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PRE-TRIAL CHAMBER II

Before: Judge Antoine Kesia-Mbe Mindua, Presiding judge
Judge Tomoko Akane
Judge Rosario Salvatore Aitala

**SITUATION IN CENTRAL AFRICAN REPUBLIC II
IN THE CASE OF
*THE PROSECUTOR v. MAHAMAT SAID ABDEL KANI***

Public
With Public Annexes I and II
Confidential *EX PARTE* Annex III, only available to the Registry
Registry Submissions on Aspects Related to the Participation of Victims in the Proceedings

Source: Registry

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

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I. Introduction

1. In view of the confirmation of charges hearing presently scheduled to start on 5 October 2021,¹ the Registry hereby submits, pursuant to regulation 24*bis*(1) of the Regulations of the Court (“RoC”), observations and recommendations on the following aspects of victims’ participation in the case of *The Prosecutor v. Mahamat Said Abdel Kani* (“Case”):
 - the admission process for victims seeking to participate in the proceedings (“Admission Process”);
 - the application forms for participation and/or reparations;
 - identity documents available to the victims in the Case; and
 - legal representation of victims in the Case.
2. The Registry requests in particular Pre-Trial Chamber II’s (“Chamber”) approval for i) the use of the proposed victim application forms for participation and or reparations for individuals (Annex I) and for organisations (Annex II), as well as ii) the documents that may establish applicants’ identity or those applying on their behalf (see below paragraphs 16 to 18; a number of samples are provided in Annex III).

II. Classification

3. Pursuant to regulation 23*bis*(1) of the RoC, Annex III is classified confidential *ex parte* only available to the Registry as it contains information which may lead to the identification of victims and their whereabouts.

III. Applicable Law

4. The Registry submits the present observations in accordance with articles 68(1) and (3) of the Rome Statute (“Statute”), rules 16(1), 85, 89, 90 of the Rules of Procedure

¹ ICC-01/14-01/21-T-002-ENG ET WT 29-01-2021, p.11, lines 11-12.

and Evidence (“Rules”), regulations 24bis(1), 86 of the RoC, and regulations 106 to 109 of the Regulations of the Registry (“RoR”).

IV. Submissions

5. In the present submissions the Registry sets out its recommendations on: the admission process for victims seeking to participate in the proceedings (A); the application form to be used by victims (B); the identity documents available (C); and the legal representation of victims in the Case (D).

A. Admission process

6. To prepare and organize the victim application process in light of the contextual realities of the Case, the Registry recommends the victim admission process adopted at pre-trial and trial in the cases of *The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud* (“Al Hassan case”),² and *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona* (“Yekatom and Ngaïssona case”),³ as well as at trial in the case of *The Prosecutor v. Bosco Ntaganda case* (“Ntaganda case”),⁴ and most recently by this Chamber in the case of *The Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman* (“Abd-Al-Rahman case”).⁵
7. As recently reported in the final report of the Independent Expert Review of the International Criminal Court and the Rome Statute System, in those cases where the proposed admission system has been adopted, “[t]he task for the Judiciary is

² *Al Hassan case*, Pre-Trial Chamber I, “Decision Establishing the Principles Applicable to Victims’ Applications for Participation”, 24 May 2018, ICC-01/12-01/18-37; Trial Chamber X, “Decision on the procedure for the admission of victims to participate in proceedings for the purposes of trial”, 12 March 2020, ICC-01/12-01/18-661.

³ *Yekatom and Ngaïssona case*, Pre-Trial Chamber II, “Decision Establishing the Principles Applicable to Victims’ Applications for Participation”, 5 March 2019, ICC-01/14-01/18-141; Trial Chamber V, “Order Scheduling First Status Conference”, 19 March 2020, ICC-01/14-01/18-459, para. 8 and fn. 5.

⁴ *Ntaganda case*, Trial Chamber VI, “Decision on victims’ participation in trial proceedings”, 6 February 2015, ICC-01/04-02/06-449.

