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Date: **28 May 2013**

PRE-TRIAL CHAMBER II

Before: **Judge Ekaterina Trendafilova, Single Judge**

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

IN THE CASE OF
THE PROSECUTOR V. BOSCO NTAGANDA

Public
With a Public Annex

Decision Establishing Principles on the Victims' Application Process

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 the Defence
Marc Desalliers

Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

Unrepresented Applicants for Participation/Reparation

The Office of Public Counsel for Victims
Paolina Massidda

The Office of Public Counsel for the Defence

States Representatives

Amicus Curiae

REGISTRY

Registrar & Deputy Registrar
Herman von Hebel, Registrar
Didier Preira, Deputy Registrar

Defence Support Section

Victims and Witnesses Unit

Detention Section

Victims Participation and Reparations Section
Fiona McKay

Other

Judge Ekaterina Trendafilova, acting as Single Judge on behalf of Pre-Trial Chamber II (the "Chamber") of the International Criminal Court (the "Court"),[1] hereby renders this decision establishing principles on the victims' application process.

I. Introduction

1. The present decision is aimed at addressing and, to the extent feasible, streamlining the issues relating to the victims' applications for participation in the pre-trial proceedings leading to the confirmation of charges hearing, with a view to rationalizing the application process and enhancing its predictability, efficiency and expeditiousness.

2. The Single Judge recalls that it is her responsibility to determine, pursuant to article 68(3) of the Rome Statute (the "Statute") in conjunction with rules 85 and 89 of the Rules of Procedure and Evidence (the "Rules"), whether an applicant qualifies as a victim for the purposes of participating in the pre-trial proceedings, as well as the modalities of such participation.

3. The Single Judge is of the view that the detailed guidance, and early involvement of the Chamber throughout the victims' application process is crucial and aims at organising the subsequent participation phase in an efficient and expeditious manner. The Single Judge will, therefore, provide both an overview of the guiding principles to be followed by the various specialised sections of the Registry throughout the victims' application stage, and detailed instructions as to the operative steps to be taken by those sections.

4. After briefly recalling the relevant procedural history and the applicable law (Sections II and III, respectively), the Single Judge will set forth the principles governing the outreach mission activities of the relevant specialized sections of the Registry (Section IV). Detailed guidance shall be provided, in particular, to the

[1] ICC-01/04-02/06-40.

Victims Participation and Reparations Section ("VPRS") in respect to: (i) the simplified application form to be employed for the purposes of the present case; (ii) the collection of applications; (iii) the role of the VPRS and intermediaries, (iv) the processing of victims' applications for participation; (v) the grouping of victims' applications by the VPRS and their transmission to the Chamber; and (vi) the submission of the report and its annexes under regulation 86(5) of the Regulations of the Court (the "Regulations") by the VPRS to the Chamber (Sections V-X); and finally, the legal representation of applicants and the role of the Office of Public Counsel for Victims ("OPCV") in the present phase of the proceedings (Section XI).

II. Procedural history

5. On 22 August 2006, Pre-Trial Chamber I issued a warrant of arrest for Bosco Ntaganda ("Mr. Ntaganda") for his alleged responsibility for the war crimes of conscripting, enlisting children under the age of fifteen and using them to participate actively in hostilities under either article 8(2)(b)(xxvi) or article 8(2)(e)(vii) of the Statute, committed from July 2002 to December 2003 at various locations in the Democratic Republic of the Congo ("DRC").[2] On 13 July 2012, the Chamber issued a second warrant of arrest for Mr. Ntaganda, for his alleged responsibility for the crimes against humanity of murder under article 7(1)(a) of the Statute, rape and sexual slavery under article 7(1)(g) of the Statute and persecution under article 7(1)(h) of the Statute, and for the war crimes of murder under article 8(2)(c)(i) of the Statute, attack against a civilian population under article 8(2)(e)(i) of the Statute, rape and sexual slavery under article 8(2)(e)(vi) of the Statute, and pillaging under article 8(2)(e)(v) of the Statute, all committed in the Ituri Province of the DRC between 1 September 2002 and the end of September 2003 (collectively, the "Warrants").[3]

6. On 22 March 2013, Mr. Ntaganda voluntarily surrendered to the custody of the Court. During his first appearance before the Chamber, on 26 March 2013,[4] the Single

[2] ICC-01/04-02/06-2-Corr-tENG-Red.
[3] ICC-01/04-02/06-36-Red.
[4] ICC-01/04-02/06-T-2-ENG, page 12, lines 2-3.

