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**No. ICC-01/14-01/18**

**Date: 5 March 2019**

**PRE-TRIAL CHAMBER II**

**Before: Judge Antoine Kesia-Mbe Mindua, Presiding Judge  
Judge Tomoko Akane  
Judge Rosario Salvatore Aitala**

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC II  
IN THE CASE OF *THE PROSECUTOR V. ALFRED YEKATOM  
AND PATRICE-EDOUARD NGAÏSSONA***

**Public**

Decision Establishing the Principles Applicable to  
Victims' Applications for Participation

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

**The Office of the Prosecutor**  
Fatou Bensouda, Prosecutor  
James Stewart, Deputy Prosecutor

**Counsel for Alfred Yekatom**  
Stéphane Bourgon

**Counsel for Patrice-Edouard Ngaissona**  
Geert-Jan Alexander Knoops

**Legal Representatives of Victims**

**Legal Representatives of Applicants**

**Unrepresented Victims**

**Unrepresented Applicants  
for Participation/Reparations**

**The Office of Public Counsel  
for Victims**

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

**States Representatives**

**Amicus Curiae**

## **REGISTRY**

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**Registrar**  
Peter Lewis, Registrar

**Counsel Support Section**

**Victims and Witnesses Unit**  
Nigel Verrill

**Detention Section**

**Victims Participation and  
Reparations Section**  
Philipp Ambach

**Other**  
Public Information and Outreach Section

**PRE-TRIAL CHAMBER II** (the “Chamber”) of the International Criminal Court (the “Court”) issues this decision establishing the principles applicable to victims’ applications for participation.

## **PROCEDURAL HISTORY**

1. On 11 November 2018, the Chamber issued a warrant of arrest against Alfred Yekatom (“Yekatom”),<sup>1</sup> who was surrendered to the Court by the authorities of the Central African Republic (“CAR”) on 17 November 2018.
2. On 23 November 2018, the initial appearance of Yekatom before the Chamber took place.<sup>2</sup> The Chamber scheduled the hearing to confirm or decline to confirm the charges to commence on 30 April 2019.<sup>3</sup>
3. On 7 December 2018, the Chamber issued a warrant of arrest against Patrice-Edouard Ngaïssona (“Ngaïssona”),<sup>4</sup> who was surrendered to the Court by the authorities of the French Republic on 23 January 2019.
4. On 25 January 2019, the initial appearance of Ngaïssona before the Chamber took place.<sup>5</sup> The Chamber scheduled the hearing to confirm or decline to confirm the charges to commence on 18 June 2019.<sup>6</sup>
5. On 6 February 2019, the Chamber received the “Registry Observations on Aspects Related to the Admission of Victims for Participation in the Proceedings” (the “Registry Observations”), to which a proposed victim application form for participation and, as the case may be, reparations was appended (the “Registry’s Proposed Form for Individuals”).<sup>7</sup>
6. On 20 February 2019, the Chamber joined the cases against Yekatom and Ngaïssona.<sup>8</sup> The Chamber retained 18 June 2019 as the date of the hearing to confirm or decline to confirm the charges against Yekatom and Ngaïssona.<sup>9</sup>

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<sup>1</sup> ICC-01/14-01/18-1-US-Exp. A public redacted version is also available, *see* [ICC-01/14-01/18-1-Red.](#)

<sup>2</sup> [ICC-01/14-01/18-15](#), para. 7.

<sup>3</sup> Pre-Trial Chamber II, Transcript of Hearing, ICC-01/14-01/18-T-1-ENG, p. 8, lines 20-25.

<sup>4</sup> ICC-01/14-02/18-2-US-Exp. A public redacted version is also available, *see* [ICC-01/14-02/18-2-Red.](#)

<sup>5</sup> [ICC-01/14-02/18-12-Corr](#), para. 7.

<sup>6</sup> Pre-Trial Chamber II, [Transcript of Hearing](#), ICC-01/14-02/18-T-1-ENG, p. 9, lines 5-6.

<sup>7</sup> [ICC-01/14-01/18-78](#), with one confidential *ex parte* annex, only available to the Registry.

<sup>8</sup> [ICC-01/14-01/18-87](#); [ICC-01/14-02/18-34](#).

<sup>9</sup> [ICC-01/14-01/18-87](#), para. 18; [ICC-01/14-02/18-34](#), para. 18.

7. On 27 February 2019, the “Registry Report on Proof of Identity Documents Available in the Central African Republic and Transmission of Proposed Application Form for Victims Under Rule 85(b) of the Rules of Procedure and Evidence” (the “Registry’s Report on Documents as Proof of Identity” and the “Registry’s Proposed Form for Organisations or Institutions”) was filed.<sup>10</sup>

## ANALYSIS

8. The Chamber notes articles 21, 43, 57(3)(c) and 68 of the Rome Statute (the “Statute”), rules 16(1), 85-90, 92 and 94 of the Rules of Procedure and Evidence (the “Rules”), regulations 23(2), 79-81, 86 and 88 of the Regulations of the Court (the “Regulations”) and regulations 103-118 and 123(1) of the Regulations of the Registry.

