

**Cour
Pénale
Internationale**



**International
Criminal
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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***

Confidential - Prosecution, Defence and VPRS only

**Prosecution's Observations on 160 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:

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Introduction

1. The Prosecution submits observations on 160 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 The Prosecution supports all 160 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* 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 14 days of their transmission by the 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 30 October 2013, the Registry provided the Prosecution with 258 unredacted victim applications.⁷ The parties submitted their observations on 15 November 2013.⁸
8. On 21 November 2013, the Registry provided the Prosecution with 363 unredacted victim applications.⁹ The parties submitted their observations on 9 December 2013.¹⁰
9. On 13 December 2013, the Registry provided the Prosecution with 160 unredacted victim applications.¹¹

Legal criteria for victim participation in the proceedings

10. 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.

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-01/04-02/06-127-Conf.

⁷ ICC-01/04-02/06-132-Conf-Exp.

⁸ ICC-01/04-02/06-146-Conf, ICC-01/04-02/06-143-Conf.

⁹ ICC-01/04-02/06-154-Conf-Exp.

¹⁰ ICC-01/04-02/06-168-Conf, ICC-01/04-02/06-169-Conf.

¹¹ ICC-01/04-02/06-179-Conf-Exp.

11. 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, if possible.
12. According to the Appeals Chamber, a person has the right to participate as a victim in the proceedings under article 68(3) of the Statute if (i) he/she qualifies as a victim pursuant to rule 85; and (ii) his/her personal interests are affected by the issues, legal or factual, raised in the proceedings at hand.¹²
13. 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,¹³ 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.¹⁴
14. In reviewing applications, Chambers do not generally delve into the credibility of applicants' statements or require rigorous corroboration.¹⁵ 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.¹⁶

¹² See, e.g., ICC-01/04-556, para. 45; ICC-01/04-01/06-1335, para. 36.

¹³ See, e.g., ICC-02/05-01/07-58, para. 7; ICC-01/04-01/07-579, para. 67.

¹⁴ See, e.g., ICC-01/04-556, para. 45; ICC-01/04-01/06-1335, para. 36.

¹⁵ See ICC-01/04-01/07-579, para. 67.

¹⁶ ICC-01/04-01/07-579, paras. 67 and 132.

15. 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.¹⁷ 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 reparations.”¹⁸ Further, the Appeals Chamber held that “[a]n 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.”¹⁹
16. 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.²⁰
17. 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

¹⁷ 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).

¹⁸ ICC-01/04-01/06-925, para. 28.

¹⁹ *Ibid.*

²⁰ ICC-01/04-01/06-1432, paras. 2 and 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.”).

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.

18. 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.”²¹

19. The Appeals Chamber has defined “harm” within the meaning of rule 85(a) as “loss, injury or damage”²² and explained that cognizable harm include material, physical and psychological injuries.²³ 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.²⁴ A qualifying injury may be direct or indirect, so long as it is the applicant who experiences it.²⁵ 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.”²⁶ 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.²⁷

²¹ ICC-02/05-02/09-147-Red, para. 6; *see also* ICC-02/04-179, paras. 35-38.

²² ICC-01/04-01/06-1432, para. 31.

²³ 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’”).

²⁴ ICC-01/04-01/06-1432, para. 32.

²⁵ ICC-01/04-01/06-1432, paras. 32 and 34-35.

²⁶ ICC-01/04-01/06-1813, para. 44.

²⁷ ICC-01/04-01/06-1813, paras. 50-51.

Factual analysis of the applications

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

20. All 160 applicants are natural persons acting on their own behalf.²⁸ The 160 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 Union des Patriotes Congolais (“UPC”) constitute one or more of the following crimes relevant to the first or the second warrant of arrest:²⁹ using, conscripting and enlisting children under the age of 15, attacks directed against a civilian population, murder, pillaging, rape, sexual slavery, and persecution.³⁰ Further, Pre-Trial Chamber II made specific findings regarding the incidents (crimes, dates and locations) common to this group of applicants.³¹

Duplicate applications

21. According to the VPRS,³² applicant a/00038/13³³ submitted two applications. The duplicate application has not been transmitted to the Prosecution. The Prosecution is therefore unable to compare the applications or assess any impact the different applications may have on the criteria to establish participation as a victim. The Prosecution notes, however, that the discrepancies flagged by the VPRS appear to be minor.

