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**No. ICC-01/12-01/18
Date : 9 December 2021**

TRIAL CHAMBER X

**Before: Judge Antoine Kesia-Mbe Mindua, Presiding Judge
Judge Tomoko Akane
Judge Kimberly Prost**

SITUATION IN THE REPUBLIC OF MALI

**IN THE CASE OF
*THE PROSECUTOR v. AL HASSAN AG ABDOUL AZIZ AG MOHAMED AG
MAHMOUD***

Public redacted version of

Decision on LRVs requests to present evidence and views and concerns

To be notified in accordance with Regulation 31 of the *Regulations of the Court* to:**The Office of the Prosecutor**

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TRIAL CHAMBER X of the International Criminal Court, in the case of *The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*, having regard to Articles 64(2), 66(2), 67, 68 and 69 of the Rome Statute (the ‘Statute’), Rule 140 of the Rules of Procedure and Evidence (the ‘Rules’) and Regulation 43 of the Regulations of the Court, issues the following ‘Decision on LRVs requests to present evidence and views and concerns’.

I. Procedural history

1. On 6 May 2020, the Chamber issued its directions on the conduct of proceedings (the ‘Initial Directions’). The Chamber *inter alia* instructed the Legal Representatives of the Victims (the ‘LRVs’) to file any requests for leave to present evidence or for victims to present their views and concerns no later than three days after the Office of the Prosecutor (the ‘Prosecution’) concludes its presentation of evidence.¹
2. On 22 September 2021, the Chamber issued its ‘Fifth decision on matters related to the conduct of proceedings: presentation of evidence by the LRVs and Defence’ (the ‘Fifth Directions’). In the interest of the fair and expeditious conduct of the proceedings, the Chamber notably amended the aforementioned deadlines and instructed the LRVs to file any such requests by 15 November 2021.²
3. On 15 November 2021, the LRVs filed a request for leave to present evidence and views and concerns (the ‘Initial Request’).³ The LRVs also submitted a list consisting of seven individuals to the Chamber by way of email.⁴

¹ ICC-01/12-01/18-789-AnxA, paras 24, 93.

² ICC-01/12-01/18-1756, paras 5-6.

³ Requête déposée en application de la cinquième décision sur la conduite de la procédure (ICC-01/12-01/18-1756), ICC-01/12-01/18-1922-Conf.

⁴ Email from the LRVs at 11:00.

4. On the same date, the Single Judge instructed the LRVs to proceed to file a detailed and fully motivated formal request in accordance with the Initial Directions and the Fifth Directions.⁵
5. On 16 November 2021, the Single Judge granted a limited extension of time and directed that the LRVs' formal request be filed by 19 November 2021 and responses thereto by 1 December 2021.⁶
6. On 19 November 2021, the LRVs separately submitted two filings supplementing the Initial Request.⁷ In total, the LRVs request the Chamber's authorisation to call ten individuals, including one expert, as witnesses.
7. On 1 December 2021, the Defence filed its response to the Requests (the 'Response').⁸ The Prosecution indicated that it has no submissions to make in relation to the Requests.⁹
8. On 6 and 7 December 2021, the LRVs separately filed two requests for leave to reply to the Response (the 'Leave to Reply Requests').¹⁰

⁵ Email from the Chamber dated 15 November 2021 at 15:19.

⁶ Email from the Chamber dated 16 November 2021 at 12:33. *Ex parte* email communications between the LRVs and the Chamber were provided to the parties with redactions applied where necessary.

⁷ Observations et présentation de la liste des témoins du Représentant légal des victimes en application de la décision portant sur la conduite de la procédure (ICC-01/12-01/18-1756) et de la «Decision relating to the LRV request to present witnesses and/or views and concerns », ICC-01/12-01/18-1935-Conf (with one confidential annex) filed by one of the LRVs (the 'First Request') and Soumission déposée en application de la Décision de la Juge unique du 16 novembre 2021 intitulée « Decision relating to the LRV request to present witnesses and/or views and concerns », ICC-01/12-01/18-1942-Conf and filed by two of the LRVs (the 'Second Request' and collectively the 'Requests').

⁸ Defence Consolidated Response to the LRVs' Requests to Call Witnesses, ICC-01/12-01/18-2022-Conf (with seven confidential annexes).

