

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-02/04
Date: 9 March 2012

PRE-TRIAL CHAMBER II

Before: Judge Hans-Peter Kaul, Single Judge

SITUATION IN UGANDA

PUBLIC

**Decision on Victim's Participation in Proceedings Related
to the Situation in Uganda**

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

The Office of the Prosecutor

Luis Moreno Ocampo, Prosecutor
Fatou Bensouda, Deputy Prosecutor

Counsel for the Defence

Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(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

Silvana Arbia, Registrar
Didier Preira Deputy Registrar

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Fiona McKay

Other

JUDGE HANS-PETER KAUL, acting as Single Judge for Pre-Trial Chamber II (the “Chamber”) of the International Criminal Court (the “Court”), responsible for all victims’ issues relating to the proceedings in the situation in Uganda,¹ hereby renders a framework decision on victims’ participation in proceedings related to the situation in Uganda, irrespective and outside the context of any case which has arisen or may arise from that situation.

I. Procedural History

1. The Single Judge recalls the Chamber’s earlier decisions² on victims’ applications in the situation in Uganda by way of which in total 21 victim applicants³ have been granted so far the status of victims in the context of the situation. Further, the Chamber deferred its decision on in total 20 applications until adequate documentation would be provided to the Chamber.⁴ Additionally, the Chamber deferred its decision on 13 applications pending the observations of the Prosecutor

¹ Pre-Trial Chamber II, Decision Designating a Single Judge on Victims’ Issues, ICC-02/04-184.

² Pre-Trial Chamber II, Decision on victims’ applications for participation a/0010/06, a/0064/06 to a/0070/06, a/0081/06 to a/0104/06 and a/0111/06 to a/0127/06, **ICC-02/04-101**; Pre-Trial Chamber II, Decision on victims’ applications for participation a/0010/06, a/0064/06 to a/0070/06, a/0081/06, a/0082/06, a/0084/06 to a/0089/06, a/0091/06 to a/0097/06, a/0099/06, a/0100/06, a/0102/06 to a/0104/06, a/0111/06, a/0113/06 to a/0117/06, a/0120/06, a/0121/06 and a/0123/06 to a/0127/06, **ICC-02/04-125**; Pre-Trial Chamber II, Decision on victims’ applications for participation a/0066/06, a/0067/06, a/0069/06, a/0070/06, a/0083/06, a/0088/06, a/0091/06, a/0092/06, a/0102/06, a/0114/06, a/0115/06, a/0125/06 and a/0126/06, **ICC-02/04-170**; Pre-Trial Chamber II, Decision on victims’ applications for participation a/0014/07 to a/0020/07 and a/0076/07 to a/0125/07, **ICC-02/04-172**; Pre-Trial Chamber II, Decision on victims’ applications for participation a/0192/07 to a/0194/07, a/0196/07, a/0200/07, a/0204/07, a/0206/07, a/0209/07, a/0212/07, a/0216/07, a/0217/07, a/0219/07 to a/0221/07, a/02228/07 to a/0230/07, a/0234/07, a/0235/07, a/0237/07, a/0324/07 and a/0326/07 under rule 89, **ICC-02/04-180**.

³ This concerns victims with the designated numbers a/0101/06, a/0119/06, a/0065/06, a/0068/06, a/0093/06, a/0096/06, a/0117/06, a/0120/06, a/0123/06, a/0066/06, a/0088/06, a/0091/06, a/0092/06, a/0102/06, a/0115/06, a/0125/06, a/0126/06, a/0108/07, a/0115/07, a/0117/07 and a/0118/07.

⁴ This concerns the applications a/0010/06, a/0064/06, a/0081/06, a/0082/06, a/0084/06, a/0085/06, a/0086/06, a/0087/06, a/0097/06, a/0099/06, a/0100/06, a/0104/06, a/0111/06, a/0113/06, a/0116/06, and a/0127/06. The Chamber requested the Prosecutor and an *ad hoc* counsel for the Defence to provide observations on those applications, to which the Prosecutor and the defence are entitled but not obliged pursuant to rule 89(1) of the Rules of Procedure and Evidence. The Chamber received the Prosecutor’s observations in ICC-02/04-85 and those of the *ad hoc* counsel for the Defence in ICC-02/04-93-tENG. Further, the Chamber deferred its decision on four other applications a/0014/07, a/0017/07, a/0018/07 and a/0113/07, see Pre-Trial Chamber II, Decision on victims’ applications for participation a/0014/07 to a/0020/07 and a/0076/07 to a/0125/07, **ICC-02/04-172**. Observations by the Prosecutor on those four applications were provided in ICC-02/04-159. The *ad hoc* counsel for the Defence provided observations on those applications in ICC-02/04-160.

and the *ad hoc* counsel for the Defence pursuant to rule 89(1) of the Rules of Procedure and Evidence (the “Rules”).⁵

