

Annex I

Public

Registry Report on Proof of Identity Documents Available in the Central African Republic

I. Introduction

1. The purpose of the present report ("Report") is to provide to the Chamber information regarding the documents known to be available in the Central African Republic ("CAR") that may assist in establishing a person's identity in the context of victims' applications to participate in the proceedings. Pursuant to regulation 86 of the Regulations of the Court, applications for participation in the proceedings must be supported by proof of identity and/or proof of kinship.
2. The Report follows the *Registry's first report on proof of identity documents available in the CAR* submitted in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo* ("*Bemba Report*" and "*Bemba case*", respectively).¹ The Report draws on the Court's experience with respect to the documents attached to applications for participation and/or reparations in the *Bemba case*,² as well as on information collected by the Court's field office in Bangui³ and from civil society actors since then, including representatives of NGOs and of the legal community in the CAR, as well as information collected through open source research.
3. The ongoing crisis in the CAR that started with the unrest of December 2012 ("*Ongoing Crisis*")⁴ has exacerbated some of the challenges faced by victims

¹ Victims Participation and Reparations Section, Annex II to "Report to Pre Trial Chamber III on applications to participate in proceedings in accordance with Rule 89 paragraph 1 of the Rules of Procedure and Evidence and Regulation 86 paragraph 5 of the Regulations of the Court", dated 17 October 2008 and reclassified as public on 30 October 2017, ICC-01/05-01/08-168-Anx2.

² Trial Chamber III, "Judgment pursuant to Article 74 of the Statute", 21 March 2016, ICC-01/05-01/08-3343, paras. 18-21. Altogether 5229 victims were authorized to participate in the *Bemba case*.

³ Since 2008, the Registry developed a field presence in Bangui and a network of intermediaries in various areas outside of Bangui which kept staff in Bangui and at HQ abreast of the situation on the ground.

⁴ Office of the Prosecutor, "Situation in the Central African Republic II Article 53(1) Report", 24 September 2014, at https://www.icc-cpi.int/iccdocs/otp/art_53_1_report_car_ii_24sep14.pdf

already highlighted in the *Bemba* Report.⁵ The Report includes information about the additional difficulties that applicants in the current case may encounter in obtaining and/or providing relevant documentation, and the alternative tools available to establish identity or kinship in the context of the CAR.

4. When available, the Report provides samples of documentation previously received by the Victims Participation and Reparations Section ("VPRS") in support of applications for participation and/or reparations in the CAR situation. These examples are compiled in Annex II of the Report ("Annex II").

II. The Court's experience with respect to identity documents in the *Bemba* case

5. In 2008, the Registry submitted its *Bemba* Report on proof of identity documents, which identified a list of documents available to victims to provide as proof of identification in the context of the Court's proceedings. The Registry considers that the content of its *Bemba* Report continues to be valid.
6. The *Bemba* Report provided the following non-exhaustive list of documents establishing identification of individuals in the CAR: i) "*certificat de nationalité*", (ii) "*permis de conduire*", (iii) "*passeport*", (iv) "*livret de famille*", (v) "*extrait d'acte de mariage*", (vi) "*acte de mariage*", (vii) "*extrait d'acte de décès*", (viii) "*acte de décès*", (ix) "*jugement supplétif*", (x) "*extrait d'acte de naissance*", (xi) "*acte de naissance*", (xii) "*nouvelle carte d'identité*", (xiii) "*ancienne carte d'identité qui n'est plus en vigueur*", (xiv) "*carte professionnelle*", (xv) "*carte d'association*", (xvi) "*récépissé de dépôt de demande de carte nationale d'identité*", (xvii) "*carte de*

⁵ *Bemba* Report, conclusions, pp. 7-8. In the *Bemba* Report, the Registry highlighted some of the difficulties faced by victims in providing documentary evidence to support their claims, which included cumbersome administrative procedures, the high costs incurred and a lack of transport means to reach the competent authorities.

commission d'emploi", (xviii) "*carte de député*", (xix) "*déclaration de naissance*", (xx) "*carte d'identité pastorale*", (xxi) "*testament*", and (xxii) "*livret de pension*".

