

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

No.: ICC-02/05-03/09

Date: 20 March 2014

**TRIAL CHAMBER IV**

**Before:** Judge Joyce Aluoch, Presiding Judge  
Judge Silvia Fernández de Gurmendi  
Judge Chile Eboe-Osuji

**SITUATION IN DARFUR, SUDAN**

**IN THE CASE OF  
*THE PROSECUTOR v. ABDALLAH BANDA ABAKAER NOURAIN***

**Decision on the participation of victims in the trial proceedings**

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

**The Office of the Prosecutor**

Ms Fatou Bensouda

Mr Julian Nicholls

**Counsel for the Defence**

Mr Karim A.A. Khan

**Legal Representatives of Victims**

Ms Hélène Cissé

Mr Jens Dieckmann

**Legal Representatives of Applicants**

**Unrepresented Victims**

**Unrepresented Applicants for  
Participation/Reparation**

**The Office of Public Counsel for  
Victims**

**The Office of Public Counsel for the  
Defence**

**States' Representatives**

***Amicus Curiae***

**REGISTRY**

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**Registrar**

Mr Herman von Hebel

**Victims and Witnesses Unit**

Mr Patrick Craig

**Detention Section**

**Victims Participation and Reparations Others  
Section**

Ms Fiona Mc Kay

Trial Chamber IV (the “Chamber”) of the International Criminal Court (the “Court”) in the case of *The Prosecutor v. Abdallah Banda Abakaer Nourain*, issues the following “Decision on the participation of victims in the trial proceedings”, pursuant to Articles 64(3), 68 and 69 of the Rome Statute (the “Statute”); Rules 85, 86, 87, 88, 89, 91 and 134(1) of the Rules of Procedure and Evidence (the “Rules”) and Regulation 86 of the Regulations of the Court.

## I. BACKGROUND AND SUBMISSIONS

### 1. Pre-trial proceedings

1. On 29 October 2010, the Pre-Trial Chamber issued the “Decision on Victims’ Participation at the Hearing on the Confirmation of the Charges”, in which 89 applicants were recognised as victims for the purpose of participation in the pre-trial proceedings.<sup>1</sup> The Pre-Trial Chamber recalled the established criteria for the determination of victim status and outlined the relevant procedural rights of the Legal Representatives of the victims (the “Legal Representatives”).<sup>2</sup> On 17 November 2010, the Pre-Trial Chamber issued the “Decision on issues related to the hearing on the confirmation of charges”, in which it noted that all of the Legal Representatives authorised to participate at the confirmation hearing were entitled to make oral submissions on the personal interests of the victims.<sup>3</sup>

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<sup>1</sup> Decision on Victims’ Participation at the Hearing on the Confirmation of the Charges, 29 October 2010, ICC-02/05-03/09-89, para. 55, p. 23.

<sup>2</sup> ICC-02/05-03/09-89, paras 2, 60-68.

<sup>3</sup> Decision on issues related to the hearing on the confirmation of charges, 12 November 2010, ICC-02/05-03/09-103, para. 8.

2. The hearing on the confirmation of charges was held before the Pre-Trial Chamber on Wednesday 8 December 2010. During that hearing the Pre-Trial Chamber set out the scope of permissible oral submissions by victims' Legal Representatives.<sup>4</sup>
3. On 7 March 2011, the Pre-Trial Chamber issued the "Decision on the Confirmation of Charges" and confirmed the charges against both accused.<sup>5</sup>

## **2. Trial proceedings to date**

4. On 19 April 2011, Trial Chamber IV held the first status conference of the trial proceedings with the aim of resolving, *inter alia*, the outstanding questions about victim participation.<sup>6</sup> The Chamber indicated its intention to issue a decision on the modalities of participation of victims once it had dealt with the issue of common legal representation.<sup>7</sup>
5. On 27 June 2011, the parties jointly filed their "Proposed Procedures" for the presentation of evidence, which included proposals as to the modalities of victim participation.
6. On 14 September 2011, the Registry appointed a Common Legal Representative ("CLR") to represent all victims authorised to participate in the current proceedings.<sup>8</sup> The Chamber confirmed the CLR's appointment on 25 May 2012.<sup>9</sup>

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<sup>4</sup> Transcript of Hearing, 8 December 2010, ICC-02/05-03/09-T-9-CONF-ENG, p. 5 line 8 – p. 6 line 7, with public redacted version ICC-02/05-03/09-T-9-Red-ENG.