9. At the outset, the Chamber notes that the Registry Observations were filed in the case of *the Prosecutor v. Yekatom*. However, the Chamber is of the view that the Registry Observations equally apply to Ngaißona. The reason is that both cases arise out of the same situation and the crimes imputed against Yekatom and Ngaißona overlap substantially.<sup>11</sup>

### A. Outreach Activities

10. Having regard to rule 92(3) and (8) of the Rules, regulation 103(1) of the Regulations of the Registry and the findings of other Pre-Trial Chambers,<sup>12</sup> the Chamber recalls that the first step in enabling victims to participate in the proceedings in accordance with article 68(3) of the Statute is to conduct outreach activities about the Court’s work for those who may have been affected by the crimes contained in the warrants of arrest issued against Yekatom and Ngaißona. Should these crimes be subsequently amended and, specifically, should the Prosecutor bring charges for crimes other than the crimes currently set forth in the warrants of arrest, the Registry would have to inform the victims concerned accordingly.

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<sup>10</sup> [ICC-01/14-01/18-133](#), with one public annex and two confidential *ex parte* annexes, only available to the Registry.

<sup>11</sup> [ICC-01/14-01/18-87](#), para. 11; [ICC-01/14-02/18-34](#), para. 11.

<sup>12</sup> See for example Pre-Trial Chamber II, *The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Agmahmoud*, “[Decision Establishing the Principles Applicable to Victims’ Applications for Participation](#)”, 24 May 2018, ICC-01/12-01/18-37-tENG, paras 11-17 (the “Al Hassan Victims Participation Decision”).

11. The outreach activities shall be undertaken by the Public Information and Documentation Section (“PIDS”) in cooperation and close coordination with the Victims Participation and Reparations Section (“VPRS”), and with the assistance of the Victims and Witnesses Unit (“VWU”) as regards any protective measures for victims. In the course of their activities, PIDS and VPRS may seek the assistance of, among others, Non-Governmental Organisations (“NGOs”) and intergovernmental organizations, including those in situ, for the purpose of making contact with the victims, especially in the victims’ language.

12. As to the content of the outreach activities, the Chamber considers that PIDS and VPRS shall focus in particular on: (i) the Court’s overall mandate; (ii) the course of the proceedings before the Court; (iii) the role of victims and their rights during the proceedings, in particular the right to present their “views and concerns”; (iv) the modalities of reparations proceedings as distinct proceedings before the Court and the role of the Trust Fund for Victims; (v) the material, temporal and geographical parameters of the present case; and (vi) the provisions of rule 90 of the Rules concerning the legal representation of victims, specifically that victims are free to choose their legal representative and may receive financial assistance from the Court for representation, as well as the role the Office of Public Counsel for Victims may play. The Chamber reminds PIDS and VPRS that, in view of the significant volume of information with which the victims will have to contend, it is important that their outreach activities be accurate and clear.

13. The Chamber further considers that PIDS shall, in principle, first plan a field mission to the CAR as soon as possible in close cooperation with VPRS. This mission shall be directed at the affected population in the locations referred to in the arrest warrants issued against Yekatom and Ngaïssona as well as the refugee population and diaspora outside of these locations. Considering the present security situation in the CAR,<sup>13</sup> the Chamber insists that the mission be carried out as efficiently as possible to reach the greatest number of victims while observing the necessary precautions to guarantee the security of all those concerned. In this regard, various means should be considered to communicate the necessary information to the victims.

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<sup>13</sup> [ICC-01/14-01/18-78](#), para. 9.

14. Furthermore, regarding the means of communication, PIDS shall, as regulation 103 of the Regulations of the Registry requires, take into account factors relating to the specific context of the case to give adequate publicity to the proceedings. The Chamber recalls that all means must be considered, including messages during radio and television broadcasts. In that connection, the Chamber requires a notice to be placed on the Court's website to inform potential victims and their representatives of the possibility of applying to participate in the proceedings. The Chamber considers that a notice along the lines of that published in the case of *the Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Agmahmoud* would be suitable.<sup>14</sup> The Chamber points out that, to the extent possible, this notice should be in the languages that would help the victims gain access to the necessary information. In this regard, consideration must also be given to how victims who have left the CAR in the aftermath of the events relevant to the present case should be informed.

15. Lastly, the Chamber orders PIDS and VPRS to submit a joint report, to be filed as confidential, *ex parte*, only available to the Registry and the Chamber, within 10 days of completing the outreach mission. This report shall set out the measures taken, their impact on those concerned, and any difficulties encountered and suggestions to avoid their future recurrence.

### **B. Application Forms for Participation**

16. The Registry requests the Chamber to, *inter alia*, approve the Registry's Proposed Form for Individuals of four pages.<sup>15</sup> The Registry specifies that this form contains two main differences in comparison with the two-page form approved by the Presidency, namely "1) a slight amendment to the question pertaining to harm; and 2) the inclusion of a question on reparations".<sup>16</sup> According to the Registry, the proposed changes are based on the following reasons:

lessons learned from the *Al Hassan* case and the case of *The Prosecutor v. Jean-Pierre Bemba Gombo*";

the need to have a tool that complies with the relevant legal requirements relating to reparations [...];

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<sup>14</sup> See <https://www.icc-cpi.int/mali/al-hassan>.

<sup>15</sup> [ICC-01/14-01/18-78](#), para. 17.

<sup>16</sup> [ICC-01/14-01/18-78](#), para. 10.

the overall need for procedural and economic efficiency in the application process in order to enable as many victims as possible to exercise their procedural rights in the Case in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial;

recommendations provided by experts on the victim application process before the Court; and

the volatility of the security environment in the Central African Republic [...].<sup>17</sup>

17. The Registry further proposes a “draft application form for organisations or institutions to participate in the proceedings and claim reparations, as appropriate, in keeping with rule 85(b) of the Rules”.<sup>18</sup> The Registry’s Proposed Form for Organisations or Institutions also includes an amended question on harm and a question on reparations.

