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PRE-TRIAL CHAMBER II

Before: Judge Ekaterina Trendafilova, Single Judge

SITUATION IN UGANDA

**IN THE CASE OF
*THE PROSECUTOR V. DOMINIC ONGWEN***

**Public
With a Public Annex**

Decision Establishing Principles on the Victims' Application Process

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

The Office of the Prosecutor

Fatou Bensouda, Prosecutor
Benjamin Gumpert, Senior Trial Lawyer

The Defence

Kripus Ayena Odongo

Legal Representatives of the Victims

Legal Representatives of the 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

Registrar & Deputy Registrar

Herman von Hebel

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Fiona McKay

**Public Information and Documentation
Section**

Sonia Robla

Trust Fund for Victims

Pieter de Baan

Judge Ekaterina Trendafilova, acting as Single Judge on behalf of Pre-Trial Chamber II (the “Chamber”) of the International Criminal Court (the “Court”),¹ hereby renders this decision establishing principles on the victims’ application process.

I. INTRODUCTION

1. At the outset, the Single Judge recalls her responsibility to determine, pursuant to article 68(3) of the Rome Statute (the “Statute”) in conjunction with rules 85 and 89 of the Rules of Procedure and Evidence (the “Rules”), whether an applicant qualifies as a victim for the purposes of participating in the pre-trial proceedings, as well as the modalities of such participation. To this effect, the Single Judge considers that detailed guidance, and early involvement by the Chamber throughout the victims’ application process is crucial to organise the subsequent participation phase in an efficient and expeditious manner.

2. The purpose of the present decision is to address and streamline issues relating to the victims’ applications for participation in the pre-trial proceedings leading to the confirmation of charges hearing in the case of *the Prosecutor v. Dominic Ongwen* (the “*Ongwen case*”), with a view to rationalizing the application process and enhancing its predictability, efficiency and expeditiousness.

3. Such practice has already been adopted by this Chamber in previous cases and it has proved to be efficient, in so far as it clarifies, phase by phase, the respective roles of various organs and sections of the Court in respect of potential victims and communities of victims.² In this regard, the Single Judge wishes to point out that, whilst distinct sections of the Registry are vested with different responsibilities in respect of victims’ involvement in the Court’s proceedings, their coordinated action, under the overall supervision of the Chamber, ensures that the statutory

¹ Pre-Trial Chamber II, “Decision Designating a Single Judge”, 21 January 2015, ICC-02/04-01/05-415.

² See Pre-Trial Chamber II, “Decision Establishing Principles on the Victims’ Application Process”, 28 May 2013, ICC-01/04-02/06-67.

responsibilities of the Court *vis-à-vis* the victims, as well as the proper conduct of the proceedings, are accurately fulfilled. The Single Judge will, therefore, provide both an overview of the guiding principles to be followed by the various specialised sections of the Registry throughout the victims' application stage, and detailed instructions as to the operative steps to be taken by those sections.

II. PROCEDURAL HISTORY

4. On 8 July 2005, the Chamber, in its previous composition, issued the "Decision on the Prosecutor's application for the warrants of arrest under Article 58",³ along with a warrant of arrest for Dominic Ongwen ("Mr. Ongwen"),⁴ for his alleged responsibility for crimes against humanity and war crimes. At the time, Mr. Ongwen was prosecuted together with others forming the case of the *Prosecutor v. Joseph Kony et al.* (ICC-02/04-01/05).

5. On 16 January 2015, Mr. Ongwen consented to appear voluntarily before the Court and was transferred, on the same day, to its custody.⁵

6. On 21 January 2015, Mr. Ongwen arrived to the Court's detention centre.⁶ The same day, the Chamber designated Judge Ekaterina Trendafilova as Single Judge.⁷

7. On 26 January 2015, Mr. Ongwen made his initial appearance before the Single Judge during which, *inter alia*, the date of the confirmation of charges hearing was set for 24 August 2015.⁸

8. On 6 February 2015, the Single Judge severed the case against Mr. Ongwen from the case of the *Prosecutor v. Joseph Kony et al.*⁹

³ Pre-Trial Chamber II, "Decision on the Prosecutor's application for the warrants of arrest under Article 58", 8 July 2005, ICC-02/04-01/05-1.