²⁸ 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.

²⁹ ICC-01/04-02/06-1-Red, pages 35-36, (i), (ii), (iii); ICC-01/04-02/06-36-Red, page 36, (i), (ii), (iii), (iv), (v), (vi), and (vii).

³⁰ 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, 8(2)(e)(vii) of the Statute.

³¹ ICC-01/04-02/06-36-Red, paras. 43, 61.

³² ICC-01/04-02/06-179-Conf-AnxA.

³³ ICC-01/04-02/06-179-Conf-AnxB-7-Red.

Indirect harm suffered from murder of extended family members

22. Applicants a/00087/13,³⁴ a/00353/13³⁵ and a/00625/13³⁶ have suffered indirect harm as a result of the murder of their family members (son-in-law, nephews and nieces, grandfather). 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 or support in the form of assistance with physical work, as well as their claims of mental suffering, all sufficiently demonstrate personal harm. The Prosecution considers that personal harm has been sufficiently established.

Dates of the crimes

23. The Prosecution notes that applicants a/00003/13,³⁷ a/00016/13,³⁸ a/00019/13,³⁹ a/00026/13,⁴⁰ a/00349/13,⁴¹ a/00350/13,⁴² a/00353/13,⁴³ a/00406/13,⁴⁴ a/00411/13,⁴⁵ a/00412/13,⁴⁶ a/00413/13,⁴⁷ a/00414/13,⁴⁸ a/00428/13,⁴⁹ a/00436/13,⁵⁰ a/00919/13,⁵¹ a/00923/13,⁵² a/00925/13,⁵³ a/00932/13,⁵⁴ a/00953/13,⁵⁵ a/00955/13,⁵⁶ a/01085/13,⁵⁷

³⁴ ICC-01/04-02/06-179-Conf-AnxB-12-Red.

³⁵ ICC-01/04-02/06-179-Conf-AnxB-25-Red.

³⁶ ICC-01/04-02/06-179-Conf-AnxB-45-Red.

³⁷ ICC-01/04-02/06-179-Conf-AnxB-1-Red.

³⁸ ICC-01/04-02/06-179-Conf-AnxB-2-Red.

³⁹ ICC-01/04-02/06-179-Conf-AnxB-3-Red.

⁴⁰ ICC-01/04-02/06-179-Conf-AnxB-4-Red.

⁴¹ ICC-01/04-02/06-179-Conf-AnxB-23-Red.

⁴² ICC-01/04-02/06-179-Conf-AnxB-24-Red.

⁴³ ICC-01/04-02/06-179-Conf-AnxB-25-Red.

⁴⁴ ICC-01/04-02/06-179-Conf-AnxB-28-Red.

⁴⁵ ICC-01/04-02/06-179-Conf-AnxB-29-Red.

⁴⁶ ICC-01/04-02/06-179-Conf-AnxB-30-Red.

⁴⁷ ICC-01/04-02/06-179-Conf-AnxB-31-Red.

⁴⁸ ICC-01/04-02/06-179-Conf-AnxB-32-Red.

⁴⁹ ICC-01/04-02/06-179-Conf-AnxB-33-Red.

⁵⁰ ICC-01/04-02/06-179-Conf-AnxB-34-Red.

⁵¹ ICC-01/04-02/06-179-Conf-AnxB-126-Red.

⁵² ICC-01/04-02/06-179-Conf-AnxB-127-Red.

⁵³ ICC-01/04-02/06-179-Conf-AnxB-128-Red.

⁵⁴ ICC-01/04-02/06-179-Conf-AnxB-129-Red.

a/01240/13,⁵⁸ a/01243/13,⁵⁹ a/01244/13,⁶⁰ a/01273/13,⁶¹ a/01274/13,⁶² a/01277/13,⁶³ a/01279/13,⁶⁴ a/01280/13⁶⁵ and a/01282/13⁶⁶ indicate that the events occurred in the beginning of 2003, in February 2003 or between February and March 2003. They also all refer to 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 2003.⁶⁷ 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.

