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**International
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Date: **8 April 2020**

TRIAL CHAMBER V

Before: Judge Bertram Schmitt, Presiding Judge
Judge Péter Kovács
Judge Chang-ho Chung

SITUATION IN THE CENTRAL AFRICAN REPUBLIC II

IN THE CASE OF
THE PROSECUTOR v. ALFRED YEKATOM AND PATRICE- EDOUARD
NGAISSONA

Public Document

**Common Legal Representatives' joint submissions on the matters identified in the
"Order Scheduling First Status Conference"**

Source: Common Legal Representatives of Victims

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

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I. PROCEDURAL BACKGROUND

1. On 11 December 2019, Pre-Trial Chamber II issued its decision confirming partially the charges against Mr Yekatom and Mr Ngaïssona and committing them for trial.¹

2. On 16 March 2020, the Presidency assigned the case to the constituted Trial Chamber V.²

3. On 19 March 2020, Trial Chamber V (the “Chamber”) issued the “Order Scheduling First Status Conference” (the “Order”), instructing the parties and participants to file, by 8 April 2020, their submissions on the following matters in preparation for trial:³

A. Commencement date of the trial.

B. Anticipated evidence.

C. Agreed facts under Rule 69 of the Rules.

D. Languages to be used by the parties, participants, and the witnesses the parties intend to call.

E. Disclosure of outstanding material in the Prosecution’s possession and related issues.

F. Disclosure by the Defence, including whether the Defence intends to advance a defence in accordance with Rules 79 and 80 of the Rules.

G. Provision of a pre-trial brief by the Prosecutor.

H. Estimated length of opening statements.

¹ See the public redacted version of the “Decision on the confirmation of charges against Alfred Yekatom and Patrice-Edouard Ngaïssona” (Pre-Trial Chamber II), [No. ICC-01/14-01/18-403-Red](#), 20 December 2019 (the “Decision confirming the charges”). The confidential version of the Decision was issued on 11 December 2019.

² See the “Decision constituting Trial Chamber V and referring to it the case of The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona”(Presidency), [No. ICC-01/14-01/18-451](#), 16 March 2020.

³ See the “Order Scheduling First Status Conference” (Trial Chamber V), [No. ICC-01/14-01/18-459](#), 19 March 2020.

I. Update and forecast on (additional) applications by victims to participate in the proceedings.

4. In addition, the Chamber indicated that the parties and participants may “express their wish to add further items to the list and indicate whether parts of the status conference should be held *ex parte*”.⁴ It further instructed that “should the parties and participants be of the view that any matters ought to be resolved before the status conference, they should bring these to the Chamber’s attention promptly”.⁵

5. Pursuant to the Order, the Common Legal Representative of the Former Child Soldiers and the Common Legal Representatives of Victims of Other Crimes (jointly the “Common Legal Representatives” or the “CLRV”) authorised to participate in the present case⁶ submit their joint observations on the matters identified by the Chamber.

II. SUBMISSIONS

Regarding matters under item (E), (F) and (G)

6. The Common Legal Representatives have no submissions to make on matters under items (E), (F) and (G) of the Order which are to be primarily addressed by the Prosecution and the Defence.

Regarding matters under item (A)

7. The Common Legal Representatives inform the Chamber that the victims have already indicated their wish that the trial starts as soon as practicable. During various meetings held with the Common Legal Representatives, the victims also expressed their view that trial proceedings should be carried out in an expeditious manner and

⁴ *Idem*, para. 5

⁵ *Ibid.*, para. 6

⁶ See the “Decision regarding the Registry’s First Assessment Report on Applications for Victim Participation, the Registry’s First Transmission of Group C Applications, the appointment of counsel for Victims of Other Crimes, and the victims’ procedural position” (Pre-Trial Chamber II), [No. ICC-01/14-01/18-227-Red](#), 21 June 2019.

made clear their strong opposition to any delay with regard to the commencement of the trial.

8. Taking into account the right of the Accused to be tried promptly and the right of new potential victims to be afforded a reasonable time to apply for participation in the proceedings, the Common Legal Representatives indicate that the trial could start between the end of the year and January 2021, at the latest. The Common Legal Representatives acknowledge the current situation linked to the COVID-19 pandemic which may have an impact on the possibility to start the trial as soon as possible. Indeed, the current situation is already heavily impacting the operations of all parties and participants in the present proceedings, as well as the Registry.