2. The issue of legal representation and assistance to victims and victim applicants was also addressed by this Chamber in a series of decisions. In general, the Chamber considered the appointment of a legal representative for the victims allowed to participate at the situation stage to be appropriate but not compulsory. The Chamber requested the Office of Public Counsel for Victims (the “OPCV”) (i) to inform victims ‘having communicated with the Court’ of their rights and prerogatives and (ii) to provide support and assistance to the victims accepted to participate in proceedings, victim applicants and legal representatives for victims in accordance with regulation 81(4) of the Regulations, where necessary upon consultation with the VPRS and the Victims and Witnesses Unit (the “VWU”).⁶ On occasion, the Chamber also appointed the OPCV as legal representative of certain victims.⁷

3. In its decision of 21 November 2008, the Chamber clarified that “with a view to preserving the efficiency of the proceedings, it appears appropriate that all victims in the context of the [s]ituation be represented jointly by a member of the OPCV”.⁸ Without prejudice to the above finding, the Chamber renewed its request that the

⁵ This concerns the applications a/0192/07, a/0194/07, a/0206/07, a/0209/07, a/0216/07, a/0217/07, a/0219/07, a/0220/07, a/0221/07, a/0229/07, a/0235/07, a/0237/07, and a/324/07. The Chamber requested the Prosecutor and an *ad hoc* counsel for the Defence to provide observations on those applications, to which the Prosecutor and the defence are entitled but not obliged pursuant to rule 89(1) of the Rules of Procedure and Evidence. The Chamber received the Prosecutor’s observations in ICC-02/04-187 and those of the *ad hoc* counsel for the Defence in ICC-02/04-188.

⁶ Pre-Trial Chamber II, Decision on victims’ applications for participation a/0010/06, a/0064/06 to a/0070/06, a/0081/06 to a/0104/06 and a/0111/06 to a/0127/06, **ICC-02/04-101**, para. 164; Pre-Trial Chamber II, Decision on victims’ applications for participation a/0010/06, a/0064/06 to a/0070/06, a/0081/06, a/0082/06, a/0084/06 to a/0089/06, a/0091/06 to a/0097/06, a/0099/06, a/0100/06, a/0102/06 to a/0104/06, a/0111/06, a/0113/06 to a/0117/06, a/0120/06, a/0121/06 and a/0123/06 to a/0127/06, **ICC-02/04-125**, para. 194; Pre-Trial Chamber II, Decision on victims’ applications for participation a/0014/07 to a/0020/07 and a/0076/07 to a/0125/07, **ICC-02/04-172**, para. 286.

⁷ Pre-Trial Chamber II, Decision on legal representation of Victims a/0101/06 and a/0119/06, **ICC-02/04-105**; Pre-Trial Chamber II, Decision on victims’ applications for participation a/0066/06, a/0067/06, a/0069/06, a/0070/06, a/0083/06, a/0088/06, a/0091/06, a/0092/06, a/0102/06, a/0114/06, a/0115/06, a/0125/06 and a/0126/06, **ICC-02/04-170**, para. 52.

⁸ Pre-Trial Chamber II, Decision on victims’ applications for participation a/0014/07 to a/0020/07 and a/0076/07 to a/0125/07, **ICC-02/04-172**, para. 281.

OPCV provide “[a]pplicants, whether granted or not the status of victim (...) in the context of the situation (...), with any form of support and assistance which may be appropriate within the limits of its mandate, where necessary upon consultation with the VPRS and the [VWU] and in particular to inform them of their rights and prerogatives”.⁹

4. As regards the participatory activities which victims would be allowed to perform specifically “in the context of the situation, prior to, and/or irrespective of, a case”¹⁰ the Chamber clarified in its decision dating 10 August 2007 that the Rome Statute (the “Statute”) foresees certain scenarios wherein victims are called upon to play a role, such as articles 15, 53, 56 or 57(3)(c) and 68(1) of the Statute or rules 89 and 93 of the Rules.¹¹ The Chamber, highlighting that the list of proceedings provided is not exhaustive, concluded by stating:

“All possible scenarios cannot be foreseen at this stage, and the Chamber may still decide to allow victims to participate in other proceedings, provided that their participation is appropriate and consistent with the relevant provisions of the Statute and the Rules.”¹²

5. The Single Judge further takes note of the fact that in light of the Appeals Chamber judgments dating 19 December 2008¹³ and 2 February 2009¹⁴ which addressed some aspects of victims’ participation in proceedings related to a situation, the pre-trial chambers of the Court undertook a new effort to adjudge and

⁹ Pre-Trial Chamber II, Decision on victims’ applications for participation a/0014/07 to a/0020/07 and a/0076/07 to a/0125/07, ICC-02/04-172, para. 286.

¹⁰ Pre-Trial Chamber II, Decision on victims’ applications for participation a/0010/06, a/0064/06 to a/0070/06, a/0081/06 to a/0104/06 and a/0111/06 to a/0127/06, ICC-02/04-101, para. 88.

¹¹ Pre-Trial Chamber II, Decision on victims’ applications for participation a/0010/06, a/0064/06 to a/0070/06, a/0081/06 to a/0104/06 and a/0111/06 to a/0127/06, ICC-02/04-101, paras 90-103.

¹² Pre-Trial Chamber II, Decision on victims’ applications for participation a/0010/06, a/0064/06 to a/0070/06, a/0081/06 to a/0104/06 and a/0111/06 to a/0127/06, ICC-02/04-101, para. 88.