24. The Prosecution notes that applicants a/00042/13,⁶⁸ a/00209/13,⁶⁹ a/00470/13,⁷⁰ a/00647/13,⁷¹ a/00948/13⁷² and a/01241/13⁷³ indicate that the events occurred in February 2003, in March 2003 or between February and March 2003, without referring to operation “*Shika na mukono*.” The Prosecution also notes that applicants a/00687/13⁷⁴ and a/00749/13⁷⁵ indicate that the events occurred in 2003. Taking into account the overall account provided by the applicants, the

⁵⁵ ICC-01/04-02/06-179-Conf-AnxB-131-Red.

⁵⁶ ICC-01/04-02/06-179-Conf-AnxB-132-Red.

⁵⁷ ICC-01/04-02/06-179-Conf-AnxB-135-Red.

⁵⁸ ICC-01/04-02/06-179-Conf-AnxB-140-Red.

⁵⁹ ICC-01/04-02/06-179-Conf-AnxB-142-Red.

⁶⁰ ICC-01/04-02/06-179-Conf-AnxB-143-Red.

⁶¹ ICC-01/04-02/06-179-Conf-AnxB-145-Red.

⁶² ICC-01/04-02/06-179-Conf-AnxB-146-Red.

⁶³ ICC-01/04-02/06-179-Conf-AnxB-147-Red.

⁶⁴ ICC-01/04-02/06-179-Conf-AnxB-148-Red.

⁶⁵ ICC-01/04-02/06-179-Conf-AnxB-149-Red.

⁶⁶ ICC-01/04-02/06-179-Conf-AnxB-151-Red.

⁶⁷ See ICC-01/04-02/06-119-Conf, para. 18.

⁶⁸ ICC-01/04-02/06-179-Conf-AnxB-8-Red.

⁶⁹ ICC-01/04-02/06-179-Conf-AnxB-19-Red.

⁷⁰ ICC-01/04-02/06-179-Conf-AnxB-35-Red.

⁷¹ ICC-01/04-02/06-179-Conf-AnxB-50-Red.

⁷² ICC-01/04-02/06-179-Conf-AnxB-130-Red.

⁷³ ICC-01/04-02/06-179-Conf-AnxB-141-Red.

⁷⁴ ICC-01/04-02/06-179-Conf-AnxB-77-Red.

⁷⁵ ICC-01/04-02/06-179-Conf-AnxB-120-Red.

Prosecution is of the view that it has been sufficiently established that the crimes alleged occurred within the relevant time frame of the charges.

Locations of the crimes

25. 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. Most of the applicants further add that the crimes occurred during the operation “*shika na mukono*.”

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

Proof of identity and kinship

27. 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.⁷⁶ According to the VPRS’s report, almost all applicants have provided voting cards as proof of identity and some provide an additional letter from local authorities as proof of identity and kinship. Applicants a/00175/13,⁷⁷ a/00428/13,⁷⁸ a/00575/13,⁷⁹ a/00578/13,⁸⁰ a/00581/13,⁸¹ a/00663/13,⁸² a/00664/13,⁸³ a/00665/13,⁸⁴ a/00666/13,⁸⁵ a/00667/13,⁸⁶

⁷⁶ ICC-01/04-02/06-179-Conf-AnxA.

⁷⁷ ICC-01/04-02/06-179-Conf-AnxB-16-Red.

⁷⁸ ICC-01/04-02/06-179-Conf-AnxB-33-Red.

⁷⁹ ICC-01/04-02/06-179-Conf-AnxB-38-Red.

⁸⁰ ICC-01/04-02/06-179-Conf-AnxB-40-Red.

⁸¹ ICC-01/04-02/06-179-Conf-AnxB-43-Red.

⁸² ICC-01/04-02/06-179-Conf-AnxB-53-Red.