⁴ Pre-Trial Chamber II, "Warrant of Arrest for Dominic Ongwen", 8 July 2005, ICC-02/04-01/05-10.

⁵ ICC-02/04-01/05-419-Conf-Exp, para. 4; ICC-02/04-01/05-419-Conf-Exp-Anx2.

⁶ ICC-02/04-01/05-419-Conf-Exp, para. 18.

⁷ Pre-Trial Chamber II, "Decision Designating a Single Judge", 21 January 2015, ICC-02/04-01/05-415.

⁸ Pre-Trial Chamber II, Transcript of Hearing, 26 January 2015, ICC-02/04-01/05-T-10-ENG, p. 14, lines 7-9.

⁹ Pre-Trial Chamber II, "Decision Severing the Case against Dominic Ongwen", 6 February 2015, ICC-02/04-01/05-424.

III. Applicable law

9. The Single Judge notes articles 21(1)(a), (2) and (3), 43 and 68(1) and (3) of the Statute, rules 16, 85, 86, 89 and 92(3) and (8) of the Rules, regulation 86 of the Regulations of the Court (the “Regulations”) and regulation 105(1) of the Regulations of the Registry (the “RoR”).

IV. Outreach missions

10. The Single Judge recalls the responsibility of the Court, pursuant to rule 92(3) and (8) of the Rules, to notify potential victims of the proceedings in which they may be entitled to participate. The Single Judge considers that the first step in the victims’ application process is to conduct an effective outreach mission for the purpose of raising an understanding of the Court’s mandate *vis-à-vis* victims and the proceedings in the present case among the affected communities by the crimes allegedly committed by Mr. Ongwen. Such mission shall be undertaken by the Public Information and Documentation Section of the Court (the “PIDS”), in light of its neutral role as institutional representative and promoter of the Court. The Single Judge underlines that the PIDS should act in coordination with the Victims Participation and Reparations Section (the “VPRS”) when dealing specifically with victims’ participation and/or reparation issues, in order to harmonize the messages delivered to the affected communities, thereby avoiding the risk of subsequent contradictory inputs, which would defeat the purpose of the outreach activity and could adversely affect the victims’ application process. As already held by the Single Judge:

“[...] the outreach role played by the PIDS in the field is key in creating the background and paving the way for the VPRS to plan and carry out its own field missions in the most effective way. Ideally, whilst ensuring that proper coordination is put in place, there should be no overlapping between the action of the PIDS and the one of the VPRS: the better and the earlier the former prepares the ground – by disseminating accurate and targeted information about

the case and the various options which might be available to victim applicants – the more effective the latter can be in focussing on its specific mandate to collect applications for participation and/or reparations among affected groups, as well as in pursuing and developing crucial relationships with relevant intermediaries who may assist them”.¹⁰

11. The Single Judge considers it appropriate that the PIDS approaches the Lukodi community, where the crimes allegedly committed by Mr. Ongwen were perpetrated,¹¹ as well as the surrounding communities, in so far as their understanding of the proceedings in the present case can positively impact the attitude of the members of the Lukodi community. In case the Prosecutor decided to enlarge the factual scope of this case,¹² the PIDS and the VPRS would need to adapt to such a change and would be given sufficient time for that purpose. The Single Judge is mindful that Mr. Ongwen is the first suspect in the situation in Uganda to be transferred to the custody of the Court. Accordingly, given the sensitivity of this event and the expectations that the suspect’s surrender has created among the victims’ communities, the Single Judge believes that the PIDS must be effective and build a proper understanding of the proceedings in the present case within the relevant communities. To this goal, the Single Judge considers that a mission of the PIDS, in close coordination with the VPRS, to accomplish the abovementioned objectives, should be deployed to the field for a period of two weeks as soon as practicable and after the notification of the present decision. The PIDS is instructed to inform the Chamber on a continuous basis about the progress of the mission, including unforeseen circumstances, and should provide the Chamber with a report (the “PIDS Report”), to be filed confidential, *ex parte*, Registry only, no later than 10 days after the completion of the outreach mission. The PIDS Report should inform the Chamber of the operational steps taken during the outreach mission, its results

¹⁰ See Pre-Trial Chamber II, “Decision Establishing Principles on the Victims’ Application Process”, 28 May 2013, ICC-01/04-02/06-67, para. 16.