18. The Chamber notes that “the applicable law affords the Court some discretion in determining the procedure for the victims’ participation in its proceedings” but that it is also necessary that “the forms for participation and reparations [...] be standardized to a certain extent”.<sup>19</sup> Furthermore, the Chamber recalls “the need to improve the victims’ participation system in order to ensure ‘its sustainability, effectiveness and efficiency’ and the efforts undertaken by other Chambers of the Court in this regard, including by developing application forms for victims’ participation tailored to the characteristics of the specific case at hand”.<sup>20</sup>

19. With regard to the proposed amendment to the question pertaining to harm, the Chamber notes the Registry’s explanation in relation to the Registry’s Proposed Form for Individuals that it “amalgamates the previous open question regarding the victim’s personal harm suffered with a standardised tick-box approach regarding [the] main types of harm [...]”.<sup>21</sup> The Chamber considers that this approach does not affect the substance of the question concerned, simplifies the participation form and provides additional guidance to the applicants. The Chamber further finds that this explanation also applies to the Registry’s Proposed Form for

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<sup>17</sup> [ICC-01/14-01/18-78](#), para. 9 (footnotes omitted).

<sup>18</sup> [ICC-01/14-01/18-133](#), para. 4.

<sup>19</sup> [Al Hassan Victims Participation Decision](#), para. 19.

<sup>20</sup> Pre-Trial Chamber II, *The Prosecutor v. Bosco Ntaganda*, “[Decision Establishing Principles on the Victims’ Application Process](#)”, 28 May 2013, ICC-01/04-02/06-67, para. 17 (footnote omitted) (the “Pre-Trial Chamber II Ntaganda Victims Participation Decision”).

<sup>21</sup> [ICC-01/14-01/18-78](#), footnote 16.

Organisations or Institutions. Accordingly, the Chamber approves the amended question on harm in the Registry's Proposed Form for Individuals and the Registry's Proposed Form for Organisations or Institutions.

20. In relation to the proposed inclusion of a question on reparations, the Registry puts forward in relation to the Registry's Proposed Form for Individuals that, “[g]iven the changeable security situation on the ground [in the CAR], collecting information on participation and reparations at the same time enables the VPRS to safely secure all procedurally relevant victim-related information through a single application process”.<sup>22</sup> The Chamber notes that Pre-Trial Chamber I has recently approved a similar dual-purpose form.<sup>23</sup> In this regard, the Chamber agrees with Pre-Trial Chamber I that such a form reduces the security risk for those involved, promotes efficiency by reducing travel, preparation and other logistical arrangements, and obviates the need for applicants to revisit traumatic events.<sup>24</sup> The Chamber further considers that this explanation also applies to the Registry's Proposed Form for Organisations or Institutions. However, as the Registry Observations point out,<sup>25</sup> victims' expectations regarding the award of reparations must be managed. PIDS and VPRS must, thus, stress the distinction between the course of the various stages of the criminal proceedings of the Court and the subsequent proceedings dedicated to reparations in their outreach activities. On this basis, the Chamber authorises the use of forms containing a section for the collection of reparations-related information. The Chamber underlines that the collection of such information at this stage of the proceedings will not affect the Chamber's decision to confirm or decline to confirm the charges pursuant to article 61(7) of the Statute, which will be exclusively informed by the evidence and the parties' submissions.

21. The Chamber turns to the information required for an applicant to be accorded the standing of victim. Rule 85(a) of the Rules provides as follows: “[v]ictims' means natural persons who have suffered harm as a result of the commission of any crime within the jurisdiction of the Court”. According to the interpretation adopted in previous decisions of the Court, an individual applicant is considered a victim within

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<sup>22</sup> [ICC-01/14-01/18-78](#), para. 11.

<sup>23</sup> [Al Hassan Victims Participation Decision](#), para. 25.

<sup>24</sup> [Al Hassan Victims Participation Decision](#), para. 23.

<sup>25</sup> [ICC-01/14-01/18-78](#), para. 14.



the definition of this provision if the following conditions are met: (i) his or her identity appears to have been duly established; (ii) the events described in the application for participation constitute one or more crimes within the jurisdiction of the Court with which the suspect has been charged; and (iii) the applicant suffered harm as a result of the commission of the crime(s) with which the suspect is charged.<sup>26</sup> In addition, rule 85(b) of the Rules lays down that organizations and institutions applying for the standing of victim must establish that they “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”.

22. Furthermore, the Chamber notes regulation 86(2) of the Regulations and rule 94 of the Rules, which state what information must be contained – to the extent possible – in an application for participation and a request for reparations, respectively.