⁸³ ICC-01/04-02/06-179-Conf-AnxB-54-Red.

a/00668/13,⁸⁷ a/00672/13,⁸⁸ a/00673/13,⁸⁹ a/00676/13,⁹⁰ a/00679/13,⁹¹ a/00686/13,⁹²
a/00687/13,⁹³ a/00689/13,⁹⁴ a/00690/13,⁹⁵ a/00692/13,⁹⁶ a/00698/13,⁹⁷ a/00699/13,⁹⁸
a/00700/13,⁹⁹ a/00710/13,¹⁰⁰ a/00719/13,¹⁰¹ a/00730/13,¹⁰² a/00732/13,¹⁰³ a/00733/13,¹⁰⁴
a/00734/13,¹⁰⁵ a/00740/13,¹⁰⁶ a/00741/13,¹⁰⁷ a/00742/13,¹⁰⁸ a/00743/13,¹⁰⁹ a/00744/13,¹¹⁰
a/00746/13,¹¹¹ a/00748/13,¹¹² a/00749/13,¹¹³ a/00750/13,¹¹⁴ a/00751/13,¹¹⁵ a/00752/13,¹¹⁶
a/00948/13,¹¹⁷ a/01183/13,¹¹⁸ a/01201/13,¹¹⁹ a/01208/13,¹²⁰ a/01240/13,¹²¹ a/01241/13,¹²²

⁸⁴ ICC-01/04-02/06-179-Conf-AnxB-55-Red.
⁸⁵ ICC-01/04-02/06-179-Conf-AnxB-56-Red.
⁸⁶ ICC-01/04-02/06-179-Conf-AnxB-57-Red.
⁸⁷ ICC-01/04-02/06-179-Conf-AnxB-58-Red.
⁸⁸ ICC-01/04-02/06-179-Conf-AnxB-62-Red.
⁸⁹ ICC-01/04-02/06-179-Conf-AnxB-63-Red.
⁹⁰ ICC-01/04-02/06-179-Conf-AnxB-66-Red.
⁹¹ ICC-01/04-02/06-179-Conf-AnxB-69-Red.
⁹² ICC-01/04-02/06-179-Conf-AnxB-76-Red.
⁹³ ICC-01/04-02/06-179-Conf-AnxB-77-Red.
⁹⁴ ICC-01/04-02/06-179-Conf-AnxB-78-Red.
⁹⁵ ICC-01/04-02/06-179-Conf-AnxB-79-Red.
⁹⁶ ICC-01/04-02/06-179-Conf-AnxB-80-Red.
⁹⁷ ICC-01/04-02/06-179-Conf-AnxB-83-Red.
⁹⁸ ICC-01/04-02/06-179-Conf-AnxB-84-Red.
⁹⁹ ICC-01/04-02/06-179-Conf-AnxB-85-Red.
¹⁰⁰ ICC-01/04-02/06-179-Conf-AnxB-91-Red.
¹⁰¹ ICC-01/04-02/06-179-Conf-AnxB-95-Red.
¹⁰² ICC-01/04-02/06-179-Conf-AnxB-105-Red.
¹⁰³ ICC-01/04-02/06-179-Conf-AnxB-106-Red.
¹⁰⁴ ICC-01/04-02/06-179-Conf-AnxB-107-Red.
¹⁰⁵ ICC-01/04-02/06-179-Conf-AnxB-108-Red.
¹⁰⁶ ICC-01/04-02/06-179-Conf-AnxB-111-Red.
¹⁰⁷ ICC-01/04-02/06-179-Conf-AnxB-112-Red.
¹⁰⁸ ICC-01/04-02/06-179-Conf-AnxB-113-Red.
¹⁰⁹ ICC-01/04-02/06-179-Conf-AnxB-114-Red.
¹¹⁰ ICC-01/04-02/06-179-Conf-AnxB-115-Red.
¹¹¹ ICC-01/04-02/06-179-Conf-AnxB-117-Red.
¹¹² ICC-01/04-02/06-179-Conf-AnxB-119-Red.
¹¹³ ICC-01/04-02/06-179-Conf-AnxB-120-Red.
¹¹⁴ ICC-01/04-02/06-179-Conf-AnxB-121-Red.
¹¹⁵ ICC-01/04-02/06-179-Conf-AnxB-122-Red.
¹¹⁶ ICC-01/04-02/06-179-Conf-AnxB-123-Red.
¹¹⁷ ICC-01/04-02/06-179-Conf-AnxB-130-Red.
¹¹⁸ ICC-01/04-02/06-179-Conf-AnxB-137-Red.
¹¹⁹ ICC-01/04-02/06-179-Conf-AnxB-138-Red.
¹²⁰ ICC-01/04-02/06-179-Conf-AnxB-139-Red.
¹²¹ ICC-01/04-02/06-179-Conf-AnxB-140-Red.
¹²² ICC-01/04-02/06-179-Conf-AnxB-141-Red.