Judge scheduled the commencement of the confirmation of the charges hearing for 23 September 2013.

7. On 11 April 2013, the Registry submitted the "Eighth periodic Report of the Registry on the activities of the Victims Participation and Reparations Section in the Situation in the Democratic Republic of the Congo",[5] noting *inter alia* that the VPRS was in the process of reassessing the applications for participation received in relation to the DRC Situation "in order to identify those which could be linked to the Ntaganda case"[6].

8. On 25 April 2013, the Registry filed its "Report on proof of identity documents available in the Democratic Republic of the Congo".[7]

9. Also on 25 April 2013, the Single Judge issued the "Decision Requesting the Victims Participation and Reparations Section to submit observations".[8] On 6 May 2013, the Chamber received the "Registry observations in compliance with the Decision ICC-01/04-02/06-54-Conf" (the "Registry Observations").[9]

III. Applicable law

10. The Single Judge notes articles 21(1)(a), (2) and (3), 43(1) and (6), 68 (1) and (3) of the Statute, rules 16, 85 to 93 of the Rules, regulations 80, 81 and 86 of the Regulations and regulation 105(1) of the Regulations of the Registry (the "RoR").

IV. Outreach missions

11. The Single Judge wishes to point out that, whilst distinct sections of the Registry are vested with different responsibilities in respect of victims' involvement in the Court's proceedings, all of them are important players in ensuring that the statutory

[5] ICC-01/04-622.
[6] ICC-01/04-622, para. 2.
[7] ICC-01/04-02/06-53-Anx1.
[8] ICC-01/04-02/06-54-Conf.
[9] ICC-01/04-02/06-57-Conf.

responsibilities of the Court *vis-à-vis* the victims, as well as the proper conduct of the proceedings, are accurately fulfilled.

12. The Single Judge is of the view that, in accordance with rule 92(3) and (8) of the Rules, the first step in the victims' application process is the outreach action on behalf of the Court. In this regard, the Single Judge underlines that a comprehensive and timely outreach mission, targeted at potential victim applicants in the present case, is essential in order for the application stage to run smoothly and efficiently. All of the relevant Registry's sections are expected to be involved in such field outreach. In particular, the Single Judge refers to the Public Information and Documentation Section (the "PIDS") which, in light of its neutral role as institutional representative and promoter of the Court, should take a central role in the initial phase of the approach of potential victim applicants. Subsequently, other specialized sections of the Registry, namely the VPRS, in cooperation and coordination with the PIDS and the Victims and Witnesses Unit (the "VWU"), shall take action.

13. Consistent with its mandate under regulation 105(1) of the RoR, the outreach action by the PIDS should be aimed at providing potential victims, in a timely manner, with accurate, concise, accessible and complete information both on the Court's overall mandate and, more specifically, on the various roles which the victims are statutorily called to play in the proceedings. Further, the specific substantive and procedural features of victims' participation, on the one hand, and of victims' reparations, on the other, as well as their respective independence, should be clarified. Regarding their participation at the pre-trial stage of this case, potential victim applicants should be provided with accurate information as to the material, temporal and geographical parameters of the case of the Prosecutor against Mr. Ntaganda, as defined in the Warrants. As for the possibility to claim reparations before the Court, it should be explained that the option to apply for reparations pursuant to article 75 of the Statute will only be available to victims if the accused is committed to trial and found guilty by the relevant Trial Chamber. Furthermore, it

should be clarified in simple terms that the victims' right to apply for reparations, should that stage be reached, is not conditional upon previous participation in the proceedings, be it at the pre-trial or at the trial stage.