¹¹ Pre-Trial Chamber II, “Warrant of Arrest for Dominic Ongwen”, 8 July 2005, ICC-02/04-01/05-10, pp. 9-10.

¹² See in this regard ICC-02/04-01/15-196-Red2, paras 41-42.

as well as the steps that the VPRS could consider to undertake in accordance with the present decision, on the basis of the mission conducted by the PIDS.

12. As for the practical steps to be undertaken in the course of the outreach mission, the Single Judge expects the PIDS, consistent with its mandate under regulation 105(1) of the RoR, to provide potential victims, in a timely manner, with accurate, concise, accessible and complete information both on the Court's overall mandate and, more specifically, on the various roles which the victims are statutorily called to play in the proceedings. Further, the specific substantive and procedural features of victims' participation proceedings, on the one hand, and of victims' reparations proceedings, on the other, including their respective independence, should be clarified. Regarding their participation at the pre-trial stage of this case, potential applicant victims should be provided with accurate information as to the personal, material, temporal and geographical parameters of the *Ongwen case*, as defined in the warrant of arrest. In case this changes, victims would have to be informed accordingly. As for the possibility to claim reparations before the Court, it should be explained that reparation proceedings pursuant to article 75 of the Statute will only be triggered if the suspect is found guilty by the relevant Trial Chamber. Furthermore, it should be clarified that the victims' right to apply for reparations, should that stage be reached, is not conditional upon previous participation in the proceedings, be it at the pre-trial or at the trial stage.

13. The Single Judge has already emphasised the importance of providing potential victims with access to immediate and meaningful assistance, in particular in cases such as the present one where the "length and complexity of the proceedings [...] as well as the ensuing fact that a significant amount of time can elapse between the opening of a case and the time when victims may be awarded reparations, might in some instances result in their disappointment and frustration".¹³ Accordingly, the

¹³ See Pre-Trial Chamber II, "Decision Establishing Principles on the Victims' Application Process", 28 May 2013, ICC-01/04-02/06-67, para. 15.

Single Judge is of the view that the PIDS should also illustrate to the affected communities the unique role of and the activities undertaken by the Trust Fund for Victims. In this respect, it should be highlighted that this Chamber, in its previous composition, decided to approve a number of activities proposed by the Trust Fund for Victims for implementation in numerous districts in Northern Uganda.¹⁴ It should also be stressed that those projects might be particularly beneficial to the victims who suffered from events falling out of the scope of either the case against Mr. Ongwen or any other case brought by the Prosecutor in the situation in Uganda.

V. Simplified application form for the purposes of the present case

14. The Single Judge recalls the constant need to improve the victims' participation system in order to ensure "its sustainability, effectiveness and efficiency"¹⁵ and underlines the efforts undertaken by the Chambers of the Court in this regard.¹⁶ An integral and decisive component of this improvement is the application form to be used in each case, which is the primary tool in the hands of every applicant victim to convey information relevant to the Single Judge's determination as to whether or not applicants qualify as victims in a given case.

15. In this regard, the Single Judge recalls the positive experience in the case of *the Prosecutor v. Bosco Ntaganda* (the "*Ntaganda case*"), in which the development and subsequent use of a one-page individual application form (the "*Simplified Form*")¹⁷ led to the successful and expedited processing by the VPRS and the admission by the

¹⁴ Pre-Trial Chamber II, "Decision on Notification of the Trust Fund for Victims and on its Request for Leave to Respond to OPCD's Observations on the Notification", 19 March 2008, ICC-02/04-126, pp. 5-6.

¹⁵ ICC-ASP/10/Res.5, para. 49.

¹⁶ Pre-Trial Chamber II, "Decision Establishing Principles on the Victims' Application Process", 28 May 2013, ICC-01/04-02/06-67; Pre-Trial Chamber I, "Second decision on issues related to the victims' application process", 5 April 2012, ICC-02/11-01/11-86.

