

PUBLIC ANNEX A2

Annex A

Application of victim a/0403/08 [Annex 11]

Means of identification

The Chamber was not provided with any identification document in the original application.¹ In a supplementary filing, the Chamber was provided with a signed declaration of a single witness as to the identity of the applicant, including the election card of the person making the statement.²

Claim to victim status

The applicant claims that in [REDACTED] 2003 he was recruited by force by the UPC militia of Thomas Lubanga, when he was [REDACTED] years old. He was then trained in [REDACTED] for [REDACTED] weeks where he learnt to use weapons. He was then sent to fight against the FNI. He killed and committed pillage. He was demobilised in [REDACTED] 2003. His father was killed in [REDACTED] 2003. The applicant states that as a result of his recruitment he lost everything, and he suffers in consequence of having been left without assistance or a family.³

Phases of the proceedings

The applicant submits he has an interest in participating in all phases of the proceedings.⁴

Defence observations

The defence submits that the application does not include any identity documents. As a result, the application does not meet the *prima facie* conditions required by Rule 85 of the Rules of the Rules, and therefore the applicant's request to participate in the proceedings should be rejected.⁵ The defence further contends that the applicant is a minor and in his case the application should be presented by his parent or legal guardian. As a result, the defence suggests that the applicant does not meet the *prima*

¹ Second Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1501-Conf-Exp, 21 November 2008, Annex 2, pages 17-18 and Annex 11.

² Report on Supplementary information concerning applications for participation filed with the "Second Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court", dated 21 November 2008 (ICC-01/04-01/06-1501-Conf-Exp), 3 December 2008, pages 3-4 and Anx I.

³ Second Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1501-Conf-Exp, 21 November 2008, Annex 2, pages 17-18 and Annex 11.

⁴ Second Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1501-Conf-Exp, 21 November 2008, Annex 2, pages 17-18 and Annex 11.

⁵ Observations de la Défense sur les 15 demandes de participation à la procédure et les 30 demandes de participation complémentaires communiquées le 27 novembre 2008 ; Réponse de la Défense aux observations des représentants légaux relatives aux 105 demandes de participation communiquées le 20 mai 2008 ; et Observations de la Défense relatives aux victimes indirectes, 5 December 2008, ICC-01/04-01/06-1536, paragraph 35.

facie conditions under Rule 85 of the Rules, and therefore his application to participate in the proceedings should be rejected.⁶

Prosecution observations

The prosecution submits that the application is insufficiently complete under the criteria established by the Trial Chamber and Pre-Trial Chamber I, since it does not include adequate proof of identification, and the signed statement of a single person does not meet the requirements established by the Court. The prosecution also submits that the applicant is a minor and the consent of a parent or legal guardian is required. In all the circumstances, the prosecution submits that the application is incomplete.⁷

Victim's legal representative observations

The legal representative did not file a reply.

Legal representation

The applicant has been represented thus far by Mr Hervé Diakiese.⁸

Chamber's analysis and decision

The Chamber considers that the documents and other material provided to the Chamber do not fulfil the requirements as established in the Trial Decision on victims' participation, namely that in those instances where it is not possible for an applicant to acquire or produce the necessary documents, the Chamber will consider a statement signed by two credible witnesses attesting to the identity of the applicant and including, where relevant, the relationship between the victim and the person acting on his or her behalf, providing there is consistency between the statement and the application. The Chamber stated that the statement should be accompanied by proof of the identity of the two witnesses.⁹

Although a lack of documents may be justified for applicants who are or have been confronted with particular difficulties, no explanation has been provided for the absence of a second declaration signed by a witness to support this application. Consequently, the application is materially incomplete. The Chamber instructs the VPRS to contact the applicant and his legal representative in order to seek appropriate documentation.

⁶ Observations de la Défense sur les 15 demandes de participation à la procédure et les 30 demandes de participation complémentaires communiquées le 27 novembre 2008 ; Réponse de la Défense aux observations des représentants légaux relatives aux 105 demandes de participation communiquées le 20 mai 2008 ; et Observations de la Défense relatives aux victimes indirectes, 5 December 2008, ICC-01/04-01/06-1536, paragraph 38.