⁵ Pre-Trial Chamber II, “Decision establishing the principles applicable to victims’ participation and representation during the Confirmation Hearing, 18 January 2021, ICC-02/05-01/20-259, para. 34.

greatly simplified and expedited.”⁶ The admission process (described in detail below) aims at enhancing procedural efficiencies and maximizing victims’ access to the Court while at the same time respecting the accused’s fair trial rights.⁷

8. The following admission process recommendation is informed mostly by the approaches adopted in the aforementioned cases and mindful of relevant provisions of the Chambers Practice Manual.⁸ This approach includes the following features:

- The Victim Participation and Reparations Section (“VPRS”) receives victim applications and assesses these applications against rule 85 of the Rules and any other criteria that the Chamber may find appropriate. Further, it categorizes the applicants into three groups:

Group A: Applicants who clearly qualify as victims;

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

Group C: Applicants for whom the VPRS could not make a clear determination for any reason.⁹

- The VPRS transmits all complete applications from Group A, Group B and relevant examples from Group C to the Chamber, in accordance with the abovementioned grouping, on a rolling basis.
- The applications that, in the VPRS’s view, are incomplete and/or fall clearly outside the scope of the concerned case are not transmitted to the Chamber.¹⁰

⁶ Independent Expert Review of the International Criminal Court and the Rome Statute System, “Final Report”, 30 September 2020, para. 847.

⁷ See also: *Yekatom and Ngaïssona* case, Registry, “Registry’s Observations on Aspects Related to the Admission of Victims for Participation in the Proceedings”, 6 February 2019, ICC-01/14-01/18-78; *Al Hassan* case, Registry, “Registry Observations on Aspects Related to the Admission of Victims for Participation in the Proceedings”, 9 May 2018 (reclassified as public on 11 May 2018), ICC-01/12-01/18-28.

⁸ See https://www.icc-cpi.int/about/judicial-divisions/Pages/chambers_practice_manual.aspx, section C. I. (i).

⁹ Chambers Practice Manual, section C. I. (ii).

¹⁰ Chambers Practice Manual, section C. I. (ii), (iii), (iv).

- The VPRS prepares reports that accompany each transmission and list the victim applications falling into the aforementioned three groups. These reports are notified to the Chamber, the parties and participants. The reports need not include application-by-application reasoning or analysis and need not justify the respective classifications.
 - For Group A and B, barring a clear, material error in the VPRS's assessment, the Chamber would ratify the assessments regarding these applicants through a decision.
 - As regards the transmission of applications to the parties pursuant to rule 89(1) of the Rules, only relevant examples of Group C applications presenting unclear or borderline issues on which the VPRS is unable to make a clear determination would be transmitted to the Chamber and the parties (with the necessary redactions) for observations from the parties.¹¹ The VPRS would also provide a report to the Chamber and the parties that clearly highlights the issue(s) arising from the application forms that the VPRS was unable to make a clear determination on. Once the parties' observations have been received on the unclear applications, the Chamber would assess the Group C applications individually and determine whether the victims concerned shall be admitted to participate or not.¹²
9. The benefit of the abovementioned approach, as it can be observed in practice in the proceedings in the *Ntaganda*, *Al Hassan* and *Yekatom and Ngaïssona* cases, is that the parties as well as the Chamber can concentrate on pre-assessed unclear or

¹¹ The *Ntaganda/Al Hassan/Yekatom and Ngaïssona* practice of transmitting only group C applications to the parties would be in slight deviation from the Chambers Practice Manual, section C. I. (v). It is noted however that all forms would remain on file with the Registry and could be transmitted to the parties at any stage as necessary (with redactions as appropriate).

