

ANNEX 14

PUBLIC

From: Pre-Trial Chamber III Communications
Sent: 13 June 2025 09:28
To: VPRS-UGANDA; Office of the Director DJSS
Cc: OTP Kony Communications; Kony LRV Team OPCV; D35 Kony Defence team; Chamber Decisions Communication; Associate Legal Officer-Court Officer; Pre-Trial Chamber III Communications
Subject: ICC-02/04-01/05 – Single Judge order on the Registry’s request for guidance in victims’ matters - public

[ICC] RESTRICTED

Dear Registry,

The Single Judge has noted the VPRS’ request for guidance below, as well as the parties and participants responses to it.

The Single Judge recalls the ‘Decision on victim participation, legal representation, and on the OPCV’s Application for recognition of the status of victims in the Kony case to the victims participating in the Ongwen case’ (ICC-02/04-01/05-540: the ‘First Victims’ Decision’), deciding *inter alia* to adopt the A-B-C system as the procedure for admission of victims to participate in the proceedings.

With a view to facilitating the Registry’s performance of its duties in accordance with the applicable legal framework, in particular as regards the classification and grouping of existing applications and the finalisation of the transmission report on applications for which the Registry could not make a clear determination for any reason (Group C applications), due by 30 June 2025, the Single Judge clarifies the following:

- (i) As regards applications from minors without a Person Acting on their Behalf (PAB), whose file contains enough contextual information to demonstrate the maturity of the applicant, or whose age at the time of the signature was close to 18 and who have turned 18 since the signature of the application or latest signed supplementary information, the Registry is instructed to treat them as complete for the purposes of the A-B-C procedure;
- (ii) As regards applications from deceased victims, all such applications, including those from applicants not having participated in the Ongwen case, shall be subject to the regime enshrined in the First Victims’ Decision; as regards applications from a deceased person who has a PAB who is also applying for participation, the Registry is further instructed to treat them as complete for the purposes of the A-B-C procedure.

The Single Judge further clarifies that the purpose of these instructions is strictly limited to assisting the Registry in performing its duties in the context of the A-B-C- procedure and to preserve the potential for victims’ participation. The Chamber will address and adjudicate upon any and all legal issues arising from the applications in the context of its forthcoming decision on victims’ applications, on the basis of the Registry’s relevant reports and pursuant to the relevant legal

framework, the First Victims' Decision and the A-B-C procedure, which remain otherwise unaffected. The Registry is reminded of its duty to specifically highlight any issue for which it was unable to make a clear determination in the Report relating to Group C applications.

Thank you and kind regards.

On behalf of Judge Alexis-Windsor, Single Judge

From: OTP Kony Communications [REDACTED]
Sent: 23 May 2025 14:20
To: Pre-Trial Chamber III Communications [REDACTED]
Cc: OTP Kony Communications [REDACTED]; Kony LRV Team OPCV [REDACTED]; VPRS-UGANDA [REDACTED]; Chamber Decisions Communication [REDACTED]; Court Management-Court Records [REDACTED]; Office of the Director DJSS [REDACTED]; D35 Kony Defence team [REDACTED]
Subject: RE: RE: ICC-02/04-01/05 - Single Judge order on responses to VPRS inquiry on two issues relating to the processing of applications - public

[ICC] RESTRICTED

Dear Single Judge,
 Dear Counsel,

The Prosecution respectfully submits its observations below in response to the questions posed by the Registry to the Chamber.

Underage Victims

Under rule 89(3) of the Rules of Procedure and Evidence, an application for participation may also be made by a person acting with the consent of the victim, or a person acting on behalf of a victim if the victim is a child. This provision allows for a competent adult to represent a child during the application process but does not impose this as a requirement in the absence of which the application becomes incomplete. Still, in the case of individuals who were minors at the time of their application – or who are currently minors – it may be *desirable* to take certain steps.

In the case of persons who have reached the age of 18 since the time of their application, the Prosecution submits that such individuals should be able to retroactively affirm or supplement an application made as a minor, especially in the absence of a competent person acting on their behalf at the time of the application. Thus, individuals in this category should be allowed to confirm their application to participate in the proceedings as victims.

