

Public redacted version of “Annex to the Registry Report on the implementation of Trial Chamber X’s Decision of 20 December 2019 (ICC-01/12-01/18-536)”, 24 January 2020, ICC-01/12-01/18-563-Conf-Exp-Anx

Registry Report on Victim Application Process in Compliance with Paragraph 13 of the 20 December 2019 Decision

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Registry Report on Victim Application Process in Compliance with Paragraph 13 of the 20 December 2019 Decision

Introduction

1. In compliance with the 20 December 2019 Decision,¹ the Registry provides below an update on victim applications received so far by the VPRS in the Case (I), and observations on the procedure for victim participation at trial (II).

I- Update on Victims' Applications

2. To date, the Registry has received a total of 968 victim applications for participation in the proceedings in relation to the Case.² Out of these, during the pre-trial stage of the proceedings 882 applications were transmitted to the Chamber in Group A and five in Group B. 29 applications were transmitted in Group C to the Parties. As a result of this process, Pre-Trial Chamber I issued its 1 July 2019 Decision in which 882 victims were accepted to participate at the confirmation of charges hearing, and four applicants were refused the status of victim in the proceedings as the reported harm did not match the charges in terms of geographical scope. Finally, one applicant was requested to submit additional information and three applicants had their applications

¹ Trial Chamber X, "Decision on the Prosecution request for access to the identity and applications of participating victims and inviting report and submissions on victim application procedure", 20 December 2019, ICC-01/12-01/18-536.

² Duplicates are not included in this figure. The VPRS also notes that it received new 60 applications after the start of the confirmation of charges hearing.

suspended until further information will be received for a determination on their status.³

3. The Registry is awaiting supplementary information from the LRVs on four applicants, namely one from Group B and three from Group C, for whom the Chamber's decision on their status was suspended (as outlined *supra*).⁴
4. Following additional verifications, the Registry noticed one duplicate application⁵ amongst the 882 participating victims.⁶ In addition, the Registry was informed on 3 December 2019⁷ about the death of another participating victim.⁸ As a result, the number of victims participating is currently at 880.
5. Approximately 80 applications for participation in the proceedings were not transmitted during the pre-trial stage of the proceedings either because they were received after the deadlines⁹ set by Pre-Trial Chamber I for the transmission by the VPRS of complete applications to the Chamber (and to the parties for Group C applications) before the start of the confirmation

³ Pre-Trial Chamber I, "Décision relative à la participation des victimes à la procédure", 1 July 2019, ICC-01/12-01/18-391-Red ("1 July 2019 Decision").

⁴ Email from VPRS to the LRVs on 5 July 2019 requesting supplementary information for the relevant applicants.

⁵ Application a/45178/18 is a duplicate of application a/45147/18.

⁶ See 1 July 2019 Decision and its Annex, ICC-01/12-01/18-391-Conf-AnxA.

⁷ Emails from VPR field staff to VPR HQ on 3 December 2019 and 20 December 2019, reporting the information received from the intermediary who has assisted the victim, and further providing a copy of the victim's death certificate.

⁸ Victim a/20425/19. By email on 31 December 2019, the VPRS has informed the Legal representatives of the victim accordingly.

⁹ Pre-Trial Chamber I, "Decision Establishing the Principles Applicable to Victims' Applications for Participation", 24 May 2018, ICC-01/12-01/18-37-tENG, para. 59(vii) setting a deadline of 15 days before the confirmation hearing for the transmission of Group A ("inside the scope") and Group B ("outside the scope") applications and of 30 days before the confirmation hearing for the transmission of Group C ("unclear") applications; Pre-Trial Chamber I, "Decision Postponing the Date of the Confirmation Hearing", 20 July 2018, ICC-01/12-01/18-94-Red-tENG postponing the date of the confirmation of charges from 24 September 2018 to 6 May 2019; Pre-Trial Chamber I, "Decision Rescheduling the Date of Filing of the Document Containing the Charges and the Commencement of the Confirmation Hearing", 18 April 2019, ICC-01/12-01/18-313-tENG postponing the date of the confirmation hearing until 8 July 2019. VPRS received one application on 8 July 2019.

hearing on 8 July 2019,¹⁰ or because they were assessed by the Registry as incomplete.¹¹