⁹ Email from the Prosecution at 10:32.

¹⁰ Demande d'autorisation de déposer une réplique au document de la Défense intitulé "Defence Consolidated Response to the LRVs' Requests to Call Witnesses" (ICC-01/12-01/18-2022-Conf), ICC-01/12-01/18-2033-Conf filed by two of the LRVs and Demande d'autorisation de déposer une réplique à la «Defence Consolidated Response to the LRVs' Requests to Call Witnesses » ICC-01/12-01/18-2022, ICC-01/12-01/18-2051-Conf filed by one of the LRVs.

II. Analysis

A. Requests for leave to present evidence

9. The Chamber considers that Article 68(3) of the Statute, in conjunction with Article 69(3), provides an avenue for participating victims to lead previously undisclosed evidence when the personal interests of the victims are affected.¹¹
10. Consistent with the Court's jurisprudence, the Chamber will assess, in addition to whether the personal interests of the victims are affected, whether: (i) the hearing of evidence is appropriate and affects the issues in the case; (ii) the hearing of evidence is necessary for the determination of the truth; and (iii) the presentation of evidence is consistent with the rights of the accused.¹²
11. The Chamber notes that the statutory framework does not automatically confer victims a *right* to present evidence but merely affords a *possibility* to do so with the leave of the Chamber.¹³ It is therefore incumbent on the victims, acting through their representatives, to submit motivated requests demonstrating that their personal interests have been affected and to provide necessary information in order to assess whether the requisite criteria for authorising victims to present evidence have been satisfied.¹⁴ Providing such information is a necessary prerequisite as, pursuant to Articles 64(2), 67 and 68(3) of the Statute, it is the

¹¹ Appeals Chamber, *The Prosecutor v. Germain Katanga*, Judgment on the Appeal of Mr Katanga Against the Decision of Trial Chamber II of 22 January 2010 Entitled "Decision on the Modalities of Victim Participation at Trial", 16 July 2010, ICC-01/04-01/07-2288 (the '*Katanga* OA 11 Judgment'), paras 1, 3; Appeals Chamber, *The Prosecutor v. Thomas Lubanga Dyilo*, Judgment on the appeals of The Prosecutor and The Defence against Trial Chamber I's Decision on Victims' Participation of 18 January 2008, 10 July 2008, ICC-01/04-01/06-1432 (the '*Lubanga* OA 9 OA 10 Judgment'), paras 92-98.

¹² Trial Chamber IX, *The Prosecutor v. Dominic Ongwen*, Decision on the Legal Representatives for Victims Requests to Present Evidence and Views and Concerns and related requests, 6 March 2018, ICC-02/04-01/15-1199-Red (the '*Ongwen* Decision'), para. 17; Trial Chamber VI, *The Prosecutor v. Bosco Ntaganda*, 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), 15 February 2017, ICC-01/04-02/06-1780-Red (the '*Ntaganda* Decision'), para. 11; *Katanga* OA 11 Judgment, ICC-01/04-01/07-2288, para. 114.

¹³ Trial Chamber II, *The Prosecutor v. Germain Katanga*, Decision on the Modalities of Victim Participation at Trial, 22 January 2010, ICC-01/04-01/07-1788-tENG (the '*Katanga* Decision'), paras 52, 83; Trial Chamber IV, *The Prosecutor v. Abdallah Banda Abakaer Nourain*, Decision on the participation of victims in the trial proceedings, ICC-02/05-03/09-545 (the '*Banda* Decision'), para. 24.

¹⁴ See *Lubanga* OA 9 OA 10 Judgment, ICC-01/04-01/06-1432, para. 99; *Katanga* Decision, ICC-01/04-01/07-1788-tENG, para. 84.

responsibility of the Chamber to ensure that any presentation of evidence by the victims is authorised only when it is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.