23. Having verified the Registry’s Proposed Form for Individuals and the Registry’s Proposed Form for Organisations or Institutions, the Chamber considers that they meet the requirements set forth in the applicable law. The Chamber also requires the Registry to ensure – to the extent possible – that the forms are made available to applicants in languages that they understand. As to the permission sought by the Registry to use an electronic version of the Registry’s Proposed Form for Individuals and an online version on the Court’s website,<sup>27</sup> the Chamber considers that these suggestions are justified and that they also apply to the Registry’s Proposed Form for Organisations or Institutions. The previous use of such formats demonstrates that they tend to expedite the collection and processing of applications and foster wider victim

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<sup>26</sup> See for example Pre-Trial Chamber I, *The Prosecutor v. Laurent Gbagbo*, “[Decision on Victims’ Participation and Victims’ Common Legal Representation at the Confirmation of Charges Hearing and in the Related Proceedings](#)”, 4 June 2012, ICC-02/11-01/11-138, para. 20; Pre-Trial Chamber II, *The Prosecutor v. Uhuru Muigai Kenyatta*, “[Decision on Victims’ Participation at the Confirmation of Charges Hearing and in the Related Proceedings](#)”, 26 August 2011, ICC-01/09-02/11-267, para. 40; Pre-Trial Chamber III, *The Prosecutor v. Jean-Pierre Bemba Gombo*, “[Fourth Decision on Victims’ Participation](#)”, 12 December 2008, ICC-01/05-01/08-320, para. 30 (the “Bemba Fourth Decision on Victims’ Participation”); Trial Chamber III, *The Prosecutor v. Jean-Pierre Bemba Gombo*, “[Decision on 772 applications by victims to participate in the proceedings](#)”, 18 November 2010, ICC-01/05-01/08-1017, para. 38 (the “Bemba Decision on 772 Applications”); [Al Hassan Victims Participation Decision](#), para. 27.

<sup>27</sup> [ICC-01/14-01/18-78](#), para. 15.

participation, especially when access to potential applicants in the field is limited.<sup>28</sup> Nonetheless, the Chamber considers that a field mission to collect application forms should take precedence as it enables direct communication between the applicants and VPRS staff, especially if the applicants have queries, and it overcomes any lack of technological means at the victims' disposal. For these reasons, the Chamber authorises the use of an electronic version and an online version of the Registry's Proposed Form for Individuals and the Registry's Proposed Form for Organisations or Institutions.

24. Lastly, in the Registry's Report on Documents as Proof of Identity, the Registry calls attention to the difficulties applicants are likely to face in obtaining or providing copies of official identification in the CAR, which are due to, in particular, enduring conflicts, the collapse of a parallel system of administration and justice that was in place before the crisis starting in December 2012, the complexity of the legal and institutional framework regarding civil status, the almost complete absence of administration and functional tribunals outside of Bangui, the shortcomings of the institutional framework in Bangui, the high costs of obtaining documentation, extensive movements of victims, mistrust on the part of the Muslim and Foola communities and the fact that Islamic institutions do not always possess official registration acts.<sup>29</sup> The Registry is also "currently inquiring on existing documents/alternative tools that can be used to establish the identity and age of the children who were enrolled in armed groups during the conflict, when no official identity document is available".<sup>30</sup> Finally, the Registry recommends that the Chamber adopts a flexible approach by: (i) accepting the identity documents accepted by Pre-Trial Chamber III in the case of *the Prosecutor v. Jean-Pierre Bemba Gombo* (the "Bemba Case"); (ii) accepting additional forms of identification with similar features to those accepted by Pre-Trial Chamber III as was done by Trial Chamber III in the Bemba Case; and (iii) considering for acceptance any other documents with features

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<sup>28</sup> Registry, *Situation in the Islamic Republic of Afghanistan*, [Annex I to "Final Consolidated Registry Report on Victims' Representations Pursuant to the Pre-Trial Chamber's Order ICC-02/17-6 of 9 November 2017"](#), 20 February 2018, ICC-02/17-29-AnxI-Red, para. 18.

<sup>29</sup> [ICC-01/14-01/18-133-AnxI](#), paras 12-24.

<sup>30</sup> [ICC-01/14-01/18-133-AnxI](#), para. 26.

similar to those already authorised in the Bemba Case following assessments and recommendations provided by the Registry to that effect as appropriate.<sup>31</sup>

25. Following a careful assessment of the Registry's Report on Documents as Proof of Identity and having regard to the practice of other Chambers of the Court, the Chamber accepts the documents considered to be valid for establishing the identity of applicants and those presenting an application on their behalf by the Pre-Trial Chamber and Trial Chamber in the Bemba Case as listed in the Registry's Report on Documents as Proof of Identity.<sup>32</sup> In the event that applicants present other documents, the Chamber will decide whether to accept such documents upon receipt of the Registry's assessments and recommendations. The Chamber also defers its assessment regarding documents/alternative tools that can be used to establish the identity and age of children who were enrolled in armed groups and who do not have an official identity document until receipt of the Registry's assessment.

### **C. Collection of Applications**

26. As the Court's previous decisions have underscored,<sup>33</sup> the Chamber considers that it is essential that VPRS assist applicants in completing their forms, in accordance with its mandate under regulation 86(9) of the Regulations and the Registry's obligations pursuant to rule 16(1) of the Rules.

27. However, VPRS may call on persons, NGOs and intergovernmental organizations in situ to act as intermediaries between the potential applicants and the Court where it sees fit to do so in view of the security and logistical challenges in the CAR. Such persons shall be chosen from the most qualified and trustworthy, in particular from those with a prominent role within the community or from among local, experienced NGOs or intergovernmental organizations with knowledge of the conflict in question and the victims' situation. Furthermore, the Chamber points out that, in any event, the intermediaries shall act under the oversight of VPRS, which remains responsible for ensuring that the information is disseminated and that the forms are correctly completed. This entails that, after the outreach mission undertaken with PIDS, VPRS shall, for the duration of the collection of applications for

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<sup>31</sup> [ICC-01/14-01/18-133-AnxI](#), paras 6-8, 27.