¹³ Appeals Chamber, Judgment on victim participation in the investigation stage of the proceedings in the appeal of the OPCD against the decision of Pre-Trial Chamber I of 7 December 2007 and in the appeals of the OPCD and the Prosecutor against the decision of Pre-Trial Chamber I of 24 December 2007, ICC-01/04-556.

¹⁴ Appeals Chamber, Judgment on victim participation in the investigation stage of the proceedings in the appeal of the OPCD against the decision of Pre-Trial Chamber I of 3 December 2007 and in the appeals of the OPCD and the Prosecutor against the decision of Pre-Trial Chamber I of 6 December 2007, ICC-02/05-177.

regulate the issue of victims' participation in the context of the situation. To this end, the Single Judge recalls that this Chamber rendered on 3 November 2010 and 11 November 2010 its decisions on victims' participation in proceedings related to the situations in the Republic of Kenya¹⁵ and the Central African Republic,¹⁶ respectively. Pre-Trial Chamber I rendered similar decisions in relation to the situations in the Democratic Republic of Congo¹⁷ and Libya¹⁸.

6. For reasons of coherence and predictability in the Court's approach to the issue of victims' participation in the context of the situation, the Single Judge deems it appropriate, to clarify further, bearing in mind the previous findings of this Chamber in the context of the situation in Uganda, the substantive and procedural framework for possible participation of victims in proceedings at the situation stage together with instructions directed to the Victims Participation and Reparation Section (the "VPRS"), charged to implement this decision. Thus, the Single Judge hopes to unify the Chamber's approach in this situation with its approach in the other situations assigned to this Chamber.

II. The Law

7. The Single Judge notes articles 68(3), 21(2) and (3) of the Statute, rules 85 to 93 of the Rules and regulations 80, 81, 86 and 87 of the Regulations of the Court (the "Regulations"). Reference is also made to the Chamber's identification of applicable law as reflected in its "Decision on Victims' Participation in Proceedings Related to the Situation in the Republic of Kenya".¹⁹

¹⁵ Pre-Trial Chamber II, Decision on Victims' Participation in Proceedings Related to the Situation in the Republic of Kenya, ICC-01/09-24.

¹⁶ Pre-Trial Chamber II, Decision on Victims' Participation in Proceedings Related to the Situation in the Central African Republic, ICC-01/05-31.

¹⁷ Pre-Trial Chamber I, Decision on victims' participation in proceedings relating to the situation in the Democratic Republic of Congo, ICC-01/04-593.

¹⁸ Pre-Trial Chamber I, Decision on Victims' Participation in Proceedings Related to the Situation in Libya, ICC-01/11-18.

¹⁹ Pre-Trial Chamber II, Decision on Victims' Participation in Proceedings Related to the Situation in the Republic of Kenya, ICC-01/09-24, paras 2-6.

III. Substantive framework for the possible participation of victims in proceedings at the situation stage

8. As this Chamber also clarified in its first decision on victims' participation dated 10 August 2007,²⁰ article 68(3) of the Statute constitutes the basic norm according to which victims' participation may take place in proceedings before the Court. The Single Judge also recalls that other provisions of the Statute, such as articles 15(3), 19(3) and 75, specify particular instances where victims have the right to participate.²¹ However, in the view of the Single Judge, unless the Statute allows *expressis verbis* for victims' participation at specific stages of the proceedings, their participation is governed by the normative framework of article 68(3) of the Statute.

9. Article 68(3) of the Statute sets out certain criteria that must be met before victims, who meet the requirements of rule 85 of the Rules, are permitted to participate at "stages of the proceedings". Before examining such criteria, the Chamber will have first to determine whether and to what extent a situation stage may qualify as a "stage of the proceedings" within the meaning of article 68(3) of the Statute. Thereafter, the Chamber will have to determine (1) whether the relevant stage is "appropriate", and (2) whether the personal interests of the victims are affected.

10. The Single Judge recalls that hitherto the Court's jurisprudence has been consistent in recognizing the possibility of victims' participation during the stage of the situation. This right has been recognized in principle by this Chamber in its first decision dated 10 August 2007 on the subject-matter *sub judice*.²² However, while this Chamber previously adopted a broad definition of the notion of "stage of

²⁰ Pre-Trial Chamber II, Decision on victims' applications for participation a/0010/06, a/0064/06 to a/0070/06, a/0081/06 to a/0104/06 and a/0111/06 to a/0127/06, ICC-02/04-101, paras 8-10 and 89.

²¹ In the context of proceedings at the situation stage, this has been amply analyzed by this Chamber also in its previous decision of 10 August 2007, see Pre-Trial Chamber II, Decision on victims' applications for participation a/0010/06, a/0064/06 to a/0070/06, a/0081/06 to a/0104/06 and a/0111/06 to a/0127/06, ICC-02/04-101, paras 82-104.