<sup>5</sup> Corrigendum of the "Decision on the Confirmation of Charges", 8 March 2011, ICC-02/05-03/09-121-Conf-Corr, with confidential annex, and public redacted version ICC-02/05-03/09-121-Corr-Red.

<sup>6</sup> Transcript of hearing, 19 April 2011, ICC-02/05-03/09-T-10-Red-ENG, p. 35 line 3.

<sup>7</sup> ICC-02/05-03/09-T-10-Red-ENG, p. 37 lines 12-16.

<sup>8</sup> Notification of appointment of common legal representatives, 14 September 2011, ICC-02/05-03/09-215, with 2 confidential annexes.

7. On 17 October 2011, the Chamber issued the “Decision on the Registry Report on six applications to participate in the proceedings”, in which it authorised the participation in the trial of the 89 victims previously authorised by Pre-Trial Chamber I to participate in the pre-trial proceedings.<sup>10</sup>
8. On 20 March 2012, the CLR submitted the “Requête aux Fins de Divulgence aux Représentants Légaux Communs d’Eléments Confidentiels et D’Eléments Expurgés du Dossier de l’Affaire Le Procureur c/ Banda & Jerbo”, in which she made submissions on the victims’ rights to access confidential information.<sup>11</sup> The parties submitted a joint response on 11 April 2012.<sup>12</sup>
9. On 7 November 2012, the CLR requested that the Chamber determine the modalities of participation of victims to enable them to outline at this interim phase of the proceedings and throughout the trial, the views and concerns of victims.<sup>13</sup> The parties responded to the request, on 28 and 29 November 2012, submitting that the request was premature and unnecessary, in particular because no trial date had been fixed.<sup>14</sup> On 29 January 2013, the Chamber held a status conference with the parties and participants and, after considering submissions in relation to the issuance of a decision on victims’ participation, the Chamber indicated that it would deal with the issue “as a whole once the trial date is set”.<sup>15</sup>

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<sup>9</sup> Decision on common legal representation, 25 May 2012, ICC-02/05-03/09-337, para. 54.

<sup>10</sup> Corrigendum of the Decision on the Registry Report on six applications to participate in the proceedings, 17 October 2011, ICC-02/05-03/09-231-Corr, para. 17 and p. 16.

<sup>11</sup> Requête aux Fins de Divulgence aux Représentants Légaux Communs d’Eléments Confidentiels et D’Eléments Expurgés du Dossier de l’Affaire Le Procureur c/ Banda & Jerbo, 20 March 2012, ICC-02/05-03/09-310, para. 66.

<sup>12</sup> Joint Response by the Office of the Prosecutor and the Defence for Abdallah Banda Abakaer Nourain and Saleh Mohammed Jerbo Jamus to the “Requête aux Fins de Divulgence aux Représentants Légaux Communs d’Eléments Confidentiels et D’Eléments Expurgés du Dossier de l’Affaire Le Procureur c/ Banda & Jerbo”, 11 April 2012, ICC-02/05-03/09-320.

<sup>13</sup> ICC-02/05-03/09-414, para. 10.

<sup>14</sup> ICC-02/05-03/09-425, paras 1, 17-25; ICC-02/05-03/09-426, paras 1-7.

<sup>15</sup> Transcript of hearing, 29 January 2013, ICC-02/05-03/09-T-21-CONF-ENG, and public redacted version ICC-02/05-03/09-T-21-Red-ENG, p. 3 lines 8-18. The Chamber went on to state that it intended to issue a decision dealing with

10. On 6 March 2013, the Chamber set the date for the commencement of trial at 5 May 2014.<sup>16</sup>
11. On 12 December 2013, the Chamber issued the “Decision on 19 applications to participate in the proceedings”,<sup>17</sup> whereby it granted victim status to 14 additional applicants, thereby authorising them to participate in the trial proceedings.
12. The Chamber has to date granted the status of participatory victims to 103 applicants in the case and recalls that the deadline for filing victims’ applications was 29 February 2012.<sup>18</sup>

## II. ANALYSIS AND CONCLUSIONS

13. The Chamber specifies below, pursuant to Article 68(3) of the Statute and Rule 89(1) of the Rules, the manner in which victims will participate during the trial proceedings. The decision does not seek to define the scope of victim participation in reparations or appeal proceedings.

