge assessed the applications of those persons referring to the temporal indicators enumerated in the preceding paragraph as falling within the temporal parameters of the charges against the suspect.

2.4. Geographical scope of the case

55. The Defence submits that the identification of the villages that surround Lipri, Kobu and Bambu constitutes an issue that will have to be determined by the Chamber after litigation between the parties in the course of the confirmation of charges hearing.⁷⁴ As such, the Defence submits that it is premature to admit as victims those victim applicants who allege to have suffered harm in such locations.⁷⁵

56. The Single Judge recalls what has been stated in paragraph 16 above, namely that the purpose of the present decision is limited to determine whether each victim

⁷⁴ ICC-01/04-02/06-143-Conf, para. 23.

⁷⁵ ICC-01/04-02/06-143-Conf, para. 23.

applicant has provided sufficient information to satisfy the requirement of rule 85(a) of the Rule in order to qualify as a victim as well as to determine the participatory rights that the victims may exercise in the confirmation hearing and in the related proceedings. As a consequence, the decision on victims' participation is separate from and has no bearing on the decision to be taken by the Chamber pursuant to article 61(7) of the Statute.

57. In the DCC, the Prosecutor charged Mr. Ntaganda with crimes committed in "various locations in Banyali-Kilo *collectivité*, including Pluto, Nzebi, Mongbwalu, Sayo and Kilo"⁷⁶ and "in over 40 villages in the Walendu-Djatsi *collectivité* including but not limited to Lipri, Kobu and Bambu".⁷⁷ Accordingly, based on the information available, the Single Judge has assessed whether the events described by the victim applicants were committed in the geographical area identified by the Prosecutor in her DCC.

2.5. Duplicate applications

58. With regard to duplicate applications, the Defence argues that it cannot effectively utilise its right to submit observations on those applications due to the fact that only two duplicates, out of eleven, have been transmitted to the Defence. Furthermore, it notes that significant contradictions between the duplicate applications have been raised by the VPRS when it comes to dates, number of deceased family members and the alleged prejudice suffered.

2.6. Incomplete Application Forms

59. The Defence draws the attention of the Single Judge to those applications that are allegedly incomplete, in particular because they (i) contain internal contradictions or inconsistencies (ii) do not detail the alleged prejudice suffered; (iii) do not indicate the ethnicity, the date of birth, the gender, as well as the place and/or date where the

⁷⁶ ICC-01/04-02/06-203-AnxA, para. 63.

⁷⁷ ICC-01/04-02/06-203-AnxA, para. 77.

application was signed; or (iv) do not indicate the perpetrators of the alleged crimes.⁷⁸

60. The Single Judge recalls that in the 28 May 2013 Decision, she held that an application for victim's participation is considered to be complete if it contains the following information, supported by documentation, if applicable:

- (i) the identity of the applicant;
- (ii) the date of the crime(s);
- (iii) the location of the crime(s);
- (iv) a description of the harm suffered as a result of the commission of the crime(s) allegedly committed by the suspect;
- (v) proof of identity, through one of the identification documents available in the Democratic Republic of Congo and accepted by the Single Judge;⁷⁹
- (vi) if the application is made by a person acting with the consent of the victim, the express consent of that victim;
- (vii) if the application is made by a person acting on behalf of a victim, in the case of a victim who is a child, proof of kinship or legal guardianship; or, in the case of a victim who is disabled, proof of legal guardianship; and
- (viii) a signature or thumb-print of the applicant on the document, at the very least, on the last page of the application.⁸⁰

⁷⁸ ICC-01/04-02/06-118-Conf, paras 33-41; ICC-01/04-02/06-127-Conf, paras 22-24 and 28-31; ICC-01/04-02/06-143-Conf, paras 31-34; ICC-01/04-02/06-169-Conf, paras 29-30 and ICC-01/04-02/06-196-Conf, paras 38-39.

⁷⁹ ICC-01/04-02/06-53-Anx1.