<sup>32</sup> [ICC-01/14-01/18-133-AnxI](#), paras 6, 8.

<sup>33</sup> See for instance [Al Hassan Victims Participation Decision](#), para. 38.

participation, remain in the field – subject to the security situation – in order to answer any queries from the victims and securely collect the applications.

28. In this regard, the Chamber instructs VPRS to hold training sessions for the intermediaries as soon as possible if it decides to rely on such persons. Such sessions shall include: (i) the nature and goal of the intermediaries' task; (ii) the relevant ethical principles (such as impartiality and confidentiality); (iii) the need to protect the victims' security; (iv) the material, temporal and geographic parameters of the present case as described in the warrants of arrest; (v) the rights of victims before the Court; and (vi) techniques for efficient communication of all relevant information.

#### **D. Processing of Applications**

29. The Chamber considers that VPRS bears responsibility for receiving the applications on a rolling basis. It is, therefore, for VPRS to inform victims of the time it will need for an initial examination of the applications in order to transmit them to the Chamber and the participants on time. Should it see fit to do so, VPRS may set a deadline for the submission of applications so as to afford the victims some certainty about the processing of their applications, and to so inform the applicants. VPRS shall inform the Chamber accordingly.

30. It is also the responsibility of VPRS to verify the applications and prepare them for transmission to the Chamber and the parties, in accordance with the practice followed in previous cases.<sup>34</sup> Only applications that are complete and fall within the temporal, geographical and material parameters of the present case are to be transmitted to the Chamber. If necessary, VPRS shall compile missing information before transmitting it in accordance with regulation 86(4) of the Regulations.

31. In accordance with the consistent jurisprudence of the Court,<sup>35</sup> the Chamber considers that an application is complete if it contains the following information, supported by documentation, if applicable:

- (i) the identity of the applicant;
- (ii) the date of the crime(s);

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<sup>34</sup> See for instance [Pre-Trial Chamber II Ntaganda Victims Participation Decision](#), para. 29; [Al Hassan Victims Participation Decision](#), para. 43.

<sup>35</sup> See for instance [Al Hassan Victims Participation Decision](#), para. 46.

- (iii) the location of the crime(s);
- (iv) a description of the harm suffered as a result of the commission of the crime(s) allegedly committed by the suspect(s);
- (v) proof of identity by a piece of identification which is available in the CAR and accepted by the Chamber;
- (vi) the express consent of the victim, where the application is made by a person acting with the victim's consent;
- (vii) if the application is made by a person acting on behalf of a victim, in the case of a victim who is a child, proof of family relationship or legal guardianship or, in the case of a victim who is disabled, proof of legal guardianship; and
- (viii) a signature or thumb print of the applicant on the document, at least on the last page of the application.

32. The Chamber recalls that persons seeking authorisation to participate in the proceedings must show that they are victims within the definition of rule 85 of the Rules as specified the present decision.

33. As to the identity of the applicant, the Court has consistently held that, where it is not possible for an applicant to obtain or provide the documents required for establishing his or her identity, he or she may submit a statement signed by two credible witnesses attesting to the applicant's identity and stating, if applicable, the relationship between the victim and the person acting on his or her behalf.<sup>36</sup> The statement must be accompanied by proof of the identity of the two witnesses.

34. Should the Registry identify discrepancies in the information in the applications and the identification provided, the Chamber considers, as have other Chambers of the Court,<sup>37</sup> that a certain degree of flexibility must be shown. Minor discrepancies which

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<sup>36</sup> See for instance Trial Chamber I, *The Prosecutor v. Thomas Lubanga Dyilo*, "[Decision on Victims' Participation](#)", 18 January 2008, ICC-01/04-01/06-1119, para. 88; [Al Hassan Victims Participation Decision](#), para. 49.

<sup>37</sup> See for instance Trial Chamber II, *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, "[Grounds for the Decision on the 345 Applications for Participation in the Proceedings Submitted by Victims](#)", 23 September 2009, ICC-01/04-01/07-1491-Red-tENG, para. 32; Trial Chamber IV, *The Prosecutor v. Abdallah Banda Abakaer Nourain and Saleh Mohammed Jerbo Jamus*, "[Corrigendum to](#)

do not call into question the overall credibility of the information provided by the applicant may be accepted.

35. Regarding proof of the harm suffered by the applicant, the Chamber recalls that other chambers have held that rule 85(a) of the Rules includes physical injuries, emotional suffering and economic loss. The applicant must have personally suffered harm.<sup>38</sup> This personal harm can, however, have been suffered directly or indirectly. On that point, the Chamber recalls that the Appeals Chamber has explained that “[t]he harm suffered by one victim as a result of the commission of a crime within the jurisdiction of the Court can give rise to harm suffered by other victims”.<sup>39</sup> The Chamber is of the view that, for an indirect victim to be admitted to participate in the proceedings, the identity of the direct victim and the indirect victim must be duly established, as must their family relationship, by one of the documents accepted by the Chamber in the present decision or the statement from two witnesses as described above.

36. Furthermore, the Chamber also endorses the position of Pre-Trial Chamber III that:

47. [...] although a deceased person cannot present his or her “views and concerns” in the proceedings, the Single Judge sees no impediment that the rights of the deceased victim are exercised by their successors during the proceedings, if these successors are victims recognized as participants in the proceedings, as in the present case.

48. The successors must clearly indicate in the application form whether they act on their own behalf and on behalf of the deceased person.