¹⁷ Pre-Trial Chamber II, "Decision Establishing Principles on the Victims' Application Process", 28 May 2013, ICC-01/04-02/06-67, para. 17-25, p. 21.

Single Judge of 1120 victims participating in the confirmation of charges hearing and the related proceedings.¹⁸

16. The Single Judge observes that the Simplified Forms used in the *Ntaganda case* led to significant savings in terms of (i) paper work; (ii) time required by the applicants to fill it in; (iii) time and resources employed by the VPRS to process and transmit the Simplified Forms to the parties and the Chamber; and (iv) time and resources used by the Chamber in its final determination on each application for victims' participation received. In light of the foregoing, the Single Judge considers that the Simplified Form should be retained in the present case, albeit with minor wording changes due to the specificities of this case, as specified in the annex to this decision.

17. The Single Judge wishes to underline that, while leading to a number of advantages in the management of the application process, the Simplified Form complies with the requirements of the definition of a victim, as entrenched in rule 85 of the Rules:

- (a) "Victims" means natural persons who have suffered harm as a result of the commission of any crime within the jurisdiction of the Court;
- (b) Victims may include organizations or institutions that have sustained direct harm to any of their property which is dedicated to religion, education, art or science or charitable purposes, and to their historic monuments, hospitals and other places and objects for humanitarian purposes.

18. As interpreted in the case law of the Court, an applicant qualifies as a victim pursuant to the above provision provided that: (i) the identity of the applicant appears duly established; (ii) the event(s) described in the application for participation constitute(s) one or more crimes within the jurisdiction of the Court,

¹⁸ Pre-Trial Chamber II, "Decision on Victims' Participation at the Confirmation of Charges Hearing and in the Related Proceedings", 15 January 2014, ICC-01/04-02/06-211, para. 65, p. 37; Pre-Trial Chamber II, "Second Decision on Victims' Participation at the Confirmation of Charges Hearing and in the Related Proceedings", 7 February 2014, ICC-01/04-02/06-251, para. 19, pp. 19-20.

with which the suspect is charged; and (iii) the applicant has suffered harm as a result of the crime(s) with which the suspect is charged.¹⁹

19. Bearing in mind the above requirements, the Single Judge is of the view that the Simplified Form will enhance the efficiency of the victims' application process also in the present case. Indeed, it contains only such information which is strictly required by law for the Single Judge to determine whether an applicant satisfies the requirements to qualify as a victim under rule 85 of the Rules. The Simplified Form to be employed in the present case is attached as an annex to the present decision.

20. As already emphasised by the Single Judge, the features of the Simplified Form have been devised considering the very limited and clear purpose of the application phase, i.e. to determine whether an applicant meets the requirements of rule 85 of the Rules for the purpose of being granted the status of victim in the present case.²⁰ In view of this, the Simplified Form is structured according to the elements enshrined in rule 85 of the Rules. It would thus allow each applicant to concisely bring forward the core elements of the relevant events, particularly their spatial and temporal parameters, as well as (in broad terms) the nature of the alleged crime and, to the extent possible, the identity of the alleged perpetrator(s). By allowing the victim to provide a concise account of all those elements which will ground the Chamber's determination under rule 85 of the Rules, it is expected that the Simplified Form will also prove instrumental in streamlining the process of redactions. In principle, the information submitted in concise form, whilst accurate and precise enough to be assessed against the backdrop of rule 85 of the Rules,

¹⁹ See, *inter alia*, Pre-Trial Chamber I, "Decision on Victims' Participation and Victims' Common Legal Representation at the Confirmation of Charges Hearing and in the Related Proceedings", 4 June 2012, ICC-02/11-01/11-138, para. 20; Pre-Trial Chamber II, "Decision on Victims' Participation at the Confirmation of Charges Hearing and in the Related Proceedings", 26 August 2011, ICC-01/09-02/11-267, para. 40; Pre-Trial Chamber III, "Fourth Decision on Victims' Participation", 12 December 2008, ICC-01/05-01/08-320, para. 30; Trial Chamber III, "Decision on 772 applications by victims to participate in the proceedings", 18 November 2010, ICC-01/05-01/08-1017, para. 38.