⁷ Prosecution's Observations on 3 Redacted Applications for Victim Participation to the Case of Applicants a/0403/08, a/0407/08, a/0408/08, 10 December 2008, ICC-01/04-01/06-1550, paragraphs 6-7.

⁸ Second Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1501-Conf-Exp, 21 November 2008, Annex 2, pages 17-18 and Annex 11.

⁹ Decision on victims' participation, 18 January 2008, ICC-01/04-01/06-1119, paragraph 88.

Application of victim a/0407/08 [Annex 15]

Means of identification

The Chamber has been provided with a school certificate for the applicant.¹⁰ In a supplementary filing, the Chamber was provided with a signed declaration of a single witness as to the identity of the applicant, including the election card of the person making the statement.¹¹

Claim to victim status

The applicant states that in [REDACTED] 2002 he was recruited by force by the UPC of Thomas Lubanga when he was [REDACTED] years old. He was trained and he learnt to use weapons, and he was given a military uniform. He was used as [REDACTED], and he participated in rapes and acts of pillage against civilians. He was also used in combat against the FNI. In [REDACTED] and [REDACTED] 2003 he participated in battles in [REDACTED]. His house was burned by the UPC and since demobilisation he has been living in wholly deprived circumstances and he suffers morally and physically.¹²

Phases of the proceedings

The applicant submits he has an interest in participating in all phases of the proceedings.¹³

Defence observations

The defence submits that the applicant is a minor and in this case the application should be presented by his parent or legal guardian. As a result, the defence states that the applicant does not meet the *prima facie* conditions under Rule 85 of the Rules, and therefore the application should be rejected.¹⁴

Prosecution observations

The prosecution submits that the application is insufficiently complete under the criteria established by the Trial Chamber and Pre-Trial Chamber I, since it does not include adequate proof of identification, and the signed statement of a single person does not meet the requirements established by the Court. The prosecution also

¹⁰ Second Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1501-Conf-Exp, 21 November 2008, Annex 2, pages 25-26 and Annex 15.

¹¹ Report on Supplementary information concerning applications for participation filed with the "Second Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court", dated 21 November 2008 (ICC-01/04-01/06-1501-Conf-Exp), 3 December 2008, page 4 and Anx2.

¹² Second Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1501-Conf-Exp, 21 November 2008, Annex 2, pages 25-26 and Annex 15.

¹³ Second Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1501-Conf-Exp, 21 November 2008, Annex 2, pages 25-26 and Annex 15.

¹⁴ Observations de la Défense sur les 15 demandes de participation à la procédure et les 30 demandes de participation complémentaires communiquées le 27 novembre 2008 ; Réponse de la Défense aux observations des représentants légaux relatives aux 105 demandes de participation communiquées le 20 mai 2008 ; et Observations de la Défense relatives aux victimes indirectes, 5 December 2008, ICC-01/04-01/06-1536, paragraph 38.

submits that the applicant is a minor and the consent of a parent or legal guardian is required. In all the circumstances, the prosecution submits that the application is incomplete.¹⁵

Victim's legal representative observations

The legal representative did not file a reply.

Legal representation

The applicant has been represented thus far by Mr Hervé Diakiese.¹⁶

Chamber's analysis and decision

The Chamber considers that the documents and other material provided to the Chamber assist in demonstrating the identity of the applicant in accordance with the Trial Chamber's Decision on victims' participation. Although the school certificate does not provide information in relation to his date of birth and his age at the time of the relevant events, the applicant has precisely and unequivocally indicated in his application that he was born on [REDACTED] 1992, and thus was [REDACTED] years old at the time of the relevant events. Furthermore, the community leader who signed the additional declaration submitted to the Chamber certifies that [REDACTED] was born on [REDACTED] 1992.

The Chamber notes that the applicant has consented to someone else acting on his behalf. The question that arises is whether the applicant needs to establish that the person acting on his behalf is either a relative or legal guardian, in order to participate in the proceedings. Alternatively, is the Chamber entitled to act on the application that has been submitted "by a person" on the applicant's behalf, which indicates clearly that the victim wishes to participate in these proceedings.