The Prosecution notes that it is unclear in what circumstances individuals who are currently minors under the age of 18 have lodged applications for participation. On the understanding that this is nevertheless the case, the Prosecution submits that the Registry should ideally seek the support of the relevant authorities in Uganda to appoint competent individuals to oversee the interests of children under the age of 18 years for the submission of their applications to participate in proceedings and any subsequent related processes. It is important that, *to the extent possible* (noting the circumstances of many victims raised in the LRV's submissions), any such children have a competent representative acting in their interest as they engage with institutions such as the ICC.

Deceased Victims

Regarding whether the Registry should consider an application from a deceased person submitted by an individual seeking to participate in proceedings, the Prosecution respectfully submits that there is no provision under the Statute and Rules that prevents another victim or person from applying to participate in proceedings as a victim while also applying on behalf of a deceased person harmed by the charged events.

Furthermore, some ICC cases (ICC-01/14-01/18-141, para. 36, ICC-01/05-01/08-320, paras. 48-49) support such applications, with the sole requirement being that the applicant, on behalf of the deceased person, specifies in the application form whether they are acting on their behalf or behalf of the deceased person, indicates the identity of the deceased person, their own identity, their relationship with the deceased, and outlines the harm suffered as required under rule 85.

Kind regards,

OTP Kony Team

From: D35 Kony Defence team [REDACTED]
Sent: 23 May 2025 09:35
To: Pre-Trial Chamber III Communications [REDACTED]
Cc: OTP Kony Communications [REDACTED]; Kony LRV Team OPCV [REDACTED]; VPRS-UGANDA [REDACTED]; D35 Kony Defence team [REDACTED]; Chamber Decisions Communication [REDACTED]; Court Management-Court Records [REDACTED]; Office of the Director DJSS [REDACTED]
Subject: HPRM: RE: ICC-02/04-01/05 - Single Judge order on responses to VPRS inquiry on two issues relating to the processing of applications - public

[ICC] RESTRICTED

[ICC] RESTRICTED

Dear Single Judge, Dear VPRS,

Thank you for your email. The Defence provides the following response to VPRS's queries.

Underage victims:

In accordance with the VPRS submission, the Defence is of the view that an application from a minor can be considered complete, provided that (a) there is enough contextual information in their file to demonstrate their maturity at the time of the application; and (b) their age at the time of the signature was close to 18, and they have turned 18 since the signature of the application or latest signed supplementary information in the file.

Deceased victims:

- **case of deceased victims admitted to participate in the proceedings before their death:**

The Defence submits that an application from a deceased person already participating, who has a PAB and who is applying for participation, may not be considered as complete in the absence of a request for resumption of the action initiated by the deceased victim. This request must be made on behalf of the deceased victim by the

successor and within the limits of the views and concerns expressed by the victim in his or her initial application. Conditions may also apply for a successor to be authorised to resume the actions initiated by a deceased victim (see e.g. Ongwen, [ICC-02/04-01/15-962](#), para. 3; Bemba, [ICC-01/05-01/08-3346](#), paras 22-23).

- **case of applicants who died before they were admitted to participate**

In accordance with the established jurisprudence, a deceased person cannot be authorised to participate in the proceedings (see e.g., Katanga, [ICC-01/04-01/07-1491-Red-tENG](#), paras 54, 86; Bemba, [ICC-01/05-01/08-320](#), para. 46; Ntaganda, [ICC-01/04-02/06-449](#), para. 48). These applications are accordingly incompatible with the purpose of victims' participation in the proceedings, i.e., the expression of views and concerns of the victim.

Sincerely,
Kony Defence Team

From: Kony LRV Team OPCV [REDACTED]
Sent: 23 May 2025 09:09
To: Pre-Trial Chamber III Communications [REDACTED]
Cc: OTP Kony Communications [REDACTED]; D35 Kony Defence team [REDACTED]; Kony LRV Team OPCV [REDACTED]; Chamber Decisions Communication [REDACTED]; Court Management-Court Records [REDACTED]; Office of the Director DJSS [REDACTED]; VPRS-UGANDA [REDACTED]
Subject: RE: ICC-02/04-01/05 - Single Judge order on responses to VPRS inquiry on two issues relating to the processing of applications - public

[ICC] RESTRICTED

Dear Pre-Trial Chamber III,
 Following the Chamber's instruction the Legal Representatives submit their observations on the two matters raised by the Registry.