¹² This suggested approach follows Trial Chamber VI, "Decision on victims' participation in trial proceedings", 6 February 2015, ICC-01/04-02/06-449, para. 24(iv), (vi) and (vii); Pre-Trial Chamber I, "Decision Establishing the Principles Applicable to Victims' Applications for Participation", 24 May 2018, ICC-01/12-01/18-37-tENG, pp. 28-30; and Pre-Trial Chamber II, "Decision establishing the principles applicable to victims' participation and representation during the Confirmation Hearing, 18 January 2021, ICC-02/05-01/20-259, para. 34.

borderline issues arising from victim applications in a bundled fashion. In addition, the VPRS's processing and redaction obligations would extend to only a fraction of the relevant forms (i.e. only relevant examples from the Group C applications submitted to the Chamber and the parties), leading to considerable time and resource savings. This, in turn, would enable the VPRS to process the highest number of victim applications with a view to their timely participation in the proceedings leading up to the confirmation of charges hearing in the present proceedings.

B. Application forms

10. The Registry respectfully requests the Chamber to approve the set of application forms for participation (for individuals and organizations, pursuant to rule 85 of the Rules) adopted and tested in the same situation, in the context of the *Yekatom and Ngaïssona* case ("Proposed Application Forms").¹³ These same application forms have since been applied at the trial stage of the *Al Hassan* case,¹⁴ and most recently, albeit with a minor modification, in the *Abd-Al-Rahman* case.¹⁵
11. The purpose of the first two pages of the Proposed Application Forms is to collect all the information necessary for the Chamber to make a determination on the victim's participatory status and for the victim to submit a valid request for reparations pursuant to rule 94(1) of the Rules. The remaining pages of the Proposed Application Forms are designed to capture the personal information of the victim including information on legal representation. In line with prevailing

¹³ See Annexes 1 and 2. See also *Yekatom and Ngaïssona* case, Registry, "Registry Observations on Aspects Related to the Admission of Victims for Participation in the Proceedings", dated 6 February 2019 and notified on 7 February 2019, ICC-01/14-01/18-78, paras 9-14.

¹⁴ <https://www.icc-cpi.int/pages/victims-info-page.aspx?for='al-hassan'>, under 'Information for Victims.' See also Trial Chamber X, "Decision on the procedure for the admission of victims to participate in proceedings for the purposes of trial", 12 March 2020, ICC-01/12-01/18-661, paras. 36-37.

¹⁵ <https://www.icc-cpi.int/about/victims>, under 'Victim participation in the *Abd-Al-Rahman* case'. This form was approved for use also specifically for this case by Pre-Trial Chamber II, "Decision on the Registry's Request for Authorisation to use a Modified Standard Application Form for Victim Participation", 4 November 2020, ICC-02/05-01/20-198.

practice at the Court, the VPRS would systematically split the application after page two and, in accordance with, *inter alia*, article 68(1) of the Statute, keep the victims' personal information from being transmitted on the case record.

12. The Registry respectfully submits that the Proposed Application Forms are appropriate in light of the contextual realities in the Central African Republic ("CAR"), lessons learned from other cases (particularly from the present as well as the CAR I situation), recommendations provided by experts on the victim application process before the Court¹⁶, as well as efficiency purposes.¹⁷
13. The Registry has implemented the victim application process in CAR for nearly two years in the context of the *Yekatom and Ngaissona* case with forms identical to the Proposed Application Forms. It assisted victims directly in filling out relevant forms, provided training to intermediaries and informed civil society actors and victim communities of relevant processes. The use of these forms has shown positive results in terms of quantity and quality of the information gathered. It is therefore the Registry's view that the use of the Proposed Application Forms is in the interest of victims and should facilitate the swift implementation of the application process in the Case.
14. In the *Abd-Al-Rahman* case, the Registry further obtained approval for the use of a modified version of these forms – by replacing the signature field with a solemn undertaking text field ("Modified Form").¹⁸ However the Registry does not deem

¹⁶ Amnesty International and REDRESS, "Independent Panel of Experts Report on Victim Participation at the ICC", July 2013, para 64.v; Registry, "Public Redacted Version of 'Annex, 28 November 2017, ICC-01/05-01/08-3575-Conf-Exp-Anx-Corr2'", 30 November 2017, ICC-01/05-01/08- 3575-Anx-Corr2-Red, para. 51; relevant correspondence on the Proposed Application Form with actors in the Rome Statute system.