12. Any potential prejudice to the accused will be assessed in light of the distinct nature of the LRVs' presentation of evidence. Indeed, the Chamber emphasises that, as reflected in Article 66(2) of the Statute, the burden of proof regarding the guilt of the accused lies with the Prosecution and therefore it is in principle the role of the Prosecution to present incriminating evidence.¹⁵ Thus, the victims' presentation of evidence must not constitute a venue for the LRVs to pose questions aiming to prove the elements of the crimes charged or the accused's role in their commission.¹⁶ The primary purpose of the LRVs' presentation of evidence is to illustrate matters 'relevant to the personal interests of the victims' by eliciting evidence which, while not directly pertaining to the accused's individual responsibility, bears relevance to the issues of the case.¹⁷
13. Having in mind the aforementioned requirements, the Chamber will assess the Requests in which the LRVs seek leave to present the evidence of ten witnesses. Noting the submissions already made and the issues identified by the LRVs, the Chamber is of the view that it will not be assisted by further submissions at this stage and accordingly rejects the Leave to Reply Requests.

¹⁵ *Ongwen* Decision, ICC-02/04-01/15-1199-Red, para. 16; *Lubanga* OA 9 OA 10 Judgment, ICC-01/04-01/06-1432, para. 93; Trial Chamber III, *The Prosecutor v. Jean-Pierre Bemba Gombo*, Decision on the supplemented applications by the legal representatives of victims to present evidence and the views and concerns of victims, 22 February 2012, ICC-01/05-01/08-2138 (the '*Bemba* Decision'), para. 14.

¹⁶ Trial Chamber IX, *The Prosecutor v. Dominic Ongwen*, Decision on Defence Urgent Request for Delay in Opening of LRV and CLRV Evidence Presentation, 26 April 2018, ICC-02/04-01/15-1248 (the '*Second Ongwen* Decision'), para. 13; *Ongwen* Decision, ICC-02/04-01/15-1199-Red, paras 18, 23. *See also Katanga* Decision, ICC-01/04-01/07-1788-tENG, para. 52 (noting that 'during the drafting of the Statute, proposals for the victims to be able to present evidence for the purpose of establishing the criminal responsibility of the accused via their legal representatives were not retained in the final version of the Statute').

¹⁷ *See Second Ongwen* Decision, ICC-02/04-01/15-1248, para. 14.

1. *Seven individuals subject to the First Request (TB01, TB02, TB03, TB04, TB05, TB06 and TB07)*

14. In the First Request, the LRVs seek authorisation to call seven individual victims as witnesses.¹⁸ The LRVs submit, in a general manner, that the evidence of these seven individuals would assist the Chamber in evaluating *inter alia* the seriousness of the crimes.¹⁹ Without making specific arguments in relation to individual proposed witnesses, they further state that ‘*le Représentant légal a pris soin d’éviter toute déclaration répétitive ou sans lien suffisant avec les charges visées.*’²⁰ The LRVs further provide a very brief summary in relation to each of these seven victims, while noting that they do not comprehensively cover all aspects of the proposed witnesses’ evidence.²¹
15. The Defence submits *inter alia* that there is insufficient information to determine whether the allegations made in relation to these seven individuals fall within the parameters of the confirmed charges and that the First Request should be rejected on the basis that they lack necessary details.²²
16. On this point, and for reasons underlined in paragraph 11 above, the Chamber has repeatedly instructed that any request by the LRVs to call witnesses shall contain submissions as to how the evidence sought to be presented may contribute to the determination of the truth and shall include a summary of the expected testimony and an estimate of the time needed for their examination.²³ The Chamber agrees with the Defence that, this notwithstanding, the First Request lacks the necessary details required for its proper adjudication. Indeed, the scarce details provided in the First Request does not make clear the precise timing of the alleged

¹⁸ ICC-01/12-01/18-1935-Conf-AnxA. The Chamber agrees with the Defence that the First Request is not clear as to whether these seven individuals are to be called to provide evidence or non-evidentiary views and concerns (*see* Response, ICC-01/12-01/18-2022-Conf, para. 10.) Nonetheless, as the First Request describes them as potential ‘witnesses’, the Chamber will treat the First Request as a request to present evidence rather than views and concerns.

¹⁹ First Request, ICC-01/12-01/18-1935-Conf, paras 8-9.

²⁰ First Request, ICC-01/12-01/18-1935-Conf, para. 10.

²¹ First Request, ICC-01/12-01/18-1935-Conf, paras 11-12. *See* ICC-01/12-01/18-1935-Conf-AnxA.

²² Response, ICC-01/12-01/18-2022-Conf, paras 10-17.