### (a) *The interpretation of Article 68(3) of the Statute*

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issues of victims participation including, *inter alia*, the redaction of applications made by dual status individuals and access to confidential information by the CLR, p. 17 lines 17-20 and p. 58 lines 20-23.

<sup>16</sup> ICC-02/05-03/09-455, para. 25(iii).

<sup>17</sup> Decision on 19 applications to participate in the proceedings, 12 December 2013, ICC-02/05-03/09-528.

<sup>18</sup> Email communication from the Legal Officer to Trial Chamber IV to the Registry on 11 January 2012 at 14:44 granting an extension of deadline to the OPCV for filing the complete applications of 16 applicants to the victim’s status to 29 February 2012.

14. The Chamber wishes to clarify the approach it will adopt to allow victims to present their views and concerns during the trial, pursuant to Article 68(3) of the Statute and Rule 89 of the Rules.
15. Article 68(3) of the Statute provides that victim participation is restricted to distinct “stages of the proceedings”, but goes no further in defining the meaning of such a “stage”. Instead, this statutory provision leaves it to the discretion of the Court to determine the stages of the proceedings at which the participation of victims is appropriate.
16. The Chamber will apply Article 68(3) of the Statute in accordance with the existing jurisprudence of the Court that interprets “stages of proceedings” in terms of *specific procedural activities*, those being activities such as the examination of a particular witness or the discussion of a particular piece of evidence.<sup>19</sup>
17. Victims’ requests to present their views and concerns will be considered by the Chamber, taking into account the following three questions: (i) whether the factual or legal issue raised in the application affects the personal interests of the victim; (ii) whether it is appropriate for the victim to participate at the relevant stage of proceedings, in the determination of which the Chamber retains a broad discretion; and (iii) whether the manner of the victim’s participation would cause any prejudice to or inconsistency with the rights of the accused and the requirements of a fair and impartial trial.

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<sup>19</sup> Decision on victims’ participation, 18 January 2008, ICC-01/04-01/06-1119, paras 96, 103; ICC-01/05-01/08-807-Corr, para. 25. See also 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, 19 December 2008, ICC-01/04-556 OA4 OA5 OA6, para. 45; Decision of the Appeals Chamber on the Joint Application of Victims a/0001/06 to a/0003/06 and a/0105/06 concerning the “Directions and Decision of the Appeals Chamber” of 2 February 2007, 13 June 2007, ICC-01/04-01/06-925, paras 26 to 29; 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. 94 and 104.

(b) *Anonymous victims*

18. The Chamber will carefully scrutinise whether and to what extent it may allow the participation of anonymous victims, taking into account the potential for prejudice to the parties and participants.<sup>20</sup> The Chamber must strike a balance between the rights of the accused and the requirements of a fair trial, on the one hand, and the rights of victims combined with the need to protect certain individuals in the difficult contexts on the other. Each application requires the Chamber to carry out this balancing act, reliant on a case-by-case analysis.

19. The Chamber recalls that it has already set out some principles as to the limited extent of anonymous victims' participatory rights in its "Order requesting observations from the Legal Representatives on the agreement as to evidence pursuant to Rule 69 of the Rules of Procedure and Evidence" (the "Order").<sup>21</sup> In this Order, the Chamber stated that it will "consider only those observations submitted on behalf of non-anonymous victims."<sup>22</sup> In line with the Chamber's approach, participation by anonymous victims will depend on the impact such participation may have on the rights of the accused, and whether the participation would have a significant impact on the conduct of the proceedings.<sup>23</sup> For instance, victims requiring access to non-public information; victims who are granted leave to present their views and concerns in person; and victims called to testify may be required to relinquish their anonymity.<sup>24</sup>

<sup>20</sup> See ICC-01/04-01/06-1119, para. 131 and ICC-01/05-01/08-807-Corr, paras 61-69.

<sup>21</sup> Order requesting observations from the Legal Representatives on the agreement as to evidence pursuant to Rule 69 of the Rules of Procedure and Evidence, 22 June 2011, ICC-02/05-03/09-165.

<sup>22</sup> ICC-02/05-03/09-165, para. 6.

