

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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No.: ICC-01/04
Date: 18 August 2011

PRE-TRIAL CHAMBER I

Before: Judge Sanji Mmasenono Monageng, Single Judge

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

Public Document

Redacted version of the Decision on 13 applications for victims' participation in proceedings relating to the situation in the Democratic Republic of the Congo

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

The Office of the Prosecutor

Mr Luis Moreno-Ocampo, Prosecutor
Ms Fatou Bensouda, Deputy Prosecutor

Counsel for the Defence

Legal Representatives of Victims

Ms Paolina Massidda

Legal Representatives of Applicants

Me Emmanuel Daoud
Me Patrick Baudouin

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

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

Mr Xavier-Jean Keita

States Representatives

Amicus Curiae

REGISTRY

Registrar

Ms Silvana Arbia

Deputy Registrar

Mr Didier Preira

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Ms Fiona McKay

Others

Judge Sanji Mmasenono Monageng, Judge of Pre-Trial Chamber I of the International Criminal Court (the “Chamber” and the “Court” respectively), acting as a Single Judge responsible for carrying out the functions of the Chamber, including all the issues related to victims’ applications, in relation to the situation in the Democratic Republic of the Congo (“DRC”) and any case emanating therefrom,¹ hereby renders this decision.

Procedural History

1. On 24 September 2010, the Registry filed the “Report on applications for participation in proceedings submitted by Me Daoud and Me Baudouin” (“Report”),² together with thirteen applications for victims’ participation in proceedings in the situation of the DRC (“Applications”) annexed to that Report.³

2. On 18 November 2010, the Prosecutor filed the “Prosecution’s Observations on 12 Applications for Victim Participation in the Situation in the Democratic Republic of the Congo” (“Prosecutor’s Observations”).⁴

3. On 19 November 2010, the Office of Public Counsel for the Defence (“OPCD”) filed the “Observations du Bureau du Conseil Public pour la Défense sur les 13 demandes de participation en tant que victime dans la situation en République Démocratique du Congo” (“OPCD Observations”).⁵

4. On 26 November 2010, the Prosecutor filed the “Prosecution’s Observations on one additional Application for Victim Participation in the Situation in the Democratic Republic of the Congo”,⁶ whereby he makes observations on an application which, due to a technical problem, was not discussed in the Prosecutor’s Observations, and requests the Single Judge to vary the time limit for observations on that application. The Single Judge

¹ “Decision on the designation of a Single Judge of Pre-Trial Chamber”, 26 July 2010, ICC-01/04-569.

² ICC-01/04-579-Conf-Exp.

³ The report was filed pursuant to the Single Judge’s “Order for the transmission of applications for participation” dated 25 August 2010; ICC-01/04-574-Conf.

⁴ ICC-01/04-585-Conf; ICC-01/04-585-Red filed on 29 November 2010.

⁵ ICC-01/04-586-Conf.

⁶ ICC-01/04-588-Conf.

agrees that good cause was shown for the extension of the time limit in this instance. The extension sought by the Prosecutor is therefore granted in accordance with regulation 35 of the Regulations of the Court (“Regulations”).

5. On 11 April 2011, the Chamber issued the “Decision on victims’ participation in proceedings relating to the situation in the Democratic Republic of the Congo” (“Decision”),⁷ whereby the Chamber set out a new framework for victims’ participation in proceedings at the stage of the situation in the DRC, together with instructions directed to the Victims Participation and Reparation Section (“VPRS”), which is charged with implementing the said decision. The Chamber decided, *inter alia*, that the present Applications will be dealt with in a different manner, in that a decision on whether they meet the requirements of rule 85 of the Rules of Procedure and Evidence (“Rules”) will be made at this stage, rather than at the time a judicial proceeding in the situation in the DRC is conducted before the Chamber.