⁸⁰ For example, Pre-Trial Chamber III, "Fourth Decision on Victims' Participation", 12 December 2008, ICC-01/05-01/08-320, para. 81; Pre-Trial Chamber I, "Decision on the Requests of the Legal Representative of Applicants on application process for victims' participation and legal representation", 17 August 2007, ICC-01/04-374, para. 12; Pre-Trial Chamber I, "Public Redacted Version of the 'Decision on the 97 Applications for Participation at the Pre-Trial Stage of the Case'", 10 June 2008, ICC-01/04-01/07-579, para. 44; Pre-Trial Chamber I, "Decision on the 34 Applications for Participation at the Pre-Trial Stage of the Case", 25 September 2009, ICC-02/05-02/09-121, para. 7; Trial Chamber II, "Decision on the treatment of applications for participation", 26 February 2009, ICC-01/04-01/07-933-tENG, para. 28; Trial Chamber III, "Decision defining the status of 54 victims who participated at the pre-trial stage, and inviting the parties' observations on applications for participation by 86 applicants", 22 February 2010, ICC-01/05-01/08-699, paras 35 and 36.

61. The missing information referred to by the Defence is not among the information that the Single Judge, consistent with the jurisprudence of the Court, considers necessary for an application to be complete.⁸¹

62. In addition, the Single Judge points out that with regard to the description of the harm suffered as one of the necessary information required by regulation 86(2) of the Regulations, victim applicants are not required to detail the nature of the physical or psychological prejudice that they suffered or the inventory of the belongings pillaged but to describe, including in their own words, the harm suffered as a result of the commission of the crime(s) allegedly committed by the suspect. More precise information detailing the prejudice suffered by victims may become relevant for the purposes of reparation proceedings before a Trial Chamber, in the event the charges are confirmed and the accused is convicted at trial.

63. In the same vein, the absence of personal information such as the ethnicity, gender, date of birth as well as information about the place and date where the application form was signed does not automatically render the application incomplete, so as to lead to its rejection on this ground. Such information, although sometimes missing from the application forms accessible to the parties, still appears in the identification document(s) provided by the victim applicants or in other information accessible only to the Chamber pursuant to the 28 May 2013 Decision.

64. Furthermore, the Single Judge recalls that “at times it will inevitably be impossible for the applicants to establish precisely who committed the relevant crime(s) and that, consequently, it would be an unfair burden to require the applicant victims to identify the actual perpetrator(s) of the crimes(s) allegedly causing them harm [...]”.⁸² However, the Single Judge has remained attentive to whether the victim applicants mention unequivocally that the perpetrators of the crimes from which they suffered personal harm are individuals or entities that are

⁸¹ Pre-Trial Chamber II, 28 May 2013, ICC-01/04-02/06-67, para. 30 and footnote 23.

⁸² Pre-Trial Chamber II, 26 August 2011, ICC-01/09-02/11-267, para. 33.

not related to the charges brought by the Prosecutor against the suspect. Such statement may lead to the rejection of the application for participation, on the basis that there is no link between the harm suffered by the victim applicant and the charges brought against the suspect.

VI. Conclusions of the Single Judge

65. On the basis of the requirements dictated by the legal texts of the Court as recalled above and taking into due consideration the observations submitted by the parties and the submissions of the VPRS in each of its reports under regulation 86(5) of the Regulations, the Single Judge has assessed all victims' applications for participation received. With regard to Group 1, the Single Judge has decided to accept 97 victim applicants as victims and to reject none. With regard to Group 2, the Single Judge has decided to accept 825 victim applicants, to reject 48 applications and to defer 12 applications, pending additional information to be obtained by the VPRS. This assessment is contained in Annex A (group 1) and Annex B (group 2) to the present decision, which are classified as "confidential" because they contain personal information concerning the victim applicants. Still, the Single Judge considers it appropriate, as a minimum, to share publicly the main grounds on which some applications have been rejected or deferred pending further information to be obtained by the VPRS. In this respect, the Single Judge recalls that, pursuant to rule 89(2) of the Rules "a victim whose application has been rejected may file a new application later in the proceedings."

66. A number of applications have been rejected in part as the victim applicants failed to demonstrate either the identity/kinship with the family members in respect of whom they claim to have indirectly suffered personal harm as a result of the crimes charged,⁸³ or they otherwise did not establish the sufficient degree of kinship for these family members to be considered as "immediate".⁸⁴ However, in most of these cases, these victim applicants also directly suffered personal harm as a result of

⁸³ See for example victim applicants a/00102/13, a/00023/13, a/01063/13.

⁸⁴ See for example victim applicants a/00072/13, a/00066/13, a/00098/13.

crimes with which the suspect is charged. They accordingly qualify as victims and are entitled to participate in the proceedings of the present case.