Regarding matters under item (B)

9. The Common Legal Representatives wish to inform the Chamber that, at present, they are not in a position to identify amongst the victims they represent, the ones for whom they would either seek authorisation to call as witnesses or otherwise request to appear in person to present their views and concerns.

10. This determination will be made at a later stage of the proceedings taking into account the relevant interests of the victims and the extent and type of evidence on which the Prosecution will rely on at trial.

11. In this regard, the Common Legal Representatives wish to underline the important distinction drawn in the jurisprudence of the Court to date between the right for legal representatives to call victims to give evidence and the right of victims to present their views and concerns in person before the Chamber.⁷

⁷ See e.g., the “Decision on the presentation of views and concerns by victims a/0542/08, a/0394/08 and a/0511/08” (Trial Chamber III), [No. ICC-01/05-01/08-2220](#), 24 May 2012, paras. 7-8 and 9-11.

12. In the *Lubanga* case, Trial Chamber I recognised “[t]he unequivocal statutory right for victims to present their views and concerns in person when their personal interests are affected [...] if the Court considers that course appropriate [and in as much as it does not] undermine the integrity of these criminal proceedings”.⁸ Trial Chamber I also drew a distinction between the process of victims expressing their views and concerns and the process of victims giving evidence.⁹

13. However, it is in the *Bemba* case that, for the first time, the legal representatives were allowed to both apply for some of their clients to present their views and concerns in person before the Chamber and some to give evidence at trial.¹⁰ Trial Chamber III emphasised that the “[t]hreshold to grant applications by victims to give evidence is significantly higher than the threshold applicable to applications by victims to express their views and concerns in person. For this reason, victims who fail to reach the threshold to be authorised to give evidence may still be permitted to express their views and concerns in person”,¹¹ in the form of unsworn statements.¹² The presentation of views and concerns of six victims was also authorized in the *Ntaganda* case and the

⁸ See the “Decision on the 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” (Trial Chamber I), [No. ICC-01/04-01/06-2032-Anx](#), 26 June 2009, paras. 17 and 25-27.

⁹ *Idem*. See also, the “Decision on the Modalities of Victim Participation at Trial” (Trial Chamber II), [No. ICC-01/04-01/07-1788-tENG](#), 22 January 2010, paras. 69-71.

¹⁰ See the “Decision on the supplemented applications by the legal representatives of victims to present evidence and the views and concerns of victims” (Trial Chamber III), [No. ICC-01/05-01/08-2138](#), 22 February 2012, para. 20. See also, the “Decision on victims’ representation and participation” (Trial Chamber V), [No. ICC-01/09-01/11-460](#), 3 October 2012, paras. 56-58; the “Decision on victims’ representation and participation” (Trial Chamber V), [No. ICC-01/09-02/11-498](#), 3 October 2012, paras. 55-57; and the “Decision on the participation of victims in the trial proceedings” (Trial Chamber IV), [No. ICC-02/05-03/09-545](#), 20 March 2014, paras. 22-41.

¹¹ See the “Decision on the supplemented applications by the legal representatives of victims to present evidence and the views and concerns of victims”, *supra* note 10, para. 20. See also, the “Public redacted version of ‘Decision on the request by the Legal Representative of the Victims of the Attacks for leave to present evidence and victims’ views and concerns’ (10 February 2017, ICC-01/04-02/06-1780-Conf)” (Trial Chamber VI), [No. ICC-01/04-02/06-1780-Red](#), 15 February 2017, para. 10.

¹² See the “Decision on the presentation of views and concerns by victims a/0542/08, a/0394/08 and a/0511/08” (Trial Chamber III), [No. ICC-01/05-01/08-2220](#), 24 May 2012, para. 7.

Chamber noted “*their alleged harms suffered, and the temporal and geographical proximity of the alleged events in relation to the charges*”.¹³

14. For the presentation of views and concerns, the Chamber may envisage the possibility for victims to either present their views in person or in writing. In the case of the appearance in person, the Common Legal Representatives suggest adopting the procedure as established in the *Bemba* and *Ntaganda* cases, so that the legal representatives would guide the victims through their presentation by only facilitating it, eventually with a few questions, and that the victims will not be questioned by the parties but by the judges.¹⁴ In light of the importance for victims to be able to express their views and to share their experience with the judges, the Common Legal Representatives favour their appearance in person (either by video-link or at the seat of the Court) rather than in writing.