14. The Single Judge's opinion that accurate and timely outreach action is instrumental to the application process is supported by what has been stated in the Registry Observations, according to which "collecting less information [...] had been expected to lead to less paperwork and therefore reduce the staff time needed to scan, enter data into the database and analyse, and less information to redact in the versions prepared for transmission to the parties".[10] It was further acknowledged that "applicants provided numerous supplementary documents which [...] reduced this effect, and significant challenges were faced in putting the documents in order."[11] Consequently, providing precise and strictly necessary information for the purposes of the current proceedings to affected communities prior to engaging in the actual application process is vital for ensuring victims' participation, where desirable, as well as for the effectiveness of the proceedings as a whole.

15. The Single Judge is mindful that the usual length and complexity of the proceedings before the Court, as well as the ensuing fact that a significant amount of time can elapse between the opening of a case and the time when victims may be awarded reparations, might in some instances result in their disappointment and frustration. Access to immediate and meaningful assistance would often be beneficial to them. In light of this, the Single Judge believes that the unique role of the Trust Fund for Victims should also be adequately illustrated during the outreach missions. In particular, it should be highlighted that projects for the benefit of victims of crimes within the jurisdiction of the Court (i.e., within the scope of the DRC situation) have already been put in place in the country. More specifically, it should be stressed that those projects might be particularly beneficial to the victims

[10] Registry Observations, para. 16.
[11] Registry Observations, para. 16.

who suffered from events falling out of the scope of either the case against Mr. Ntaganda or any other case brought by the Prosecutor in the situation in the DRC.

16. The Single Judge takes the view that the outreach role played by the PIDS in the field is key in creating the background and paving the way for the VPRS to plan and carry out its own field missions in the most effective way. Ideally, whilst ensuring that proper coordination is put in place, there should be no overlapping between the action of the PIDS and the one of the VPRS: the better and the earlier the former prepares the ground – by disseminating accurate and targeted information about the case and the various options which might be available to victim applicants – the more effective the latter can be in focussing on its specific mandate to collect applications for participation and/or reparations among affected groups, as well as in pursuing and developing crucial relationships with relevant intermediaries who may assist them.

V. Simplified application form for the purposes of the present case

17. At the outset, the Single Judge recalls the need to improve the victims' participation system in order to ensure "its sustainability, effectiveness and efficiency"[12]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.[13]

18. In light of the foregoing, the Single Judge takes the view that the availability of a concise and simplified individual form might significantly assist victims willing to participate in the current case, as well as the VPRS in processing their applications and the Chamber in its assessment of the requirements set forth in rule 85 of the Rules. This would enhance the overall efficiency and expeditiousness of the proceedings leading to the confirmation of charges hearing. That being said, it is

[12] ICC-ASP/10/Res.5, para. 49.
[13] Pre-Trial Chamber I, "Second decision on issues related to the victims' application process", 5 April 2012, ICC-02/11-01/11-86.

advisable to construct the victims' application system in each case, mindful of the feedback on the practices already tested,[14] and also considering the specificities of the case at hand.

19. The Single Judge recalls that rule 85 of the Rules provides the definition of victims as follows:

> (a) "Victims" means natural persons who have suffered harm as a result of the commission of any crime within the jurisdiction of the Court;
> (b) Victims may include organizations or 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.

20. As interpreted in the case law of the Court, an applicant qualifies as a victim pursuant to the above provision provided that: (i) the identity of the applicant appears duly established; (ii) the event(s) described in the application for participation constitute(s) one or more crimes within the jurisdiction of the Court, with which the suspect is charged; and (iii) the applicant has suffered harm as a result of the crime(s) with which the suspect is charged.[15]

21. Bearing in mind the above requirements and in light of the specific features of the case against Mr. Ntaganda, the Single Judge will use for the purposes of this case a concise and simplified one-page individual application form (the "Simplified Form"), containing only such information which is strictly required by law for the Chamber to determine whether an applicant satisfies the requirements set forth in

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[14] Registry Observations, paras 5-19.

[15] See, *inter alia*, Pre-Trial Chamber I, "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, "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, "Fourth Decision on Victims' Participation", 12 December 2008, ICC-01/05-01/08-320, para. 30; Trial Chamber III, "Decision on 772 applications by victims to participate in the proceedings", 18 November 2010, ICC-01/05-01/08-1017, para. 38.

rule 85 of the Rules.[16] The Simplified Form is attached as an annex to the present decision.

