

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/04-01/06

Date: 10 June 2014

THE APPEALS CHAMBER

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

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

Public

**Public Redacted Version of "Prosecution's Response to Victims Applications", 17
 June 2013, ICC-01/04-01/06-3042-Conf**

Source: Office of the Prosecutor

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

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REGISTRY

Registrar

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Introduction

1. The Prosecution submits this response pursuant to the Appeals Chamber's "Decision on the request of the Registrar relating to the transmission of applications for participation in the appeal proceedings and on related issues" issued on 6 May 2013 ("Decision on Applications for Participation").¹
2. With the exception of one applicant, all applications cited in the Decision on Applications for Participation appear, *prima facie*, to meet the requirements of Rule 85. It is not clear whether the remaining applicant (a/0062/07) meets the requirements of Rule 85. The Prosecution submits that applicant a/0062/07 should be further requested to clarify the discrepancies and *lacunae* in his application before the Chamber makes a final assessment of his application to participate.

Procedural History

3. On 7 February 2013, the Registry filed its "Request for guidance regarding applicants for participation in the appeal phase" ("Request for Guidance").²
4. On 14 February 2013, the Appeals Chamber issued its "Order on the filing of submissions on new applications to participate as victims in the proceedings" ("Submissions Order").³ On 25 February 2013, and in compliance with the Submissions Order, the Defence, the Prosecution, the Legal Representative and OPCV, submitted their respective observations.⁴
5. On 6 May 2013, the Appeals Chamber issued the Decision on Applications for Participation.⁵ The Chamber held that it was not persuaded by the arguments of the parties that participation of the applicants is not appropriate and that the

¹ ICC-01/04-01/06-3026 (A4 A5 A6).

² ICC-01/04-01/06-2977 (OA4 OA5 OA6).

³ ICC-01/04-01/06-2978 (OA4 OA5 OA6).

⁴ ICC-01/04-01/06-2984-Conf-Exp-tENG (OA4 OA5 OA6); ICC-01/04-01/06-2985-tENG (OA4 OA5 OA6); ICC-01/04-01/06-2986-tENG (OA4 OA5 OA6); ICC-01/04-01/06-2987 (OA4 OA5 OA6).

⁵ ICC-01/04-01/06-3026 (OA4 OA5 OA6).

rights of the accused would be necessarily infringed upon by allowing any additional victims to make observations at this stage of the appeal proceedings.⁶

6. In light of the above, the Chamber ordered the Registry to transmit the 32 applications for participation in the appeal proceedings specified in its Request for Guidance to the Appeals Chamber, together with a report thereon.⁷ The Chamber also ordered the Registry to notify the Defence and the Prosecution of the applications and of the report, redacting any information contained in the applications and the report that should not be disclosed for protection purposes.⁸
7. [REDACTED].⁹ On 27 May 2013, the Registry filed its "Request for reclassification of the 'Transmission to the Appeals Chamber of a Report on 32 Applications to Participate in the Proceedings' filed on 20 May 2013".¹⁰ [REDACTED].¹¹
8. [REDACTED].¹²
9. On 14 June 2013, the Defence submitted its observations regarding the 32 applications.¹³

Confidential filing

10. Pursuant to Regulation 23*bis*(2) of the Regulations of the Court, the Prosecution files this document confidentially as it makes reference to documents with the same level of confidentiality.¹⁴

⁶ ICC-01/04-01/06-3026 (OA4 OA5 OA6), para.6.

⁷ ICC-01/04-01/06-3026 (OA4 OA5 OA6), page 3.

⁸ ICC-01/04-01/06-3026 (OA4 OA5 OA6), page 4.

⁹ [REDACTED].

¹⁰ ICC-01/04-01/06-3032 (OA4 OA5 OA6).

¹¹ [REDACTED].

¹² [REDACTED].

¹³ ICC-01/04-01/06-3041 A4 A5 A6.

¹⁴ However, the Prosecution notes that the Defence made its submissions regarding the 32 victim's applications publicly.

Legal criteria for victims' participation in the proceedings

11. For a person to be granted the status of a victim under Rule 85: (i) the applicant must be a natural person as set forth in Rule 85(a), or an organization 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.¹⁵
12. The Appeals Chamber confirmed that in the case of natural persons, both direct and indirect victims may suffer harm, provided it is "personal to the individual".¹⁶ The jurisprudence of this Court indicates that for the purposes of participation in proceedings in a particular case, the harm suffered by a victim must be linked to the charges confirmed against the accused.¹⁷
13. In line with current jurisprudence¹⁸ harm is assessed in the following categories:
 - o Material harm: including the loss or destruction of property, loss of income or other form of economic loss, including medical costs;
 - o Physical harm: physical injuries, including when brought about by psychological trauma (for instance, where stress has caused heart conditions or miscarriage);
 - o Psychological harm: including mental illness, emotional, moral or other form of psychological suffering.
 - o Other forms of harm that can be considered as a substantial impairment of a fundamental right: including for example the loss of educational opportunities, or social stigmatization.¹⁹

¹⁵ ICC-01/04-01/06-228-tEN, page 7.