²³ Initial Directions, ICC-01/12-01/18-789-AnxA, para. 24; Fifth Directions, ICC-01/12-01/18-1756, paras 5-6; Email from the Chamber dated 15 November 2021 at 15:19; Email from the Chamber dated 16 November 2021 at 12:33.

victimisation for the majority of the proposed witnesses or the location of their alleged victimisation. By way of example, it is unclear which ‘prison’ TB01 or TB06 were detained in or which village TB07 was apprehended at. As no individual submissions have been made to that effect, it also remains unclear at this stage for the Chamber how the evidence of these seven victims would contribute to the determination of the truth.²⁴

17. Further, having considered the manner in which the charges against Mr Al Hassan are framed (that is, incident by incident under each charge), the Chamber is of the view that additional caution must be employed to ensure that the LRV’s presentation of the evidence does not attempt to introduce new incidents into the charges. The Chamber has had regard to the allegations made by these victims which, as stated above, are void of the necessary details and further, for one of them, refers to Mr Al Hassan’s acts and conduct. In its view, authorising the calling of the individuals identified in the First Request in the present circumstances would risk expanding the scope of charges in a manner incompatible with the accused’s right to notice.
18. For the aforementioned reasons, the Chamber declines to exercise its discretion under Article 69(3) of the Statute with respect to the First Request, which is rejected in its entirety. The present determination is without prejudice to the LRVs requesting that these victims be called to present their views and concerns. Any such requests will be assessed at a later stage, in accordance with section II-B below.

2. Victim a/45345/18

19. On the basis of the information provided in the Second Request, a/45345/18 is an alleged victim of forced marriage who was married to [REDACTED].²⁵ The LRVs request that she be called to testify *inter alia* on the condition of women who were married forcibly to the jihadists, as well as particulars of her own experience which can be distinguished from the others on the basis of her

²⁴ Similarly see *Ntaganda* Decision, ICC-01/04-02/06-1780-Red, para. 28.

²⁵ Second Request, ICC-01/12-01/18-1942-Conf, para. 13.

husband's profile.²⁶ The LRVs further submit that a/45345/18's narrative is unique in that [REDACTED] and would be able to provide testimony on associated stigma.²⁷

20. The Defence opposes the calling of a/45345/18. It submits that the information provided by the LRVs is vague, lacking information on the location or temporal period of the alleged events as well as the identity of the 'husband'.²⁸
21. The Chamber has considered the information provided by the LRVs together with the victim application form of a/45345/18.²⁹ The Chamber notes that alleged acts of forced marriage form part of the charges brought against Mr Al Hassan. Having also considered the location and timing of the events narrated by a/45345/18, the Chamber is satisfied that her proposed testimony bears sufficient relevance to the case. The Chamber also finds that the specific account of a/45345/18 provides a unique perspective on the manner and effects of alleged acts of forced marriages, which may assist the Chamber in assessing the harm suffered by victims of such crimes.
22. Accordingly, the Chamber authorises participating victim a/45345/18 to testify as a witness. The Chamber finds 3 hours to be an appropriate length of time for the questioning of this witness by the LRVs, especially noting that it appears consecutive interpretation will be required.³⁰

3. *The president of a/20455/19*

23. The Chamber notes that a/20455/19 is an organisation ([REDACTED]) authorised to participate in the present proceedings pursuant to Rule 85(b) of the Rules. According to the LRVs, its members represent a significant proportion of the participating victims.³¹ The LRVs request the Chamber's leave to call the president of the organisation as a witness in order to testify on the impact of the

²⁶ Second Request, ICC-01/12-01/18-1942-Conf, paras 13-14.

²⁷ Second Request, ICC-01/12-01/18-1942-Conf, para. 15.

²⁸ Response, ICC-01/12-01/18-2022-Conf, para. 18.

²⁹ ICC-01/12-01/18-175-Conf-Exp-Anx72.

³⁰ See ICC-01/12-01/18-175-Conf-Exp-Anx72, p.1.