²² Pre-Trial Chamber II, Decision on victims' applications for participation a/0010/06, a/0064/06 to a/0070/06, a/0081/06 to a/0104/06 and a/0111/06 to a/0127/06, ICC-02/04-101.

proceedings” as encompassing the situation as a whole,²³ the Appeals Chamber distinguished between the investigation itself conducted by the Prosecutor on the one hand, and judicial proceedings, on the other, stating that “[a]rticle 68(3) of the Statute correlates victim participation to ‘proceedings’, a term denoting a judicial cause pending before a Chamber” and that “[i]n contrast, an investigation is not a judicial proceeding”.²⁴ By so doing, the Appeals Chamber, confined victims’ participation during the situation stage to judicial proceedings, which “includ[e] proceedings affecting investigations, provided [that victims’] personal interests are affected by the issues arising for resolution”.²⁵ It follows that the Appeals Chamber clearly acknowledged that victims *can* be allowed to participate in judicial proceedings taking place at the stage of a situation. The Single Judge, accordingly, sees no reason to depart from this Chamber’s original approach taken according to which it held in essence that victims may participate in proceedings related to the situation stage. Therefore, victims participation may take place at that stage, albeit only when an issue arises which may require judicial determination.

11. Since it has been established that judicial proceedings within the situation may qualify as a “stage of the proceedings” within the meaning of article 68(3) of the Statute, the Single Judge will provide further clarifications to the two criteria under the said provision. With respect to the first criterion, the Single Judge must consider whether the relevant stage of the proceedings is deemed “appropriate” for the purpose of victims’ participation. If the answer is in the affirmative, then the Single

²³ Pre-Trial Chamber II, Decision on victims’ applications for participation a/0010/06, a/0064/06 to a/0070/06, a/0081/06 to a/0104/06 and a/0111/06 to a/0127/06, ICC-02/04-101, paras 88-103. This understanding had also been laid down in Pre-Trial Chamber I, Decision on the Applications for Participation in the Proceedings of VPRS 1, VPRS 2, VPRS 3, VPRS 4, VPRS 5 and VPRS 6, ICC-01/04-101-tENG, paras 28-54.

²⁴ Appeals Chamber, Judgment on victim participation in the investigation stage of the proceedings in the appeal of the OPCD against the decision of Pre-Trial Chamber I of 7 December 2007 and in the appeals of the OPCD and the Prosecutor against the decision of Pre-Trial Chamber I of 24 December 2007, ICC-01/04-556, para. 45.

²⁵ Appeals Chamber, Judgment on victim participation in the investigation stage of the proceedings in the appeal of the OPCD against the decision of Pre-Trial Chamber I of 7 December 2007 and in the appeals of the OPCD and the Prosecutor against the decision of Pre-Trial Chamber I of 24 December 2007, ICC-01/04-556, para. 56.

Judge must assess the second criterion, namely whether the victims' personal interests are affected by those judicial proceedings, which will be assessed on a case-by-case basis and only when an issue arises which may require judicial determination.

12. The Single Judge agrees with this Chamber's previous analysis²⁶ that the Statute and the Rules foresee different scenarios of judicial proceedings related to the situation stage where victims' personal interests may be affected and where judicial scrutiny is required, such as articles 53, 56(3) and 57(3)(c) of the Statute and rule 93 of the Rules. As has been clarified by this Chamber previously, this exemplary enumeration does not deny the fact that there may be other instances where victims' participation may be deemed appropriate by the Chamber.²⁷

IV. Procedural framework for the possible participation of victims in proceedings at the situation stage

13. For the purpose of this decision, the Single Judge wishes to clarify that he considers all persons applying as victims, as referred to in the Court's legal texts. However, a distinction must be drawn between victims *applying* to participate and victims *recognized* as participants in the potential proceedings.²⁸

14. The Single Judge recalls once more the statement of the Appeals Chamber in its judgment of 19 December 2008: "Having determined that the Pre-Trial Chamber cannot grant the procedural status of victim entailing a general right to participate in the investigation, the Appeals Chamber is not in a position to advise the Pre-Trial Chamber as to how applications for participation in judicial proceedings at the

²⁶ Pre-Trial Chamber II, Decision on victims' applications for participation a/0010/06, a/0064/06 to a/0070/06, a/0081/06 to a/0104/06 and a/0111/06 to a/0127/06, ICC-02/04-101, paras 82-104.

²⁷ Pre-Trial Chamber II, Decision on victims' applications for participation a/0010/06, a/0064/06 to a/0070/06, a/0081/06 to a/0104/06 and a/0111/06 to a/0127/06, ICC-02/04-101, para. 88.

²⁸ See also Pre-Trial Chamber III, Fourth Decision on Victims' Participation, ICC-01/05-01/08-320, para. 20.

investigation stage of a situation should generally be dealt with in the future (...).²⁹ Therefore, in the absence of any clear guidance of the Appeals Chamber with respect to the issue at stake, the Single Judge finds it essential to define the procedural framework for victims' participation at the situation stage.

15. The Single Judge is cognizant of the fact that this Chamber has assessed the merits of a number of victims' applications in the context of the situation, irrespective of the case of *The Prosecutor v Joseph Kony, Vincent Otti, Okot Odhiambo and Dominic Ongwen*, and has recognized 21 victims as participants in potential proceedings. However, in light of the uniform approach taken by pre-trial chambers in the various situations pending before the Court, the Single Judge deems it appropriate to vary, to a limited extent, the procedural framework in which victims' applications will be assessed in the context of this situation for the future. This is without prejudice to the previous findings of this Chamber accepting 21 victims to participate in the stage of the situation, should an issue arise which may require judicial determination.