7. The Single Judge of Pre-Trial Chamber III in *Bemba* admitted the aforementioned documents.⁶ He further indicated that where it is not possible for a victim applicant to acquire or produce a document of the kind set out above, he will consider a statement signed by two witnesses - and accompanied by their proof of identity - attesting to the identity of the victim applicant.⁷
8. At the trial stage in *Bemba*, Trial Chamber III endorsed the flexible approach adopted by Pre-Trial Chamber III in its appreciation of the documentary identification evidence supporting applications for participation.⁸ Additionally, whenever the documents appended by the applicants had similar features to the ones listed in the *Bemba* Report, the Chamber accepted them as proof of identity.⁹ Accordingly, the Chamber issued individual decisions on the merits of more than 5,700 applications for participation transmitted in the case, in which it recognised a variety of other documents as additional means to establish identity or kinship, including: i) electoral cards, ii) baptism cards, iii) certificates of school attendance and student cards, iv) civil status certificates signed by the "*Chef de quartier*",¹⁰ v) residence permits, vi) refugee cards, vii) police statements

⁶ Pre-Trial Chamber III, "Fourth Decision on Victims' Participation", dated 12 December 2008 and registered on 15 December 2008, ICC-01/05-01/08-320, para. 36.

⁷ *Ibid*, para. 37.

⁸ 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, para.36.

⁹ Trial Chamber III, "Decision on 772 Applications by Victims to Participate in the Proceedings", 18 November 2010, ICC-01/05-01/08-1017, para. 41.

¹⁰ *Chef de Village* and *Chef de Quartier* are official representatives of the CAR administrative structure, elected for a period of ten years. See Norwegian Refugee Council, "Displacement and housing, land and property rights in the Central African Republic", December 2014, pp. 23-24, at <https://www.nrc.no/globalassets/pdf/reports/displacement-and-housing-land-and-property-rights-in-the-central-african-republic.pdf>.

for loss of identity documents, viii) “*cartes de demandeur d’emploi*”, ix) “*actes de notoriété*”, x) “*avis de mariage*”, xi) “*cartes d’identité scolaire*”, xii) cards indicating marital status (“*fiches individuelles d’état civil*”), xiii) police records (“*casiers judiciaires*”) xiv) duplicates of birth certificates (“*duplicata d’acte de naissance*”), xv) “*déclarations de reconnaissance*” signed and stamped by the “*Chef de quartier*”, xvi) “*cartes de religion*” and xvii) membership cards (“*cartes d’adhésion*”).¹¹

Information extracted from the VPRS database

9. The VPRS has compiled data relevant to the question of identity documents from its database containing approximately 5,760 applications for participation in the proceedings and/or reparations received in relation to the Situation in the CAR.
10. Among the 5,229 application forms from victims authorised to participate in the *Bemba* case, the main types of documents provided as identification documents were: birth certificates (including “*jugements supplétifs*”, “*extraits d’acte de naissance*” and duplicates), electoral cards, national identity cards, passports, membership cards (from NGOs, religious or political associations, etc.), baptism cards, professional cards and statements by a “*Chef de village*” and/or a “*Chef de quartier*”.
11. For the reasons further developed below, the Registry anticipates that the applicants for participation in the case of *The Prosecutor v. Alfred Yekatom and*

¹¹ See Trial Chamber III, “Decision on 772 applications by victims to participate in the proceedings”, 18 November 2010, ICC-01/05-01/08-1017, para. 42; Trial Chamber III, “Corrigendum to the Decision on 401 applications by victims to participate in the proceedings and setting a final deadline for the submission of new victims’ applications to the Registry”, 21 July 2011, ICC-01/05-01/08-1590-Corr; Trial Chamber III, “Decision on 270 applications by victims to participate in the proceedings”, 25 October 2011, ICC-01/05-01/08-1862, para. 25; Trial Chamber III, “Decision on 418 applications by victims to participate in the proceedings”, 15 December 2011, ICC-01/05-01/08-2011, para. 17.

Patrice Edouard-Ngaïssona (“*Yekatom* and *Ngaïssona* case”) may not be in a position to provide as easily the documents emanating from official authorities.