¹⁷ See *Yekatom and Ngaissona* case, Registry, "Registry Observations on Aspects Related to the Admission of Victims for Participation in the Proceedings", dated 6 February 2019 and notified on 7 February 2019, ICC-01/14-01/18-78, paras 11-13; *Al Hassan* case, Registry, "Public redacted version of 'Annex to the Registry Report on the implementation of Trial Chamber X's Decision of 20 December 2019 (ICC-01/12-01/18-536)'", 24 January 2020, ICC-01/12-01/18-563-Conf-Anx-Red, para. 23.

¹⁸ See *Abd-Al-Rahman* case, Pre-Trial Chamber II, "Decision on the Registry's Request for Authorisation to use a Modified Standard Application Form for Victim Participation", 4 November 2020, ICC-02/05-

necessary, after assessment of the particular circumstances of the Case, to request the same authorisation for the following reasons:

- the Registry has a Country Office in Bangui whose staff has been in a position to maintain direct contacts with victims - despite the tense security situation and the ongoing COVID restrictions; this is further supported by the geographic scope of the charges in the Case;
- the Registry is using identical versions of the Proposed Application Forms (i.e with the signature requirement) in the *Yekatom and Ngaiissona* case. It considers sensible to have parity, whenever feasible, between the processes and between the victim communities in order to ensure an even-handed treatment of victim communities including identical requirements across cases in the same situation to participate in ICC proceedings.¹⁹

15. The Registry would also make available versions of the Proposed Application Forms in all relevant languages (if approved) on the ICC homepage, including a printable electronic version of the form as well as an online form which would facilitate access to the proceedings to those potential applicants who have access to

01/20-198 (“Decision on Modified Form”), following the Registry request “Public Redacted version of ‘Registry Request for Authorization to use a Modified Standard Application Form to Facilitate Victim Participation in the Case’, 8 October 2020, ICC-02/05-01/20-178-Conf”, 2 November 2020, ICC-02/05-01/20-178-Red (“Registry Request on Modified Form”).

¹⁹ The Registry reiterates its general submission of the limited overall value of the physical signature on the application form as a guarantee function that the form is genuine, alongside the submission that a signature is not a statutory or otherwise regulatory requirement within the Rome Statute system (*see* Registry Request on Modified Form, paras 7, 10 and “Public Redacted version of “Registry Observations on the Defence’s “Réponse à la Requête ICC-02/05-01/20-178”(ICC-02/05-01/20-182-Conf)”, 26 October 2020, ICC-02/05-01/20-194-Conf”, 29 October 2020, ICC-02/05-01/20-194-Red; paras 34-37), as endorsed by the Single Judge of Pre-Trial Chamber II in the Decision on Modified Form in the *Abd-Al-Rahman* case, para. 11. The Registry considers that one of the key reasons militating against the Modified Form in the present Case at present is parity between the victim application forms used in the different ongoing cases in the present situation. Yet, the specific challenges victims may face in the present face (e.g. deterioration of the security/COVID 19 situation or accessibility of victims in refugee camps) will require a renewed assessment of the situation in the coming months, following which the Registry may come back to the Chamber with a view to the Modified Form.

the internet. In addition, the Registry would operate with mobile devices that allow filling in a fully electronic form where the signature (or other mark)²⁰ is saved electronically. This is envisaged to lead to further efficiency gains in form handling, translation and reporting.²¹

C. Identity documents

16. The Registry recommends that the Chamber endorses the approach adopted in the *Yekatom and Ngaïssona* case with respect to the documentary requirements for participation,²² since the circumstances prevailing in CAR are still the same as those described in relation to the *Yekatom and Ngaïssona* case in the report on proof of identity documents submitted in that case ("*Yekatom and Ngaïssona* Report"),²³ including:

- an enduring conflict situation,²⁴
- a complex legal and institutional framework regarding civil status,²⁵
- dysfunctions in the administration,²⁶ and
- high costs for the requester for the issuance of identification documents.²⁷

²⁰ This includes notably a thumb print.