a/01279/13¹²³ and a/01295/13¹²⁴ provide a letter from local authorities. Applicants a/00034/13,¹²⁵ a/00630/13,¹²⁶ a/00635/13¹²⁷ and a/01311/13¹²⁸ provide an attestation. Applicant a/01308/13¹²⁹ provides a passport. 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.¹³⁰

28. In its report, the VPRS noted several inconsistencies between the application forms and the documents submitted as proof of identity and/or kinship.¹³¹ For instance, there are slight variations in: (i) the spelling of the names of applicants a/00087/13,¹³² a/00231/13,¹³³ a/00406/13,¹³⁴ a/00627/13,¹³⁵ a/00635/13,¹³⁶ a/00661/13,¹³⁷ a/00667/13,¹³⁸ a/00679/13,¹³⁹ a/00682/13,¹⁴⁰ a/00701/13,¹⁴¹ a/00712/13,¹⁴² a/00742/13,¹⁴³ a/00745/13,¹⁴⁴ a/00753/13,¹⁴⁵ a/00923/13¹⁴⁶ and a/00953/13¹⁴⁷; (ii) the spelling of the names of family members of applicants a/00968/13¹⁴⁸ and a/01208/13¹⁴⁹; and (iii)

¹²³ ICC-01/04-02/06-179-Conf-AnxB-148-Red.

¹²⁴ ICC-01/04-02/06-179-Conf-AnxB-152-Red.

¹²⁵ ICC-01/04-02/06-179-Conf-AnxB-5-Red.

¹²⁶ ICC-01/04-02/06-179-Conf-AnxB-47-Red.

¹²⁷ ICC-01/04-02/06-179-Conf-AnxB-49-Red.

¹²⁸ ICC-01/04-02/06-179-Conf-AnxB-156-Red.

¹²⁹ ICC-01/04-02/06-179-Conf-AnxB-154-Red.

¹³⁰ ICC-01/04-02/06-67, para. 30, point (V) referring to ICC-01/04-02/06-53-Anx1.

¹³¹ ICC-01/04-02/06-179-Conf-AnxA.

¹³² ICC-01/04-02/06-179-Conf-AnxB-12-Red.

¹³³ ICC-01/04-02/06-179-Conf-AnxB-20-Red.

¹³⁴ ICC-01/04-02/06-179-Conf-AnxB-28-Red.

¹³⁵ ICC-01/04-02/06-179-Conf-AnxB-46-Red.

¹³⁶ ICC-01/04-02/06-179-Conf-AnxB-49-Red.

¹³⁷ ICC-01/04-02/06-179-Conf-AnxB-51-Red.

¹³⁸ ICC-01/04-02/06-179-Conf-AnxB-57-Red.

¹³⁹ ICC-01/04-02/06-179-Conf-AnxB-69-Red.

¹⁴⁰ ICC-01/04-02/06-179-Conf-AnxB-72-Red.

¹⁴¹ ICC-01/04-02/06-179-Conf-AnxB-86-Red.

¹⁴² ICC-01/04-02/06-179-Conf-AnxB-92-Red.

¹⁴³ ICC-01/04-02/06-179-Conf-AnxB-113-Red.

¹⁴⁴ ICC-01/04-02/06-179-Conf-AnxB-116-Red.

¹⁴⁵ ICC-01/04-02/06-179-Conf-AnxB-124-Red.

¹⁴⁶ ICC-01/04-02/06-179-Conf-AnxB-127-Red.

¹⁴⁷ ICC-01/04-02/06-179-Conf-AnxB-131-Red.