³¹ Second Request, ICC-01/12-01/18-1942-Conf, para. 19.

occupation on the economic system of Timbuktu, with a particular focus on the role of women, as well as the effects on the health of women and children and education.³² The LRVs submit that said testimony is relevant in fully appreciating the harm suffered by the population due to persecutory acts.³³

24. The Defence opposes the calling of the president of a/20455/19. The Defence submits that it has reasons to believe that this individual is [REDACTED].³⁴ The Defence further takes issue with the LRVs' proposition that the president of a/20455/19 could testify both in her own capacity and on behalf of 'hundreds' of members of her association, arguing that hearing such evidence would lead to the introduction of highly prejudicial hearsay through the backdoor.³⁵ The Defence also submits that persecution on the grounds of age constitutes a separate and uncharged form of persecution and, as such, that eliciting evidence on the harm specifically suffered by children triggers a significant amount of prejudice.³⁶
25. The Chamber considers that the anticipated evidence of the proposed individual appears to be of relevance in assessing the harm suffered as a result of alleged acts of persecution charged under count 13. The Chamber also notes that the proposed evidence is potentially representative of harm suffered by a large number of victims, which is a factor that militates in favour of hearing the proposed evidence.³⁷
26. In this regard, the Chamber sees no merit in the Defence's arguments that eliciting such evidence would lead to the inclusion of an uncharged form of persecution (on the grounds of age). In the Chamber's view, such an argument conflates the distinction between the grounds for persecution, as required by the elements of crimes for the crime of persecution, and the nature and scope of the resulting harm allegedly suffered. In this context, the Chamber further recalls that Pre-Trial

³² Second Request, ICC-01/12-01/18-1942-Conf, paras 19-20.

³³ Second Request, ICC-01/12-01/18-1942-Conf, para. 21.

³⁴ Response, ICC-01/12-01/18-2022-Conf, paras 23-26.

³⁵ Response, ICC-01/12-01/18-2022-Conf, paras 24, 27.

³⁶ Response, ICC-01/12-01/18-2022-Conf, para. 19.

³⁷ *Bemba Decision*, ICC-01/05-01/08-2138, para. 24; *Ntaganda Decision*, ICC-01/04-02/06-1780-Red, paras 10, 25.

Chamber I found that issues relating to the control of educational freedoms is of relevance under the crime of persecution for which Mr Al Hassan is charged.³⁸

27. The Chamber has had regard to the application form of a/20455/19,³⁹ which identifies an individual appearing to be [REDACTED] as their representative. Notwithstanding [REDACTED], the Chamber does not consider that her appearance as a witness in the context of the LRVs' presentation of evidence would trigger undue prejudice to the Defence. First, the Chamber finds unhelpful the Defence's comparison with other cases before the Court, submitting that the evidence [REDACTED].⁴⁰ Not only did such case-law not make a general finding applicable to [REDACTED], but they also significantly differ from the case at hand, in that the decisions cited concern [REDACTED]. Further, in so far as the Defence's arguments are based on its doubt as to whether [REDACTED] was present in Timbuktu during the relevant time period or the fact that she may testify on the victimisation suffered by other members of a/20455/19, the Chamber considers that they pertain to the probative value or weight, if any, that may be given to her testimony and is not a factor that bars the calling of her as a witness.
28. Accordingly, the Chamber authorises the president of a/20455/19 to testify as a witness. The Chamber finds 2.5 hours to be an appropriate length of time for the questioning of this witness by the LRVs, who are to question her on issues relating to a/20455/19.

4. *Expert on trauma experienced by women and children*

29. The LRVs request leave to call an expert witness '*sur les questions liées à la spécificité du traumatisme vécu par les femmes et enfants victimes des crimes de genre commis par les groupes djihadistes.*' In particular, the LRVs indicate that the proposed expert would be testifying on the stigmatisation against victims of gender based crimes and children born out of rapes and forced marriages.⁴¹ The

³⁸ Rectificatif à la Décision relative à la confirmation des charges portées contre Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud, 30 September 2019, ICC-01/12-01/18-461-Conf-Corr (corrigendum filed on 8 November 2019), para. 683.

³⁹ ICC-01/12-01/18-384-Conf-Exp-Anx43.

⁴⁰ Response, ICC-01/12-01/18-2022-Conf, para. 26.

⁴¹ Second Request, ICC-01/12-01/18-1942-Conf, paras 25-27.