67. Moreover, some applications have been rejected, in whole or in part, because the victim applicants: (i) provided an account of events that fall outside either the temporal scope⁸⁵ or the geographical scope of the case presented by the Prosecutor in the DCC;⁸⁶ (ii) provided insufficient information to assess whether the events described amount to a crime with which the suspect is charged;⁸⁷ (iii) provided highly inconsistent information in the narrative of the events that cast doubts on the veracity of their applications and on the credibility of the victim applicants.⁸⁸

68. The Single Judge notes the submissions of the Defence with regard to duplicate applications submitted by some victim applicants, which were not all transmitted to the Defence. More specifically, the Single Judge observes that 7 duplicates were included in the second batch⁸⁹ and 4 were included in the fourth batch⁹⁰ of victims' applications transmitted by the Registry. The Single Judge disapproves the policy of the VPRS to transmit duplicate applications without attempting to obtain clarification from the victim applicants concerned with regard to the reasons why they filled in more than one application and the inconsistencies, if any, contained therein. The Single Judge urges the VPRS, should similar circumstances reoccur in the future, to resort to the mechanism established in the 28 May 2013 Decision, according to which the VPRS shall "raise with the Single Judge, if need be and on a continuous basis, any issues that may arise in regard to the collection and processing of the applications, in order to readily address and resolve such issues before the

⁸⁵ See for example victim applicants a/00056/13, a/00197/13, a/00458/13, a/00215/13, a/00216/13, a/00467/13.

⁸⁶ See for example victim applicants a/00860/13, a/01197/13.

⁸⁷ See for example victim applicants a/00773/13, a/00776/13, a/00619/13.

⁸⁸ See for example victim applicants a/01044/13, a/01145/13.

⁸⁹ Applications a/00970/13 (duplicate of a/00050/13), a/00482/13 (duplicate of a/00086/13), a/00136/13 (duplicate of a/00435/13), a/00014/13 (duplicate of a/00569/13), a/00183/13 (duplicate of a/01076/13), a/00077/13 (duplicate of a/00076/13) and a/01075/13 (duplicate of a/00171/13).

⁹⁰ Applications a/01096/13 (duplicate of a/01168/13), a/01115/13 (duplicate of a/01170/13), a/01132/13 (duplicate of a/01169/13), a/01134/13 (duplicate of a/01167/13).

transmission of the applications to the Chamber". In addition, the Single Judge considers that notwithstanding the significance of the inconsistencies between the duplicates, the Defence should not be deprived of the opportunity to submit observations on the applications concerned, as provided in rule 89(1) of the Rules.

69. Under these circumstances, the Single Judge finds that transmitting the duplicate applications to the Defence at this point in time is not warranted. Rather, considering the inconsistencies contained in the duplicate applications received, the Single Judge is of the view that it is more appropriate to defer the assessment of these applications pending the collection of additional information from the victim applicants concerned as to which application form they intend to submit and which information they wish to include therein. The VPRS is thus instructed to contact those victim applicants, obtain the additional information required and transmit one Simplified Form for each victim applicant to the Defence with redactions, if need be, in order to enable the Defence to submit observations under rule 89(1) of the Rules.

VII. Dual Status Victim-Witness Individuals

70. In her Request to Lift Redactions, the Prosecutor informs the Single Judge that victim applicants a/01308/13, a/00090/13 and a/00436/13 are Prosecution's witnesses P-0010, P-0113 and P-0805, respectively.⁹¹

71. In respect of victim applicant a/01308/13, the Prosecutor proposes to lift redactions applied to her victim application with regard to her identity, the name of certain individuals mentioned, her ethnicity, and a location where she was. The Prosecutor seeks to maintain all other redactions applied in her victim application, given that a/01308/13 is included, in her capacity as witness, in the Court's protection programme. Revealing all remaining information that has been redacted would undermine the protection afforded to her as currently enforced.

⁹¹ ICC-01/04-02/06-199-Conf-Exp, paras 8, 11, 14.

72. As for victim applicant a/00090/13, the Prosecutor proposes to lift redactions in her victim application with regard to a location, while maintaining the remainder of the redactions applied.

73. Lastly, concerning victim applicant a/00436/13, the Prosecutor proposes to lift redactions to his name, signature and his date of birth in his victim application, while maintaining the rest of the redactions applied.