I. APPLICABLE LAW

6. As regards natural persons applying for participation as victims, rule 85 (a) of the Rules provides:

‘Victims’ means natural persons who have suffered harm as a result of the commission of any crime within the jurisdiction of the Court.

7. At this stage, the Single Judge must ascertain that the following criteria are met: (i) the applicant must be a natural person; (ii) the applicant must have suffered harm; (iii) the crime from which the harm resulted must fall within the jurisdiction of the Court. The Single Judge reiterates that the applicants are only required to demonstrate that the requirements set out in rule 85 (a) of the Rules are met *prima facie*.⁸

⁷ ICC-01/04-593.

⁸ *Prosecutor v. Bahar Idriss Abu Garda*, “Decision on the 34 Applications for Participation at the Pre-Trial Stage of the Case”, 25 September 2009, ICC-02/05-02/09-121 (“Decision on 34 Applications”), para. 14.

8. With respect to the requirement that the identity of the applicant as a natural person be sufficiently established, the Single Judge recalls that a document submitted in order to prove an applicant's identity should be (i) issued by a recognised public authority; (ii) stating the name and the date of birth of the holder, and (iii) showing a photograph of the holder.⁹

9. As regards organisations and institutions seeking participation as victims, rule 85(b) of the Rules states that:

"Victims may include organisations and institutions that have sustained direct harm to any of their property which is dedicated to religion, education, art or science or charitable purposes, and to their historic monuments, hospitals and other places and objects for humanitarian purposes."

10. The criteria to be fulfilled in order for an organisation or institution to be recognized as a victim before the Court are the following:

- (i) the applicant must be an organisation or institution having property dedicated to religion, education, art or science or charitable purposes, or historic monuments, hospitals and other places and objects for humanitarian purposes;
- (ii) the organisation or institution must have sustained direct harm to any of that property or objects;
- (iii) the crime from which the harm resulted must fall within the jurisdiction of the Court.

II. INDIVIDUAL ASSESMENT OF APPLICATIONS FOR PARTICIPATION

Preliminary issues

11. The OPCD in its Observations submits that the voting cards cannot be accepted as a reliable proof of identity and, consequently, that the applicants that rely on voting cards as proof of identity should be rejected. In support of its argument, the OPCD refers to a

⁹ *Prosecutor v. Joseph Kony et al*, "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-02/04-01/05-252, para. 16.

decision of Trial Chamber I.¹⁰ The Single Judge notes that in that decision Trial Chamber I did not address the issue of reliability of voting cards as proof of identity in general. Instead, it addressed specific allegations made by the Prosecutor in respect of four duplicate election cards that were allegedly obtained in breach of Congolese law. Trial Chamber I found that they are *prima facie* reliable.¹¹ Furthermore, the Single Judge recalls her previous ruling that voting cards are acceptable as proof of identity.¹²

12. As regards applications a/0263/07, a/0264/07, a/0265/07 and a/0266/07, the Single Judge notes that there are significant discrepancies between the dates of birth or the Applicants' age provided in these applications and the dates of birth stated on their voting cards, appended to the applications as proof of their identity. Consequently, the Single Judge is of the view that their identity was not sufficiently established. The Single Judge indicates that, pursuant to rule 89(2) of the Rules, these Applicants may file new applications for participation.

Application a/0259/07

13. Application a/0259/07 is submitted by a man of Congolese nationality and Luba ethnicity. He provides a voting card as proof of his identity. The Single Judge is satisfied that the Applicant is a natural person and that his identity has been duly established.

14. Applicant a/0259/07 alleges that in August 2002, in [REDACTED], his two grandchildren were killed and another one was tortured by Ngiti soldiers. The Single Judge notes that the Applicant does not provide evidence of identity of the grandchildren and of relationship between them and him. As a result of the above lack of evidence regarding the said grandchildren, the Single Judge finds that this application cannot be granted in so far as emotional harm is alleged. The Applicant further states that his house was pillaged, apparently during the same attack, as a result of which he lost some of his

¹⁰ OPCD Observations, para. 20, quoting: *Prosecutor v. Thomas Lubanga Dyilo*, "Redacted Decision on the «Seconde requête de la Défense documents »", 17 November 2010, ICC-01/04-01/06-2596-Red, para. 30.