6. The Registry started a comprehensive review of all applications for participation in the proceedings received to date in order to *inter alia* assess whether the victims admitted to participate at the confirmation hearing remain within the scope of the Case, in particular in light of the new temporal scope of the Case.¹²
7. Considering the geographical scope of the Case (i.e. the city of Timbuktu as well as the region of Timbuktu),¹³ the Registry anticipates that a large number of additional applicants may seek to participate at trial.¹⁴ However, the Registry notes the highly volatile security situation in Timbuktu city and also in different areas in the wider Timbuktu region.¹⁵ This difficult context in terms of security and thus accessibility also prevails in other areas of Mali - and outside Mali - where displaced victims are living,¹⁶ which impacts Registry activities to reach out to these victims regarding their potential participation in the proceedings.

¹⁰ Pre-Trial Chamber I, «Decision Rescheduling the Date of Filing of the Document Containing the Charges and the Commencement of the Confirmation Hearing», 18 April 2019, ICC-01/12-01/18-313.

¹¹ Approximately 70 applications were assessed during the pre-trial phase as incomplete and the LRVs were requested to provide supplementary information. Supplementary information was received for approximately 10 applications which have since then been assessed by the VPRS as complete but not yet submitted to the Chamber.

¹² See Pre-Trial Chamber I, «Rectificatif à la Décision relative à la confirmation des charges portées contre Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud», 13 November 2019, ICC-01/12-01/18-461-Corr-Red, p. 466 («Decision on Confirmation of Charges»).

¹³ Decision on Confirmation of Charges, paras. 71, 192 and p. 466.

¹⁴ The Decision on Confirmation of Charges determined that the Ansar Dine/AQMI attack targeted the population of Timbuktu region which encompassed approximately 780.000 inhabitants during the relevant period (Decision on Confirmation of Charges, para. 189).

¹⁵ See para. 8 of the present Report in regard of security concerns.

¹⁶ [REDACTED].

II- Observations on Victim Admission Process at Trial

A. Preliminary Observations on the Security Situation in Mali

8. The Registry notes that:

- The security situation in Mali deteriorated further in 2019 leading to more than 85,000 civilians fleeing their homes to escape violence primarily in northern and central regions of Gao, Mopti and Segou; hundreds of civilians were killed in numerous incidents;
- violence intensified particularly in Gao and Mopti [REDACTED];
- [REDACTED];
- [REDACTED];¹⁷
- [REDACTED].¹⁸

¹⁷ [REDACTED].¹⁸ See for more details the imminent Registry's Report on Security Situation in Mali due on 31 January 2020 (first report) and on 3 July 2020 (second report) as ordered by the Trial Chamber X during the Status conference held on 12 December 2019, ICC-01/12-01/18-T-008-ENG, p. 7, lines 1-6 ("12 December 2019 Hearing").¹⁹ Trial Chamber I, *The Prosecutor v. Thomas Lubanga Dyilo*, "Decision on victims' participation", 18 January 2008, ICC-01/04-01/06-1119, para. 85; Appeals Chamber, *The Prosecutor v. Thomas Lubanga*, "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. 97; 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. 10(a); Trial Chamber II, *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, "Decision on the modalities of victim participation at trial", 22 January 2010, ICC-01/04-01/07-1788-tENG, para. 57; Trial Chamber III, *The Prosecutor v. Jean-Pierre Bemba Gombo*, "Decision on common legal representation of victims for the purpose of trial", 10 November 2010, ICC-01/05-01/08-1005, para. 9(a); Trial Chamber V, *The Prosecutor v. Francis Kirimi Muthaura and Uhuru Muigai Kenyatta*, "Decision on victims' representation and participation", 3 October 2012, ICC-01/09-02/11-498, para. 9.

¹⁸ See for more details the imminent Registry's Report on Security Situation in Mali due on 31 January 2020 (first report) and on 3 July 2020 (second report) as ordered by the Trial Chamber X during the Status conference held on 12 December 2019, ICC-01/12-01/18-T-008-ENG, p. 7, lines 1-6 ("12 December 2019 Hearing").¹⁹ Trial Chamber I, *The Prosecutor v. Thomas Lubanga Dyilo*, "Decision on victims' participation", 18 January 2008, ICC-01/04-01/06-1119, para. 85; Appeals Chamber, *The Prosecutor v. Thomas Lubanga*, "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. 97; 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. 10(a); Trial Chamber II, *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*,