22. The Single Judge emphasises that the features of the Simplified Form have been devised considering the very limited and clear purpose of the application phase, i.e. to determine whether an applicant meets the requirements of rule 85 of the Rules for the purposes of being granted the status of victim in the present case. In view of this, the Simplified Form is structured according to the elements enshrined in rule 85 of the Rules. It would thus allow each applicant to concisely bring forward the salient elements of the relevant events, particularly their spatial and temporal parameters, as well as (in broad terms) the nature of the alleged crime and, to the extent possible, the identity of the alleged perpetrator(s). By allowing the victim to provide a concise account of all those elements which will ground the Chamber's determination under rule 85 of the Rules, it is expected that the Simplified Form will also prove significantly instrumental in streamlining the process of redactions. In principle, the information submitted in concise form, whilst accurate and precise enough to be assessed against the backdrop of rule 85 of the Rules, should minimise the concerns for identification and, hence, the need to resort to protective measures, ultimately allowing for the transmission of such information to the parties in non-redacted form, to the extent possible.

23. The Single Judge trusts that the Simplified Form adequately responds to the concerns expressed and the recommendations made by the Registry and considers that the level and type of information contained therein would still enable the parties to submit, pursuant to rule 89(1) of the Rules, meaningful observations on each application for victims' participation.[17]

24. The Single Judge wishes to highlight that the Simplified Form, while containing exclusively information required by rule 85 of the Rules, should not be regarded as

[16] In this regard see also the Registry Observations, para. 9.
[17] Registry Observations, para. 9.

an instrument preventing the submission, by an applicant, of information which goes beyond the domain of rule 85 of the Rules. The Single Judge is mindful that such information may be important, although not directly pertinent for the purposes of the assessment under rule 85 of the Rules. It could include, *inter alia,* the contact details of the applicants, their level of language(s) proficiency, preferences as to their legal representation, security concerns related to them or to members of their families. This information will be submitted separately and shall be collected and safely stored by VPRS. Accordingly, VPRS is hereby instructed to establish an electronic log in which all additional information provided by each victim applicant having filled in the Simplified Form shall be securely inserted and remain stored within the VPRS's information system.

25. Finally, the Simplified Form does not prejudice the participatory rights envisaged by the Court's legal framework once the status of victim has been granted. Accordingly, the PIDS as well as the VPRS are instructed to inform all applicants in due time that, should their application for participation be granted, they will have ample opportunities throughout all stages of the proceedings to present their stories, in particular to voice their "views and concerns", as well as to exercise the rights provided by the statutory framework of the Court and any other rights deemed appropriate by the Chamber, in compliance with article 68(3) of the Statute and with the Rules.[18]

VI. Collection of applications; role of the VPRS and intermediaries

26. The Single Judge considers that, as the unit chiefly responsible for the collection of the applications for victims' participation and with a view to making the process as efficient as feasible, the VPRS should be directly involved in assisting the applicants to fill in the Simplified Forms. Such type of assistance is compatible with

[18] See Pre-Trial Chamber I, "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,paras 46-60; Pre-Trial Chamber II, "Decision on Victims' Participation at the Confirmation of Charges Hearing and in the Related Proceedings", 26 August 2011, ICC-01/09-02/11-267, paras 97-118.

the mandate of the VPRS pursuant to regulation 86(9) of the Regulations, according to which the VPRS "shall be responsible for assisting victims and groups of victims".[19]

27. However, the Single Judge notes the Registry Observations to the effect that, due to factors including "lack of ICC field presence everywhere, shortage of resources, security concerns [...] tensions in the communities or other reasons",[20] it may not always be feasible for the VPRS to assist applicants directly. Therefore, given the scope of the charges in the current case, the necessity to act expeditiously as well as to provide full opportunity for participation to victims of the crimes in this case, the Single Judge considers that, in carrying out its tasks, the VPRS may benefit from the assistance of suitable individuals, based in the field, who will serve as intermediaries between the affected communities and the Court. Such individuals should be identified and selected from amongst those vested with leading roles in the affected communities and who, by the nature of their positions, are trusted by the population. Such individuals may include, for example, the following: community leaders, *chefs de village*, or staff members of local NGOs. The VPRS is instructed to make the most extensive use of the assistance provided by intermediaries in the field pursuant to their developed best practices.[21]