The Rome Statute framework is clear on this issue. There are no provisions establishing categories of people who alone are allowed to act for victims, whether the latter are adults or children. Rule 89(3) of the Rules simply states that "(a)n application ... 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". It follows that the person acting on behalf of a victim does not have to be a relative or a legal guardian because, within the Rules, the "person acting" is undefined and unrestricted.

In support of this approach, the inevitable experience of most, if not all, children who were recruited in the circumstances alleged in this trial, is that they will have been separated from their parents and other adult relatives at a relatively young age. Many of them have been living, to put it at its lowest, disjointed and very unsettled lives for a number of years. Some children have still not been reunited with their

¹⁵ Prosecution's Observations on 3 Redacted Applications for Victim Participation to the Case of Applicants a/0403/08, a/0407/08, a/0408/08, 10 December 2008, ICC-01/04-01/06-1550, paragraphs 6-7.

¹⁶ Second Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1501-Conf-Exp, 21 November 2008, Annex 2, pages 25-26 and Annex 15.

families and they do not have legal guardians. To the extent that they have managed to find representation at all, they are often assisted by people such as schoolteachers and other similar community figures.

In this regard, the Chamber notes the General Comment No. 6(2005) of the Committee on the Rights of the Child in which it was recognised that separated or unaccompanied children (defined as children who have been separated from both parents, other relatives or from any previous legal or customary primary caregiver), in some situations “have no access to proper and appropriate identification, registration, age assessment, documentation family tracing, guardianship systems or legal advice”.¹⁷ The Committee further noted that “in large-scale crises, where it will be difficult to establish guardianship arrangements on an individual basis, the rights and best interests of separated children should be safeguarded and promoted by States and organizations working on behalf of these children”.¹⁸

The Chamber has paid careful attention to the experience of the Registry in the field in the DRC, and particularly its opinion that “legal guardianship is very rare in Eastern Congo and many children who do not live with their parents, for instance because they have not yet been reunited with their families after being demobilised from an armed group or because they experience difficulties in reintegration, are looked after by persons such as school principals, transition centres for demobilised children, who do not have a formal status in relation to the child”.

The real possibility exists, therefore, that a number of applicants who seek to participate in these proceedings will be living in circumstances where they cannot be represented by their parents, other family relatives or a legal guardian. In relation to these victims, who are over 18 years of age or are close thereto, they have individually applied through a person acting on their behalf (who is not their next-of-kin or their legal guardian) to participate in this trial as a victim. In each instance, the application accords with the express requirements of Rule 89 (3) of the Rules.

All of the matters set out above provide strong support for the approach that the Rules have not restricted the types of people who are able to act on behalf of all victims and including child victims.

Moreover, in this case, the Chamber notes that the applicant was [REDACTED] years old at the time the application was completed, and in the additional declaration submitted to the Chamber the person signing the declaration states that he is acting as [REDACTED]. Thus, the Chamber considers

¹⁷ Committee on the Rights of the Child, General Comment No. 6 (2005), 1 September 2005, CRC/GC/2005/6, paragraphs 3, 7 and 8. Although this General Comment applies to children that have crossed and international border, the Committee has acknowledged that there are many similar challenges related to internally displaced unaccompanied and separated children and encourages States Parties to adopt the relevant aspects of the General Comment in relation to internally displaced unaccompanied and separated children (paragraph 5).

¹⁸ Committee on the Rights of the Child, General Comment No. 6 (2005), 1 September 2005, CRC/GC/2005/6, paragraph 38.

that this person has at least *de facto* authority in the community and is in all probability acting as *de facto* guardian of the applicant. The Chamber also notes that it has been provided with a certificate stating that the person signing the declaration is the [REDACTED] in the village.¹⁹

In all the circumstances, the Trial Chamber determines that the applicant has given sufficient evidence to establish, *prima facie*, that he is a victim under Rules 85(a) of the Rules, as the Chamber has been provided with information that leads it to conclude that the applicant has suffered personal harm as a result of crimes confirmed against the accused, namely his alleged conscription and/or enlistment and/or use to participate actively in the hostilities, between September 2002 and 13 August 2003.²⁰