B. Proposed Admission Process

9. The Registry welcomes the opportunity to provide its observations on the admission system for victims to participate at trial and is mindful of the imperative set by the various Trial Chambers and the Appeals Chamber that the system needs to be “meaningful” as opposed to “purely symbolic”.¹⁹ The Registry is also fully cognisant of the need to take into account the rights of the accused to a fair and impartial trial as well as the rights of victims to protection in relation to the issue of the disclosure of information contained in the victims’ applications.²⁰ Finally it appreciates the need to ensure judicial efficiency and sustainability of the victim participation system as regularly recalled by States Parties.²¹
10. In consideration of the above and in light of the circumstances surrounding the present Case, the Registry respectfully submits two potential admission

“Decision on the modalities of victim participation at trial”, 22 January 2010, ICC-01/04-01/07-1788-tENG, para. 57; Trial Chamber III, *The Prosecutor v. Jean-Pierre Bemba Gombo*, “Decision on common legal representation of victims for the purpose of trial”, 10 November 2010, ICC-01/05-01/08-1005, para. 9(a); Trial Chamber V, *The Prosecutor v. Francis Kirimi Muthaura and Uhuru Muigai Kenyatta*, “Decision on victims’ representation and participation”, 3 October 2012, ICC-01/09-02/11-498, para. 9.

¹⁹ Trial Chamber I, *The Prosecutor v. Thomas Lubanga Dyilo*, “Decision on victims’ participation”, 18 January 2008, ICC-01/04-01/06-1119, para. 85; Appeals Chamber, *The Prosecutor v. Thomas Lubanga*, “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. 97; 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. 10(a); Trial Chamber II, *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, “Decision on the modalities of victim participation at trial”, 22 January 2010, ICC-01/04-01/07-1788-tENG, para. 57; Trial Chamber III, *The Prosecutor v. Jean-Pierre Bemba Gombo*, “Decision on common legal representation of victims for the purpose of trial”, 10 November 2010, ICC-01/05-01/08-1005, para. 9(a); Trial Chamber V, *The Prosecutor v. Francis Kirimi Muthaura and Uhuru Muigai Kenyatta*, “Decision on victims’ representation and participation”, 3 October 2012, ICC-01/09-02/11-498, para. 9.

²⁰ Appeals Chamber, *The Prosecutor vs. Thomas Lubanga Dyilo*, “Judgment on the appeals against Trial Chamber II’s ‘Decision Setting the Size of the Reparations Award for which Thomas Lubanga Dyilo is Liable’”, 18 July 2019, ICC-01/04-01/06-3466-Red, paras. 248-249, 254 and 279 referring to Appeals Chamber, *The Prosecutor v. Ahmad Al Faqi Al Mahdi*, “Judgment on the appeal of the victims against the ‘Reparations Order’” 9 March 2018, ICC-01/12-01/15-259-Red2, para. 93.

²¹ See Assembly of States Parties, “Report of the Bureau on the Study Group on Governance”, 22 November 2017, ICC-ASP/16/19, paras. 7-18.

systems for the Chamber's consideration. Furthermore, and particularly in light of the exceptionally challenging security environment, the Registry proposes that the transmissions of further applications be continued throughout the trial phase in order to allow for the participation of an as inclusive number of victims as possible of the crimes subject to the confirmed charges. This request will be further detailed *infra*.²²

Option 1

11. The following proposal for the admission process is similar to the one adopted for the pre-trial stage of the proceedings.²³ It is informed mostly by the approaches adopted in the cases of *The Prosecutor v. Dominic Ongwen*,²⁴ *The Prosecutor v. Bosco Ntaganda*²⁵ and *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*,²⁶ and largely corresponds with the Chambers Practice Manual.²⁷

²² See paras. 21, 22.

²³ Pre-Trial Chamber I, *The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*, "Decision Establishing the Principles Applicable to Victims' Applications for Participation", 24 May 2018, ICC-01/12-01/18-37-tENG, pp. 28-30. See also for the same approach, Pre-Trial Chamber II, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, "Decision Establishing the Principles Applicable to Victims' Applications for Participation", 5 March 2019, ICC-01/14-01/18-141, paras. 39-45 ("*Yekatom and Ngaïssona* 5 March 2019 Decision"). The VPRS notes that the difference between the approach adopted at pre-trial and the one proposed here is the fact that the Registry proposes to no longer transmit to the Chamber applications within Group B (in line with the Chambers Practice Manual, para. 96(ii)). Under option 1, all complete applications which would be assessed as clearly falling outside the scope of the Case would not be transmitted, but only listed in a table to be annexed to the filings transmitting Group A and/or Group C applications; yet, the Registry stands ready to continue the approach applied at pre-trial of submitting also Group B applications for the Chamber's most comprehensive control over the process.