15. The Common Legal Representatives recall the established jurisprudence to date and advocate for the possibility of diverging from it on one particular aspect. The necessity that victims will relinquish their identity when appearing to give evidence as witnesses is in perfect line with the general rules and proceedings applying to all participants at the trial stage.¹⁵ However, the Common Legal Representatives submit that the victims appearing to present their views and concerns before the Chamber through unsworn statements should not automatically be required to lift their anonymity. Instead, said issue should be considered on a

¹³ See the “Public redacted version of ‘Decision on the request by the Legal Representative of the Victims of the Attacks for leave to present evidence and victims’ views and concerns’ (10 February 2017, ICC-01/04-02/06-1780-Conf)” (Trial Chamber VI), [No. ICC-01/04-02/06-1780-Red](#), 15 February 2017, para. 49.

¹⁴ See the “Decision on the presentation of views and concerns by victims a/0542/08, a/0394/08 and a/0511/08”, *supra* note 7, paras. 7-8. See also, the “Decision on the supplemented applications by the legal representatives of victims to present evidence and the views and concerns of victims”, *supra* note 10, para. 7; and the transcripts of the hearing held on 1 March 2017, [No. ICC-01/04-02/06-T-198-Red2-ENG WT](#) p. 3, lines 8-20. ¹⁵ See the “Second order regarding the applications of the legal representatives of victims to present evidence and the views and concerns of victims” (Trial Chamber III), [No. ICC-01/05-01/08-2027](#), 21 December 2011, paras. 12-15 and 19.

¹⁵ See the “Second order regarding the applications of the legal representatives of victims to present evidence and the views and concerns of victims” (Trial Chamber III), [No. ICC-01/05-01/08-2027](#), 21 December 2011, paras. 12-15 and 19.

case-by-case basis, depending on the circumstances of the victims concerned, particularly in light of the specific volatile security situation in CAR.

16. The Common Legal Representatives agree with the principle established according to which victims who will appear before the Chamber should be the best-placed to give evidence or to present views and concerns, and that their appearance should not be cumulative with what has already been presented in the case.¹⁶ Trial Chamber VI also considered whether *“the accounts expected to be provided are representative of the harms suffered by a larger group of victims”*.¹⁷

17. In relation to the right to call witnesses – other than victims –, the Common Legal Representatives recall the Court’s jurisprudence according to which witnesses called by the legal representatives shall be able to provide important information that is not hitherto included in the evidence presented by the parties, and shall make a genuine contribution to the determination of the truth.¹⁸ In particular, Trial Chamber I considered whether the testimony *“[i] affects the victim’s personal interests; (ii) is 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”*.¹⁹

18. The Common Legal Representatives observe that there is no need to depart from the procedure established to date in other cases, essentially requiring the legal representatives to file a written request towards the expected end of the Prosecution case,²⁰ explaining the relevance of the victim’s evidence/views and concerns for the

¹⁶ *Idem*, paras. 12-15.

¹⁷ See the “Public redacted version of ‘Decision on the request by the Legal Representative of the Victims of the Attacks for leave to present evidence and victims’ views and concerns, *supra* note 13, para. 10

¹⁸ See the “Decision on the Modalities of Victim Participation at Trial” (Trial Chamber II), [No. ICC-01/04-01/07-1788-tENG](#), 22 January 2010, paras. 94-97. Trial Chamber I appointed an expert on names and other social conventions in the DRC following the legal representatives’ submissions in this regard; see the “Instructions to the Court’s expert on names and other social conventions in the Democratic Republic of Congo” (Trial Chamber I), [No. ICC-01/04-01/06-1934](#), 5 June 2009, para. 12.

¹⁹ See the “Decision on the participation of victims in the trial proceedings”, *supra* note 10, para. 25.

²⁰ See the “Preliminary Directions for any LRV or Defence Evidence Presentation” (Trial Chamber IX), [No. ICC-02/04-01/15-1021](#), 13 October 2017. See also, the “Decision on the conduct of

proceedings, how the victim's evidence/views and concerns would assist in the Chamber's determination of the truth, the estimated time for the appearance, and whether they need to be afforded in-court protective measures. Such a request shall include a detailed summary/statement of the aspects which will be addressed by each victim.²¹

19. In relation to expert witnesses, the Common Legal Representatives recall that recently in the *Ongwen* case, Trial Chamber IX authorised the Common Legal Representative to call four experts to present evidence on different areas²² namely on trauma, issues related to children, youth and in particular former child soldiers, issues related to rape, and sexual and gender-based crimes, and Acholi culture²³.