28. In this regard, the Single Judge underlines that intermediaries, if involved in the application process, should operate under the control of the VPRS, which bears the responsibility for their proper performance. Hence, the VPRS must make sure that the intermediaries are given the appropriate training prior to being requested or allowed to assist applicants in submitting applications alongside the VPRS staff. The training may cover, *inter alia*, the following topics: (i) the nature and purpose of their role; (ii) all relevant principles of ethics, in particular as regards the confidentiality of information; (iii) the Court's duties of protection *vis-à-vis* the victims and the

[19] Pre-Trial Chamber I, "Second decision on issues related to the victims' application process", 5 April 2012, ICC-02/11-01/11-86, para. 27.
[20] Registry Observations, para. 11.
[21] Registry Observations, para. 12.

ensuing need to preserve the security of the applicants; (iv) the material, temporal and geographical scope of the case against Mr. Ntaganda, as defined in the Warrants; (v) information concerning the statutory framework as regards victims' rights before the Court; and (vi) suitable techniques to ensure that all relevant information is appropriately and effectively conveyed to the applicants. All such training activities directed towards intermediaries should be closely coordinated and supervised by the VPRS staff members, with a view to maximising their timeliness and efficiency. Finally, the presence of the VWU could prove essential, where needed, for security reasons or for the support to be provided to victims and/or the VPRS staff.

VII. Processing victims' applications for participation

29. As soon as the Simplified Forms are filled in, the VPRS shall process them without delay in order to prepare them for transmission to the Chamber and to the parties. In line with the practice followed in previous cases, the Single Judge highlights that she will only consider complete applications for victims' participation. Since her oversight is exercised primarily within the limits of the information provided by the victim applicants, as collected and verified by the VPRS, the Single Judge instructs the VPRS to ensure that the information contained in the applications is complete prior to their transmission to the Chamber.

30. In accordance with the jurisprudence of the Court, the Single Judge considers that an application for the purposes of the present case 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);

(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;

(v) proof of identity, through one of the identification documents available in the Democratic Republic of Congo and accepted by the Single Judge;[22]

(vi) if the application is made by a person acting with the consent of the victim, the express consent of that victim;

(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 kinship 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 the very least, on the last page of the application.[23]

31. The Single Judge expects that the assistance to be provided by the VPRS to victim applicants in completing the applications, directly or through properly trained intermediaries, will result in few applications, if any, being incomplete. Nevertheless, the VPRS is instructed to expeditiously screen all collected applications for participation in order to promptly obtain any supplementary information, if needed, pursuant to regulation 86(4) of the Regulations.

32. In line with the practice of the Single Judge established in previous cases, the VPRS is instructed to raise with the Single Judge, if need be and on a continuous basis, any issues that may arise in regard to the collection and processing of the applications, in order to readily address and resolve such issues before the transmission of the applications to the Chamber.

VIII. Grouping of victims' applications by the VPRS and their transmission to the Chamber

[22] ICC-01/04-02/06-53-Anx1.

[23] For example, Pre-Trial Chamber III, "Fourth Decision on Victims' Participation", 12 December 2008, ICC-01/05-01/08-320, para. 81; Pre-Trial Chamber I, "Decision on the Requests of the Legal Representative of Applicants on application process for victims' participation and legal representation", 17 August 2007, ICC-01/04-374, para. 12; Pre-Trial Chamber I, "Public Redacted Version of the 'Decision on the 97 Applications for Participation at the Pre-Trial Stage of the Case'", 10 June 2008, ICC-01/04-01/07-579, para. 44; Pre-Trial Chamber I, "Decision on the 34 Applications for Participation at the Pre-Trial Stage of the Case", 25 September 2009, ICC-02/05-02/09-121, para. 7; Trial Chamber II, "Decision on the treatment of applications for participation", 26 February 2009, ICC-01/04-01/07-933-tENG, para. 28; Trial Chamber III, "Decision defining the status of 54 victims who participated at the pre-trial stage, and inviting the parties' observations on applications for participation by 86 applicants", 22 February 2010, ICC-01/05-01/08-699, paras 35 and 36.

