

Annex A

Public

Registry methodology for conducting *prima facie* rule 85 assessments

1 Overview

1. In its Order¹, the Chamber required the Registry to undertake an initial *prima facie* assessment under rule 85 of the Rules of Procedure and Evidence (the “Rules”) in relation to representations received. The Chamber indicated that “any individual representations, to the extent possible, are to include sufficient information about the identity of any individuals who make representations in this context; the harm they suffered; and the link with any crimes coming within the jurisdiction of the Court”. As to collective representations, the Chamber held that “community leaders, to the extent possible, are to provide sufficient information about the community they represent; the harm suffered by members of that community; and the links to any crimes coming within the jurisdiction of the Court”.²
2. In compliance with the Chamber’s instructions, each representation received by the Registry was reviewed in order to assess whether the individual, group or person making the representation fell within the definition of victims under rule 85 of the rules, adopting the following approach.

2 Standard of proof

3. During this process, the Registry has borne in mind the Chamber’s directions as stated above, as well as the Chamber’s observation that representations at this stage are provided for a “limited purpose”.³ In light of this, the Registry has considered that it is appropriate in this context to follow a more flexible approach to rule 85 requirements, applying a lower standard of proof than the test ordinarily adopted when dealing with applications for participation in proceedings. Following the approach adopted at the same stage of proceedings in the Kenya Situation, the Registry has considered that information submitted by a

¹ ICC-02/11-6

² *Ibid.* para. 10

³ *Ibid.*, para. 8 and 10.

victim need not be supported by additional proof of its veracity, but will be judged on the basis of its internal consistency as established by the practice.⁴

3 Requirements

4. The Registry made its assessment by reference to the well-established core requirements for victim status under rule 85 of the Rules.
5. For individuals, these core requirements are:⁵
 - (a) The individual is a natural person whose identity is sufficiently established;
 - (b) The individual suffered harm;
 - (c) The harm was suffered as a result of the commission of a crime;
 - (d) The crime was within the jurisdiction of the ICC.
6. For collective representations, in light of the instructions provided by the Chamber in its Order, the Registry has considered the following conditions for assessing whether groups of victims meet the requirements of rule 85 of the Rules:
 - (a) The group is composed of natural persons and information on its nature and composition is provided;
 - (b) The person or organization representing the group is identified;
 - (c) The person or organization representing the group has authority to represent the group;
 - (d) Members of the group suffered harm;
 - (e) The harm was suffered as a result of the commission of a crime;
 - (f) The crime was within the jurisdiction of the ICC.

⁴ ICC-01/09-4, para.8 and ICC-01/09-17-Anx5, para. 3.

⁵ ICC-02/04-101, para. 12; ICC-01/05-01/08-320, para. 30; ICC-01/04-01/06-101-tEN, para. 79.

4 Specific issues

4.1 Proof of identity

7. Whilst a large number of representations were accompanied by documents establishing the identity of the victims, the Registry, in line with the Chamber's Order, has not considered the provision of an identity document to be a requirement within the context of this process, so long as sufficient information about the identity of the person making the representation was provided.

4.2 Harm suffered

8. In making its initial *prima facie* rule 85 assessments, the Registry has taken into account the jurisprudence of the Appeals Chamber with respect to victims' applications for participation, recognizing that harm must be personal to the victim, but need not be direct.⁶ It may include physical injury, emotional suffering, economic loss as well as other forms of harm.⁷
9. In practical terms the approach taken by the Registry meant that relatively little information was expected to be provided by the persons making representations. Thus, when assessing representations received, the Registry accepted as sufficient a bare minimum of information demonstrating that harm had been caused by the alleged crime.
10. In some instances, the person making the representation claims to have suffered a specific crime without expressly mentioning the harm suffered as a consequence of the commission of the crime. The Registry considered that for certain categories of crimes (specifically rape and murder), the mention of the crime provided a sufficient basis for an inference to be drawn as to the harm suffered by the victim. Thus, in the specific case of rape, the Registry drew the conclusion that the victim in question suffered physical and psychological harm as a result of the rape.

⁶ ICC-01/04-01/06-1432.

⁷ ICC-01/04-01/06-1119, paragraph 92.

11. The Registry also took the approach of inferring that emotional harm had been suffered where the death of a family member was explicitly mentioned in the representation. The Registry believes that many people would consider the suffering of emotional harm to be self-evident once the death of a family member is mentioned and for this reason do not expressly describe such harm. The Registry notes that in contrast to the approach taken in analyzing applications for participation in proceedings,⁸ detailed information or proof regarding the relationship between the deceased person and the person presenting a representation has not been required. For example, when a person asserted that a “family member was killed” and alleged emotional harm as a result of this crime, the Registry treated this as sufficient for establishing that harm was suffered. This reflects the standard of proof used in this process, which is lower than that applied for applications for participation as a victim in the proceedings.

4.3 Proof of authority to represent a group or an organization

12. Similarly, those who made representations on behalf of a group of victims or organizations were not required to provide documentary proof of their authority to speak on behalf of the group or the organization. Instead, the Registry has expected these persons to provide information regarding their own identity as well as the (individual or collective) identity or identities of the persons they represent, and an explanation demonstrating why they have authority to represent such persons.

4.4 Signatures

13. While 475 persons signed their the representations, 197 did not do so.⁹ For the reasons set out below, these unsigned representations were not considered as falling outside the requirements of rule 85 of the Rules.

⁸ ICC-02/04-01/05-371.

⁹ Out of the 679 considered to meet the requirement of rule 85 of the Rules.

14. In this respect it is noted that rule 85 defines “victims” by reference to substantive characteristics and not by compliance with any formal procedures. Furthermore, while rule 50 provides that victims “may make representations in writing”, it does not set formal requirements for such representations. Chambers have established certain requirements regarding signatures applicable to applications to participate in proceedings, commensurate with the standard of proof established for a victim to be accepted to participate in proceedings.¹⁰ The signature is a device which confirms that the information contained in the document in fact reflects the views of the person signing. In this respect it is of value in this process where provided. However, given the lower standard of proof established for the current proceedings, and bearing in mind that the representations do not constitute a request for a legal status in the proceedings, but rather are a particular conduit for victims’ opinions, the Registry has not considered a signature to be a requirement for meeting the definition of victim in rule 85 of the Rules, nor for a victim to make a representation to the Chamber.

4.5 Legal capacity

15. No representations were received from children, disabled persons or other victims whose legal capacity to make them might be questioned.

4.6 Categorization of crimes and the Court’s subject matter jurisdiction

16. In undertaking its rule 85 assessments the Registry has considered whether or not the events described constitute a crime which falls within the subject-matter jurisdiction of the Court. However the Registry notes that the information given by victims rarely addresses the *contextual* or *mental* elements of the crimes contained in articles 6 to 8 of the Statute. Nor would it usually be expected that victims would necessarily be aware of information relating to these elements. The Registry notes that according to its usual approach when reporting on

¹⁰ ICC-01/04-374, para. 12; ICC-01/05-01/08-320, para. 81.

applications for participation in proceedings, it is not considered necessary for victims to demonstrate these elements.