20. In the context of the present case, there are numerous subject-matters on which experts could testify, the majority of which are of a direct relevance to the interests of the victims. Said subject-matters may include, *inter alia*, the calling of experts on child soldiers or on the victimisation of the affected communities and the subsequent immediate and long-term consequences of victimisation, such as psychological trauma, post-traumatic disorder and intergenerational harm.

21. Consequently, the Common Legal Representatives indicate that they will be in a position of filing a request for calling witnesses and/or victims to present their views and concerns towards the end of the Prosecution's presentation of evidence when they will be able to better assess if the proposed testimony complies with the

proceedings" (Trial Chamber VI), [No. ICC-01/04-02/06-619](#), 2 June 2015, para. 69; the "Initial Directions on the Conduct of the Proceedings" (Trial Chamber IX), [No. ICC-02/04-01/15-497](#), 13 July 2016, para. 9; the "Order regarding applications by victims to present their views and concerns or to present evidence" (Trial Chamber III), [No. ICC-01/05-01/08-1935](#), 21 November 2011, para. 3; the "Decision on Directions for the Conduct of the Proceedings" (Trial Chamber III), [No. ICC-01/05-01/08-1023](#), 19 November 2010, para. 5; and the "Decision adopting amended and supplemented directions on the conduct of the proceedings" (Trial Chamber I), [No. ICC-02/11-01/15-498-Anx A](#), 4 May 2016, paras. 18-21.

²¹ See the "Second order regarding the applications of the legal representatives of victims to present evidence and the views and concerns of victims", *supra* note 15, paras. 12-15.

²² See the "Decision on the Legal Representatives for Victims Requests to Present Evidence and Views and Concerns and related requests" (Trial Chamber IX), [No. ICC-02/04-01/15-1199-Red](#), 6 March 2018.

²³ *Idem*.

above mentioned criteria and is necessary to the interests of the victims they represent.

22. On the issue of submission of documentary and other non-testimonial evidence, the Common Legal Representatives submit that the principles of being relevant to the victims' interests, non-duplicative and contributing to the determination of the truth identified above should equally apply.²⁴

23. Finally, the Common Legal Representatives have no observation on the use of prior recorded testimony pursuant to rule 68 of the Rule of Procedure and Evidence (the "Rules").

Regarding matters under item (C)

24. The Common Legal Representatives contend that the need to take into consideration the interests of the victims with regard to any agreement between the Defence and the Prosecution as to facts or evidence in a given case is clearly reflected in rule 69 of the Rules. Pursuant to this provision, the "*Chamber may consider such alleged fact as being proven, unless the Chamber is of the opinion that a more complete presentation of the alleged facts is required in the interest of justice, in particular the interests of the victims*".²⁵

25. The language used in the provision expressly states that no agreement between the parties may become effective and binding in a manner detrimental to the victims' interests. Moreover, providing victims with the possibility to submit their views and concerns in relation to such agreements will benefit the overall effectiveness of the proceedings. Furthermore, it clearly falls within the power of a Trial Chamber under article 69(3) of the Rome Statute "*to request the submission of all evidence that it considers necessary for the determination of the truth*".

²⁴ See the "Decision adopting amended and supplemented directions on the conduct of the proceedings" (Trial Chamber I), [No. ICC-02/11-01/15-498-Anx A](#), 4 May 2016, para. 20.

²⁵ See Rule 69 of the Rules of Procedure and Evidence (emphasis added).

26. This reading of rule 69 of the Rules is further supported by the jurisprudence of the Court. In particular, in the *Lubanga* case, Trial Chamber I ordered the parties to prepare a draft schedule of agreed facts which then will be served on participating victims.²⁶ In said case, victims were authorised to submit their observations on the facts and evidence agreed between the parties.²⁷

27. The Common Legal Representatives submit that this approach is the most consistent with the legal framework of the Court. First, it enables victims to comprehend issues covered by any agreements between the parties and to envisage the potential impact that they could have on their interests, as well as on the proceedings as a whole. Second, the notification of agreements to victims prior to any decision on the merits by the Chamber will contribute to the effectiveness and the meaningfulness of victims' participation at trial.

28. Moreover, in this fashion, the Common Legal Representatives will have an opportunity to make specific submissions on how the interests of the participating victims will be affected by the proposed agreements. While the Common Legal Representatives do not consider necessary to be associated to the discussions amongst the parties, any agreement reached between the parties under rule 69 of the Rules should be notified to the legal representatives timely for observations.