III. Update on the availability of official documentation

12. As already explained in the *Bemba* Report, for decades people of the CAR have suffered as a result of several crises, which left them with a “phantom state” to live in.¹² Prior to the Ongoing Crisis, some communities outside of Bangui relied on a system of local parallel justice/administration operated by key individuals from the community, and very fragile institutions.¹³ This system collapsed following the events of December 2012.
13. During the Ongoing Crisis, many victims had their property destroyed and/or were forced to flee and leave their homes, without having the chance to take any belongings along. This often led to victims being stripped of any of their identity documents and other administrative documentation.
14. For these reasons the Registry anticipates that the presentation of official documentation by victim-applicants will remain difficult and, in some situations, the on-going instability may place an impossible burden on victims.

Dysfunction in the context of the administrative and judicial systems

15. The legal and institutional framework regarding its citizens’ civil status is complex in the CAR.¹⁴ It requires, in some cases, the involvement of the

¹² See International Crisis Group, “Central African Republic: Anatomy of a Phantom State”, 13 December 2007, at <https://d2071andvip0wj.cloudfront.net/central-african-republic-anatomy-of-a-phantom-state.pdf>.

¹³ Office of the United Nations High Commissioner for Human Rights, “Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Mr. Philip Alston on his mission to the Central African Republic”, 27 May 2009, A/HRC/11/2/Add.3, para. 59, at <https://undocs.org/A/HRC/11/2/Add.3>.

¹⁴ See Law No. 97 013 on the Family Code as well as information provided by the United Nations International Children’s Emergency Fund (“UNICEF”) at <https://data.unicef.org/resources/crvs/central-african-republic/>.

judiciary, for instance in case of late registration of civil status acts. The Ongoing Crisis greatly impacted the already scarce resources of the State apparatus running a relatively complex system. In some places, civil registration centres have been destroyed, alongside with their archives.

16. The current administrative dysfunction results in the quasi-total absence of administration and functional tribunals outside of Bangui.¹⁵ Most regions in the CAR lack technical and human resources capacities, and the administration does not receive the funds necessary to manage the needs of the population in the provinces.
17. Even in the capital, Bangui, the administration remains impaired¹⁶ and the issuance of official documents requires individuals to overcome a series of barriers. Furthermore, in some cases, obtaining official documents is presently impossible. It is reported that in Bangui, the CAR government has not been in a position to issue new national identity cards ("ID cards") since 2013,¹⁷ while many people lost their ID cards as a result of the violence, ongoing insecurity, and forced displacement of population over the past years.¹⁸
18. Faced with this situation, the CAR administration currently adopts a flexible approach with regards to identification documents. It accepts a variety of documents interchangeably to prove identity such as school identity cards,

¹⁵ See International Legal Assistance Consortium, "Rapport d'évaluation d'état de droit : République centrafricaine" (Solna: ILAC, 2017), pp. 22-23, at <http://www.ilacnet.org/wp-content/uploads/2017/05/ILACs-Rule-of-Law-Assessment-Report-Central-Africa-Republic-2017-.pdf>.

¹⁶ See Avocats Sans Frontières ("ASF"), "Etat civil en République centrafricaine : enjeux et pratiques. Effets sur l'accès à la justice et la réalisation des droits fondamentaux.", p 9. Even in Bangui and Bimbo the legal and institutional framework for civil status appear to be dysfunctional, see https://www.asf.be/wp-content/uploads/2017/08/ASF_RCA_EtatCivil_201707_FR.pdf.

¹⁷ See Radio Ndeke Luka, <https://www.radiondekeluka.org/actualites/societe/32000-des-milliers-de-centrafricains-circulent-sans-carte-nationale-d-identite-depuis-5-ans.html>.

¹⁸ The Registry is informed that the "*récépissé de demande de carte nationale d'identité*" is often used in lieu of ID cards.

national identity cards, electoral cards, *Formulaires d'enregistrement des électeurs*”,¹⁹ professional cards, driving licenses, passports, etc.²⁰

Accessibility for victims

19. The precarious condition of the population increased as a result of the Ongoing Crisis. The costs related to the issuance of identification documents are often prohibitive,²¹ and they are beyond the means of many victims. Additionally, since the CAR legal/administrative authorities do not publicly indicate the costs for the issuance of some documents, fees may vary from one authority to another.²²
20. Victims living outside Bangui have to travel long distances in a context of insecurity,²³ to reach the only “functioning” judicial/administrative institutions in Bangui, at a high financial cost. The Registry notes that mobile judicial hearings have been organised with the support of international organisations to palliate some of these deficiencies. However, the Registry has no updated information regarding

¹⁹ See Annex II, pp. 76-77. The Registry is informed that some individuals did not receive their electoral cards on time for the 2015 elections. They were still able authorised to vote by presenting this document. See <http://www.anerca.org/index.php/actu/parutions>.