74. The Single Judge recalls that she has granted authorization, pursuant to article 68(1) of the Statute in conjunction with rule 81(4) of the Rules, to redact certain information in the evidence provided by the three abovementioned victim applicants, in their capacity as witnesses presented by the Prosecutor for the purposes of the confirmation of charges hearing.⁹² Therefore, the Single Judge considers it appropriate to ensure that the same information is redacted in the victims' applications submitted by these individuals, while ensuring that information that has already been revealed to the Defence in the course of the disclosure process is equally available to the suspect in the victims' applications presented by these persons.

75. However, the Single Judge observes that the redactions to the victims' applications were applied by the VPRS, which subsequently transmitted them to the Defence. Therefore, the Single Judge instructs the VPRS to prepare new versions of the Simplified Forms submitted by victim applicants a/01308/13, a/00090/13 and a/00436/13, lifting the redactions to the information referred to by the Prosecutor in her submissions and to transmit them anew to the Defence.

⁹² Pre-Trial Chamber II, "Third Decision on the Prosecutor's Request for Redactions", 6 December 2013, ICC-01/04-02/06-165-Conf-Red and ICC-01/04-02/06-165-Conf-AnxII, pp. 61-62, 70-71, 432-444.

VIII. Common Legal Representation of Victims

76. With regard to the common legal representation of those victims that will be admitted to participate in the confirmation of charges hearing and the proceedings related thereto, the Single Judge recalls that the Registry had recommended “the creation of two distinct victims groups, each represented by a legal team: a group consisting of UPC/FPLC child soldiers and another consisting of victims of UPC/FPLC attacks”.⁹³ Such recommendation, which was endorsed by the Single Judge in her 2 December 2013 Decision, was grounded on the serious concerns expressed by the victim applicants in the present case towards the possibility to have one legal team representing both Hema and Lendu/non-Hema victims.⁹⁴

77. In light of these concerns, the Single Judge decided to organize the common legal representation of the victims that will be admitted to participate in the confirmation of charges hearing and the proceedings related thereto by appointing two counsels from the OPCV to represent the two groups of victims as identified by the Registry.⁹⁵ The Single Judge stresses that the appointment made in the 2 December 2013 Decision was limited to “facilitate the proper organization of work for the appointed common legal representatives [...] the familiarization with the features of the groups identified by the Registry, and the preparation of the logistical steps to be taken, in particular traveling to the field for the purposes of consulting the victims as soon as they are admitted as participants in the case”.⁹⁶

78. The Single Judge notes the recommendation of the OPCV to appoint Ms. Sarah Pellet as the common legal representative (“CLR1”) of the group constituted by victims child soldiers (“Group 1”) and Mr. Dmytro Suprun as the common legal

⁹³ ICC-01/04-02/06-141-Conf-Exp, paras 16,18.

⁹⁴ Pre-Trial Chamber II, 2 December 2013, ICC-01/04-02/06-160, para. 10.

⁹⁵ Pre-Trial Chamber II, 2 December 2013, ICC-01/04-02/06-160, p. 11.

⁹⁶ Pre-Trial Chamber II, 2 December 2013, ICC-01/04-02/06-160, p. 21.

representative ("CLR2") of the group constituted by victims of the attacks of UPC/FPLC troops ("Group 2").⁹⁷

79. The Single Judge endorses the proposals made by the OPCV and decides to appoint Ms. Sarah Pellet as CLR1 of Group 1 and Mr. Dmytro Suprun as CLR2 of Group 2.

80. In addition, with a view to put the two common legal representatives in a position to properly fulfil their mandate, they must be assisted by two assistants to counsel based in the field, tasked with maintaining regular contact with victims, keeping victims regularly updated about the ongoing proceedings and receiving instructions by victims where deemed necessary. In this respect, the Single Judge observes the recommendations of the VPRS, in coordination with the OPCV and the Counsel Support Section, with regard to the two candidates for the position of assistants to CLR1 and CLR2.⁹⁸ Such recommendations were made, as instructed by the Single Judge,⁹⁹ on the basis of appropriate criteria, including legal knowledge, drafting and linguistic skills, familiarity with the case and experience in working with victims in the field.¹⁰⁰ Thus, the Single Judge endorses these recommendations concerning the two candidates identified for the position of assistants to CLR1 and CLR2.¹⁰¹

IX. Participatory rights

81. Turning to the participatory rights, the Single Judge recalls that under the Statute and the Rules, victims participating in the proceedings are entitled *expressis verbis* to a number of specific procedural rights, which they can exercise through their legal representative. Alongside these specific rights conferred to the victims *ex lege*, other

⁹⁷ ICC-01/04-02/06-176, para. 2.