²¹ See already in Registry Request on Modified Form, paras 9-11.

²² Pre-Trial Chamber II, "Decision Establishing the Principles Applicable to Victims' Applications for Participation", 5 March 2019, ICC-01/14-01/18-141, paras 24-25.

²³ Registry, "Annex I to Registry Report on Proof of Identity Documents Available in the Central African Republic and Transmission of Proposed Application Form for Victims Under Rule 85(b) of the Rules of Procedure and Evidence", 28 February 2019, ICC-01/14-01/18-133-AnxI.

²⁴ In the run-up to, and following, the 27 December 2020 presidential elections in CAR, the security in the country has deteriorated considerably. See <https://www.securitycouncilreport.org/monthly-forecast/2021-02/central-african-republic-10.php>.

²⁵ *Yekatom and Ngaïssona* Report, para.15.

²⁶ *Ibid*, paras 15-18. The Registry notes that the suspension of the issuance of national identity cards has been lifted. However the modalities of their issuance has remained problematic and their cost has been increasing. See RFI, <https://www.rfi.fr/fr/afrique/20200820-centrafrique-polemique-augmentation-prix-cartes-identite>, Radio Ndeke Luka, <https://www.radiondekeluka.org/actualites/politique/36240-rca-deception-des-deputes-face-au-non-respect-de-certaines-dispositions-de-la-loi-des-finances-2020.html>

²⁷ *Ibid*, paras 19-20. The Registry specifies that in Bangui the cost of the issuance of administrative documents is public. However, their cost remains often prohibitive for many individuals. The Registry further notes that due to the blockade of the border with Cameroon and of the main supply road, the Bangui population is currently facing increased socio-economic issues with a shortage of first necessity

17. In light of the challenges currently faced by potential applicants for participation and/or reparations in this Case to prove their identity, the Registry respectfully requests the Chamber to accept as documents establishing the identity of applicants and those presenting an application on their behalf :

- all types of identity documents accepted by Pre-Trial Chamber III in *The Prosecutor v. Jean-Pierre Bemba* case (“*Bemba* case”),²⁸ including:

(i) “*certificat de nationalité*”, (ii) “*permis de conduire*”, (iii) “*passeport*”, (iv) “*livret de famille*”, (v) “*extrait d’acte de mariage*”, (vi) “*acte de mariage*”, (vii) “*extrait d’acte de décès*”, (viii) “*acte de décès*”, (ix) “*jugement supplétif*”, (x) “*extrait d’acte de naissance*”, (xi) “*acte de naissance*”, (xii) “*nouvelle carte d’identité*”, (xiii) “*ancienne carte d’identité qui n’est plus en vigueur*”, (xiv) “*carte professionnelle*”, (xv) “*carte d’association*”, (xvi) “*récépissé de dépôt de demande de carte nationale d’identité*”, (xvii) “*carte de commission d’emploi*”, (xviii) “*carte de député*”, (xix) “*déclaration de naissance*”, (xx) “*carte d’identité pastorale*”, (xxi) “*testament*”, and (xxii) “*livret de pension*” ;

- all additional forms of identification accepted by Trial Chamber III in the *Bemba* case,²⁹ including:

(i) electoral cards, (ii) baptism cards, (iii) certificates of school attendance and student cards, (iv) civil status certificates signed by the “*Chef de quartier*”,³⁰ (v)

products and supplies and an increase of prices. See, RFI, <https://www.rfi.fr/fr/afrique/20210109-centrafrique-la-fronti%C3%A8re-avec-le-cameroun-est-bloqu%C3%A9e-depuis-plus-de-trois-semaines>.

²⁸ *Bemba* case, Pre-Trial Chamber III, “Fourth Decision on Victims’ Participation”, dated 12 December 2008 and registered on 15 December 2008, ICC-01/05-01/08-320, para. 36.