<sup>23</sup> ICC-02/05-03/09-165, paras 4-5.

<sup>24</sup> As per Trial Chamber II in ICC-01/04-01/07-1788-tENG, paras 92-93



(c) *Participation in person*

20. The jurisprudence of the Court has identified that there is no absolute statutory right of victims to participate in proceedings in person.<sup>25</sup> Since the Chamber is required to ensure the fair and expeditious conduct of the proceedings and to safeguard the rights of the accused pursuant to Article 64(2) of the Statute, the Chamber finds it appropriate that, unless otherwise authorised by the Chamber, victims will present their views and concerns through the CLR.

(d) *Dual status individuals*

21. There are currently six dual status individuals in the present case, as indicated by the Prosecution.<sup>26</sup>

22. The Chamber concurs with the current jurisprudence of the Court that, whilst the views and concerns of a victim may be presented either in person or through a representative, the manner in which a victim may contribute to the determination of the truth at trial is by giving evidence under oath,<sup>27</sup> thereby becoming a “dual status” individual. This may occur in one of two ways: (i) the victim is called as a witness by a party; or (ii) by the Chamber, upon request of the CLR or on its own initiative, pursuant to Article 69(3) of the Statute as further developed below.

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<sup>25</sup> ICC-01/05-01/08-807-Corr, para. 27; Decision on victims’ participation, 18 January 2008 (Judge Blattmann dissenting), ICC-01/04-01/06-1119, para. 115; Decision on request by victims a/0225/06, a/0229/06 and a/0270/07 to express their views and concerns in person and to present evidence during the trial, 26 June 2009, ICC-01/04-01/06-2002-Conf, public redacted version ICC-01/04-01/06-2032-Anx, para. 17; *Prosecutor v Thomas Lubanga Dyilo* (Trial Chamber I Transcript), ICC-01/04-01/06-T-101-ENG (12 Dec 2009) p. 43.

<sup>26</sup> Updated List of Dual Status Victims, 27 August 2012, ICC-02/05-03/09-385.

<sup>27</sup> ICC-01/04-01/06-2032-Anx, para. 25.

23. The Chamber will establish whether the participation of dual status individuals in the relevant stage of proceedings would be appropriate and in particular whether their participation may be effected in a manner that is not prejudicial to or inconsistent with the rights of the accused and a fair and expeditious trial.

(e) *Requests to call witnesses*

24. By virtue of Article 69(3) of the Statute, the Chamber has the power to request the submission of all evidence that it considers necessary for the determination of the truth. As decided by the Appeals Chamber, the victims are entitled to invite the Chamber to exercise its power to make such a request.<sup>28</sup> The Chamber considers that Article 69(3) of the Statute does not create a systematic victim's right to give evidence or request the attendance of witnesses – it merely provides a basis for inviting the Chamber to exercise its discretion to request a victim's, or anyone else's, attendance to testify.

25. For each CLR's application to the Chamber to call a witness, the Chamber will consider whether the testimony: (i) affects the victim's personal interests; (ii) is

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<sup>28</sup> Judgment on the Appeal of Mr Katanga Against the Decision of Trial Chamber II of 22 January 2010 Entitled "Decision on the Modalities of Victim Participation at Trial", 16 July 2010, ICC-01/04-01/07-2288, para. 111. As explained above, the Appeals Chamber decided in the Lubanga case that victims do not have a right to present evidence pertaining to the guilt of the accused. Rather, the Appeals Chamber recalled that the Trial Chamber has the authority, pursuant to article 69 (3) of the Statute, to request the submission of all evidence that "it considers necessary for the determination of the truth". If the Victims demonstrate that the testimony they wish to give affects their personal interests, the Trial Chamber may request them to submit such evidence, if this is "necessary for the determination of the truth". According to the Appeals Chamber at para. 112, "the delineation of what constitutes evidence 'necessary for the determination of the truth' will inevitably be decided by the Trial Chamber on a case-by-case basis. Nevertheless, the Appeals Chamber finds that the role of the accused in the crimes charged is a crucial question on which the Trial Chamber will have to decide at the end of the trial. Thus, in principle, evidence pertaining to the role of the accused may fall within the scope of evidence that the Trial Chamber considers necessary for the determination of the truth. While the Prosecutor bears the responsibility for prosecutions before the Court and the burden to prove the guilt of the accused, no provision in the Statute or the Rules of Procedure and Evidence confines the submission of evidence pertaining to the conduct of the accused to the Prosecutor, thereby limiting the Trial Chamber's powers under article 69 (3) of the Statute. Consequently, the Trial Chamber may request victims to testify on the role of the accused, if it considers that such testimony is necessary for the determination of the truth".