Application of victim a/0408/08 [Annex 16]

Means of identification

The Chamber was not provided with any identification document for the applicant in the original application form.²¹ In a supplementary filing, the Chamber was provided with a single signed declaration of a witness as to the identity of the applicant, along with the election card of the person making the statement.²²

Claim to victim status

The applicant states that he was recruited by force by the UPC in [REDACTED] 2002, when he was [REDACTED] or [REDACTED] years old. He witnessed the murder of his relatives. He was trained and used in combat against the FNI. He killed people and committed pillage. He was demobilised in [REDACTED] 2003. He claims that as a result of his recruitment he is very anxious and has recurring nightmares.²³

Phases of the proceedings

¹⁹ Report on Supplementary information concerning applications for participation filed with the "Second Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court", dated 21 November 2008 (ICC-01/04-01/06-1501-Conf-Exp), 3 December 2008, page 4 and Annex 2.

²⁰ Decision on victims' participation, 18 January 2008, ICC-01/04-01/06-1119, as confirmed, amended and reversed by the Appeals Chamber's 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.

²¹ Second Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1501-Conf-Exp, 21 November 2008, Annex 2, pages 27-28 and Annex 16.

²² Report on Supplementary information concerning applications for participation filed with the "Second Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court", dated 21 November 2008 (ICC-01/04-01/06-1501-Conf-Exp), 3 December 2008, page 4 and Annex 3.

²³ Second Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1501-Conf-Exp, 21 November 2008, Annex 2, pages 27-28 and Annex 16.

The applicant submits he has an interest in participating in all phases of the proceedings.²⁴

Defence observations

The defence submits that the application does not include any identity documents. As a result, the application does not meet the *prima facie* conditions required by Rule 85 of the Rules of the Rules, and therefore the applicant's request to participate in the proceedings should be rejected.²⁵

Prosecution observations

The prosecution submits that the applicant has stated he was born in 1990, therefore it should be assumed that the applicant was not a minor when the application was submitted. However, since the application does not contain a copy of an identity document and only includes a written declaration by one witness, it is incomplete.²⁶

Victim's legal representative observations

The legal representative did not file a reply.

Legal representation

The applicant has been represented thus far by Mr Hervé Diakiese.²⁷

Chamber's analysis and decision

The Chamber considers that the documents and other material provided to the Chamber do not fulfil the requirements as established in the Trial Decision on victims' participation, namely that in those instances where it is not possible for an applicant to acquire or produce documents the Chamber will consider a statement signed by two credible witnesses attesting to the identity of the applicant and including, where relevant, the relationship between the victim and the person acting on his or her behalf, providing there is consistency between the statement and the application. The Chamber stated that the statement should be accompanied by proof of identity of the two witnesses.²⁸

Although a lack of documents may be justified for applicants who are or have been confronted with particular difficulties, no explanation has been provided for the

²⁴ Second Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1501-Conf-Exp, 21 November 2008, Annex 2, pages 27-28 and Annex 16

²⁵ Observations de la Défense sur les 15 demandes de participation à la procédure et les 30 demandes de participation complémentaires communiquées le 27 novembre 2008 ; Réponse de la Défense aux observations des représentants légaux relatives aux 105 demandes de participation communiquées le 20 mai 2008 ; et Observations de la Défense relatives aux victimes indirectes, 5 December 2008, ICC-01/04-01/06-1536, paragraph 35.

²⁶ Prosecution's Observations on 3 Redacted Applications for Victim Participation to the Case of Applicants a/0403/08, a/0407/08, a/0408/08, 10 December 2008, ICC-01/04-01/06-1550, paragraphs 8-9.

²⁷ Second Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, ICC-01/04-01/06-1501-Conf-Exp, 21 November 2008, Annex 2, pages 27-28 and Annex 16.

²⁸ Decision on victims' participation, 18 January 2008, ICC-01/04-01/06-1119, paragraph 88.

absence of a second declaration signed by a witness to support this application. Consequently, the application is materially incomplete. The Chamber instructs the VPRS to contact the applicant and his legal representative in order to seek appropriate documentation.