Regarding matters under item (D)

29. The Common Legal Representatives inform the Chamber that the languages mostly spoken by the victims they represent are Sango, Arabic and French, and that, in case of appearance, it is most likely that they will use one of these three languages.

²⁶ See the "Decision on agreements between the parties" (Trial Chamber I), [No. ICC-01/04-01/06-1179](#), 20 February 2008, para. 11.

²⁷ *Idem*, para. 13.

Regarding matters under item (H)

30. The Common Legal Representatives wish to underline that the opening statements represent a unique opportunity for the victims to convey to the Chamber their views and concerns, and particularly to make use of their right to explain the reasons for and importance of their participation.

31. With regard to the length of opening statements, the Common Legal Representatives estimate that three hours in total will be sufficient for them to present the views of their clients.

32. The Common Legal Representatives further note that, in accordance with the practice developed in other cases, all participants are usually directed to disclose, before the start of the trial, copies of the material they intend to rely on during their opening statements, unless said material is on the Prosecution's list of evidence.²⁸

33. In addition, participants are normally requested to make written objections, if any, in relation to said material.²⁹ In light of the existing jurisprudence on the matter, the Common Legal Representatives should benefit from said disclosure and from the possibility to make objections, if any.

Regarding matters under item (I)

34. Concerning the victims already authorised to participate in the case at the pre-trial stage,³⁰ the Common Legal Representatives understand that all the ones falling

²⁸ See the "Initial Directions on the Conduct of the Proceedings" (Trial Chamber IX), [No. ICC-02/04-01/15-497](#), 13 July 2016, para. 8. See also, the "Decision on the conduct of proceedings" (Trial Chamber VI), [No. ICC-01/04-02/06-619](#), 2 June 2015 ; para. 10; the "Decision on the Conduct of Trial Proceedings (General Directions)" (Trial Chamber V(A)), [No. ICC-01/09-01/11-847-Corr](#), 9 August 2013, para. 4; and the instruction issued by Trial Chamber I, transcript of the hearing held on 16 January 2009, [ICC-01/04-01/06-T-104-ENG ET WT](#), pp. 45-47.

²⁹ See the "Decision No. 2 on the Conduct of Trial Proceedings (General Directions)" (Trial Chamber V(A)), [No. ICC-01/09-01/11-900](#), 3 September 2013, para. 11. See also, the instruction issued by Trial Chamber I, transcript of the hearing held on 16 January 2009, [ICC-01/04-01/06-T-104-ENG ET WT](#), pp. 45-47.

³⁰ See the "Decision regarding the Registry's First Assessment Report on Applications for Victim Participation, the Registry's First Transmission of Group C Applications, the appointment of counsel

within the scope of the charges confirmed are automatically admitted at the trial stage without their status being determined *de novo*. However, the Common Legal Representatives of the victims of other crimes acknowledge that, as a result of the Decision partially confirming the charges,³¹ a review of the situation of each victim is needed in order to verify whether their application still fall within the scope of the case.³²

35. In this regard, the Common Legal Representatives of the victims of other crimes posit that this exercise has to be conducted jointly by them and the Registry, namely the Victims Participation and Reparations Section (the “VPRS”). In this regard, the Common Legal Representatives – by virtue of their regular trust relationship with the victims they represent - are best placed to verify or elucidate information from their clients. Indeed, the Common Legal Representatives have noticed that the victims have often limited the account of the events they suffered from to the first event occurred in the place where they resided omitting to also refer the subsequent harm suffered in other locations. Therefore, the Common Legal Representatives are currently verifying said information and will eventually submit to the VPRS supplementary information to complete the file of the concerned individuals. Said exercise, already difficult by virtue of the fact that victims are dispersed in several counties, has become cumbersome because of the current situation linked to the COVID-19 pandemic which render impossible to travel and limit the possibility of individual meetings.

36. Concerning the new applications for participation received after the confirmation proceedings deadline, the Common Legal Representatives favour the

for Victims of Other Crimes, and the victims’ procedural position” (Pre-Trial Chamber II), [No. ICC-01/14-01/18-227-Red](#), 21 June 2019; and the “Decision regarding the Registry’s Outstanding Transmissions of Applications for Victim Participation” (Pre-Trial Chamber II), [No. ICC-01/14-01/18-338](#), 13 September 2019.

³¹ See the Decision confirming the charges, *supra* note 1.