²⁰ Pre-Trial Chamber II, "Decision Establishing Principles on the Victims' Application Process", 28 May 2013, ICC-01/04-02/06-67, para. 22.

should minimise the concerns for identification and, hence, the need to resort to protective measures, ultimately allowing for the transmission of such information to the parties in non-redacted form, to the extent possible.

21. The Single Judge wishes to highlight that the Simplified Form, while exclusively containing information required by rule 85 of the Rules, should not prevent the applicants from submitting additional information and documentation relevant to their application as described in the Simplified Form, regardless of whether it strictly relates to the rule 85 requirements or not. The Single Judge is mindful that such information may include, *inter alia*, the contact details of the applicants, their level of language(s) proficiency, preferences as to their legal representation and security concerns related to them or to their family members. This information will be submitted separately and shall be collected and safely stored by the VPRS. Accordingly, the VPRS is hereby instructed to establish an electronic log in which all such additional information provided by each applicant victim who has filled in the Simplified Form shall be stored within the VPRS's information system. Such electronic log must be available to the Chamber and the VPRS only, unless otherwise decided by the Single Judge.

22. Finally, the Simplified Form does not prejudice the participatory rights envisaged by the Court's legal framework once the status of victim has been granted. Accordingly, the PIDS and the VPRS are instructed to inform all applicants that, should their application for participation be granted, they will have ample opportunities throughout all stages of the proceedings to convey their "views and concerns" to the Chamber, as well as to exercise the rights provided by the statutory framework of the Court and any other rights deemed appropriate by the Chamber,

in compliance with article 68(3) of the Statute and the relevant provisions of the Rules.²¹

VI. Collection of applications; role of the VPRS and intermediaries

23. The Single Judge considers that the VPRS should be directly involved in assisting the applicants to fill in the Simplified Forms. This type of assistance is compatible with the mandate of the VPRS pursuant to regulation 86(9) of the Regulations, according to which the VPRS “shall be responsible for assisting victims and groups of victims”.²²

24. In performing this task, the VPRS may avail itself of the assistance of suitable individuals, based in the field, who will serve as intermediaries operating under the control and supervision of the VPRS, which bears responsibility for their conduct.²³ They may be identified and selected, at the discretion of the VPRS, from amongst those vested with leading roles in the affected communities and who, by the nature of their positions, are trusted by the population. Such individuals may include, for example: community leaders, *chefs de village*, or staff members of NGOs. The VPRS is instructed to start with the identification and training of intermediaries while the PIDS conducts its outreach mission in order to maximize the time and deploy the intermediaries and the VPRS staff at any suitable moment after the end of the outreach mission.

²¹ See Pre-Trial Chamber I, “Decision on Victims’ Participation and Victims’ Common Legal Representation at the Confirmation of Charges Hearing and in the Related Proceedings”, 4 June 2012, ICC-02/11-01/11-138, paras 46-60; Pre-Trial Chamber II, “Decision on Victims’ Participation at the Confirmation of Charges Hearing and in the Related Proceedings”, 26 August 2011, ICC-01/09-02/11-267, paras 97-118.

²² See in this respect Pre-Trial Chamber I, “Second decision on issues related to the victims’ application process”, 5 April 2012, ICC-02/11-01/11-86, para. 27.

²³ Pre-Trial Chamber II, “Decision Establishing Principles on the Victims’ Application Process”, 28 May 2013, ICC-01/04-02/06-67, paras 26-28.

VII. Processing and transmission of applications for victims' participation

25. As the information on the potential victims linked to the present case is still very limited to date, the Single Judge considers it appropriate to receive, after the PIDS Report, a report by the VPRS (the "VPRS Report"). Such report should include: (i) information about the activities carried out in the field; and (ii) observations on a calendar to be established by the Single Judge for transmission of the complete applications for victims' participation to be organized in accordance with the present decision. The Single Judge considers the VPRS Report necessary in order to properly organize the transmission of the victims' applications to the Chamber and the parties, taking into consideration the practices of this Chamber, according to which victims' applications are submitted in batches, as soon as possible, to the Chamber and to the parties and as far as the last batch of applications is concerned, no later than 45 days before the start of the confirmation hearing.