49. Further, the applicant must provide the sufficient information on: (i) the identity of the deceased person, (ii) the identity of the successor, and (iii) the kinship between the successor and the deceased.

50. The Single Judge emphasizes that all other criteria established by rule 85 of the Rules apply equally.

51. In addition, immediate family members and dependants of a deceased person may also allege to have been personally subjected to emotional suffering resulting from the death of his or her relative, provided that the

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[Decision on the Registry Report on six applications to participate in the proceedings](#)”, 28 October 2011, ICC-02/05-03/09-231-Corr, para. 24.

<sup>38</sup> Appeals Chamber, *The Prosecutor v. Thomas Lubanga Dyilo*, “[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, para. 32 (the “Lubanga Appeal on Victims’ Participation”).

<sup>39</sup> [Lubanga Appeal on Victims’ Participation](#), para. 32.

person concerned has made an application to that effect and submitted sufficient information.<sup>40</sup>

37. In addition, the nexus between the commission of the crime and the harm suffered by the applicant will be assessed in the light of the information available and will be established on a *prima facie* basis. The Chamber considers it sufficient for an applicant to show, for example, that the alleged crimes have objectively contributed to the harm suffered. The crimes charged need not, therefore, be the only cause of the harm suffered by the applicant.<sup>41</sup>

38. Accordingly, the Chamber instructs VPRS to make an initial assessment of the applications received on the basis of the above guidelines as soon as possible. In accordance with the practice established in previous cases,<sup>42</sup> VPRS is invited, where it sees fit, to raise before the Chamber any issue which may arise regarding the collection and processing of the applications so that it may be considered and resolved before the applications are transmitted to the Chamber.

#### **E. Transmission and Procedure for the Admission of Applications**

39. VPRS “recommends the victim admission processes adopted in both *the Prosecutor v. Bosco Ntaganda* [...] trial and the case of *The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud* case [...]”.<sup>43</sup>

40. The Chamber notes rule 89(1) of the Rules, which reads:

In order to present their views and concerns, victims shall make written application to the Registrar, who shall transmit the application to the relevant Chamber. Subject to the provisions of the Statute, in particular article 68, paragraph 1, the Registrar shall provide a copy of the application to the Prosecutor and the defence, who shall be entitled to reply within a time limit to be set by the Chamber.

41. The Chamber hereby establishes the following system for the transmission and admission of applications:

- (i) The Registry examines the applications per the instructions given by the Chamber in the present decision and classifies the applicants into three categories: (a) applicants who clearly qualify as victims

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<sup>40</sup> [Bemba Fourth Decision on Victims' Participation](#), paras 47-51.

<sup>41</sup> [Bemba Fourth Decision on Victims' Participation](#), para. 77.

<sup>42</sup> [Pre-Trial Chamber II Ntaganda Victims Participation Decision](#), para. 32.

<sup>43</sup> [ICC-01/14-01/18-78](#), para. 6.

("Group A"); (b) applicants who clearly do not qualify as victims ("Group B"); and (c) applicants for whom the Registry could not make a clear determination for any reason ("Group C").

- (ii) The Registry transmits to the Chamber on a rolling basis and in unredacted form all complete applications and any supporting documentation in its possession.
- (iii) The Registry prepares regular reports that list the applications for participation and classify them according to the three groups, but need not justify the classification of each individual application. It addresses the reports to the Chamber, the Prosecutor, the Defence and, if applicable, to the legal representatives chosen to represent the victims authorised to participate.
- (iv) Upon submitting each report, the Registry also discloses to the Prosecutor and the Defence all Group C applications, redacted as needed. As regards applications provided to the Defence, when redactions are a necessary protective measure, the Chamber orders the Registry to remove all identifying information while respecting the principle of proportionality prescribed by article 68(1) of the Statute.
- (v) The Registry also prepares assessment reports for the attention of the Chamber and the parties, highlighting the difficulties encountered regarding Group C applications.
- (vi) In addition, the Registry provides assessment reports for Group B applications exclusively to the Chamber, which contain the reasons for rejecting the applications, in order to allow the Chamber to take a final decision on such applications if necessary.
- (vii) To guarantee that all applications are processed before the commencement of the hearing to confirm or decline to confirm the charges, the Registry proceeds as follows for the remaining application forms: (a) Group C applications are transmitted to the Chamber and the parties no later than 30 days before the date the hearing is scheduled to commence; and (b) Group A and B



applications are transmitted to the Chamber no later than 15 days before the date of commencement of the hearing. The Registry submits the remaining corresponding reports within the same time limits. Upon expiry of that limit, no new applications for participation may be submitted for consideration.

- (viii) Upon receipt of the Group C applications, the Prosecutor and the Defence shall have 10 days to make submissions, should they wish to do so.
- (ix) Upon receiving any submissions from the parties on the Group C applications, the Chamber will assess them individually. Furthermore, barring a clear, material error in the Registry's assessment of Groups A and B, it will also ratify the Registry's assessment of the Group A and B applications. While VPRS's conclusions may be of assistance, it is for the Chamber to ultimately authorise or reject an applicant to participate in the proceedings.
- (x) The Registry maintains a database of information provided by the victims admitted to participate in the proceedings, and makes available to each legal representative in the case the data provided by the victims who he or she represents so that he or she knows to which group said victims belong.

42. The Chamber considers that the procedure described above is consistent with the applicable law before the Court and the approaches adopted by other Chambers.<sup>44</sup> Furthermore, it is prompted by the need to strike a balance between the expeditiousness and fairness of the proceedings, while taking into consideration the particular circumstances of the case. The Chamber also recognizes the importance of effective and meaningful victim participation in the proceedings which is not prejudicial to the rights of the accused.