³² Reference is to the applications by victims who related events suffered in Yaloke, Gaga, Zawa, Bossemptele, Boda, Carnot, Berberati, Guen which charges have not been confirmed by Pre-Trial Chamber II; as well as Other specific incidents within Bossangoa and Bangui for which charges have not been also confirmed.

approach already adopted at the pre-trial stage concerning the procedure for admission of victims to participate in the proceedings.³³ Indeed, said approach allows for the handling of victims' applications in an efficient manner and expedites the proceedings. Moreover, in light of the potential high number of victims, the Common Legal Representatives also favour the use of the simplified application form.

37. The Common Legal Representatives wish to draw the attention of the Chamber to the fact that during their missions in the field (both in CAR and in neighbouring countries where victims are dispersed), numerous victims have expressed their wish to participate in the proceedings. The Common Legal Representatives inform the Chamber that the potential number of applicants is high (potentially thousands).

38. In this regard, while in accordance with regulation 85(3) of the Regulations of the Court, victims are encouraged to file their applications, to the extent possible, before the start of the stage of the proceedings to which they wish to participate, they can do so throughout the proceedings. Therefore, in light of the current situation linked to the COVID-19 pandemic and in order not to prejudice the right of victims to participate in the proceedings, particularly in a country like CAR, where victims have been demanding justice since many years before the Court, the Common Legal Representatives respectfully suggest that the Chamber sets an adequate initial deadline for victims to file their applications prior to the start of the trial and, in addition, leaves open the possibility for victims to present their applications throughout the trial at least until the end of the presentation of evidence by the Prosecution. For the purpose of proper administration of new applications presented during the trial, it is suggested that the Registry is instructed to transmit new applications to the Chamber and, when needed to the parties, on a rotating basis every three months.

³³ See the "Decision Establishing the Principles Applicable to Victims' Applications for Participation" (Pre-Trial Chamber II), [No. ICC-01/14-01/18-141](#), 5 March 2019.

Other matters

39. Concerning the invitation by the Chamber to address further items,³⁴ the Common Legal Representatives wish to address few matters related to the conduct of the proceedings.

J. Protocols already adopted and to be adopted at trial

40. The Common Legal Representatives have no observations on the e-court protocol³⁵ and on the protocol for handling confidential information and contacting witnesses of other party or participant,³⁶ as already adopted at the pre-trial stage of the case.

41. In relation to the “Redactions protocol”³⁷ adopted by the Pre-Trial Chamber, and in particular the procedures for redactions,³⁸ the Common Legal Representatives note the Chamber’s order endorsing said existing procedure adopted at the pre-trial stage at a time at which the no decision on victims’ participation in the proceedings was issued.

42. In this regard, the Common Legal Representatives underline that the practice has shown that in the course of the proceedings – and particularly at trial – lifting of redactions in application forms or in documents attached to application forms or related to victims may become a live issue. Therefore, they contend that some of the categories contemplated in the adopted procedure (*i.e.* Category A.5 identifying and

³⁴ See the Order, *supra* note 3, para. 5.

³⁵ See the Annex to the “Decision on Disclosure and Related Matters” (Pre-Trial Chamber II), [No. ICC-01/14-01/18-64-Anx](#), 23 January 2019.

³⁶ See Annex A to the “Decision on a Protocol on the Handling of Confidential Information and Contacts with Witnesses” (Pre-Trial Chamber II), [No. ICC-01/14-01/18-156-AnxA](#), 22 March 2019.

³⁷ See the “Decision on Disclosure and Related Matters” (Pre-Trial Chamber II), [No. ICC-01/14-01/18-64-Conf](#), 23 January 2019.

³⁸ *Idem*, paras. 23-32. See also the “Second Decision on disclosure and related matters” (Pre-Trial Chamber II), [No. ICC-01/14-01/18-163](#), 4 April 2019.

contact information of intermediaries)³⁹ could also be applicable to said material; while other categories may still not be covered by the relevant procedure (*i.e.* information related to the kinship or third parties). Therefore, the Common Legal Representatives respectfully request the Chamber to amend the Protocol or to indicate formally that the relevant legal representative has to be consulted on any request for lifting redactions which may impact on previous rulings granting said redactions in application forms and related material of participating victims and that shall be afforded an opportunity to challenge before the Chamber any such request. The Common Legal Representatives stress that this has been the practice in this case already at the pre-trial stage and the practice in other cases.⁴⁰

43. Moreover, the Common Legal Representatives favour the adoption of a Protocol on dual status individuals as approved in other cases.⁴¹

44. The Protocols in the matter adopted in other cases reflect the efforts of various Chambers to create a uniform practice and have proved to be workable Court-wide. They also take into account the specificity of individuals enjoying dual status of participating victims and witnesses. Furthermore, the *Chambers Practice Manual* recommends that a protocol specifically governing dual status individuals be adopted.⁴²

³⁹ See the “Decision on Disclosure and Related Matters”, *supra* note 37, para. 25.