relevant to the issues of the case; (iii) contributes to the determination of the truth; and (iv) whether the testimony would be consistent with the rights of the accused, in particular the right to adequate time and facilities to prepare a defence.<sup>29</sup>

26. In accordance with the procedures suggested by the parties,<sup>30</sup> the Chamber directs the CLR to file a schedule of the anticipated testimony of victims she will request the Chamber to call, detailing the likely lengths of testimony and the order in which they may appear. In the present case where a trial date has been set, the CLR should endeavour to file the schedule at the earliest opportunity, and no later than 17 April 2014. Where and if necessary, the schedule shall be updated regularly to provide the Chamber with the order of testimony.

(f) *Presenting evidence*

27. The jurisprudence of the Appeals Chamber has confirmed the possibility for victims to “bring to the Trial Chamber evidence that the Trial Chamber may consider necessary for the determination of the truth”. The Appeals Chamber has held that the exercise of a Chamber’s discretionary power to request evidence is linked to the requirements of Article 68(3) of the Statute such that the Chamber must be satisfied that the personal interests of the victim are affected:

40. [...] It is only if the Trial Chamber is persuaded that the requirements of article 68(3) have been met, and, in particular, that it has been established that the personal interests of the victims are affected, that the Chamber may decide whether to exercise its discretionary

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<sup>29</sup> In accordance with the criteria established by the Appeals Chamber in ICC-01/04-01/07-2288, para. 114. The Appeals Chamber has set out the procedure to be adopted where any such participation involves the triggering of the Chamber’s power to permit victims to tender and examine evidence: “(i) a discrete application, (ii) notice to the parties, (iii) demonstration of personal interests that are affected by the specific proceedings, (iv) compliance with disclosure obligations and protection orders, (v) determination of appropriateness and (vi) consistency with the rights of the accused and a fair trial.” ICC-01/04-01/06-1432, para 104.

<sup>30</sup> ICC-02/05-03/09-166, para. 11.

powers under the second sentence of article 69(3) of the Statute "to request the submission of all evidence that it considers necessary for the determination of the truth". [...] <sup>31</sup>

28. The CLR may bring evidence to the attention of the Chamber during the trial proceedings.<sup>32</sup> The Chamber will make its determination on a case by case basis.

(g) *Challenging the relevance or admissibility of evidence*

29. The Chamber considers that challenges to the relevance or admissibility of evidence do not fall within the realm of Article 69(3) of the Statute, a provision which relates only to the submission of evidence. Instead, the Chamber considers that the legal basis upon which a victim may challenge the relevance or admissibility of evidence extends from the combined effect of: (i) the obligation to give effect to the spirit and meaning of Article 68(3) of the Statute; and (ii) the Chamber's power to make rulings on the relevance or admissibility of evidence under Articles 64(9) and 69(4) of the Statute. The Appeals Chamber has expressed support for this approach:

101. In relation to the right afforded to victims to challenge the admissibility or relevance of evidence, the Trial Chamber relied on its general powers under article 69 (4) to declare any evidence admissible or relevant. The provision is silent as to who may challenge such evidence. Under article 64 (9) of the Statute, the Trial Chamber has the power to rule on the admissibility or relevance of evidence on its own motion. These provisions must be seen in light of the provisions on victims' participation, in particular article 68 (3) of the Statute and rules 89 and 91 of the Rules. In light of these provisions, nothing in articles 69 (4) and 64 (9) excludes the possibility of a Trial Chamber ruling on the admissibility or relevance of evidence after having received submissions by the victims on said evidence. The approach of the Trial Chamber in interpreting its powers, once again does not result in an unfettered right for victims but is subject to the application of article 68 (3), which is the founding provision governing victim participation in the proceedings.<sup>33</sup>

<sup>31</sup> ICC-01/04-01/07-2288, para. 40. See also the directions for the conduct of the proceedings and testimony in accordance with Rule 140, ICC-01/04-01/07-1665-Corr, paras 45-48.