33. Having satisfied itself that the applications are complete, the VPRS should transmit them to the Chamber for determination. The Single Judge endorses the approach of grouping victims' applications, which has already been applied in the jurisprudence of the Court.[24] Accordingly, she will employ this approach in the current case, albeit with some variations, taking into account the observations made by the Registry, in particular in paragraphs 7 to 10 of the Registry Observations. Thus, the grouping of the collected applications will not be assigned to a contact person, with the view to prevent some of the complexities experienced by the VPRS when dealing with groups of individuals prepared by such a contact person, "which can in fact be more complicated than dealing with individuals in some respects."[25] Instead, the VPRS will itself perform the grouping of victims who have filled in the Simplified Form in line with appropriate criteria as listed below, for the purpose of submitting them thereafter to the Chamber. In this way, the Single Judge achieves the ultimate goal, i.e. that the Chamber receives the applications collectively, by way of their grouping, and, at the same time, takes note of the issues experienced by the VPRS in other cases.[26]

34. The Single Judge recalls that "grouping victims already at the application stage not only facilitates the application process itself, but [...] also [...] the actual participation of victims subsequently, for instance making it easier for victims' legal representatives to manage the interaction with their clients if they are already organised in groups according to location or crime".[27] The Single Judge agrees that grouping victims at this stage by the VPRS could facilitate the application process and could be time-efficient and beneficial for victims' participation. The grouping of applications will also simplify and expedite the decision-making by the Chamber as envisaged by rule 89(4) of the Rules. The Single Judge will assess the applications

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[24] Pre-Trial Chamber I, "Second decision on issues related to the victims' application process", 5 April 2012, ICC-02/11-01/11-86.
[25] Registry Observations, para. 17.
[26] Registry Observations, paras 7-10.
[27] Registry Observations, para. 7.

individually but will take a decision on each distinct group of applicants as established according to appropriate criteria.

35. Finally, the grouping of applications should be done in accordance with criteria deemed appropriate in regard to the specificities of the case. The criteria which could be used by the VPRS in this regard may include, *inter alia*: (i) the location of the alleged crime(s); (ii) the time of the alleged crime(s); (iii) the nature of the alleged crime(s); (iv) the harm(s) suffered; (v) the gender of the victim(s); and (vi) other specific circumstances common to victims. When appropriate given the specific circumstances, the VPRS could apply more than one criterion in grouping victim applicants.

36. The Single Judge observes that the VPRS could rely, as appropriate, on the support of its trusted intermediaries to prepare consolidated reports on behalf of groups of victims whose situations may show degrees of similarity. However, it is stressed that any such reports shall be meant for the exclusive use of the VPRS for the purposes of completing its task of grouping the applications and transmitting to the Chamber collective submissions on victims' applications.

IX. Submission of the report and its annexes under regulation 86(5) of the Regulations by the VPRS to the Chamber

37. Pursuant to regulation 86(5) of the Regulations, the Registry shall present to the Chamber all applications together with a report (the "Report"). The Report should include, *inter alia,* information as to the activities carried out in the field leading to the collection of the applications for participation, their grouping and the criteria employed, the number of applications in each of the groups of applicants identified by the VPRS, whether there exist conflicts of interest amongst the different groups, as well as an overview of any outstanding features of the applications as a whole. Attached to the Report will be two annexes as follows:

(i) Annex A will contain the groups of applicants as established by the VPRS on the basis of appropriate criteria together with the VPRS's assessment as to whether the requirements of rule 85 of the Rules are met for each applicant in the relevant group(s) and for the group(s) as such.

(ii) Annex B will contain copies of complete applications, including a proof of identity of those applicants who did not object to their identity being disclosed.