⁴⁰ See e.g., the “Decision on Prosecutor’s requests for lifting of certain redactions in victim application forms (ICC-02/11-01/15-465 and ICC-02/11-01/15-493)” (Trial Chamber I), [No. ICC-02/11-01/15-506](#), 9 May 2016. See also, the “Decision on Defence request for lifting of redactions in documents related to victims authorised to present evidence” (Trial Chamber VI), [No. ICC-01/04-02/06-1835](#), 24 March 2017.

⁴¹ See the “Decision adopting the Protocol on dual status witnesses and the Protocol on vulnerable witnesses” (Trial Chamber VI), [No. ICC-01/04-02/06-464](#), 18 February 2015 and the “Victims and Witnesses Unit’s submission of the proposed mechanisms for exchange of information on individuals enjoying dual status pursuant to Order n° ICC-01/04-02/06-416”, [No. ICC-01/04-02/06-430](#), with [Anx1](#), 23 January 2015. See also, the “Decision adopting mechanisms for exchange of information on individuals enjoying dual status”, with one public annex (Trial Chamber I), [No. ICC-02/11-01/15-199](#) and [Anx](#), 31 August 2015; the “Decision on Protocols to be Adopted at Trial” (Trial Chamber IX), [No. ICC-02/04-01/15-504](#), 22 July 2016; the “Decision on the ‘Protocol on the handling of confidential information during investigations and contact between a party or participant and witnesses of the opposing party or of a participant’, the ‘Dual Status Witness Protocol’, and related matters” (Trial Chamber X), [No. ICC-01/12-01/18-674](#), 19 March 2020.

⁴² See the [Chambers Practice Manual](#), fourth edition, 29 November 2019, para. 79.

45. In this regard, Trial Chamber IX emphasized that: “[...] *special considerations apply to such witnesses and that something like a protocol is required to regulate the exchange of information regarding them*”.⁴³

46. Consequently, the Common Legal Representatives respectfully request the Chamber to adopt the same protocol on dual status individuals as implemented in the *Ongwen* case.⁴⁴

47. Furthermore, the Common Legal Representatives highlight the need to protect the well-being and safety of witnesses in the present case, some of whom will be victims they represent. As Trial Chamber V noted in the *Ruto & Sang* and in the *Kenyatta* cases, much of a witness’ apprehension about testifying may result from “[...] *anxiety about giving evidence in what may feel like a foreign and even hostile environment, a lack of confidence in their ability to communicate and articulate their experiences, and/or apprehension over the unfamiliar experience of being challenged during cross-examination*”.⁴⁵

48. In the particular circumstances of the present case it is likely that a number of witnesses will be highly vulnerable and witness familiarisation is particularly important to reduce the psychological burden of testifying particularly in a new environment completely different from the one witnesses live and are used to.

49. The Common Legal Representatives submit especially that the protocol adopted in the *Ongwen* case “[...] *reflects the jurisprudence on familiarisation and its related procedures and also takes into account the practices and experiences concerning witnesses appearing before the Court. The protocol aims to outline the procedures that serve*

⁴³ See the “Decision on Protocols to be Adopted at Trial” (Trial Chamber IX), [No. ICC-02/04-01/15-504](#), 22 July 2016, para. 31.

⁴⁴ See the Annex to the “Decision on Protocols to be Adopted at Trial” (Trial Chamber IX), [No. ICC-02/04-01/15-504-Anx2](#), 22 July 2016.

⁴⁵ See the “Decision on witness preparation” (Trial Chamber V), [No. ICC-01/09-01/11-524](#), 2 January 2013, para. 37; and the “Decision on witness preparation” (Trial Chamber V), [No. ICC-01/09-02/11-588](#), 2 January 2013, para. 41.

the best interests of witnesses and provide for sustainable working solutions for all entities involved".⁴⁶

50. In this regard, the *Chambers Practice Manual* also recommends the Trial Chamber to adopt a "*familiarisation protocol governing the period of time shortly before a witness commences his/her testimony*".⁴⁷ Therefore, the Common Legal Representatives respectfully request the Chamber to adopt a Witness Familiarisation Protocol in the present case.