²⁴ Pre-Trial Chamber I, *The Prosecutor v. Dominic Ongwen*, "Decision concerning the procedure for admission of victims to participate in the proceedings in the present case", 3 September 2015, ICC-02/04-01/15-299, paras. 4-10.

²⁵ *The Prosecutor v. Bosco Ntaganda*, Trial Chamber VI, "Decision on victims' participation in trial proceedings", 6 February 2015, ICC-01/04-02/06-449, para. 24(iv), (vi) and (vii) ("*Ntaganda* 6 February 2015 Decision"). See also *Yekatom and Ngaïssona* 5 March 2019 Decision, paras. 39-45.

²⁶ *Yekatom and Ngaïssona* 5 March 2019 Decision, paras. 39 *et seq.*

²⁷ Chambers Practice Manual (version of 29 November 2019), section V. A. (paras. 95-98), see https://www.icc-cpi.int/about/judicial-divisions/Pages/chambers_practice_manual.aspx. Key differences are outlined and motivated *infra*.

12. This approach includes the following features:

- The VPRS receives applications and assesses them against rule 85 of the Rules and any other criteria that the Chamber may find appropriate. Further, and similar to the procedure followed at pre-trial, it categorizes the applicants into three groups:

Group A: Applicants who clearly qualify as victims;

Group B: Applicants who clearly do not qualify as victims;

Group C: Applicants for whom the VPRS could not make a clear determination for any reason.

- The VPRS transmits on a rolling basis all complete applications from Groups A and C to the Chamber.²⁸
- The applications that, in the VPRS's view, are incomplete (applications falling outside of categories A, B and C mentioned above) and/or fall clearly outside the scope of the concerned case (Group B applications) are not transmitted to the Chamber.²⁹
- The VPRS prepares reports that accompany each transmission and lists the victim applications falling into the aforementioned three groups. These reports are notified to the Chamber, the Parties and participants.³⁰ The reports need not include application-by-application reasoning or analysis and need not justify the respective classifications.³¹ For Group A, barring a clear, material error in the

²⁸ In line with the Chambers Practice Manual, para. 96(ii). ²⁹ In line with Chambers Practice Manual, para. 96 (iv). ³⁰ In line with Chambers Practice Manual, para. 96 (iii). ³¹ In line with the Chamber Practice Manual, para. 96(iii). ³² Chambers Practice Manual, para. 96(v).

²⁹ In line with Chambers Practice Manual, para. 96 (iv). ³⁰ In line with Chambers Practice Manual, para. 96 (iii). ³¹ In line with the Chamber Practice Manual, para. 96(iii). ³² Chambers Practice Manual, para. 96(v).

³⁰ In line with Chambers Practice Manual, para. 96 (iii). ³¹ In line with the Chamber Practice Manual, para. 96(iii). ³² Chambers Practice Manual, para. 96(v).

³¹ In line with the Chamber Practice Manual, para. 96(iii). ³² Chambers Practice Manual, para. 96(v).

VPRS's assessment, the Chamber would ratify the assessments regarding these applicants through a decision.

- As regards the transmission of applications to the Parties pursuant to rule 89(1) of the Rules and addressed in Section V(A) of the Chambers Practice Manual, the Registry suggests maintaining the approach applied throughout pre-trial – and informed by previous Chambers practice : only Group C applications presenting unclear or borderline issues on which the VPRS is unable to make a clear determination would be transmitted to the Parties (with the necessary redactions) for their observations. The VPRS would also provide a report to the Chamber and Parties that clearly highlights the issue(s) arising from the application forms that the VPRS was unable to make a clear determination on. Once the Parties' observations have been received on the unclear applications, the Chamber would assess the Group C applications individually and determine whether the victims concerned shall be admitted to participate or not.