¹¹ *Ibid*, para. 30.

¹² Decision on 34 Applications, para. 8.

possessions. The Single Judge finds that there is sufficient evidence to establish *prima facie* that Applicant a/0259/07 suffered economic loss as a result of one or more crimes within the Court's jurisdiction, pursuant to article 5 of the Rome Statute ("Statute"). He therefore meets the criteria of rule 85(a) of the Rules.

Application a/0260/07

15. Application a/0260/07 is submitted by a man of Congolese nationality and Nande ethnicity, who provides a voting card as proof of his identity. The Single Judge is satisfied that the Applicant is a natural person and that his identity has been duly established.

16. Applicant a/0260/07 alleges that in December 2002, he was driving his van to Butembo and was stopped by militiamen of the *Mouvement pour la Libération du Congo* ("MLC") conducting the operation "Effacez le tableau", who took away his personal belongings and his van, together with the goods which he transported. He further states that in January 2003, the MLC militiamen pillaged his shop and killed his son. The Applicant does not provide evidence or detailed information regarding the identity of his son and of their relationship.¹³ As a result, the Single Judge finds that this application cannot be granted in so far as emotional harm resulting from the death of the son is alleged. The Single Judge, however, finds that there is sufficient evidence to establish *prima facie* that the Applicant suffered economic loss as a result of the commission of one or more crimes within the jurisdiction of the Court pursuant to article 5 of the Statute. The Single Judge is satisfied that Applicant a/0260/07 meets the criteria of rule 85(a) of the Rules.

¹³ *The Prosecutor v. Joseph Kony, Vincent Otti Okot Odhiabo, Dominic Ongwen*, "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", Appeals Chamber, 23 February 2009, ICC-02/04-179 ("Appeals Chamber Judgment"), para. 36.

Applicant a/0261/07

17. Application a/0261/07 is submitted by a man of Congolese nationality and Nande ethnicity who provides a voting card as proof of his identity. The Single Judge is satisfied that the Applicant is a natural person and that his identity has been duly established.

18. Applicant a/0261/07 alleges that in November 2002, in Mambasa, Ituri, MLC militiamen conducting the operation “Effacez le tableau” tortured and killed civilians. The Applicant claims that he was savagely tortured. He also had to watch the mutilation and killing of other civilians. He further claims that he suffered economic loss and, as a result, he now lives in poverty. The Single Judge finds that there is sufficient evidence to establish *prima facie* that the Applicant suffered physical harm and economic loss as a result of one or more crimes within the jurisdiction of the Court pursuant to article 5 of the Statute. The Single Judge is satisfied that Applicant a/0261/07 meets the criteria of rule 85(a) of the Rules.

Applicant a/0262/07

19. Application a/0262/07 is submitted by a man of Congolese nationality and Lokele ethnicity, who provides a voting card as proof of his identity. The Single Judge is satisfied that the Applicant is a natural person and that his identity has been duly established.

20. Applicant a/0262/07 alleges that in November 2002, MLC militiamen conducting the operation “Effacez le tableau” attacked the village of Mambasa, Ituri. After the militiamen bombed the village, the Applicant and other villagers went into hiding. The Applicant claims that the militiamen threatened him and pillaged his house. The Single Judge finds that there is sufficient evidence to establish *prima facie* that the Applicant suffered economic loss and emotional harm as a result of one or more crimes within the jurisdiction of the Court pursuant to article 5 of the Statute. The Single Judge is satisfied that Applicant a/0262/07 meets the criteria of rule 85(a) of the Rules.