⁹⁸ ICC-01/04-02/06-176, para. 3 and ff.

⁹⁹ ICC-01/04-02/06-160, p. 11

¹⁰⁰ ICC-01/04-02/06-176, para. 3.

¹⁰¹ ICC-01/04-02/06-176-Conf-Exp-Anx.

rights may be granted by the Chamber either upon specific request by the legal representative or *proprio motu*, in accordance with article 68(3) of the Statute.¹⁰²

82. According to this provision, victims may present their views and concerns at “stages of the proceedings determined to be appropriate by the Court and in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial”. The Single Judge recalls that, in accordance with article 68(3) of the Statute, the right to express their views and concerns may be granted upon specific request by the common legal representative of victims justifying why their personal interests are affected by the issue at stake.¹⁰³ Such assessment may not be conducted in the abstract but on a *case-by-case basis*, depending on the issue(s) concerned and on the justification given by the legal representative in support of his or her request.¹⁰⁴

83. Furthermore, the Single Judge must take into account whether the exercise of any specific right by the common legal representative of victims will be prejudicial to or inconsistent with the rights of the suspect.¹⁰⁵

84. The Single Judge will hereunder enumerate the procedural rights granted to the victims admitted to participate in the confirmation of charges hearing and in the proceedings related thereto.

1. Attendance and participation at the confirmation of charges hearing

85. According to rule 91(2) of the Rules, the legal representative of victims shall be entitled to attend and participate in the proceedings. With regard to the attendance at the hearing, by virtue of the above provision, CLR1 and CLR2 have the right to attend all public sessions of the confirmation of charges hearing and any hearings that may take place in the related proceedings. Should one or more sessions of the

¹⁰² Pre-Trial Chamber II, 26 August 2011, ICC-01/09-02/11-267, para. 99.

¹⁰³ Pre-Trial Chamber II, 26 August 2011, ICC-01/09-02/11-267, para. 99.

¹⁰⁴ Pre-Trial Chamber II, 26 August 2011, ICC-01/09-02/11-267, para. 99.

¹⁰⁵ Pre-Trial Chamber II, 26 August 2011, ICC-01/09-02/11-267, para. 99.

confirmation of charges hearing as well as of any other hearing convened in the present case take place *in camera* or *ex parte*, the Chamber retains the option to decide on a *case-by-case* basis, upon specific request submitted by the legal representative(s) pursuant to article 68(3) of the Statute or *proprio motu*, whether they will be authorized to attend these sessions.

86. As for the right to participate in the hearing, the Single Judge notes that rule 91(2) of the Rules states that the right to be exercised by the legal representative of victims “shall include participation in the hearings, unless, in the circumstances of the case, the Chamber is of the view that the representative’s intervention should be confined to written observations or submissions”. On the basis of this provision, the Single Judge considers that CLR1 and CLR2 may, upon motivated request specifying the reasons why the victims’ personal interests are affected by the issues concerned, be authorized to make oral submissions in the course of the confirmation of charges hearing or in any other hearing convened, subject to the directions of the Chamber. In its determination, the Chamber will take into account the same factors recalled in paragraphs 82-83.

87. Lastly, the Single Judge observes that rule 89(1) of the Rules provides that victims’ participation in the proceedings may include making opening and closing statements. Consequently, the Single Judge considers that CLR1 and CLR2 are entitled to make an opening statement at the beginning of the confirmation of charges hearing and a closing statement at the end of the hearing, in accordance with the schedule thereof and the directions to be issued by the Chamber in due course.

2. Access to the public record of the case

88. Rule 121(10) of the Rules provides that the legal representatives of victims may consult the record created and maintained by the Registry of all proceedings before the Chamber “subject to any restrictions concerning confidentiality and the protection of national security information”, as applicable to the Prosecutor and the Defence.

89. Therefore, the Single Judge considers that CLR1 and CLR2 have the right, during the confirmation of charges hearing and the related proceedings, to have access to all public decisions and public filings in the record of the case, including public evidence filed by the Prosecutor and the Defence, in the same format as disclosed to the recipient party (i.e. redacted or unredacted version, summaries, audio/video, and their metadata).

90. In respect of those decisions, filings and evidence that are classified as “confidential”, the Chamber will retain the option to decide on a *case-by-case* basis, either upon motivated request by the common legal representatives or *proprio motu*, whether or not to grant access to these documents.