<sup>32</sup> As noted above in footnote 29, the Appeals Chamber has set out the procedure to be adopted where any such participation involves the triggering of the Chamber's power to permit victims to tender and examine evidence.

<sup>33</sup> ICC-01/04-01/06-1432, para. 101.

30. Accordingly, the Chamber may permit the views and concerns of victims to be presented and considered whenever the Chamber is called to determine the relevance or admissibility of evidence under Article 69(4) or Article 64(9) of the Statute, provided that all the requirements of Article 68(3) of the Statute are met. The Chamber will request, as appropriate, the CLR to make submissions on the admissibility of evidence only if the victims' personal interests are affected.

(h) *Questioning by the CLR*

31. The Court has already developed an effective approach to dealing with victims' requests to question witnesses, as outlined by Trial Chamber III:

37. As described above, Trial Chamber I in the Lubanga case, has required victims who wish to participate at any identified stage in the trial to **apply in writing**. This has worked effectively during that trial, although it has been recognised that it may be necessary for the representatives to delay submitting applications to ask questions until **7 days** before the relevant witness testifies, once the extent of the evidence to be given, and the issues, are clear. Nonetheless, even in those circumstances, written submissions have been made, identifying the essence of the relevant **victim(s) interests in the evidence**, and the Chamber has been able to make appropriate Decisions. This has minimised interruptions to the proceedings and facilitated the efficient-running of the trial.<sup>34</sup>

32. The Chamber notes the provisions of Rule 91(3) of the Rules, as well as the joint submissions of the parties on this issue,<sup>35</sup> and adopts the following procedure in the present case. The CLR shall submit a written application sufficiently in advance and no later than seven days before the expected date of testimony. In addition to the criteria specified in footnote 29 above, the application shall include the areas of questioning and the questions to the extent possible, and a justification of how the questions impact the personal interests of the victims, and should enclose any list of

<sup>34</sup> ICC-01/05-01/08-807-Corr, para. 37. [Emphasis added]

<sup>35</sup> ICC-02/05-03/09-166, paras 12-19.

relevant documents to be used during questioning.<sup>36</sup> The parties will make their observations orally before the questioning by the CLR, unless a different time limit is set.

33. With regard to the *mode* of questioning of witnesses by the CLR, the Chamber notes the joint submissions of the parties,<sup>37</sup> and concurs with the approach common to other Trial Chambers.<sup>38</sup> To the extent that questioning is permitted, the CLR shall ask her questions only after the completion of the prosecution's questioning, save for the situation where the evidence has been brought to the Chamber by the participating victims and its submission has been requested by the Chamber pursuant to Article 69(3) of the Statute. In this case, the CLR may ask her questions prior to those of the prosecution. In general, questioning by the CLR shall be conducted in a neutral manner, without the use of leading or closed questions, unless otherwise authorised by the Chamber.

(i) *Access to confidential filings, documents and evidence*

34. The Chamber indicated during the status conference held on 12 July 2011 that it intended to deal with the issue of access to confidential filings in a decision on modalities of participation.<sup>39</sup> The Chamber notes Rule 131(2) of the Rules, which provides for the right of participating victims to consult the record of proceedings subject to any restrictions concerning confidentiality and national security.

35. In the view of the Chamber, meaningful participation by victims may require access to the confidential material in the case, relevant to their views and concerns.

<sup>36</sup> ICC-01/04-01/07-1665, paras 83-84.

<sup>37</sup> ICC-02/05-03/09-166, paras 14, 18.

<sup>38</sup> ICC-01/05-01/08-807-Corr, paras 38-40.

<sup>39</sup> Transcript of hearing, 12 July 2011, ICC-02/05-03/09-T-12-ENG, p. 29 lines 5-7.

However, the security of individuals or organisations may be adversely affected if access to confidential material is granted and this may impact on the scope of confidential information that is provided to the participating victims. These issues are eminently case specific and should be dealt with on a case-by-case basis.

36. In practice, this means that the CLR may have access to confidential filings and documents, to the extent that their content is relevant to the personal interests of the victims she represents.<sup>40</sup> It will be the responsibility of the filing party, including the registry, to indicate on the notification page whether the CLR shall be notified<sup>41</sup> and, as the case may be, to file properly redacted versions thereof. In the event a dispute emerges, the parties and participants are free to seise the Chamber.