¹⁴⁸ ICC-01/04-02/06-179-Conf-AnxB-133-Red.

the date of birth or age of applicants a/00042/13,¹⁵⁰ a/00406/13,¹⁵¹ a/00577/13,¹⁵² a/00662/13¹⁵³ and a/01308/13.¹⁵⁴ The Prosecution accepts the VPRS's conclusion that these are minor discrepancies caused by transcription or copying errors and that the identity and kinship are sufficiently established for these applicants.

29. The Prosecution notes that applicant a/01308/13 is Prosecution witness DRC-OTP-P-0010. The Trial Chamber in the *Lubanga* case did not find that the Prosecution had established her age beyond reasonable doubt; as a result, the Majority of the Trial Chamber (Judge Odio-Benito dissenting) withdrew her victim status.¹⁵⁵ The Trial Chamber found, however, that DRC-OTP-P-0010 may have been a member of the UPC/FPLC, and that her appearance in a video with other UPC/FPLC commanders "speaks for itself."¹⁵⁶ The Prosecution is relying on this witness in the case against Bosco Ntaganda in regard to the events she experienced as a soldier in the UPC/FPLC and REDACTED but is not relying upon her as a child soldier, even if it is possible that the witness was under the age of 15 at the relevant time. The Prosecution supports the witness's victim application for Pre-Trial Chamber II to consider afresh.

30. The Prosecution notes that VPRS does not specify whether applicants a/00170/13,¹⁵⁷ a/00413/13¹⁵⁸ and a/00948/13¹⁵⁹ provided documents establishing the identities of, and the kinship between, the applicants and their deceased relatives. Given that the Prosecution does not have access to the supporting documentation,

¹⁴⁹ ICC-01/04-02/06-179-Conf-AnxB-139-Red.

¹⁵⁰ ICC-01/04-02/06-179-Conf-AnxB-8-Red.

¹⁵¹ ICC-01/04-02/06-179-Conf-AnxB-28-Red.

¹⁵² ICC-01/04-02/06-179-Conf-AnxB-39-Red.

¹⁵³ ICC-01/04-02/06-179-Conf-AnxB-52-Red.

¹⁵⁴ ICC-01/04-02/06-179-Conf-AnxB-154-Red.

¹⁵⁵ ICC01/04-01/06-2842, paras. 248-268.

¹⁵⁶ ICC01/04-01/06-2842, paras. 254-257 and 268.

¹⁵⁷ ICC-01/04-02/06-179-Conf-AnxB-15-Red.

¹⁵⁸ ICC-01/04-02/06-179-Conf-AnxB-31-Red.

¹⁵⁹ ICC-01/04-02/06-179-Conf-AnxB-130-Red.

it defers to the Single Judge's determination on the consistency of such allegations with the information provided in the application forms and on the impact of the missing data on these applications. The Prosecution submits that should the absence of certain data require further clarification, the applicants should be requested to submit supplementary documents in order to establish their relatives' identity and kinship.

31. The Prosecution also notes a discrepancy between the date of birth and the alleged age of applicant a/00719/13¹⁶⁰ at the time when he was enlisted into the UPC. 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 allegation with the information provided in the application form and in the letter of the local authority. The Prosecution submits that should the matter require further clarification, the applicant should be requested to submit supplementary information in order to establish his age at the time when he was enlisted.

32. The VPRS also noted miscellaneous missing administrative data in the application forms or in the letters from local authorities submitted by applicants a/00003/13,¹⁶¹ a/00016/13,¹⁶² a/00069/13,¹⁶³ a/00080/13,¹⁶⁴ a/00175/13,¹⁶⁵ a/00354/13,¹⁶⁶ a/00412/13,¹⁶⁷ a/00575/13,¹⁶⁸ a/00630/13,¹⁶⁹ a/00661/13,¹⁷⁰ a/00664/13,¹⁷¹ a/00666/13,¹⁷²

¹⁶⁰ ICC-01/04-02/06-179-Conf-AnxB-95-Red.

¹⁶¹ ICC-01/04-02/06-179-Conf-AnxB-1-Red.

¹⁶² ICC-01/04-02/06-179-Conf-AnxB-2-Red.

¹⁶³ ICC-01/04-02/06-179-Conf-AnxB-9-Red.