26. The VPRS Report should be filed confidential, *ex parte*, Registry only, no later than three weeks after the PIDS Report. Further reports may be subsequently presented by the VPRS, if it considers it appropriate, or at the request of the Single Judge. This time frame will allow sufficient time to the VPRS to obtain more precise information about the estimated number of victims' applications for participation to be expected in the present case. If the Prosecutor would decide to increase the factual scope of this case, the PIDS and the VPRS would be given additional time to submit further reports.

27. The Single Judge will hereunder set out the principles that shall govern the processing and transmission to the Chamber and the parties of the applications for victims' participation. In this respect, as soon as the Simplified Forms are filled in, the VPRS shall process them without delay in order to prepare them for transmission to the Chamber and the parties, in accordance with the instructions provided in the following paragraphs. In line with previous practice, the Single Judge will only

consider complete applications for victims' participation.²⁴ To this effect, the VPRS is expected to ensure that the information contained in the applications is complete prior to their transmission to the Chamber. Should some applications miss information required pursuant to rule 85 of the Rules, the VPRS shall, if circumstances allow so, promptly request additional information from the applicants concerned, in accordance with regulation 86(4) of the Regulations.

28. In line with the jurisprudence of the Court, the Single Judge recalls that an application for victims' participation is considered to be complete if it contains the following information, supported by documentation, if applicable:

- (i) the identity of the applicant;
- (ii) the date of the crime(s);
- (iii) the location of the crime(s);
- (iv) a description of the harm suffered as a result of the commission of the crime(s) allegedly committed by the suspect;
- (v) proof of identity, through one of the identification documents available in Uganda;
- (vi) if the application is made by a person acting with the consent of the victim, the express consent of that victim;
- (vii) if the application is made by a person acting on behalf of a victim, in the case of a victim who is a child, proof of kinship or legal guardianship; or, in the case of a victim who is disabled, proof of legal guardianship; and
- (viii) a signature or thumb-print of the applicant on the Simplified Form.²⁵

²⁴ Pre-Trial Chamber II, "Decision Establishing Principles on the Victims' Application Process", 28 May 2013, ICC-01/04-02/06-67, para. 29.

²⁵ For example, Pre-Trial Chamber II, "Decision Establishing Principles on the Victims' Application Process", 28 May 2013, ICC-01/04-02/06-67, para. 30; Pre-Trial Chamber III, "Fourth Decision on Victims' Participation", 12 December 2008, ICC-01/05-01/08-320, para. 81; Pre-Trial Chamber I, "Decision on the Requests of the Legal Representative of Applicants on application process for victims' participation and legal representation", 17 August 2007, ICC-01/04-374, para. 12; Pre-Trial Chamber I, "Public Redacted Version of the 'Decision on the 97 Applications for Participation at the Pre-Trial Stage of the Case'", 10 June 2008, ICC-01/04-01/07-579, para. 44; Pre-Trial Chamber I, "Decision on the 34 Applications for Participation at the Pre-Trial Stage of the Case", 25 September 2009, ICC-02/05-02/09-121, para. 7; Trial Chamber II, "Decision on the treatment of applications for participation", 26 February 2009, ICC- 01/04-01/07-933-tENG, para. 28; Trial Chamber III, "Decision defining the status of 54 victims who participated at the pre-trial stage, and inviting the parties'

29. The Single Judge recalls that the VPRS shall, pursuant to regulation 86(5) of the Regulations, present to the Chamber all applications together with a report (the "Regulation 86(5) Report"). Although the Regulation 86(5) Report shall be structured by the VPRS according to the specific circumstances of each case, it should include, *inter alia*, an overview of any outstanding features of the applications as a whole and information as to whether any conflict of interests seems to exist among different groups of victims. The Regulation 86(5) Report should be accompanied by three annexes, in which the victim applicants will be grouped in accordance with criteria deemed appropriate in light of the specificities of the case.²⁶ The criteria which could be used by the VPRS may include, *inter alia*: (i) the location of the alleged crime(s); (ii) the time of the alleged crime(s); (iii) the nature of the alleged crime(s); (iv) the harm(s) suffered; (v) the gender of the victim(s); and (vi) other specific circumstances common to victims. When appropriate, the VPRS could apply more than one criterion in grouping victim applicants.