13. The Registry notes that the suggested approach does not adhere to Section V A(v) which stipulates that “all complete applications falling within the scope of the concerned case that are transmitted to the Chamber (...) are also provided (...) to the Prosecutor and the Defence”.³² Yet, it is submitted that the abovementioned approach has a key benefit to all actors concerned: as it can be observed in the proceedings in the *Ntaganda*, *Al Hassan* and *Yekatm/Ngaissona* cases, through the Registry's A-B-C assessment and submission only of Group C (“unclear”) applications to the Parties, the latter as well as the Chamber can concentrate on pre-assessed unclear and/or manifestly problematic issues related to the scope of victim participation in a bundled fashion. This saves valuable time for all actors involved.

³² Chambers Practice Manual, para. 96(v).

Furthermore, the Registry's assessment of Group A applications still remains subject to the Chamber's scrutiny, thus providing for the necessary checks and balances.³³ In addition, the VPRS's redaction obligations would extend to only a fraction of the relevant forms (*ie* only the Group C applications submitted to the Parties), leading to considerable resource savings for the Registry. This, in turn, would enable the VPRS to process the highest number of victim applications with a view to their timely participation in the proceedings.

14. This is particularly relevant in the present circumstances, due to (1) the considerable number of applications received so far (and redaction requirements if all Group A applications were to be shared with the Parties); (2) security concerns faced in the Case and the resulting administration of potentially heavy redactions; (3) the difficulty to reach out to remote victim communities in a timely manner as a further consequence of the security context; and (4) the potentially high number of further victim applicants due to the broad scope of the Case. The Registry notes that the suggested approach was accepted also by Pre-Trial Chamber II in *Yekatom/Ngaïssona* in a comparably complex context on the ground as "consistent with the applicable law before the Court"³⁴ and "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."³⁵

³³ As regards compatibility of the proposed approach with rule 89(1) of the Rules, the Registry recalls in particular the relevant findings by Trial Chamber VI in the *Ntaganda* case, holding that the latter rule needs to be read in context with article 68(1) of the Statute (see *Ntaganda* 6 February 2015 Decision, paras. 29-30 and 37). The Registry submits that the present circumstances are insofar similar to those in the *Ntaganda* proceedings (if not more severe as regards the security context) and warrant a similar application of the law. It is also noted that all forms would remain on file with the Registry and could be transmitted to the Parties at any later stage considered necessary by the Chamber (with redactions as appropriate).

³⁴ *Yekatom and Ngaïssona* 5 March 2019 Decision, para. 42. See also *Ntaganda* 6 February 2015 Decision, paras. 29-30 and 37.

³⁵ *Ibid.* Should the proceedings end in a conviction and should the Parties successfully submit that the disclosure of Group A forms is necessary for reparations proceedings, the Registry would be in a

15. Should the Chamber consider that the victim admission process during the remaining trial preparation phase (and, as is requested, beyond the commencement of trial) should follow the guidance provided in the Chambers Practice Manual by the letter, the Registry would suggest the following *modus operandi*:

- all Group A and C applications would be transmitted to the Chamber and the Parties (with the necessary redactions) in batches on a rolling basis.
- The Registry would also submit a report with information on each individual victim, including the VPRS's *prima facie* assessment of the applications.
- Once the Parties' observations have been received on applications as appropriate, the Chamber would determine whether each individual victim shall be admitted to participate or not.³⁶

16. Should this latter approach be followed, the Registry anticipates that with the additional step linked to redactions, it would take a number of months to process all applications that are currently in the Registry's possession (particularly the 880 Group A forms already accepted by the Chamber) and transmit these, alongside those forms that are yet to be collected/have not yet been submitted to the Chamber.³⁷

Option 2

position to prepare redacted versions of all these applications and to transmit them on a rolling basis at the outset of any reparation proceedings.

³⁶ In line with para. 96 (v) and (vi) of the Chambers Practice Manual.

³⁷ The VPRS notes that the redaction process is rather substantial and time-intensive in terms of resources as it implies consultation of the victims concerned through their LRVs, as well as the field staff in charge, the Victims and Witnesses Unit as well as the External Operations Support Section (also from a security aspect) of the Registry. Furthermore, the redaction process requires a multi-level review of the redactions applied by Registry staff, to ensure that no mistake is made in the process and to guarantee the protection of the applicants, their families and any third party (for example, Registry's intermediaries or staff) involved in the process and whose name(s) would appear on the application form.