¹⁶⁴ ICC-01/04-02/06-179-Conf-AnxB-11-Red.

¹⁶⁵ ICC-01/04-02/06-179-Conf-AnxB-16-Red.

¹⁶⁶ ICC-01/04-02/06-179-Conf-AnxB-26-Red.

¹⁶⁷ ICC-01/04-02/06-179-Conf-AnxB-30-Red.

¹⁶⁸ ICC-01/04-02/06-179-Conf-AnxB-38-Red.

¹⁶⁹ ICC-01/04-02/06-179-Conf-AnxB-47-Red.

¹⁷⁰ ICC-01/04-02/06-179-Conf-AnxB-51-Red.

¹⁷¹ ICC-01/04-02/06-179-Conf-AnxB-54-Red.

¹⁷² ICC-01/04-02/06-179-Conf-AnxB-56-Red.

a/00668/13,¹⁷³ a/00677/13,¹⁷⁴ a/00679/13,¹⁷⁵ a/00687/13,¹⁷⁶ a/00690/13,¹⁷⁷ a/00692/13,¹⁷⁸ a/00700/13,¹⁷⁹ a/00703/13,¹⁸⁰ a/00712/13,¹⁸¹ a/00743/13,¹⁸² a/00744/13,¹⁸³ a/00747/13,¹⁸⁴ a/00748/13,¹⁸⁵ a/00750/13,¹⁸⁶ a/00923/13,¹⁸⁷ a/00925/13,¹⁸⁸ a/00932/13,¹⁸⁹ a/00948/13,¹⁹⁰ a/01183/13,¹⁹¹ a/01243/13,¹⁹² a/01295/13¹⁹³ and a/01324/13.¹⁹⁴ 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.

Conclusion

33. The Prosecution submits that all 160 applicants meet the requirements under article 68(3) to participate as victims in the pre-trial proceedings in this case,

¹⁷³ ICC-01/04-02/06-179-Conf-AnxB-58-Red.
¹⁷⁴ ICC-01/04-02/06-179-Conf-AnxB-67-Red.
¹⁷⁵ ICC-01/04-02/06-179-Conf-AnxB-69-Red.
¹⁷⁶ ICC-01/04-02/06-179-Conf-AnxB-77-Red.
¹⁷⁷ ICC-01/04-02/06-179-Conf-AnxB-79-Red.
¹⁷⁸ ICC-01/04-02/06-179-Conf-AnxB-80-Red.
¹⁷⁹ ICC-01/04-02/06-179-Conf-AnxB-85-Red.
¹⁸⁰ ICC-01/04-02/06-179-Conf-AnxB-88-Red.
¹⁸¹ ICC-01/04-02/06-179-Conf-AnxB-92-Red.
¹⁸² ICC-01/04-02/06-179-Conf-AnxB-114-Red.
¹⁸³ ICC-01/04-02/06-179-Conf-AnxB-115-Red.
¹⁸⁴ ICC-01/04-02/06-179-Conf-AnxB-118-Red.
¹⁸⁵ ICC-01/04-02/06-179-Conf-AnxB-119-Red.
¹⁸⁶ ICC-01/04-02/06-179-Conf-AnxB-121-Red.
¹⁸⁷ ICC-01/04-02/06-179-Conf-AnxB-127-Red.
¹⁸⁸ ICC-01/04-02/06-179-Conf-AnxB-128-Red.
¹⁸⁹ ICC-01/04-02/06-179-Conf-AnxB-129-Red.
¹⁹⁰ ICC-01/04-02/06-179-Conf-AnxB-130-Red.
¹⁹¹ ICC-01/04-02/06-179-Conf-AnxB-137-Red.
¹⁹² ICC-01/04-02/06-179-Conf-AnxB-142-Red.
¹⁹³ ICC-01/04-02/06-179-Conf-AnxB-152-Red.
¹⁹⁴ ICC-01/04-02/06-179-Conf-AnxB-160-Red.

provided that the Single Judge is satisfied that the attached identity documentation sufficiently proves their identity and kinship.



Fatou Bensouda

Prosecutor

Dated this 30th Day of December 2013
At The Hague, the Netherlands