16. In the following, the Single Judge will outline three different hypotheses which may lead the Single Judge to assess the merits of the victims' applications at the stage of the situation. The Single Judge considers that the distinction between the three hypotheses is necessary because it could have implications on *whether* and *which* victims' applications will be considered on their merits.

17. The three different hypotheses are the following: (a) the Chamber is seized of a request that is not submitted by victims of the situation; (b) the Chamber decides to act *proprio motu*; and (c) the Chamber is seized of a request emanating from victims

²⁹ Appeals Chamber, Judgment on victim participation in the investigation stage of the proceedings in the appeal of the OPCD against the decision of Pre-Trial Chamber I of 7 December 2007 and in the appeals of the OPCD and the Prosecutor against the decision of Pre-Trial Chamber I of 24 December 2007, ICC-01/04-556, para. 57.

of the situation³⁰ who have filed an application for participation in the proceedings with the Registry.

18. With respect to the first and third hypotheses, the Chamber will first have to determine whether the issue raised could lead or be linked to judicial proceedings such as those exemplified in paragraph 12 above. By contrast, with respect to the second hypothesis, the Chamber has already determined that judicial proceedings will take place as the Chamber has decided to act on its own motion triggering those proceedings. Only in case the Chamber has found that judicial proceedings are to be conducted, it will resort to the assessment of the requirements of rule 85 of the Rules with respect to those applications that are linked to the issue which forms the subject-matter of judicial proceedings. In this context, the three hypotheses presented may assist to identify the link between the victim and the issue requiring judicial determination. In the first and second hypotheses, the Chamber will assess the requirements of rule 85 of the Rules concerning those victims whose applications can be linked to the issue at stake. In the third hypothesis the Chamber will resort only to the applications of those victims who have addressed a request to the Chamber. Once the Chamber has assessed the requirements of rule 85 of the Rules, it will then turn on to examine whether those victims' personal interests are affected by the issue that is subject to judicial determination.

19. The Single Judge will now address the practical implications of this decision and, in particular, the involvement and assistance of the VPRS.

V. Implementation of this decision by the VPRS

20. Mindful of the Court's current inactivity in the situation in the Republic of Uganda and the related case, the Single Judge deems it necessary to receive first a comprehensive report by the VPRS on, *inter alia*, the status quo of all applications

³⁰ It is clarified that the reference to the term "victims of the situation" covers both victims who have applied to participate and those who have been recognized by the Chamber as victims participating in the proceedings.

submitted to the Registry in the situation in Uganda, whether or not pending before this Chamber, and current activities undertaken by the VPRS in this regard. The VPRS is encouraged to include into the report any other information which could be of assistance to the Chamber. The report shall be submitted to the Chamber by Friday, 11 May 2012.

21. Above all, it is recalled that the VPRS in all its activities and contacts with victims or affected groups of victims should emphasize the purely voluntary nature of their participation to the proceedings.³¹

22. In the view of the Single Judge, the VPRS should also encourage a collective approach to victims' applications for participation in the proceedings, to the extent possible.³² Collective victims' applications cannot be imposed but individual victims may be encouraged to join others so that a single application is made by a person acting on their behalf, with their consent, in accordance with rule 89(3) of the Rules. In this context, the Single Judge is cognizant of the Registry's proposal for a standard form for collective applications prepared for the purposes of the case of *The Prosecutor v Laurent Gbagbo*.³³ The VPRS is requested to prepare a similar standard form for collective applications for participation in the proceedings in the context of the situation in Uganda and the related case.

23. With regard to all applications which have been submitted or will be submitted to the Registry,³⁴ the VPRS will have to make first a distinction between those applying for participation in the proceedings and those applying solely for the

³¹ See also Pre-Trial Chamber II, Order to the Victims Participation and Reparations Section Concerning Victims' Representations Pursuant to Article 15(3) of the Statute, ICC-01/09-4, para. 10.

³² See also Pre-Trial Chamber III, Decision on issues related to the victims' application process, ICC-02/11/01/11-33, para. 7.

³³ ICC-02/11-01/11-45 and annexes.

³⁴ This part does not affect the applications which have been decided upon by the Chamber. It also does not include the 33 applications pending before the Chamber, as they have been partly considered by the Chamber and for which observations have been provided by the Prosecutor and the *ad hoc* counsel for the Defence. Those pending applications will be addressed below in this decision.

purposes of reparations. Thus, unless the victims explicitly indicate their wish to participate in the proceedings, the VPRS shall treat these applications as presented merely for the purposes of reparations.

24. The VPRS will have to assess whether all applications related to participation in the proceedings are complete. This assessment must be carried out within 60 days from the date of receipt of the said applications. For those applications, which have been received over the last years and which have not been processed yet by the VPRS, the Single Judge holds the view that the VPRS shall endeavour to complete this assessment within the next 6 months and report to the Chamber accordingly. The VPRS is encouraged to make *full use* of its staff in the field to conduct this preliminary assessment. Issues of missing documentation or incomplete applications could thus be identified and addressed by the staff in the field *before* these applications reach the Court in The Hague. Following regulation 86(4) of the Regulations, the VPRS will request additional information from the victims, if need be. In that respect, the Single Judge is aware that the VPRS may use intermediaries who assist the victim applicants. Mindful of the importance of their role,³⁵ the Single Judge is of the view that the VPRS should provide information, training and appropriate support to the intermediaries assisting the victims in filling in the application forms so as to ensure that victims' applications are properly, truthfully and comprehensively filled in and complete.