¹⁶ ICC-01/04-01/06-1335, para. 36.

¹⁷ ICC-01/04-01/06-1432, para. 2. See further ICC-01/04-01/06-1119.

¹⁸ ICC-01/04-01/06-1119, paras. 35 and 92; ICC-01/04-01/06-1556-Corr-Anx1, para. 48, ICC-01/04-01/06-2035, para. 24.

¹⁹ See also ICC-01/04-01/06-1119, para. 92, ICC-02/05-02/09-147-Conf, paras. 25, 33 and 42.

Prosecution's Submissions

Applications that *prima facie* satisfy the requirements of Rule 85

14. The Prosecution submits that there is sufficient information to be satisfied that applicants a/0032/10, a/0034/10, a/0036/10, a/0189/07, a/0198/09, a/0241/06 a/0737/10, a/2015/11, a/2016/11, a/2017/11, a/2018/11, a/2019/11, a/2020/11, a/2899/11, a/2901/11, a/2916/11, a/2917/11, a/2918/11, a/2919/11, a/2920/11, a/2921/11, a/2922/11, a/2923/11, a/2924/11, a/2925/11, a/2926/11, a/2927/11, a/2928/11, a/2929/11, a/2930/11, and a/2931/11 have suffered harm, including physical and psychological harm, as a result of the crimes included in the charges brought against the accused, namely the alleged enlistment and/or conscription and/or use to participate actively in the hostilities by the UPC between September 2002 and 13 August 2003. Many of them are young girls, who as a result of these crimes have also experienced sexual and gender based violence. Hence, *prima facie*, these applicants satisfy the requirements of Rule 85. Some of these applications are discussed in more detail below.
15. This assessment of the Prosecution is contingent on the assumption that the redacted text (including precise dates and months of birth, names, locations, duration of stay in a particular place) in the applications does not contain any major discrepancies or errors.

Applicant a/0032/10

16. [REDACTED]²⁰ [REDACTED].

Applicant a/0036/10

²⁰ [REDACTED]

17. [REDACTED].²¹ [REDACTED] ²² [REDACTED]. [REDACTED].²³ [REDACTED].²⁴
[REDACTED].²⁵

Applicant a/0189/07

18. [REDACTED].²⁶ [REDACTED].²⁷ [REDACTED].²⁸ [REDACTED].

Applicant a/2017/11

19. [REDACTED].²⁹ [REDACTED].³⁰ [REDACTED].

Applicant a/2018/11

20. [REDACTED].³¹ [REDACTED].

21. [REDACTED].³² [REDACTED],³³ [REDACTED].

22. [REDACTED]. [REDACTED].³⁴ [REDACTED].

23. [REDACTED].

Applicant a/2019/11

24. [REDACTED].³⁵ [REDACTED] ³⁶ [REDACTED]. [REDACTED].

²¹ [REDACTED].

²² [REDACTED].

²³ [REDACTED].

²⁴ [REDACTED].

²⁵ [REDACTED].

²⁶ [REDACTED].

²⁷ [REDACTED].

²⁸ [REDACTED].

²⁹ [REDACTED].

³⁰ [REDACTED].

³¹ [REDACTED].

³² [REDACTED].

³³ [REDACTED].

³⁴ [REDACTED].

Applicant a/2921/11

25. [REDACTED].³⁷ [REDACTED]. [REDACTED].

26. [REDACTED].³⁸ [REDACTED].

Applicant a/2928/11

27. [REDACTED].³⁹ [REDACTED].

**Applications that require further clarification before the Chamber makes a
final Rule 85 assessment**

Applicant a/0062/07

28. [REDACTED].⁴⁰ [REDACTED].⁴¹ [REDACTED].⁴²

29. [REDACTED] ⁴³ [REDACTED].⁴⁴

30. [REDACTED].⁴⁵ [REDACTED],⁴⁶ [REDACTED],⁴⁷ [REDACTED].

31. [REDACTED].⁴⁸

³⁵ [REDACTED].

³⁶ [REDACTED].

³⁷ [REDACTED].

³⁸ [REDACTED].

³⁹ [REDACTED].

⁴⁰ [REDACTED].

⁴¹ [REDACTED].

⁴² [REDACTED].

⁴³ [REDACTED].

⁴⁴ [REDACTED].

⁴⁵ [REDACTED].

⁴⁶ [REDACTED].

⁴⁷ [REDACTED].

⁴⁸ [REDACTED].

Conclusion

32. The Prosecution submits that for the reasons set out above, with the exception of the application of a/0062/07, all applications discussed in these submissions appear, *prima facie*, to meet the requirements of Rule 85. Applicant a/0062/07 should be requested to further clarify the discrepancies and *lacunae* in his application before the Chamber makes a final assessment of his application to participate.



Fatou Bensouda
Prosecutor

Dated this 10th June 2014
At The Hague, The Netherlands