30. The three annexes will include the following documents:

(i) Annex A will contain a chart, together with copies of their Simplified Forms, with the VPRS' individual assessment of applicants who, in the view of the VPRS, qualify as victims of the case pursuant to rule 85 of the Rules.

(ii) Annex B will contain a chart, together with copies of the Simplified Forms, in regard to which the VPRS could not make its determination due to unclear aspects of those applications.

observations on applications for participation by 86 applicants", 22 February 2010, ICC-01/05-01/08-699, paras 35 and 36.

²⁶ Pre-Trial Chamber II, "Decision Establishing Principles on the Victims' Application Process", 28 May 2013, ICC-01/04-02/06-67, para. 35.

(iii) Annex C will contain a chart, together with copies of their Simplified Forms, with the VPRS' individual assessment of all applicants who, in the view of the VPRS, do not qualify as victims of the case pursuant to rule 85 of the Rules.

31. The Single Judge is mindful that rule 89(1) of the Rules provides that the Registrar shall transmit "a copy of the application[s] to the Prosecutor and the defence, who shall be entitled to reply within a time limit to be set by the Chamber". The Single Judge considers that, in the interest of the judicial administration and expeditiousness of the proceedings, the parties shall receive the Regulation 86(5) Report together with copies of the Simplified Forms and the VPRS' individual assessment falling under Annex A and Annex B. The Prosecutor and the Defence will be entitled to submit observations, if they wish to do so, within a time limit of fourteen days as of the transmission of said applications for victims' participation. In this respect, the Single Judge reminds the parties that the observations under rule 89(1) of the Rules are "not mandatory and serve the purpose of assisting the Single Judge in her determination as to whether or not each applicant qualifies as victim pursuant to rule 85 of the Rules".²⁷

32. The VPRS' individual assessment and the Simplified Forms to be included in Annex C shall be transmitted only to the Chamber. If the Chamber, upon review, will decide that some or all applications for victims' participation included in Annex C may qualify as victims pursuant to rule 85 of the Rules, it will request the VPRS to transmit those applications to the Prosecutor and the Defence (with redactions *vis-à-vis* the latter if needed). The parties will be provided fourteen days to submit their observations, if any, in accordance with rule 89(1) of the Rules.

33. In light of the information to be included in the Regulation 86(5) Report and taking into account that the Simplified Forms shall only contain the relevant rule 85 information, the Single Judge expects none or few redactions to the Regulation 86(5)

²⁷ Pre-Trial Chamber II, "Decision on Victims' Participation at the Confirmation of Charges Hearing and in the Related Proceedings", 15 January 2014, ICC-01/04-02/06-211, para. 34.

Report and to Annexes A and B. Bearing in mind that the redaction of information is the exception to the principle of full disclosure, the concise information to be provided by the applicants in the Simplified Forms should result in very limited redactions, if any, of only the identifying information of the applicants, either when a need for protection is detected by the VPRS, or when the applicant expressed an informed intention to have his or her identity not disclosed to the Defence.

34. Accordingly, the Single Judge instructs the VPRS to redact, if necessary, any identifying information from the Regulation 86(5) Report, Annex A, and Annex B, prior to their transmission to the Defence. In the view of the Single Judge, this provides victim applicants with an appropriate protective measure at the application stage, which is not prejudicial to or inconsistent with the rights of the suspect and a fair and impartial trial. The Single Judge reminds the VPRS that any such redaction should abide by the principle of proportionality enshrined in article 68(1) of the Statute.