25. Once the applications are complete, the VPRS must commence to prepare proposals for redactions in the victims' applications for the purposes of future transmission of those applications to the parties.

³⁵ See also Pre-Trial Chamber I, Decision on the Applications for Participation Filed in Connection with the Investigation in the Democratic Republic of Congo by Applicants a/0189/06 to a/0198/06, a/0200/06 to a/0202/06, a/0204/06 to a/0208/06, a/0210/06 to a/0213/06, a/0215/06 to a/0218/06, a/0219/06, a/0223/06, a/0332/07, a/0334/07 to a/0337/07, a/0001/08, a/0030/08 and a/0031/08, ICC-01/04-545, para. 25.

26. The VPRS will also have to perform an analysis of the applications following the requirements of rule 85 of the Rules. In so doing, it shall follow the “Fourth Decision on Victims’ Participation” in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo*, in which Pre-Trial Chamber III spelled out the requirements that need to be met for the purpose of the rule 85 assessment, namely, whether (1) the victim applicant is a natural person or an organization or institution (2) a crime within the jurisdiction of the Court appears to have been committed, (3) the victim applicant has suffered harm, and (4) such harm arose “as a result” of the alleged crime within the jurisdiction of the Court.³⁶ With reference to the second requirement a victim may be recognized as a victim in the context of the situation if he or she has shown that the crime could be qualified as a crime within the jurisdiction of the Court committed on the territory of Northern Uganda since 1 July 2002.³⁷

27. The analysis conducted by the VPRS shall be prepared in order to be included in a report pursuant to regulation 86(5) of the Regulations to be later submitted to the Chamber. The report shall also include an assessment as to which applications might be accepted, rejected, or raise difficult issues. This initial rule 85 assessment will be subject to the Chamber’s final determination. The report will also include one paragraph for each victim which reflects the information contained in the application analyzed in respect of each of the requirements of rule 85 of the Rules. This paragraph shall contain concise information with regard to location, time and the specific alleged events reflecting the harm suffered by the victim.³⁸

28. This report will be submitted together with the applications in case the Chamber has determined that judicial proceedings regarding a specific issue will take place.

³⁶ Pre-Trial Chamber III, Fourth Decision on Victims’ Participation, ICC-01/05-01/08-320, para. 30; See also Pre-Trial Chamber II, Decision on victims’ applications for participation a/0010/06, a/0064/06 to a/0070/06, a/0081/06 to a/0104/06 and a/0111/06 to a/0127/06, ICC-02/04-101, para. 12; Pre-Trial Chamber I, Decision on the Applications for Participation in the Proceedings of VPRS 1, VPRS 2, VPRS 3, VPRS 4, VPRS 5 and VPRS 6, ICC-01/04-101-tENG, para. 85

³⁷ See Presidency, Decision Assigning the Situation in Uganda to Pre-Trial Chamber II, ICC-02/04-1.

³⁸ This does not concern the 33 applications for participation currently pending before the Chamber.

The Chamber stresses the importance of the VPRS to be ready at any time to present complete applications together with the assessment when an issue requiring judicial determination arises before the Chamber.

29. In addition, the VPRS will have to endeavor to group victims in the course of the assessment of the victims' applications. During this exercise, the VPRS will have to bear in mind the possibility that those groups of victims may be represented by common legal representatives.³⁹ In order to ensure appropriate representation for the victims and continuous consultation between the victims and their legal representatives, the VPRS will have to engage into discussions as soon as possible with the counsel community in Uganda who may represent victims before the Court. This would provide a practical solution concerning (common) legal representation at the time an issue arises for judicial determination before the Chamber. The VPRS is also invited to seek information as to the counsel community in Uganda and a possible need for training necessities.

30. The Single Judge is aware that the OPCV has been requested to represent all 21 victims jointly who have been recognized by the Chamber. At the same time, the OPCV has been requested to provide appropriate support and assistance to victim applicants, victims and their legal representatives. With a view to harmonize the Chamber's approach to legal representation of victims and victim applicants in the situation in Uganda, the Single Judge holds that the OPCV shall represent all

³⁹ The Single Judge notes in this context that grouping of victims has already been suggested by this Chamber, see Pre-Trial Chamber II, Decision on victims' applications for participation a/0010/06, a/0064/06 to a/0070/06, a/0081/06 to a/0104/06 and a/0111/06 to a/0127/06, ICC-02/04-101, paras 22 and 162; Pre-Trial Chamber II, Decision on victims' applications for participation a/0010/06, a/0064/06 to a/0070/06, a/0081/06, a/0082/06, a/0084/06 to a/0089/06, a/0091/06 to a/0097/06, a/0099/06, a/0100/06, a/0102/06 to a/0104/06, a/0111/06, a/0113/06 to a/0117/06, a/0120/06, a/0121/06 and a/0123/06 to a/0127/06, ICC-02/04-125, para. 10; Pre-Trial Chamber II, Decision on victims' applications for participation a/0066/06, a/0067/06, a/0069/06, a/0070/06, a/0083/06, a/0088/06, a/0091/06, a/0092/06, a/0102/06, a/0114/06, a/0115/06, a/0125/06 and a/0126/06, ICC-02/04-170, para. 52; Pre-Trial Chamber II, Decision on victims' applications for participation a/0014/07 to a/0020/07 and a/0076/07 to a/0125/07, ICC-02/04-172, para. 281.

victims, whether granted the status of victim or not, pending the appointment of a common legal representative by the Court.