17. As an alternative, the Registry proposes what would be a novel approach whereby the Parties will receive the relevant data derived from the information mentioned in the application forms for participation, together with the Registry's individual assessment, per application, in consolidated reports. This information would be presented to the Parties and the Chamber (with very limited redactions where necessary) and would avoid transmission of the forms themselves.

18. This approach includes the following features:

- The Registry transmits all applications received to the Chamber on a rolling basis.
- Rather than transmitting copies of the forms to the Parties, the Registry prepares reports in a table format with all relevant data per individual victim relating to rule 85 of the Rules that can be found on the application form.
- This table includes data from all victims' applications that either clearly fall within the scope of the Case, or unclear applications (both categories clearly marked as such). Data from applications that, in the view of the Registry, are incomplete and/or fall outside the scope of the concerned Case would not be included in the table.
- The Parties would be invited to present their observations, if any, for each victim applicant.
- The Chamber may consider that applications which are not opposed by the Parties within time limit set by the Chamber would be automatically admitted in the proceedings. For applications the Parties commented on, the Chamber may then issue decisions based on the Parties' observations.

19. The Registry submits that this approach would remain within the spirit of rule 89(1) of the Rules and the Chambers Practice Manual in that it provides all key elements of the applications including the VPRS assessment to the Parties (with redactions as necessary). It would also provide sufficient information on individual applicants for the Parties to make meaningful observations if they so choose.³⁸ As an additional safeguard, the Chamber would receive all applications in their original format for its consideration. Importantly, since no applications would be transmitted to the Parties, generally no redactions would be necessary. In light of the anticipated number of applications still to be received, this could be a substantial efficiency gain.

No cut-off date for the transmissions

20. The Registry recommends that independent of the transmission procedure decided upon by the Chamber, the transmissions be done with no “cut-off” date before the start of the trial.³⁹

21. Owing to the challenging security situation as mentioned *supra*, it is extremely difficult to reach out to a number of relevant victim communities, let alone being able to collect any relevant information from groups or individuals that could participate in the present proceedings. In addition, there is a number of refugee camps in neighbouring countries which host victims who would fall within the remit of the present case but which have yet to be reached out to, also owing to the Registry’s dependency on third party organisations for their assistance and support. In light of the foregoing, if the final transmission time

³⁸ See Chambers Practice Manual, para. 96 (iii) as to the content of the transmission report (“a list of the transmitted applications together with the information as to the alleged crime(s) and harm”).

³⁹ The Chambers Practice Manual provides in para. 98(iv) that there should be “a final time limit, sufficiently before the commencement of the trial, for the transmission of any further application by victims of the crimes charged”.

limit were to be set before the commencement of trial, the Registry might not be in a position to collect applications and related supporting documents of those victims wishing to participate in the trial proceedings.

C. Registry's Further Observations

Template Application Form to be Used in Ensuing Proceedings

22. The Registry has monitored and assessed the use of the *Al Hassan* victim application form⁴⁰ during the pre-trial proceedings. In order to provide the most efficient and meaningful approach to the collection of victims' information for the purpose of participation and reparations and bearing in mind the specific challenges of the present Case in terms of security and accessibility to victim communities, the Registry is of the view that:

- The considerations supporting the adoption of a joint participation and reparation form remain valid;⁴¹ and
- the present application form would benefit from some moderate amendments streamlining the current form; and
- the use of the most recent and Presidency-approved template application form adopted and tested in the *Yekatom and Ngaïssona* case⁴² would be beneficial for the purpose of the proceedings of the present Case ("Proposed Template Application Form").

⁴⁰ The *Al Hassan* Pre-Trial application form for victims has been approved by the Pre-Trial Chamber I in 24 May 2018 Decision. This form is based on the standard one-page form approved by the Presidency in 2017 pursuant to regulation 23(2) of the RoC, together with an ensuing reparations component. The *Al Hassan* Pre-Trial Form contains one page to collect all the information necessary for the Chamber to make a determination on the victim's participatory status, a second page to capture the personal information of the victim and three pages to collect information on reparation.

⁴¹ *Al Hassan* 24 May 2018 Decision, paras. 22-23.