LRVs submit that the evidence of the proposed expert would assist the Chamber in understanding the nature and extent of victimisation and the specific types of harm suffered.⁴² The LRVs contend that the evidence of the proposed expert would not be duplicative of other evidence on the record.⁴³

30. The Defence submits *inter alia* that the request to call said expert should be rejected as such evidence concerning the impact of alleged sexual violence, including stigma connected with marriage to members of the armed groups and children, have been elicited during the Prosecution's presentation of evidence.⁴⁴ The Defence requests that, should the Chamber be minded to authorise the calling of an expert, it urgently be provided with supplementary information to enable it to provide further submissions.⁴⁵
31. The Chamber incorporates by reference the applicable law in determining whether the evidence of an expert may be introduced.⁴⁶
32. The Chamber observes that, without prejudice to their weight or probative value, it has heard the evidence of several Prosecution witnesses on these issues, including from alleged victims of rapes and forced marriages as well as other individuals present in Timbuktu during the relevant period. Considering that a/45345/18 is also expected to testify specifically on the stigma arising from her alleged victimisation, the Chamber is of the view that there exists sufficient evidence in order to evaluate the harm suffered by the victims of these crimes in the context of the 'occupation' of Timbuktu in 2012-2013. Thus, the Chamber is not convinced that additionally hearing the evidence of an expert on this issue would assist in carrying out its truth seeking functions and accordingly rejects the request to present the evidence of an expert on trauma.

⁴² Second Request, ICC-01/12-01/18-1942-Conf, para. 24.

⁴³ Second Request, ICC-01/12-01/18-1942-Conf, paras 28-29.

⁴⁴ Response, ICC-01/12-01/18-2022-Conf, para. 32

⁴⁵ Response, ICC-01/12-01/18-2022-Conf, para. 34.

⁴⁶ Decision on Prosecution's proposed expert witnesses, 5 August 2020, ICC-01/12-01/18-989-Conf, para. 16 (public redacted version filed on 21 October 2020).

B. Presentation of views and concerns by the victims

33. Article 68(3) of the Statute enables victims to present views and concerns ‘at stages of the proceedings determined to be appropriate by the Court.’ The Chamber notes that it retains a broad discretion to determine the appropriate stages of the proceedings for presenting such views and concerns, especially where this presentation is sought to be made by individual victims, as opposed to via their legal representation.⁴⁷
34. The LRVs indicate that many victims have expressed their wish to present their views and concerns in person.⁴⁸ As the Chamber is yet to receive any specific request to that effect, the Chamber finds that it would be most appropriate to hear the views and concerns of individual victims, if any, after the delivery of its judgment pursuant to Article 74 of the Statute. Given that such views and concerns would in any event not form part of the evidentiary record that can be taken into account in its judgment, the Chamber considers that there are no compelling reasons to receive them at this stage.⁴⁹
35. The Chamber will set in due course a renewed deadline for any requests for presenting views and concerns.

C. Implementation of the present decision

36. The Chamber adopts the below directions and deadlines for the implementation of the present decision. It is emphasised that these are time *limits* and that the LRVs are accordingly encouraged to undertake these actions at the *earliest* opportunity. In particular, any relevant disclosure should be effectuated on a rolling basis as much as possible.

⁴⁷ Trial Chamber IX, *The Prosecutor v. Dominic Ongwen*, Preliminary Directions for any LRV or Defence Evidence Presentation, ICC-02/04-01/15-1021, para. 2(i); *Ongwen* Decision, ICC-02/04-01/15-1199-Red, paras 70-78; *Banda* Decision, ICC-02/05-03/09-545, para. 17.

⁴⁸ Second Request, ICC-01/12-01/18-1942-Conf, para. 35. *See also* Initial Request, ICC-01/12-01/18-1922-Conf, paras 16-17.

⁴⁹ *See Ongwen* Decision, ICC-02/04-01/15-1199-Red, paras 74-76.