31. Following the submission of the comprehensive report referred to above (see paragraph 20), the VPRS shall hereafter report periodically (for information purposes) every four months on the applications received and the progress made by the VPRS on their assessment under rule 85 of the Rules. The periodic report shall also include information with respect to the issue of (common) legal representation.

VI. Pending Victims' Applications

32. As mentioned above, the Single Judge will only assess the merits of each victim application, in case an issue arises which may require judicial determination. At the same time, the Single Judge notes that in total 33 applications, for which observations by the Prosecutor and the *ad hoc* counsel for the Defence pursuant to rule 89(1) of the Rules have been received,⁴⁰ are pending. As those applications have been already formally submitted to and partly considered by this Chamber in previous decisions, the Single Judge deems it necessary that the assessment be concluded, irrespective of whether or not one of the three hypotheses (see paragraph 17) has materialized. That said, the Single Judge clarifies once again that those victims recognized will only be able to exercise their participatory rights in case an issue arises which may require judicial determination.

33. The Single Judge recalls that the Chamber's decision on 20 victims' applications was deferred up until adequate documentation, such as proof of identity, is provided to the Chamber. The Single Judge observes that the VPRS had been requested specifically to contact the applicants with a view to submitting proper documentation in the Chamber's decision dating 10 August 2007.⁴¹ The Chamber

⁴⁰ See ICC-02/04-85; ICC-02/04-93-tENG; ICC-02/04-187, ICC-02/04-188; ICC-02/04-159, ICC-02/04-160.

⁴¹ Pre-Trial Chamber II, Decision on victims' applications for participation a/0010/06, a/0064/06 to a/0070/06, a/0081/06 to a/0104/06 and a/0111/06 to a/0127/06, ICC-02/04-101, p. 61. In its decision dating 21 November 2008, the Chamber did not instruct the VPRS to that effect, ICC-02/04-172.

received on 29 February 2012 the applications 0087/06 and a/0099/06 together with the requested proof of identity.⁴² The Registrar explained that “due to human resources and budgetary constraints [the VPRS] was not in a position to obtain supplementary information for the majority of the concerned applications as well as for other applications for participation received in the situation and in the case and which were assessed as incomplete”.⁴³ The Registrar did not further indicate whether and when the missing documentation for the other applications would be submitted to the Chamber.

34. The Single Judge is aware of the budgetary constraints and priorities of the VPRS, especially in light of the many ongoing judicial activities in other situations and cases and the current inactivity in the situation in Uganda and the related case. Nevertheless, the Single Judge wishes to make clear that investigations and proceedings in the situation in Uganda and the related case have not been terminated yet and may develop in the future. For this eventuality, the VPRS must be prepared and ready to assist the Chamber in a timely and meaningful way. Therefore, the Single Judge instructs the VPRS to provide the missing proof of identity and other supplementary documentation to applications a/0010/06, a/0064/06, a/0081/06, a/0082/06, a/0084/06, a/0085/06, a/0086/06, a/0097/06, a/0100/06, a/0104/06, a/0111/06, a/0113/06, a/0116/06, a/0127/06, a/0014/07,⁴⁴ a/0017/07, a/0018/07 and a/0113/07⁴⁵ until Friday, 29 June 2012. Pending the submission of those documents, the Single Judge defers the decision on the two applications a/0087/06 and a/0099/06 which will be assessed together with the remaining 18 applications.

⁴² ICC-02/04-190.

⁴³ ICC-02/04-190, p. 4.

⁴⁴ A decision on this application was deferred as the Chamber could not establish the identity of the applicant. Further clarifications as to the date of birth of this applicant were requested by the Chamber, see Pre-Trial Chamber II, Decision on victims' applications for participation a/0014/07 to a/0020/07 and a/0076/07 to a/0125/07, ICC-02/04-172, para. 200.

⁴⁵ The Single Judge recalls that the copy of proof of identity submitted by this applicant was of poor quality. Accordingly, a decision on this application was deferred until a readable copy of the document is submitted, see Pre-Trial Chamber II, Decision on victims' applications for participation a/0014/07 to a/0020/07 and a/0076/07 to a/0125/07, ICC-02/04-172, para. 202.