43. In this regard, the Chamber first points out that it has factored in the challenges presented by the difficult security situation in the CAR and, hence, the extensive

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<sup>44</sup> See for instance [Al Hassan Victims Participation Decision](#), para. 59.

redactions anticipated to protect the victims in accordance with article 68(1) of the Statute. The Chamber concurs with the position of Trial Chamber VI:

29. It must be noted that the parties' right to reply to victim applications set out in Rule 89(1) of the Rules is not absolute. Rule 89(1) provides that the transmission of victim applications to the parties, and their right to reply thereto, is "[s]ubject to the provisions in the Statute, in particular article 68, paragraph 1 [...]". In this regard, the Chamber notes: (i) the Court's obligation under Article 68(1) of the Statute to protect the safety, physical and psychological well-being, dignity and privacy of victims (ii) the right of the accused to not have measures adopted which are prejudicial to or inconsistent with his/her right to be tried with undue delay, as required by Articles 67(1)(c) and 68(1) and (3) of the Statute; and (iii) the Chamber's general obligation under Article 64(2) of the Statute to ensure the fair and expeditious conduct of the proceedings.<sup>45</sup>

44. Furthermore, in view of the facts of the present case and its broad scope, it is expected that a large number of victims will submit applications to participate in the proceedings.<sup>46</sup> The proceedings would be significantly slowed down were the Chamber to allow submissions from the parties on all of the applications for participation and to subsequently adjudicate them. Considering the date set for commencement of the hearing to confirm or decline to confirm the charges, the adoption of a suitable procedure is necessary. To this end, the Chamber agrees with the arguments of the Registry that the system, as currently adopted, has the advantage of allowing the parties and the Chamber to concentrate on a limited number of applications – those that pose assessment problems – thereby saving time and resources.<sup>47</sup> Such a system is conducive to expeditious proceedings, is in the interests of the victims in that it enables the greatest number of victims to apply to participate in the confirmation hearing and is in the interests of Yekatom and Ngaïssona since it guarantees their right to be tried within a reasonable time.

45. Lastly, the Chamber underlines Trial Chamber VI's findings:

31. The Chamber additionally notes that Rule 89 of the Rules contains no express requirement for individual consideration of each application by the Chamber. Rather, it provides, in Rule 89(2), that the Chamber "may" reject an application if it considers that the applicant is not a victim or the criteria

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<sup>45</sup> Trial Chamber VI, *The Prosecutor v. Bosco Ntaganda*, "[Decision on victims' participation in trial proceedings](#)", 6 February 2015, ICC-01/04-02/06-449, para. 29 (the "Trial Chamber VI Ntaganda Victims Participation Decision").

<sup>46</sup> [ICC-01/14-01/18-78](#), para. 8.

<sup>47</sup> [ICC-01/14-01/18-78](#), para. 8.

in Article 68(3) of the Statute are otherwise not fulfilled. More generally, the Chamber considers that Rule 89(1) of the Rules should be interpreted in light of Rule 89(4), which gives the Chamber discretion to “consider the applications in such a manner as to ensure the effectiveness of proceedings”.

32. The Chamber considers that designating the Registry to assess victim applications, based on clear guidelines outlined by the Chamber, who retains ultimate authority over the process, is the most efficient and appropriate way to “consider the applications” in this case [...].<sup>48</sup>

#### **F. Legal Representation**

46. With regard to the legal representation of the victims, the Chamber notes, as a starting point, that rule 90(1) of the Rules provides that “[a] victim shall be free to choose a legal representative”. The Chamber places the utmost importance on the possibility for the victims to be represented, first and foremost, by a person they have chosen according to their interests and for their own reasons.

47. Where there are a number of victims, for the purposes of ensuring the effectiveness of the proceedings, the Chamber may see fit, pursuant to rule 90(2) of the Rules, to request the victims or a particular group of victims to choose a common legal representative, if necessary with the Registry’s assistance. The Chamber emphasises again that the choice of a common legal representative belongs to the victims. Furthermore, the Chamber will assess the need for “ensuring the effectiveness of the proceedings” upon receipt of VPRS’s report on the system of legal representation in this case, with particular consideration for the number of legal representatives the victims may have chosen.

48. As a last resort, only if the victims are not in a position to choose a common legal representative, the Chamber may impose one or more common legal representatives by requesting the Registry to choose them in accordance with rule 90(3) of the Rules and regulation 79 of the Regulations. The Chamber understands this option to apply where the victims are unable to reach agreement. The Registry will, therefore, choose a common legal representative only if the lack of agreement is clearly established and communicated to the Chamber.

49. Moreover, Trial Chamber II has rightly noted that, “although victims are free to choose a legal representative, this right is subject to the important practical, financial,

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<sup>48</sup> [Trial Chamber VI Ntaganda Victims Participation Decision](#), paras 31-32.

infrastructural and logistical constraints faced by the Court”.<sup>49</sup> In this regard, the Chamber recalls that, to give the victims the means to choose a legal representative, rule 90(5) of the Rules provides that “[a] victim or group of victims who lack the necessary means to pay for a common legal representative chosen by the Court may receive assistance from the Registry, including, as appropriate, financial assistance”.