1. *Presentation of evidence and opening statements*

37. The Chamber recalls its previous indication that the LRVs' presentation of evidence 'would take place prior to and be completed at the latest by 11 February 2022.'⁵⁰ The Chamber hereby confirms that the LRVs' presentation of evidence will take place between **31 January and 11 February 2022**. This presentation of evidence shall be immediately preceded by any opening statement by the LRVs which, as previously decided, shall last a maximum of one hour and must be conducted entirely in open session.⁵¹
38. The LRVs should inform the precise dates of the witnesses' testimonies to the Chamber and the parties as soon as practicable and no later than **11 January 2022** by filing its list of witnesses. This list should contain:
- the witness code, victim participation code and identity;
 - the date and duration⁵² of the testimony;
 - the language of the testimony;
 - the modality of testimony (video-link or in-court),⁵³
 - the in-court protective measures requested, if any; and
 - the list of exhibits expected to be shown to the witness, if any.
39. The directions set out in paragraphs 34 and 56-61 of the Initial Directions⁵⁴ apply *mutatis mutandis* to the LRVs' presentation of evidence.
40. The LRVs are directed to separately indicate by email any materials they intend to use in the course of their opening statements by no later than **eight days** prior to their opening statements. Any objections by the parties to the use of such material shall be provided via email within **three days** of receipt of the list.

⁵⁰ Email from the Chamber dated 16 November 2021 at 12:33.

⁵¹ Initial Directions, ICC-01/12-01/18-789-AnxA, paras 14-15 and 17.

⁵² In scheduling witnesses, the LRVs are to bear in mind the questioning by the parties. For the purpose of these estimations, the Defence's questioning of the witnesses shall be as long as that of the LRVs.

⁵³ See Initial Directions, ICC-01/12-01/18-789-AnxA, para. 54. The LRVs are instructed to liaise with the Registry to make all necessary logistical arrangements sufficiently in advance.

⁵⁴ ICC-01/12-01/18-789-AnxA.

2. Disclosure

41. Considering that no victim may testify anonymously, the LRVs are instructed to notify the parties of the identity of their two witnesses by 16:00 on **14 December 2021**.⁵⁵
42. The Chamber further orders that disclosure of the applications for victim participation of the LRVs witnesses be effected by **17 December 2021**. In respect of a/20455/19, both the form filed on behalf of the organisation (a/20455/19) as well as the president herself, if any, should be provided. As they are the closest thing these witnesses have to a prior statement, the Chamber finds it appropriate for these applications to be translated into Arabic. The LRVs are instructed to immediately liaise with the Registry in order for the Arabic translations to be produced as soon as possible and provided to the Accused by no later than **11 January 2022**.
43. The LRVs are further directed to identify and disclose to the parties any victim application of close relatives of a/45345/18 by **11 January 2022**. Considering the anticipated scope of a/45345/18's testimony, the Chamber specifies that any such application form filled in by [REDACTED] must be provided to the parties. Should the LRVs consider that redactions are necessary, these should be implemented in accordance with the redaction protocol applicable to the present case.⁵⁶
44. The Chamber notes that the witness preparation protocol⁵⁷ remains applicable to the LRVs' presentation of evidence and that, should they wish to avail themselves of its provisions, a preparation log must be provided for each witness in

⁵⁵ By the next day, on 15 December 2021, the LRVs should confirm with the Chamber via email that this disclosure was effected and, to facilitate necessary logistical preparations, already inform of the language in which each of the witness will testify.

⁵⁶ Decision on the evidence disclosure protocol and other related matters, 30 December 2019, ICC-01/12-01/18-546. Notably, redactions may be applied to the contact details of both third parties and the witnesses themselves.

⁵⁷ Annex to the Decision on witness preparation and familiarisation, 17 March 2020, ICC-01/12-01/18-666-Anx.

accordance with paragraphs 14-15 thereof and, in any event, sufficiently in advance of the start of the relevant testimony.

3. *In-court protective measures and special measures*

45. The Chamber notes that the LRVs have already indicated that a/45345/18's identity should remain confidential *vis-à-vis* the public.⁵⁸ Formal application for in-court protective measures pursuant to Rule 87 of the Rules should be filed as soon as possible and no later than **11 January 2022**. Any responses to such applications and the VWU's observations should be filed by **24 January 2022**. The LRVs must also confirm by **11 January 2022** that all necessary witness information forms have been completed and provided to the VWU.
46. The Chamber considers that the VWU is best placed to conduct vulnerability assessments and provide recommendations on whether special measures pursuant to Rule 88 of the Rules are required.⁵⁹ Accordingly, the necessity of special measures for the LRVs witnesses will be determined by the Chamber on a case-by-case basis following receipt of the VWU's assessment.