35. The Single Judge now turns to the remaining 13 victims' applications to which the Prosecutor and the *ad hoc* counsel for the Defence provided their observations pursuant to rule 89(1) of the Rules. Having reviewed those applications, the Single Judge is not fully satisfied with the proof of identity provided by most of the victim applicants. Indeed, most of them provide a letter from an unknown author confirming the crime and harm suffered by the applicant. This information is, in the view of the Single Judge, not sufficient. The Single Judge is well aware of the difficulties for victims to obtain or produce copies of official identity documents. This Chamber in its decision dating 14 March 2008 has therefore adapted the requirements to the factual circumstances in the region of Northern Uganda and accepted the following documents as proof of identity of the applicants:

(i) passport, (ii) voter card, (iii) certificate of registration issued by the Electoral Commission, (iv) driving permits, (v) graduated tax ticket, (vi) "short" birth certificate or "long" birth certificate, (vii) birth notification card, (viii) certificate of amnesty, (ix) resident permit or card issued by a Local Council, (x) identification letter issued by a Local Council, (xi) letter issued by a leader of an IDP Camp, (xii) "Reunion letter" issued by the Resident District Commissioner, (xiii) identity card issued by a workplace or an educational establishment, (xiv) camp registration card and card issued by humanitarian relief agencies, such as the United Nations High Commissioner for Refugees and the World Food Programme, (xv) baptism card, (xvi) letter issued by a Rehabilitation Centre.⁴⁶

36. As has been accepted by other chambers,⁴⁷ the Single Judge wishes to point out that in those instances where it is not possible for a victim applicant to acquire or produce a document of the kind set out above, the Single Judge will consider a statement signed by two witnesses attesting to the identity of the victim applicant or, where applicable, the relationship between the victim applicant and the person acting on his or her behalf. The statement should be accompanied by proof of identity of the two witnesses as set out above.

⁴⁶ Pre-Trial Chamber II, Decision on victims' applications for participation a/0010/06, a/0064/06 to a/0070/06, a/0081/06, a/0082/06, a/0084/06 to a/0089/06, a/0091/06 to a/0097/06, a/0099/06, a/0100/06, a/0102/06 to a/0104/06, a/0111/06, a/0113/06 to a/0117/06, a/0120/06, a/0121/06 and a/0123/06 to a/0127/06, ICC-02/04-125, para. 6.

⁴⁷ See also Pre-Trial Chamber I, Decision on the Requests of the Legal Representative of Applicants on application process for victims' participation and legal representation, ICC-01/04-374, para. 15; Pre-Trial Chamber III, Fourth Decision on Victims' Participation, ICC-01/05-01/08-320, para. 37; Trial Chamber II, Decision on the treatment of applications for participation, ICC-01/04-01/07-933-tENG, para. 30.

37. Accordingly, the Single Judge defers his decision on applications a/0192/07, a/0194/07, a/0206/07, a/0209/07, a/0216/07, a/0217/07, a/0219/07, a/0220/07, a/0221/07, a/0229/07, a/0235/07, a/0237/07, and a/0324/07 and instructs the VPRS to review the applications again and to give additional information as to the authorship of the letters appended to the applications concerned.

38. In addition, the Single Judge observes that the link between the person acting on behalf of victim applicant a/0209/07 and the victim applicant, who is a minor, has not been proven. The Single Judge recalls the existing jurisprudence of Pre-Trial Chamber I and II which specifies that any link existing between a child applying for participation and the person acting on his or her behalf (kinship, guardianship, or legal guardianship) should be confirmed within the meaning of regulation 86(2)(e) of the Regulations.⁴⁸ Consequently, the VPRS is instructed to complete the application concerned with the missing information identified until Friday, 29 June 2012. A decision on the 13 applications is deferred up until the Chamber has been served with the supplementary information, as requested.

39. With a view to ensuring the effectiveness of proceedings, the consideration of and final decision on the outstanding 33 applications will be taken in one decision. The Single Judge recalls once again that any exercise of participatory rights by victims recognized will take place once an issue has arisen which may require judicial determination.

⁴⁸ Pre-Trial Chamber I, Decision on the Requests of the Legal Representative of Applicants on application process for victims' participation and legal representation, ICC-01/04-374, para. 13; Pre-Trial Chamber II, Decision on victims' applications for participation a/0010/06, a/0064/06 to a/0070/06, a/0081/06, a/0082/06, a/0084/06 to a/0089/06, a/0091/06 to a/0097/06, a/0099/06, a/0100/06, a/0102/06 to a/0104/06, a/0111/06, a/0113/06 to a/0117/06, a/0120/06, a/0121/06 and a/0123/06 to a/0127/06, ICC-02/04-125, para. 7. See also Pre-Trial Chamber III, Fourth Decision on Victims' Participation, ICC-01/05-01/08-320, para. 38.

FOR THESE REASONS, THE SINGLE JUDGE

- a) **decides** that victims may participate in proceedings related to the situation in the Republic of Uganda in accordance with the framework established in the present decision;
- b) **decides** to defer the decision on the pending 33 victims applications which were already submitted to and partly considered by this Chamber;
- c) **orders** the VPRS to comply with the requirements set fourth in part V and VI of this decision, including the presentation of supplementary documentation and reports mentioned therein;
- d) **appoints** the OPCV as legal representative of all victims and victim applicants pending the appointment of a common legal representative.

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



Judge Hans-Peter Kaul
Single Judge

Dated this Friday, 9 March 2012

At The Hague, The Netherlands