⁴² *Yekatom and Ngaïssona* 5 March 2019 Decision, paras. 18-23. The application form for individuals is accessible on the ICC homepage in different languages, for the English version see at https://www.icc-cpi.int/itemsDocuments/appForms-yn/ynAppFormInd_ENG.pdf. The application form for organisation or institutions is accessible in different languages, for the English version see at https://www.icc-cpi.int/itemsDocuments/appForms-yn/ynAppFormOrg_ENG.pdf.

23. The Registry noticed during the field implementation of the *Al Hassan* template application form that the victims and/or intermediaries assisting victims faced some difficulties to fully understand and complete particularly the part dedicated to the reparations-related questions due to the complexity of the issues as well as due to time and security constraints. In light of this observation, the Registry made some adjustments in the reparations part of the form (to make it more reader-friendly/comprehensive) and tested the amended form in the recent *Yekatom and Ngaïssona* pre-trial proceedings after seeking the Presidency's approval of that latter form.⁴³ These adjustments have shown better results notably in terms of quantity and quality of the information gathered, particularly relating to reparations. Based on this experience, the Registry respectfully proposes that the Proposed Template Application Form as used in *Yekatom and Ngaïssona* be used for the ensuing victim application process in the *Al Hassan* proceedings.

24. The main differences between the *Al Hassan* Form and the Proposed Template Application Form include: 1) a slight re-arrangement of the form itself, moving all key questions for the Registry's Rule 85 assessment as well as reparations to the first two pages and moving all personal information to pages three and four; 2) a slight amendment to the question pertaining to harm;⁴⁴ and 3) a more illustrative formulation of the question pertaining to types of reparations.⁴⁵

⁴³ Registry, "Registry Observations on Aspects Related to the Admission of Victims for Participation in the Proceedings", 6 February 2019, ICC-01/14-01/18-78 with one confidential *ex parte* annex, only available to the Registry, para. 9-14, and in particular footnotes 12, 16 and 17 regarding the amendments.

⁴⁴ Question 6 of the Proposed Template Application Form amalgamates the previous open question regarding the victim's personal harm suffered alongside the standardised tick-box approach regarding main types of harm as it is entailed in the reparations section in the present *Al Hassan* Form.

25. In line with prevailing practice at the Court, the VPRS would systematically split the application after page two and, in accordance with, *inter alia*, article 68(1) of the Statute, keep the victims' personal information from being transmitted on the case record.⁴⁶
26. The Registry would also continue to make available versions of the Proposed Template Application Form in all relevant languages (if approved) on the ICC homepage,⁴⁷ including an online form,⁴⁸ which would facilitate access to the proceedings to those potential applicants who have access to the internet.

Legal Representation of Unrepresented Applicants

27. The Registry finally recommends that regarding the legal representation of unrepresented applicants, to avoid any gap in legal representation, the Chamber may consider appointing the current common legal representatives of the participating victims to also represent currently unrepresented and future victim applicants.

The proposed solution streamlines the questioning process in uniting all information requirements pertaining to the victim's harm in one single question.

⁴⁵ Question 7 of the Proposed Template Application Form solicits relevant information from the victim regarding personal preferences while suggesting some key forms of reparations as foreseen in article 75(1) of the Statute and rule 94(1) of the Rules to assist the victim. A similar question is included in the current *Al Hassan* form, albeit in a less user-friendly fashion (based on Registry user feed-back from the field).

⁴⁶ The Registry notes that where a "dual status" victim/witness is scheduled to testify, the personal information of the witness may become relevant and therefore transmitted onto the case file. The practice of splitting forms (*see* Chambers Practice Manual, section C. I. (vi)) has been adopted in the *Ntaganda* case, the case of the *Prosecutor v. Dominic Ongwen* (ICC-02/04-01/15), the *Yekatom/Ngaissona* case and the *Al Hassan* case at pre-trial.

⁴⁷ Due to the security situation in Mali, the Registry provides an application form without the logo of the ICC on the form in order to best protect the victims and intermediaries assisting victims in the field. Also, the Registry provides the application forms in English, French and in local languages (Tamasheq, Bambara, Songhai).

⁴⁸ The Registry notes that during the pre-trial phase of the *Al Hassan* case, this online tool was at an experimental stage and the lessons learned showed limited albeit increasing use, alongside the need for more assistance how to fill in the form. The Registry will pursue its efforts on this aspect and will monitor and assess the use of the online form.