K) Site visit

51. The Common Legal Representatives stress the importance of holding proceedings in the country where the crimes were committed because this course of events is very likely to provide maximum access to a large public, the victims and the affected communities. This also contributes to the transparency of and accessibility to the proceedings, as well as to a wide dissemination of information and to making justice more visible for the victims.

52. In this regard, while holding proceedings in Central African Republic seems currently not feasible for logistical, security and, now, health issues, the Common Legal Representatives respectfully request the Chamber to consider holding a judicial site visit towards the middle or the end of the Prosecution's presentation of evidence when it will be fully acquainted with the Prosecution's case.

53. In that regard, the Common Legal Representatives recall the that Trial Chamber IX in the *Ongwen* case, while initially considered that "*a determination of whether a judicial site visit in northern Uganda would be of material assistance to its*

⁴⁶ See Annex 1 of the "Decision on Protocols to be Adopted at Trial" (Trial Chamber IX), [No. ICC-02/04-01/15-504-Anx1](#), 22 July 2016, para. 2.

⁴⁷ See the [Chambers Practice Manual](#), fourth edition, 29 November 2019, para. 78.

evaluation of the evidence should be made at a later stage of the proceedings”;⁴⁸ finally decided that a site visit *“would be useful and appropriate”*⁴⁹ after having heard part of the evidence presented at trial and taking note of the parties’ and participants’ observations.

54. This course of events will have a significant impact on the effective participation of victims in the proceedings insofar as they will feel that their concerns are duly taken into account and that justice is being done. In this regard, victims have already expressed their wish that the Judges visit the places where the crimes were committed in order to fully understand the events they suffered from.

L) Matters related to the conduct of the proceedings

55. Finally, the Common Legal Representatives note the Chamber’s Order according to which *“it intends to issue directions on a variety of matters pursuant to Article 64(8)(b) of the Statute in due course”* and that it *“may take into account the submissions of the parties on these matters [...]”*.⁵⁰

56. In this regard, in relation to the modalities of participation of victims at trial, the Common Legal Representatives favour orality in the proceedings, according to which the arguments of the parties and participants and their requests are presented in the courtroom as much as feasible;⁵¹ and advocate for the simplified practice to request to question witnesses;⁵² the mode of questioning⁵³ and use of documents.⁵⁴ In particular, the Common Legal Representatives support the procedure adopted in the

⁴⁸ See the “Decision Concerning the Requests to Recommend Holding Proceedings In Situ and to Conduct a Judicial Site Visit in Northern Uganda”(Trial Chamber IX), [No. ICC-02/04-01/15-499](#), 18 July 2016, para. 4.

⁴⁹ See the “Decision on Judicial Site Visit to the Republic of Uganda” (Trial Chamber IX), [No. ICC-02/04-01/15-1020](#), 13 October 2017, para. 5.

⁵⁰ See the Order, *supra* note 3, para. 7.

⁵¹ See the oral decision issued by Trial Chamber I, transcript of the hearing held on 28 January 2016, [No. ICC-02/11-01/15-T-9-ENG ET](#), p. 36, lines 10-18.

⁵² See the oral decision issued by Trial Chamber I, transcript of the hearing held on 3 February 2016, [No. ICC-02/11-01/15-T-13-Red3-ENG CT](#), p. 2, lines 17-25.

⁵³ See the “Decision adopting amended and supplemented directions on the conduct of the proceedings” (Trial Chamber I), [No. ICC-02/11-01/15-498-Anx A](#), 4 May 2016, para. 15-17 and 27-32.

⁵⁴ *Idem*, paras. 34-38 and 43-47.

*Ongwen case in which the legal representatives “[were] not required to provide an advance written note of any questions they intend to ask – applications to question may be presented orally just prior to questioning, and the necessity or propriety of questions asked will be addressed on a case-by-case basis”.*⁵⁵

57. The Common Legal Representatives contend that this approach has also proved effective and efficient, while ensuring a fair and expeditious proceeding for all parties and participants.

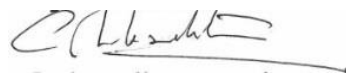
Respectfully submitted.



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Dated this 8th day of April 2020

At The Hague, The Netherlands, Saint Louis (Senegal); La Rochelle (France) and
Bangui (CAR)

⁵⁵ See the “Initial Directions on the Conduct of the Proceedings”(Trial Chamber IX), [No. ICC-02/04-01/15-497](#), 13 July 2016, para. 10.