91. With regard to the transcripts of the public sessions of the confirmation of charges hearing and the proceedings related thereto as well as *in camera* or *ex parte* sessions in which CLR1 and CLR2 could be authorised to participate, the legal representatives will have the right to access the transcripts of those sessions as well. Concerning the transcripts of sessions that took place before the issuance of the present decision or sessions in which CLR1 and CLR2 will not be authorised to participate, the Chamber retains the option to decide on a case-by-case basis, either upon motivated request by the common legal representative(s) or *proprio motu*, whether or not to grant access to these transcripts.

92. The Single Judge also considers that, with a view to put CLR1 and CLR2 in a position to properly prepare for the confirmation of charges hearing, they shall be granted access to the unredacted and redacted copies of the applications for participations of the victims admitted to participate in the proceedings by the present decision. The Registry is thus instructed to provide CLR1 with access to the relevant application forms of victims admitted in Group 1 and CLR2 with access to the relevant application forms of victims admitted in Group 2.

3. Notification of filings and decisions

93. Pursuant to rule 92(5) and (6) of the Rules, the victims' legal representative shall be notified of all filings and decisions filed in the course of the proceedings in which they are admitted to participate. By virtue of this provision and in accordance with any restriction of access to confidential information as mandated by rule 121(10) of the Rules, the Single Judge considers that CLR1 and CLR2 must be notified, on the same basis as the Prosecutor and the Defence, of: (i) all requests, submissions, motions, responses and other documents within the meaning of regulation 22 of the Regulations which are filed as "public" in the record of the present case; (ii) all public decisions of the Chamber in the present case; (iii) the date of the confirmation of charges hearing and any postponement thereof, as well as of the date of the delivery of the decision, in accordance with rule 92(5) of the Rules.

94. The Single Judge recalls that, should either party intend to notify CLR1 and CLR2 of any document that they may file as "confidential", they shall include the name of the common legal representative concerned in the notification page of the filing. The Registry shall accordingly notify the common legal representative(s).

95. In respect of notification matters, despite their classification as "confidential" the Single Judge considers that Annex A to the present decision must be notified to CLR1 and Annex B must be notified to CLR2, in order to enable them to access the Single Judge's determination, under rule 85(a) of the Rules, of each application for victims' participation received in the present case.

4. Filing of written submissions

96. The Single Judge considers it appropriate and consistent with her previous holdings,¹⁰⁶ to grant the right to CLR1 and CLR2 to make written submissions on specific issues of law and/or fact. In order for the Single Judge to grant this right, CLR1 and/or CLR2 must submit a specific request to this effect in compliance with the requirements of article 68(3) of the Statute, as recalled in paragraphs 82-83 above.

¹⁰⁶ See for example Pre-Trial Chamber II, 01/09-02/11-267, para. 118.

FOR THESE REASONS, THE SINGLE JUDGE HEREBY

- a) decides** to admit the victim applicants falling in Group 1 and Group 2 as victims in the confirmation of charges hearing and in the related proceedings, as specified in Annex C to the present decision;
- b) decides** to reject the applications for participation submitted by the victim applicants falling in Group 2 as specified in Annex C to the present decision;
- c) decides** to defer the applications for participation submitted by the victim applicants falling in Group 2 as specified in Annex C to the present decision;
- d) decides** that Ms. Sarah Pellet, as assisted by the assistant to counsel, shall represent the victims hereby admitted to participate in Group 1, comprising of victims child soldiers;
- e) decides** that Mr. Dmytro Suprun, as assisted by the assistant to counsel, shall represent the victims hereby admitted to participate in Group 2, comprising of victims of attacks carried out by UPC/FPLC;
- f) grants** to Ms. Sarah Pellet and Mr. Dmytro Suprun the participatory rights as specified in section IX of the present decision;
- g) orders** the Registrar to comply with the instructions as specified in section IX of the present decision; and
- h) orders** the VPRS to prepare new versions of the Simplified Forms submitted by victim applicants a/01308/13, a/00090/13 and a/00436/13, lifting the redactions to the information mentioned by the Prosecutor in her Request to Lift Redactions and to transmit them anew to the Defence.

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

A handwritten signature in black ink, appearing to read 'E. Trendafilova', is written over a horizontal line.

Judge Ekaterina Trendafilova

Single Judge

Dated this Wednesday, 15 January 2013

At The Hague, The Netherlands