21. Applicant a/0262/07 also states that his close colleague was killed during the attack. He does not provide any evidence regarding the identity of the deceased person and the nature of their relationship.¹⁴ The Single Judge therefore finds the Application cannot be granted in so far as the Applicant claims to have suffered emotional harm as a result of the death of his close colleague.

Application a/0267/07

22. Application a/0267/07 is submitted by a man of Congolese nationality and Topoke ethnicity who provides a voting card as proof of his identity. The Single Judge is satisfied that the Applicant is a natural person and that his identity has been duly established.

23. Applicant a/0267/07 alleges that in [REDACTED] 2002, militiamen of the *Union des Patriotes Congolais* ("UPC"), headed by Thomas Lubanga, attacked the villages of [REDACTED] and [REDACTED]. He states that he witnessed the UPC militiamen kill his brother and dismember his body, as well as acts of cannibalism. The Applicant further states that he lost some of his possessions in the attacks. The Single Judge finds that there is sufficient evidence to establish *prima facie* that Applicant a/0267/07 suffered emotional harm and economic loss as a result of one or more crimes within the Court's jurisdiction, pursuant to article 5 of the Statute. He therefore meets the criteria of rule 85(a) of the Rules.

Applicant a/0268/07

24. Application a/0268/07 is submitted by a man of Congolese nationality and Nande ethnicity who provides a voting card as proof of his identity. The Single Judge is satisfied that the Applicant is a natural person and that his identity has been duly established.

¹⁴ See Appeals Chamber Judgment, para. 36; *Prosecutor v. Bahar Idriss Abu Garda*, Pre-Trial Chamber I, "Decision on Applications a/0655/09, a/0656/09, a/0736/09 to a/0747/09, and a/0750/09 to a/0755/09 for Participation in the Proceedings at the Pre-Trial Stage of the Case", 19 March 2010, ICC-02/05-02/09-255, para. 30.

25. Applicant a/0268/07 alleges that on 6 August 2002, Hema militiamen of the UPC headed by Thomas Lubanga attacked Bunia, Ituri. The Applicant states that the militiamen broke into his house and looted his personal belongings, his car and his motorbike. He further states that his shop and farm were pillaged. The Single Judge finds that there is sufficient evidence to establish *prima facie* that the Applicant suffered economic loss as a result of one or more crimes within the jurisdiction of the Court pursuant to article 5 of the Statute. The Single Judge is satisfied that Applicant a/0268/07 meets the criteria of rule 85(a) of the Rules.

Application a/0269/07

26. Application a/0269/07 is submitted by a man of Congolese nationality and Bira ethnicity who provides a voting card as proof of his identity. The Single Judge is satisfied that the Applicant is a natural person and that his identity has been duly established.

27. Applicant a/0269/07 alleges that in August 2002, militiamen belonging to the Ngiti group headed by Kandro and the *Armée du Peuple Congolais* ("APC") attacked the Applicant and other people in [REDACTED], Ituri. The Applicant states that the attackers killed his brother and some other people. The Applicant does not provide evidence or detailed information regarding the identity of his brother and of their relationship.¹⁵ As a result, the Single Judge finds that this application cannot be granted in so far as emotional harm resulting from the death of a relative is alleged. He further states that the attackers looted his personal belongings. The Single Judge finds that there is sufficient evidence to establish *prima facie* that the Applicant suffered economic loss and emotional harm as a result of the commission of one or more crimes within the jurisdiction of the Court pursuant to article 5 of the Statute. The Single Judge is satisfied that Applicant a/0269/07 meets the criteria of rule 85(a) of the Rules.

¹⁵ See Appeals Chamber Judgment, para. 36.

Application a/2310/10

28. Application a/2310/10 is made on behalf of a parish ("Parish"). The application for participation on behalf of the Parish has been provided and it is signed by an Abbot ("Abbot"). At the time the application for participation was submitted, Abbot was a missionary in the Parish. The Single Judge notes that the application is accompanied by a Letter of Authorisation for Abbot to represent the Parish in the proceedings at the Court, prepared and signed by a bishop.