²⁹ See *Bemba* case: Trial Chamber III, “Decision on 772 applications by victims to participate in the proceedings”, 18 November 2010, ICC-01/05-01/08-1017, para. 42; “Corrigendum to the Decision on 401 applications by victims to participate in the proceedings and setting a final deadline for the submission of new victims’ applications to the Registry”, 21 July 2011, ICC-01/05-01/08-1590-Corr, para. 35; “Decision on 270 applications by victims to participate in the proceedings”, 25 October 2011, ICC-01/05-01/08-1862, para. 25; “Decision on 418 applications by victims to participate in the proceedings”, 15 December 2011, ICC-01/05-01/08-2011, para. 17.

³⁰ *Chef de Village* and *Chef de Quartier* are official representatives of the CAR administrative structure, elected for a period of ten years. See Norwegian Refugee Council, “Displacement and housing, land and property rights in the Central African Republic”, December 2014, pp. 23-24, at <https://www.nrc.no/globalassets/pdf/reports/displacement-and-housing-land-and-property-rights-in-the-central-african-republic.pdf>.

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

- and further forms of identification accepted by Pre-Trial Chamber II in the *Yekatom* and *Ngaïssona* case, in accordance with paragraph 25 of its Decision Establishing the Principles Applicable to Victims’ Applications for Participation:³¹

i) “*Formulaire d’enregistrement des électeurs*” (also called “*Récépissé*”),³² and ii) “*Registration card*” and “*Entitlement card*”,³³

- a statement signed by two witnesses and accompanied by their proof of identity attesting to the identity of the victim applicant/person acting on his/her

³¹ Pre-Trial Chamber II, “Decision Establishing the Principles Applicable to Victims’ Applications for Participation”, 5 March 2019, ICC-01/14-01/18-141, para. 25. When applicants presented other documents than those accepted in this decision, Pre-Trial Chamber II considered whether to accept such documents upon receipt of the Registry’s assessments and recommendations.

³² As previously indicated, the Registry was informed that such type of document has been used by individuals in lieu of their electoral cards to vote on time for the 2015 elections, in the context of the crisis and the dysfunction of administrative institutions (See *Yekatom and Ngaïssona* Report, para. 18). The Registry obtained Pre Trial Chamber II ‘s approval to consider such documents as sufficiently establishing the identity of applicants in the Case (email from Registry to Pre-Trial Chamber II on 28 August 2019 at 11:23, and email from Pre-Trial Chamber II to Registry on 29 August 2019 at 11:17). A sample of such document is available in Annex II to the present submission (See pp. 79-80).

³³ Displaced applicants often possessed cards delivered by UN agencies, refugee camp management agencies or NGOs in a similar role, which they used in lieu of any other type of identification (See *Yekatom and Ngaïssona* Report, para 21). Such cards were usually delivered following a registration process carried out by trained field agents from agencies in charge of the Camp in coordination with community leaders to confirm their residence in IDP sites (“*Registration card*”), ensure their protection and/or tie targeted individuals to humanitarian interventions (“*Entitlement card*”). The Registry notes that similar Entitlement cards were also used outside of the context of IDP camps/sites for beneficiaries of assistance projects/programmes such as those addressing vulnerable categories of populations. The Registry sought and obtained Pre Trial Chamber II ‘s approval to consider such documents as sufficiently establishing the identity of applicants in the Case (Email from Registry to Pre Trial Chamber II on 1 August 2019 at 18:33 and email from Pre Trial Chamber II to Registry on 2 August 2019 at 15:20). A sample of such document is available in annex II to the present submission (See pp. 81-85).

behalf where it is not possible for the latter to acquire or produce a document of the kind set out above.³⁴

18. Lastly, the Chamber may consider for acceptance any other documents appended by future applicants which contain similar features as those already authorised in the *Yekatom and Ngaïssona* case, following relevant assessments and recommendations provided by the Registry to that effect.³⁵