35. With regard to the transmission of the Regulation 86(5) Report together with the Annex A and Annex B to the Prosecutor, the Single Judge recalls that the Prosecutor is under an obligation, pursuant to articles 54(1)(b) and 68(1) of the Statute, to “respect the interests and personal circumstances of victims”, as well as to protect their safety, physical and psychological well-being, dignity and privacy. Pursuant to article 54(1)(a) of the Statute, the Prosecutor has an obligation to investigate incriminating and exonerating circumstances equally. In light of the Prosecutor’s statutory duties with respect to victim protection, and of the fact that applications for participation may contain exculpatory information, the Single Judge is of the view that no redactions should be made to the Regulation 86(5) Report, Annex A, and Annex B to be transmitted to the Prosecutor.²⁸ As already clarified by this Chamber,²⁹

²⁸ See Pre-Trial Chamber II, “Decision on the Defence Requests in Relation to the Victims’ Applications for Participation in the Present Case”, 8 July 2011, ICC-01/09-01/11-169, paras 9-15; Pre-Trial Chamber I, “Decision requesting the Parties to submit observations on 14 applications for victims’ participation in the proceedings”, 24 May 2011, ICC-01/04-01/10-181, p. 5.

this difference in treatment between the parties is instrumental in allowing the Prosecutor to properly discharge her statutory obligations and, as such, does not constitute a violation of the principle of equality of arms.

36. Lastly, in line with the practice of the Single Judge, PIDS and the VPRS are instructed to raise with the Single Judge, if need be and on a continuous basis, any issues that may arise in regard to the collection and processing of the applications, in order to readily address and resolve such issues before the transmission of the applications to the Chamber.³⁰

FOR THESE REASONS, THE SINGLE JUDGE HEREBY

ORDERS:

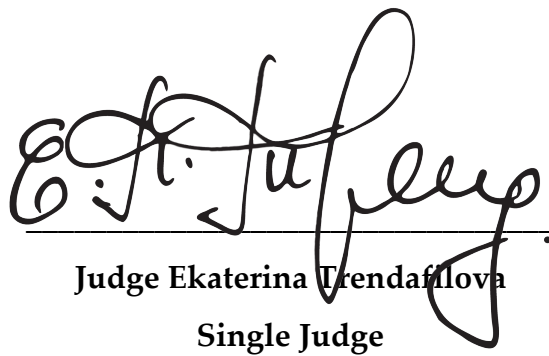
- a) the Registry, in particular the PIDS, to undertake a two weeks outreach mission as soon as practicable after the notification of the present decision and to submit the PIDS Report to the Chamber, confidential, *ex parte*, Registry only, no later than 10 days after the completion of the outreach mission, in compliance with the principles established in the present decision;
- b) the VPRS to collect forthcoming applications for victims' participation in the present case by using the Simplified Form attached as an annex to this decision;
- c) the VPRS to submit to the Single Judge the VPRS Report, confidential, *ex parte*, Registry only, in accordance with paragraph 25 of the present decision, no later than three weeks after the submission of the PIDS Report ;

²⁹ Pre-Trial Chamber II, "Decision on the defence Requests in Relation to the Victims' Applications for Participation in the Present Case", 8 July 2011, ICC-01/09-01/11-169, para. 14.

³⁰ Pre-Trial Chamber II, "Decision Establishing Principles on the Victims' Application Process", 28 May 2013, ICC-01/04-02/06-67, para. 32.

- d) the VPRS to transmit to the Chamber, jointly with any batch of applications for victims' participation, a Regulation 86(5) Report together with Annexes A, B and C, in compliance with the principles set forth in this decision;
- e) the VPRS to also transmit to the parties, jointly with any batch of applications for victims' participation, a Regulation 86(5) Report together with Annex A and Annex B, with redactions where appropriate for the Defence, in compliance with the principles set forth in this decision;
- f) the parties to submit to the Single Judge their observations, if any, on the applications for victims' participation, within fourteen days following their transmission by the VPRS;
- g) the parties to refer to the applicants only by the numbers assigned to them by the Registry;
- h) the Registry to establish an electronic log in which all information beyond the one provided in the Simplified Form, shall be securely stored in the VPRS's information system; and
- i) the Registry to make all arrangements necessary to ensure that the Chamber has access to the electronic log referred to in letter (h) of the operative part of the present decision.

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



Judge Ekaterina Trendafilova
Single Judge

Dated this Wednesday, 4 March 2015

At The Hague, The Netherlands