29. In order to prove his identity Abbot provides a copy of a document that seems to be a celebret issued by a diocese. The Single Judge recalls that the identity of an applicant should be confirmed by a document stating the name and the date of birth of the holder.¹⁶ While Abbot himself is not an applicant in this instance, this general requirement also applies to him as a person applying for participation on behalf of the Parish. The document provided by Abbot does not contain his full name, nor his date of birth, as opposed to the application form. Therefore, the Single Judge is not satisfied that application a/2310/10 complies with the requirement of sufficient identification. The Single Judge reiterates that, pursuant to rule 89(2) of the Rules, the Applicant may file a new application for participation.

Application a/2311/10

30. Application a/2311/10 appears to be made on behalf of a non-profit organisation based in the DRC ("Organisation"). According to the application and appended documents, the Organisation was established to propagate the gospel of Jesus Christ and create and manage centres for specialist medical treatment. The Single Judge is thus satisfied that the harm alleged in the application was caused to the Organisation's property dedicated to religion and to its hospital, within the meaning of rule 85(b) of the Rules.

¹⁶ See *supra* para. 8.

31. The original application was prepared in 2004 by the then executive director of the Organisation. The application details damage to the Organisation, as well as personal harm suffered by the then director ("Previous Director"). No proof of identity of the Previous Director is provided. However, an additional application for participation on behalf of the Organisation has been provided and it is signed by the current executive director of the Organisation. A proof of his identity is attached. The Single Judge will thus proceed on the understanding that application a/2311/10 has been filed on behalf of the Organisation, rather than as a personal application by the Previous Director. Should the Previous Director wish to seek participation in the proceedings as a natural person, within the meaning of rule 85(a) of the Rules, he will need to indicate such a wish to the VPRS and submit proof of identity.

32. The OPCD suggests that application a/2311/10 should not be accepted, as the Previous Director was not the director of the Organisation at the time of the events alleged the application.¹⁷ The Single Judge, however, finds this alleged fact to be of little relevance to the assessment of whether the requirements of rule 85(b) of the Rules are met, as it is the current director who applies for participation on behalf of the Organisation. In any event, the documents annexed to the application show that the four-year mandate of the Previous Director was apparently about to expire or had just expired in May 2004, which confirms that he was the director of the Organisation at the time of the alleged events, that is in September 2002.

33. The Single Judge is satisfied that the powers of the Executive Director, as set out in the statute of the Organisation, include the capacity to act on behalf of the Organisation in proceedings such as those before the Court.

34. According to application a/2311/10, in September 2002, Ngiti soldiers, who were engaged in clashes with Hema groups, destroyed and pillaged parts of the Organisation's buildings. A report on the damage, prepared in 2004, mentions damage to, *inter alia*, operating rooms, treatment rooms, chemist and a chapel. The Single Judge finds that there

¹⁷ OPCD Observations, para. 40.

is sufficient evidence to establish *prima facie* that the applicant organisation a/2311/10 suffered economic loss as a result of one or more crimes within the Court's jurisdiction, pursuant to article 5 of the Statute. This organisation therefore meets the criteria of rule 85(b) of the Rules.

FOR THESE REASONS, the Single Judge

GRANTS the Prosecutor's request for variation of time-limits under Regulation 35 with respect to the additional observations;

DECIDES that

- a. Applicants a/0259/07, a/0260/07, a/0261/07, a/0262/07, a/0267/07, a/0268/07, a/0269/07 and a/2311/10 meet the requirements of rule 85 of the Rules; and
- b. the identities of Applicants a/0263/07, a/0264/07, a/0265/07, a/0266/07 and of the representative of applicant organisation a/2310/10 have not been sufficiently established.

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



Judge Sanji Mmasenono Monageng

Single Judge

Dated this Thursday, 18 August 2011

At The Hague, The Netherlands