D. Legal representation

19. As recalled by Pre-Trial Chamber II in the *Yekatom and Ngaïssona* case, the Registry is “duty-bound to assist victims in obtaining legal advice and legal representation by virtue of rule 16(1)(b)”.³⁶ Accordingly the Registry has started collecting information on legal representation of victims in the Case with a view to best assisting and informing victims on the matter. This includes, mindful of rule 90 of the Rules, collecting information on victims’ general views and preferences, how victims are organised and the consequences for the choice of legal representative.
20. Also, in line with the *Yekatom and Ngaïssona* case, and to the extent possible, the Registry plans to engage in consultations with victims and other relevant key actors in order to:
- provide information concerning the legal representation of victims before the Court, and in particular the role and mandate of counsel before the

³⁴ This is consistent with the decisions issued in other cases before the Court. See for instance *Bemba* case, Pre-Trial Chamber III, “Fourth Decision on Victims’ Participation”, dated 12 December 2008 and registered on 15 December 2008, ICC-01/05-01/08-320, para. 37; *Yekatom and Ngaïssona* case, Pre-Trial Chamber II, “Decision Establishing the Principles Applicable to Victims’ Applications for Participation”, 5 March 2019, ICC-01/14-01/18-141, para. 25; *The Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman*, Pre-Trial Chamber II, “Decision establishing the principles applicable to victims’ and representation during the Confirmation Hearing”, 18 January 2021, ICC-02/05-01/20-259, para. 19.

³⁵ This would be in line with the approach adopted by Pre-Trial Chamber II in the *Yekatom and Ngaïssona* case. See “Decision Establishing the Principles Applicable to Victims’ Applications for Participation”, 5 March 2019, ICC-01/14-01/18-141, para.25.

³⁶ *Yekatom and Ngaïssona* case, Pre-Trial Chamber II, “Decision Establishing the Principles Applicable to Victims’ Applications for Participation”, 5 March 2019, ICC-01/14-01/18-141, paras. 51-52.

Court, the provisions of rule 90 as well as the role that the Office of Public Counsel for Victims may play;

- consult them on previous experiences they may have had regarding legal representation in judicial proceedings;
- consult them on the most important aspects they consider when choosing a legal representative, the characteristics and qualities they are looking for in a legal representative;
- assess whether distinct interests or conflict of interests exist and how they may have an impact on the organisation of the legal representation of victims;
- assess whether victims have identified one or more (common) legal representatives and whether it is necessary to help them, how to do so; and
- identify potential common legal representatives in the event that victims cannot agree on a choice.

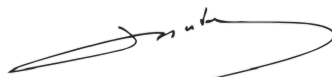
21. The Registry will be in a position to file a report to the Chamber by end of May 2021 on the information it will have collected at that time in order for the Chamber to be notably appraised on the (common) legal representative(s) indicated by potential applicants in the Case. The Registry will also provide additional observations and recommendations on the way forward with regards to legal representation of victims in the Case.³⁷

Conclusion

22. The Registry respectfully requests the Chamber's authorisation to proceed in accordance with its recommendations as to the procedure to be applied for the

³⁷ As done in the *Yekatom and Ngaïssona* case, the Registry will assess how an approach that prioritizes victims' choice of counsel may proceed in accordance with rule 90 of the Rules, the applicability of Rule 90 (2) of the Rules, and options to commence with the organization of common legal representation under rule 90(3) of the Rules, if required. See Registry, "Public redacted version of 'Annex I to Registry's Report on Legal Representation of Victims', dated 16 April 2019 and notified 17 April 2019, ICC-01/14-01/18-178-Conf-Exp-AnxI", 16 May 2019, ICC-01/14-01/18-178-AnxI-Red.

admission of applicants,³⁸ the application forms to be used to facilitate victim participation,³⁹ the documents to be provided by victims and persons acting on their behalf to establish their identity of applicants,⁴⁰ and the report to be filed on the legal representation of victims in the Case.⁴¹



Marc Dubuisson, Director, Division of Judicial Services

on behalf of Peter Lewis, Registrar

Dated this 26 February 2021

At The Hague, The Netherlands

³⁸ See *supra* paras 6-9.

³⁹ See *supra*, paras 10-15.

⁴⁰ See *supra*, paras 16-18.

⁴¹ See *supra*, paras 19-21.