²⁰ See ASF, “Etat civil en République centrafricaine : enjeux et pratiques. Effets sur l'accès à la justice et la réalisation des droits fondamentaux”, July 2017, p. 17, at https://www.asf.be/wp-content/uploads/2017/08/ASF_RCA_EtatCivil_201707_FR.pdf.

²¹ The majority of the CAR population lives with less than 1,500 XAF (\$2) per day. Although the fees for the issuance of some civil status acts are not indicated in the CAR Family code, in practice, the issuance of a birth certificate costs between 1,000-1,500 XAF (1-2 USD). This does not include related costs, such as the discharge certificate from the hospital or transport to and from the civil registration centre. If the registration is not done within the first month following the birth, a judicial registration is required, and costs between 7,000-10,000 XAF (15-20 USD). According to information collected by the Registry, a police record costs around 3500 XAF, a death certificate 3,000 XAF if done during the month following the death (7,000 – 10,000 XAF if issued later by a Tribunal).

²² See UNICEF data at <https://data.unicef.org/resources/crvs/central-african-republic/>

²³ Travelling within the country without identity documents is complex as roadblocks manned by the security forces are frequent.

the extent to which these mobile hearings are still organized, and, if so, where they take place.²⁴

21. Furthermore, the Ongoing Crisis has led to extensive movement of victims to internal displacement camps, host villages, and refugee camps in Cameroun, Chad, the Republic of Congo and the Democratic Republic of Congo.²⁵ Many of these victims have been forced to flee from their place of origin and may be at risk if they seek to return.²⁶ The type of documentation available to them may differ from the rest of the CAR population. Refugees who return may, in some cases, have a refugee card or a consular card issued by the CAR Embassy in the States where the country has diplomatic representations. The Registry is also informed that in camps of internally displaced persons, organisations have delivered documents to individuals who benefit of their assistance programme. Such cards contain information pertaining to their identification.²⁷ When available, the Registry has annexed samples of these documents to the present Report as they may assist in establishing the identity of the applicant and/or proof of kinship.²⁸

²⁴ See ASF, “No identity, No Rights”, 15 April 2016, at <https://www.asf.be/blog/2016/04/15/no-identity-no-rights/> and, “Etat civil en République centrafricaine : enjeux et pratiques. Effets sur l'accès à la justice et la réalisation des droits fondamentaux.”, July 2017, p 4, at https://www.asf.be/wp-content/uploads/2017/08/ASF_RCA_EtatCivil_201707_FR.pdf.

²⁵ See United Nations High Commissioner for Refugees, “Central African Republic Regional Situation, Internal Displacement and Refugee Movements (as of end of January 2018)”, 26 February 2018, at <https://data2.unhcr.org/en/documents/download/62316>. For updated information on the situation of refugees and internally displaced persons see United Nations Refugee Agency, “Réponse Régionale à la crise des Réfugiés en République centrafricaine”, at <http://data.unhcr.org/car/regional.php>.

²⁶ According to Article 180 of the Family Code, they would have for instance to go back to their home village in order to obtain again their civil identity documents. See Norwegian Refugee Council (“NRC”), “Les enregistrements et actes de naissance et l'accès à l'éducation en République centrafricaine”, 26 janvier 2018, pp. 31-32, at https://www.nrc.no/globalassets/pdf/reports/car/180126_car_civdoc_final.pdf.

²⁷ The identification process is conducted by field agents and local leaders. The cards contain in some cases the following information: first and last name, picture, bar code, and district.

²⁸ See Annex II, pp. 78-80.