38. All other information which does not serve the assessment under rule 85 of the Rules and which might have been provided to the VPRS, including the identity documents of those applicants who have expressed concerns towards their identity being disclosed[28], will remain stored by the VPRS. The Chamber will have access thereto for the purposes of verifying the identities of the applicants and to fulfil any other responsibility under the statutory documents (for example taking protective measures as prescribed by article 68(1) of the Statute).

39. As regards the timing of the transmission of the victims' applications to the Chamber, the Single Judge instructs the VPRS to review the applications in accordance with the principles established in the present decision after it has conducted its mission in the DRC. Thereafter, the VPRS should transmit the Report and its two annexes to the Chamber on a rolling basis, namely every one to three weeks, depending on the number of applications sufficient to be grouped, as well as the criteria to be applied.

40. With a view to organizing the smooth and proper conduct of the proceedings, the Single Judge considers that complete applications for participation shall be submitted to the VPRS no later than 45 days before the start of the confirmation hearing, in order for the Registry to transmit those applications to the Single Judge and to the parties no later than 30 days before the start of the confirmation hearing. Should this deadline interfere with the one to three weeks deadline for transmission

[28] See the information referred to in paragraph 24 above.

of applications established in the previous paragraph, the Single Judge instructs the VPRS to still transmit the last batch of applications no later than 30 days before the start of the confirmation hearing.

41. The Single Judge recalls that the Report together with the annexes shall be transmitted to the Prosecutor and the Defence, in accordance with the guidelines established in the following paragraphs. By receiving this information, the Single Judge believes that the parties will be better positioned to provide meaningful observations to the Chamber, if they wish to do so, pursuant to rule 89(1) of the Rules.

42. In light of the information to be included in the Report as specified in paragraph 37 above, the Single Judge expects few redactions to the Report, if any. The same holds true in regard to Annex A, meant to provide the Chamber with the collective submissions on groups of applicants together with the respective first assessment of the VPRS. As to Annex B containing the Simplified Forms, the Single Judge notes that one of the objectives pursued in developing the said form for the purposes of the present case, is to limit, to the extent feasible, the need to adopt protective measures in the form of redactions. Furthermore, bearing in mind that the redaction of information is the exception to the principle of full disclosure, the concise information to be provided by the applicants should result in limited redactions of only the identifying information of the victim applicant, whenever a need for protection is detected by the VPRS, or in presence of an expressed wish on the part of an applicant that his or her identity is not to be disclosed.

43. Accordingly, the Single Judge instructs the Registry in such cases to redact any identifying information from the Report, Annex A, and Annex B, prior to their transmission to the Defence. In the view of the Single Judge, this provides an appropriate measure of protection for victims, which is not prejudicial to or inconsistent with the rights of the suspect and a fair and impartial trial. The Single

Judge reminds the Registry that any such redaction should abide by the principle of proportionality enshrined in article 68(1) of the Statute.

44. With regard to the transmission of the Report together with the annexes to the Prosecutor, the Single Judge recalls that the Prosecutor is under an obligation, pursuant to articles 54(1)(b) and 68(1) of the Statute, to "respect the interests and personal circumstances of victims", as well as to protect their safety, physical and psychological well-being, dignity and privacy. Pursuant to article 54(1)(a) of the Statute, the Prosecutor has an obligation to investigate incriminating and exonerating circumstances equally. In light of the Prosecutor's statutory duties with respect to victim protection, and of the fact that applications for participation may contain exculpatory information, the Single Judge is of the view that no redactions should be made to the Report, Annex A, and Annex B to be transmitted to the Prosecutor.[29] As already clarified by this Chamber,[30] this difference in treatment between the parties is instrumental in allowing the Prosecutor to properly discharge her statutory obligations and, as such, does not constitute a violation of the principle of equality of arms.