50. Therefore, to organize the system of legal representation in this case, the Chamber instructs the Registry, which is duty-bound to assist victims in obtaining legal advice and legal representation by virtue of rule 16(1)(b) of the Rules, to submit a report on the requirements of each step of the process described above.

51. In its report, the Registry shall address how an approach that prioritizes the victims’ choice may proceed and the steps and time necessary to allow them to exercise this choice. In particular, the Chamber instructs the Registry to speak with the victims during and after the outreach mission to determine:

- (i) whether they have already identified one or more legal representatives who are able to represent them before the Court or whether efforts have been or are being made to this end, and the time needed for the victims to make a choice;
- (ii) how the victims may have organized and the consequences for the choice of legal representative; and
- (iii) whether the victims have the means to pay for legal representatives themselves or whether to rely on persons or NGOs who have accepted to represent them *pro bono*.

52. The Registry shall also address the following matters in this report:

- (i) the way in which the Registry consulted the victims;
- (ii) the budgetary capacity currently available to the Court to pay for all or part of the representation of the victims, should the victims be unable to bear the financial cost of their legal representatives themselves and should they not have *pro bono* representation;

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<sup>49</sup> Trial Chamber II, *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, “[Order on the organisation of common legal representation of victims](#)”, 22 July 2009, ICC-01/04-01/07-1328, para. 11 (footnote omitted).

- (iii) should common legal representation under rule 90(2) of the Rules be necessary to ensure the effectiveness of the proceedings, the most appropriate number of common legal representatives, given the requirement of rule 90(4) of the Rules to take into account the distinct interests of the individual victims and to avoid any conflict of interest;
- (iv) whether the victims have identified common legal representatives and whether it is necessary to help them to do so by referring them to the list of counsel in accordance with rule 90(2) of the Rules; and
- (v) where it is necessary for the Registry to choose common legal representatives when victims cannot agree on the choice, the availability of persons who are able to communicate with the victims in the field, safely and in their language, and the views of the victims on the persons thus identified by the Registry, as required by rule 90(3) of the Rules and regulation 79(2) of the Regulations.

53. In order for the legal representatives of victims to have sufficient time before the scheduled commencement of the hearing to confirm or decline to confirm the charges and to allow them to participate meaningfully in the proceedings, the Chamber instructs the Registry to submit its report by 16 April 2019.

**FOR THESE REASONS, THE CHAMBER HEREBY**

**INSTRUCTS** the Registry, and PIDS in particular, in close coordination with VPRS, and with the assistance of VWU, to embark forthwith on outreach activities in accordance with paragraphs 10 to 15 of the present decision;

**INSTRUCTS** PIDS and VPRS to file the joint report referred to in paragraph 15 of the present decision as confidential, *ex parte*, only available to the Registry and the Chamber, within 10 days of completion of their outreach mission;

**APPROVES** the Registry's Proposed Form for Individuals and the Registry's Proposed Form for Organisations or Institutions as well as the use of an electronic version and an online version of these forms in accordance with paragraphs 19 to 23 of the present decision;

**INSTRUCTS** the Registry to have the Registry's Proposed Form for Individuals and the Registry's Proposed Form for Organisations or Institutions translated into the languages understood by the applicants in the case;

**DECIDES** to accept the documents considered to be valid for establishing the identity of applicants and those presenting an application on their behalf by the Pre-Trial Chamber and Trial Chamber in the Bemba Case as listed in the Registry's Report on Documents as Proof of Identity in accordance with paragraph 25 of the present decision;

**INSTRUCTS** VPRS to collect the applications for participation in the proceedings, if necessary with the assistance of intermediaries, and, to that end, remain in the field in accordance with paragraphs 26 and 27 of the present decision;

**INSTRUCTS** VPRS to hold, as soon as possible, training sessions for intermediaries as described in paragraph 28 of the present decision;

**INSTRUCTS** VPRS to, as soon as possible, commence its verification of the applications for participation received in accordance with the instructions set out in paragraphs 29 to 38 of the present decision;

**APPROVES** the system of transmission and admission of applications for participation as described in paragraph 41 of the present decision;

**INSTRUCTS** VPRS to submit exclusively to the Chamber the Group A and Group B applications for participation on a rolling basis while the remaining applications

falling in these categories should be submitted exclusively to the Chamber no later than 15 days before the commencement of the hearing to confirm or decline to confirm the charges;

**INSTRUCTS** VPRS to submit to the Chamber and, redacted as needed, to the Prosecutor and the Defence the Group C applications for participation on a rolling basis while the remaining applications falling in this category should be submitted no later than 30 days before the commencement of the hearing to confirm or decline to confirm the charges;


**INSTRUCTS** the Prosecutor and the Defence to submit any observations they may have on the Group C applications for participation of victims within 10 days of receiving them;

**INSTRUCTS** the VPRS to consult the applicants on their preferences for legal representation and the Registry to submit to the Chamber by 16 April 2019 the report concerning the legal representation of the victims, as set out in paragraphs 51 and 52 of the present decision.

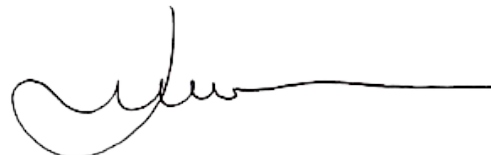
Done in both English and French, the English version being authoritative.



**Judge Antoine Kesia-Mbe Mindua,  
Presiding Judge**



**Judge Tomoko Akane**



**Judge Rosario Salvatore Aitala**

Dated this Tuesday, 5 March 2019

At The Hague, Netherlands