37. In relation to evidence, the CLR may have access to the confidential evidence in Ringtail. The party submitting an item to be uploaded into Ringtail shall indicate whether or not the CLR should have access to the evidence.<sup>42</sup>

38. In turn, the CLR shall not communicate confidential information to her clients, or anyone else who is not authorised to receive it, without the permission of the Chamber.

39. The parties are directed to review the confidential filings and the confidential evidence in Ringtail and indicate to the Registry, by 4 April 2014, what items are to be provided to the CLR.

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<sup>40</sup> ICC-01/05-01/08-807-Corr, para. 169.

<sup>41</sup> See ICC-01/04-01/06-1119, para. 107; ICC-01/09-02/11-498, para. 66.

<sup>42</sup> ICC-01/09-02/11-498, para. 68.

(j) *Obligations on victims to disclose exculpatory information*

40. The Chamber concurs with the Appeals Chamber's position that "nothing justifies a general obligation on the victims to disclose every element in their possession, whether incriminating or exculpatory" but nonetheless, "there may be specific instances in which a Trial Chamber may require victims to disclose exculpatory evidence in their possession to the accused, such as when a party or participant brings to the attention of the Trial Chamber that such information is available and the Trial Chamber finds that such information is necessary for the determination of the truth."<sup>43</sup>

(k) *Participation in closed session and ex parte hearings*

41. In the present case, the Chamber has already permitted the CLR to participate in a hearing conducted in closed session.<sup>44</sup> The Chamber will grant permission to participate in closed session or ex parte hearings if the personal interests of the victims so require.<sup>45</sup> Such participation may be subject to an unequivocal agreement with the CLR not to disclose to her clients any of the information that is covered by protective measures ordered by the Chamber, which may include the identities of the protected witnesses. The parties remain entitled at any stage to raise distinct concerns about the participation or presence of the CLR, or parts of her team, in specific hearings. Lastly, the Chamber may allow, ex parte, victims-only hearings on an exceptional basis if it finds that the victim's personal interests so justify.

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<sup>43</sup> ICC-01/04-01/07-2288, para. 71.

<sup>44</sup> ICC-02/05-03/09-491-Conf, para. 16.

<sup>45</sup> ICC-01/04-01/06-1119, para. 113.

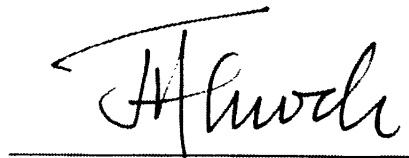


### III. ORDERS OF THE CHAMBER

For the foregoing reasons, the Chamber hereby:

- (a) **adopts** the procedures and guidelines outlined in the present Decision;
- (b) **directs** the Registry to provide access to the entire public record and index of the case to all victims who have been granted participating status in the proceedings;
- (c) **directs** the parties to indicate the confidential filings and evidence that shall be made available to the CLR, in accordance with the guidelines set out in this Decision;
- (d) **directs** the parties to review the confidential filings and the confidential evidence in Ringtail and indicate to the Registry, by 11 April 2014, what items are to be provided to the CLR;
- (e) **directs** the VWU to discuss with the parties and the participants the proposed mechanisms for the sharing of information concerning dual status individuals; accordingly, the VWU is to file a report with the Chamber by 4 April 2014; and
- (f) **orders** the CLR to file, not later than 17 April 2014 a schedule of the anticipated order of victims due to testify at trial.

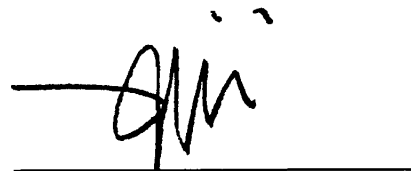
Done in both English and French, the English version being authoritative.

A handwritten signature in black ink, appearing to read 'Aluoch', written over a horizontal line.

**Judge Joyce Aluoch**

A handwritten signature in black ink, appearing to read 'Fernández de Gurmendi', written over a horizontal line.

**Judge Fernández de Gurmendi**

A handwritten signature in black ink, appearing to read 'Eboe-Osuji', written over a horizontal line.

**Judge Chile Eboe-Osuji**

Dated this 20 March 2014

At The Hague, the Netherlands