XI. Legal representation of applicants; role of the OPCV

45. The Single Judge considers that, at this stage, legal representation of applicants is not required. This stance of the Single Judge is vindicated by her belief that for the limited purpose of the application process the assistance and support to be provided by the VPRS is sufficient to duly guarantee the applicants' right to apply for participation. However, the Single Judge stresses that, should any issue arise which warrants submissions by the applicants, their legal representation will be promptly

[29] See Pre-Trial Chamber II, "Decision on the Defence Requests in Relation to the Victims' Applications for Participation in the Present Case", 8 July 2011, ICC-01/09-01/11-169, paras 9-15; Pre-Trial Chamber I, "Decision requesting the Parties to submit observations on 14 applications for victims' participation in the proceedings", 24 May 2011, ICC-01/04-01/10-181, p. 5.
[30] Pre-Trial Chamber II, "Decision on the defence Requests in Relation to the Victims' Applications for Participation in the Present Case", 8 July 2011, ICC-01/09-01/11-169, para. 14.

organized, unless some of the applicants are assisted by a lawyer of their own choice.

46. With regard to the legal representation of unrepresented applicants who *might* be admitted as participants in the case, the Single Judge considers that this will be subject to the wishes of the applicants, the potential conflicts of interests among groups of applicants, as well as the Chamber's discretion depending on the circumstances of the case. In this context, the Single Judge considers it necessary that the Registry begins organizing the legal representation pursuant to rules 16(1)(b) and 90 of the Rules. Accordingly, the Registry is instructed to consult with applicants as to their preferences for legal representation and to assess whether or not they could be represented by a common legal representative(s), including by the OPCV.

47. In this respect, the Single Judge recalls the model inaugurated in the case of the *Prosecutor v. Laurent Gbagbo*,[31] whereby the OPCV's lead counsel was appointed as common legal representative of all admitted victims and was assisted by a team member based in the field, "with wide knowledge of the context" and "to be paid by the Court's legal aid budget".[32] Taking note of said experience, and should the involvement of the OPCV as common legal representative become an option, the Single Judge believes that in the current case such a person in the field could have the role of an "assistant to counsel" as provided for in regulation 81(3) of the Regulations. Thus, in order to ensure the expeditiousness of the proceedings, the Single Judge considers that the Registry should start as soon as possible to identify an appropriate "assistant to counsel" who meets the requirements set forth in regulation 124 of the RoR and should report to the Single Judge accordingly. Mindful of the fact that the assistant counsel would perform service to the OPCV,

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[31] Pre-Trial Chamber I, "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, paras 35-45.

[32] Pre-Trial Chamber I, "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. 44.

the latter should either be involved in the selection process or at least consulted on the person to be selected.

FOR THESE REASONS, THE SINGLE JUDGE HEREBY

ORDERS:

a) the Registry, and in particular the PIDS and the VPRS, to promptly undertake outreach activities in the field for the purposes of collecting applications for victims' participation in this case, in compliance with the principles established in the present decision;

b) the VPRS to collect forthcoming applications for victims' participation in the present case by using the Simplified Form attached as an annex to this decision;

c) the VPRS to submit to the Single Judge a Report under regulation 86(5) of the Regulations, together with the two annexes, in compliance with the principles and deadlines set forth in this decision;

d) the VPRS to also transmit to the parties the Report under regulation 86(5) of the Regulations, together with the two annexes, with redactions where appropriate for the Defence, in compliance with the principles set forth in this decision;

e) the parties to submit to the Single Judge their observations, if any, on the victims' applications, within a time-limit of fourteen days following their transmission by the VPRS;

f) the parties to refer to the applicants only by the numbers assigned to them by the Registry;

g) the Registry to consult with applicants as to their preferences for legal representation, to assess whether or not they could be represented by a common legal representative(s), including by the OPCV, and to start identifying an appropriate "assistant to counsel" with the involvement or in consultation with the OPCV;

h) the Registry to establish an electronic log in which all information beyond those provided in the Simplified Form shall be securely stored in the VPRS's information system;

i) the Registry to make all arrangements necessary to ensure that the Chamber has access to the electronic log referred to in letter (h) of the operative part of this decision; and

j) the Registry to reclassify documents ICC-01/04-02/06-54-Conf and ICC-01/04-02/06-57-Conf as public.

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

Judge Ekaterina Trendafilova

Single Judge

Dated this Tuesday, 28 May 2013

At The Hague, The Netherlands