D. The rights of the accused

47. The Chamber acknowledges that the unavailability of the identities of the victims listed in the Requests impacted, to a certain extent, the Defence's ability to respond. This notwithstanding, and for reasons identified in the particularised assessment above, the Chamber is satisfied that the narratives of the two LRVs witnesses bear sufficient relevance to the issues of the case. The Chamber also observes that the Defence will have a fresh opportunity to make submissions on the relevance, probative value and prejudice of the evidence of the two LRVs witnesses before the Chamber's ultimate assessment of evidence.
48. The Chamber also finds that the scope and nature of the LRVs' presentation of evidence authorised by way of the present decision is fully compatible with the current obligations and workload of the Defence. While the Chamber is cognisant of other competing deadlines and the current workload of the Defence, it observes

⁵⁸ Second Request, ICC-01/12-01/18-1942-Conf, para. 17.

⁵⁹ See Regulation 94*bis*(3) of the Regulations of the Registry.

that the LRVs' presentation of evidence consists of only two witnesses, one of whom the Defence is already familiar with. The Chamber further recalls that redactions applied to [REDACTED] identifying information have already been lifted from other material disclosed⁶⁰ and is accordingly of the view that, together with further material that will be provided by the LRVs subsequent to the present decision, the Defence will have in its possession sufficient information to prepare for her testimony. Noting further the distinct nature of the LRVs' presentation of evidence as set out in paragraph 12 above and the limited nature of the Prosecution evidence between now and the commencement of the LRVs' presentation of evidence, the Chamber considers that the Defence will have sufficient time to conduct any necessary preparations. Accordingly, the Chamber finds that there is no need for an adjournment to be ordered as requested by the Defence.⁶¹

49. The Chamber notes that the Defence also requests that the deadlines for the submission of its list of witnesses and evidence be varied such that they fall after the conclusion of the LRVs' presentation of evidence.⁶² Noting that such submissions constitute an impermissible attempt to re-litigate matters settled by the Fifth Directions, regarding which a request for reconsideration or leave to appeal was rejected,⁶³ the Chamber dismisses the Defence's request for variation of existing deadlines. Nonetheless, the Chamber observes that, as things stands, the closure of the Prosecution case can be expected during the first half of February 2022 and that, accordingly, the deadline for the Defence to file its final list of exhibits and witnesses will fall after the conclusion of the LRVs' presentation of evidence.
50. For these reasons, the Chamber finds that the present decision is fully consistent with the rights of the accused, including the right to have adequate time and facilities and to prepare his defence.

⁶⁰ [REDACTED]

⁶¹ See Response, ICC-01/12-01/18-2022-Conf, para. 37.

⁶² Response, ICC-01/12-01/18-2022-Conf, paras 2(vii), 38.

⁶³ Decision on Defence request for reconsideration of, or leave to appeal, the 'Fifth decision on matters related to the conduct of proceedings: presentation of evidence by the LRVs and Defence', 12 October 2021, ICC-01/12-01/18-1810.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

REJECTS the Leave to Reply Requests;

AUTOHRISES the LRVs to call a/45345/18 and the president of a/20455/19 as witnesses;

REJECTS the remainder of the Requests;

INSTRUCTS the LRVs to file a public redacted version of ICC-01/12-01/18-1942-Conf by 16 December 2021;

ORDERS the Registry to reclassify ICC-01/12-01/18-1922-Conf, ICC-01/12-01/18-1935-Conf and ICC-01/12-01/18-2051-Conf as ‘public’; and

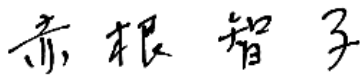
INSTURCTS the LRVs and the Defence to file public redacted versions of ICC-01/12-01/18-1935-Conf-AnxA, ICC-01/12-01/18-2022-Conf and ICC-01/12-01/18-2033-Conf by 28 January 2022.

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



Judge Antoine Kesia-Mbe Mindua

Presiding Judge



Judge Tomoko Akane



Judge Kimberly Prost

Dated this Thursday, 9 December 2021

At The Hague, The Netherlands