22. Victims with Muslim or Foula-sounding names experience even greater challenges with regards to proving their identity. In some cases, CAR local authorities and judges appear reluctant to issue official documentation or supplementary judgements of citizenship because they either question their right to nationality²⁹ or they fear reprisal from anti-balaka groups. In addition, some Muslim and Foula groups lost confidence in the politico-administrative authorities and are reluctant to approach them, as they perceive these authorities as biased and potential threats.
23. The Imams are acknowledged as the (religious) leaders in these communities. While they do not issue documents that can be used in civil life, they can issue, in the religious context, certificates of religious marriage or declarations of divorce.³⁰
24. Similarly, the Registry has been informed that institutions dedicated to the practice of the Islamic belief, such as mosques, do not always, in practice, possess official registration acts. They may therefore face challenges in providing official documentation to the Registry should they apply for participation and/or reparations in the proceedings pursuant to Rule 85(b) of the Rules.
25. Lastly, the Registry notes that the charges contained in the warrant of arrest in the *Yekatom and Ngaissona* case include the crime of enlistment of children

²⁹ In some cases, the administration/judges have refused to issue birth certificates to children of foreign parents or populations perceived to be foreign. According to a study conducted by ASF, legal identity in CAR became a political issue and Judges have been reluctant to conduct mobile court hearing in Bangui's 3rd neighbourhood where the majority of the inhabitants are Muslims. See ASF, "Etat civil en République centrafricaine: enjeux et pratiques. Effets sur l'accès à la justice et la réalisation des droits fondamentaux.", pp. 7, 17, July 2017 at https://www.asf.be/wp-content/uploads/2017/08/ASF_RCA_EtatCivil_201707_FR.pdf.

³⁰ At the time of issuance of the present Report, the Registry has not yet been able to collect samples of these documents for the Chamber's consideration.

under the age of 15 years and their use to participate actively in hostilities.³¹

The Registry has been informed that some children, with the assistance of civil society organisations, managed to obtain a “*certificat d’âge apparent*” and “*a jugement de reconstitution d’acte de naissance*”.³²

26. In view of the importance of proving the age of the applicant at the time of the commission of the crime of enlistment of children under the age of 15 years, the Registry is 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. The Registry will duly report to the Chamber on this question as soon as it has obtained a comprehensive list of the documents that can be used to that effect.

IV. Conclusion

27. In light of the information presented above regarding the challenges currently faced by potential applicants of this Case to prove their identity, the Registry respectfully recommends that the Chamber endorses a flexible approach as already adopted by Pre-Trial Chamber III and Trial Chamber III in the *Bemba*

³¹ Pre-Trial Chamber II, “Public Redacted Version of ‘Warrant of Arrest for Alfred Yekatom’”, ICC-01/14-01/18-1-US-Exp, 11 November 2018”, 17 November 2018, ICC-01/14-01/18-1-Red, p. 21; Pre-Trial Chamber II, “Public Redacted Version of ‘Warrant of Arrest for Patrice-Edouard Ngaïssona’”, 13 December 2018, ICC-01/14-02/18-2-Red, p. 37.

³² The procedure would consist in seizing the Court for the purpose of obtaining a supplementary judgment of birth certificate. The child is first presented to a doctor who determines the apparent age of the child. See Annex II, pp. 81-84.

case in its appreciation of the documentary evidence provided together with applications for participation,³³ and in particular that it:

- accepts the types of identity documents indicated in the *Bemba* Report and those which were accepted by the Pre-Trial Chamber in the *Bemba* case;³⁴
- accepts additional forms of identification as accepted by the Trial Chamber in the *Bemba* case;³⁵
- considers for acceptance any other documents appended by future applicants which have similar features as those already authorised in the *Bemba* case following assessments and recommendations provided by the Registry to that effect as appropriate.

28. Mindful of the challenging security context, the Registry will continue to inquire on existing documents/alternative tools that can be used to establish the identity of applicants and will report to the Chamber accordingly.

³³ See Pre-Trial Chamber III, "Fourth Decision on Victims' Participation", 15 December 2008, ICC-01/05-01/08-320, para. 35. See also Trial Chamber III, "Decision on 772 Applications by Victims to Participate in the Proceedings", 18 November 2010, ICC-01/05-01/08-1017, paras 40-41.

³⁴ *Supra*, paras. 6-7.

³⁵ *Supra*, para. 8.