

Annex A1

Public

Annex A

Confidential *ex parte* Registry only

Application of victim a/0292/09 [Annex 2]

The means of identification

The Chamber has been provided with two student cards for the applicant¹

The claim to victim status

The applicant claims that in [REDACTED] 2002 (when he was 11 years old) he was forcibly recruited by UPC combatants. Militiamen entered his house, killed his father and pillaged their property, and then took him to [REDACTED] for training. He fought in [REDACTED], [REDACTED] and [REDACTED], until he left the UPC in [REDACTED] 2003. The applicant particularly suffered from the death of his father, the loss of his property and his recruitment. He also suffers from loss of memory.²

The phases of the proceedings

The applicant submits he has an interest in participating in all phases of the proceedings.³

The observations of the Defence

In general, the defence argues that due to redactions to essential information – such as the relevant locations and the exact date of the relevant events – it is unable to make substantive submissions on the admissibility of these applications. The defence also contends that the applications are vague and they lack supporting documentation, thus affecting the accused's rights under Rule 89(1) of the Rules of Procedure and Evidence ("Rules") and the Chamber's ability to make informed decisions.⁴ As regards this victim, the defence opposes his application given that there are contradictions that affect the applicant's reliability, namely the applicant states in his application that he was born in 1990, although the date of birth set out in the documents annexed to the application is 1991. Likewise, the defence argues that the name in the application form is different from the name in the identification document.⁵ It appears that in the application form the name is recorded as "[REDACTED] [REDACTED]", (reflecting the first of the student identity cards), whereas the second card (which is slightly damaged and therefore not wholly legible), appears to give the name as "[REDACTED]"

¹ Fourth Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, 26 June 2009, ICC-01/04-01/06-2000-Conf-Exp, Anx2, pages 18-21

² *Ibid.*, pages 9-11

³ *Ibid.*, page 9

⁴ Observations de la Défense sur les 2 demandes de participation à la procédure transmises le 6 juillet 2009, 10 July 2009, ICC-01/04-01/06-2034, paragraphs 3-4

⁵ *Ibid.* paragraphs 5-8

The observations of the Prosecution

The prosecution submits that the applicant meets, *prima facie*, the criteria for participation. Although the application was submitted after the trial began (indeed, when the prosecution's case was almost complete), the prosecution does not oppose the request for this reason, so long as the victim's participation does not impede the efficiency and management of the proceedings.⁶

Legal representation

The applicant has been represented thus far by the Mr Diakiese.⁷

The Chamber's analysis and decision

The documents and other material provided have assisted the Chamber in determining the identity of the applicant in accordance with the Trial Chamber's Decision on victims' participation. Although there appear to be contradictions as to the exact year of birth of the applicant (1990 or 1991), the Chamber considers that the information provided (particularly the applicant's two student cards) result in a *prima facie* determination that the applicant was approximately 11 years old at the time of the relevant events. Additionally, the differences as regards the applicant's name are not such as fatally to undermine the reliability of this application, given the potentially wide range of reasons why individuals in the Democratic Republic of Congo may sometimes use various combinations or versions of names. This phenomenon has been dealt with in evidence by a significant number of prosecution witnesses.

The applicant has provided sufficient evidence to establish, *prima facie*, that he is a victim under Rules 85(a) of the Rules: the applicant suffered personal harm as a result of the crimes confirmed against the accused, namely his alleged conscription, enlistment or use to participate actively in the hostilities, between September 2002 and 13 August 2003.⁸

Application of victim a/0398/09 [Annex 3]

The means of identification

The Chamber has been provided with a student card for the applicant.⁹

The claim to victim status

The applicant claims that he was recruited by UPC combatants in [REDACTED] 2002, when he was [REDACTED] years old. His father, who tried to prevent his recruitment, was

⁶ Prosecution's Observations on Two new Applications for Victim Participation by applicants a/0292/09 and a/0398/09, 14 July 2009, ICC-01/04-01/06-2048, paragraphs 2-6

⁷ Fourth Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, 26 June 2009, ICC-01/04-01/06-2000-Conf-Exp, Ann2, page 12

⁸ 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

⁹ Fourth Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, 26 June 2009, ICC-01/04-01/06-2000-Conf-Exp, Ann3, pages 18-19

killed. He was sent to [REDACTED] to be trained and he was later deployed in [REDACTED] and [REDACTED] to fight against the Balendus. He also fought at [REDACTED] and [REDACTED]. He states that he did things that are incomprehensible: he killed many people, he used drugs, he pillaged and looted property, and he raped women. As a result, the applicant suffers psychologically particularly from the death of his father, his recruitment and the loss of his youth.¹⁰

The phases of the proceedings

The applicant submits he has an interest in participating in all phases of the proceedings.¹¹

The observations of the Defence

In general, the defence argues that due to redactions to essential information – such as the relevant locations and the exact date of the relevant events – it is unable to make substantive submissions on the admissibility of these applications. The defence also contends that the applications are vague and they lack supporting documentation, thus affecting the accused's rights under Rule 89(1) of the Rules and the Chamber's ability to make informed decisions.¹² However, the defence has no observations as regards this applicant in particular.

The observations of the Prosecution

The prosecution submits that the applicant meets, *prima facie*, the criteria for participation. Although the application was submitted after the trial began (indeed, when the prosecution's case was almost complete), the prosecution does not oppose the request for this reason, so long as the victim's participation does not impede the efficiency and management of the proceedings.¹³

Legal representation

The applicant has been represented thus far by the Mr Mulenda.¹⁴

The Chamber's analysis and decision

The documents and other material provided have assisted the Chamber in determining the identity of the applicant in accordance with the Trial Chamber's Decision on victims' participation.

The applicant has provided sufficient evidence to establish, *prima facie*, that he is a victim under Rules 85(a) of the Rules: the applicant suffered personal harm as a result of the crimes confirmed against the accused, namely his alleged conscription,

¹⁰ *Ibid*, pages 9-11

¹¹ *Ibid*, page 9

¹² Observations de la Défense sur les 2 demandes de participation à la procédure transmises le 6 juillet 2009, 10 July 2009, ICC-01/04-01/06-2034, paragraphs 3-4

¹³ Prosecution's Observations on Two new Applications for Victim Participation by applicants a.0292.09 and a.0398.09, 14 July 2009, ICC-01/04-01/06-2048, paragraphs 2-6

¹⁴ Fourth Report to Trial Chamber I on Victims' Applications under Regulation 86.5 of the Regulations of the Court, 26 June 2009, ICC-01/04-01/06-2000-Conf-Exp, Anx3, page 12

enlistment or use to participate actively in the hostilities, between September 2002 and 13 August 2003¹⁵

¹⁵ 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