1) Completeness – Age of Maturity

The Legal Representatives note that previous practice of the Court has accepted applications for minors as complete. In the *Katanga* case, the Registry raised a similar issue and the Trial Chamber ruled that *“the provisions of rule 89(3) of the Rules do not preclude a minor from applying on his or her own behalf to participate in the proceedings as a victim. [The Chamber] will assess the admissibility of such applications on a case- by-case basis, by considering the information gathered specifically by the Registry in relation to the applicant's maturity and powers of discernment.”* (see [No. ICC-01/04-01/07-933-tENG](#), 09 July 2009, para. 39).

In the *Lubanga* case, Trial Chamber I, referring to the Convention on the Right of the Child, allowed children to act on their own (without parental consent). In particular, the Chamber ruled that *“Rule 89 (3) of the Rules is a permissive rather than a mandatory provision: an application in the case of a victim who is an adult may be made by person on his or her behalf with their consent, and for a child an application may also be made by a person acting on his or her behalf. In the judgment of the Chamber, the wording of Rule 89(3) of the Rules, coupled with the absence of any provision denying children the opportunity of applying to participate without an intermediary, creates, at the very least, the opportunity for a child to apply on his or her own behalf to participate, depending always on their individual circumstances (viz. the age and the apparent maturity of the child) and the interests of*

justice overall. The idea that the views of a child shall be given due weight in accordance with his or her maturity is consistent with internationally recognized human rights (Article 21(3) of the Statute), as reflected in Article 12(1) of the Convention on the Rights of the Child and the observations of the Committee on the Rights of the Child. There is no evidence to suggest the applicant is particularly immature or that he does not understand the application he is making. Although the Chamber would normally expect a person to act on behalf of a minor, the fact that the applicant is very close to the age of legal maturity at the moment when the trial is to commence, creates a strong case for the Chamber to admit his application. Any other decision at this point in time would effectively remove his opportunity to participate. In all the circumstances, the absence of a person acting on his behalf does not act as a bar to the applicant's participation in these proceedings" (see [No.ICC-01/04-01/06-1861-AnxA1](#), 8 May 2009, pp. 226-227).

The same Chamber also observed that *"the inevitable experience of most, if not all, children who were recruited in the circumstances alleged in this trial, is that they will have been separated from their parents and other adult relatives at a relatively young age. Many of them have been living, to put it at its lowest, disjointed and very unsettled lives for a number of years. Some children have still not been reunited with their families and they do not have legal guardians. To the extent that they have managed to find representation at all, they are often assisted by people such as schoolteachers and other similar community figures. In this regard, the Chamber notes the General Comment No. 6(2005) of the Committee on the Rights of the Child in which it was recognised that separated or unaccompanied children (defined as children who have been separated from both parents, other relatives or from any previous legal or customary primary caregiver), in some situations 'have no access to proper and appropriate identification, registration, age assessment, documentation family tracing, guardianship systems or legal advice'"* (see [No.ICC-01/04-01/06-1861-AnxA1](#), 8 May 2009, pp. 59-60).

The Legal Representatives posit that the same approach should be followed in the present case, particularly in light of the specific situation prevailing in the country. Indeed, as also indicated by the Registry, due to the extent of the conflict in Northern Uganda, a number of applicants may no longer have any living parents or relatives. Moreover, because of the hostility of the community and the fear of stigmatisation, children who returned from the bush after their stay within the LRA did not always return to their original place of residence. Finally, due to what they endured in the LRA and the crimes they were forced to commit, children may not be prepared or willing to recount to a relative what they experienced, fearing rejection and stigmatisation. In these circumstances, the Legal Representatives argue that the Chamber should adopt a flexible approach in this regard. Otherwise, a number of applications may not be considered as complete with the result that the full extent of the victimisation suffered by the victims will not be acknowledged and understood. In this regard, the Legal Representatives recall that the abduction of children was one of the main crime committed by the LRA and was recognised as such by Trial Chamber IX in the *Ongwen* case.

2) Deceased Applicants

The Legal Representatives understand that the question refers to two different instances :

- 1) in cases where an applicant has filed an application on behalf of a deceased victim, expressing their willingness to also act on their behalf, the Legal Representatives posit that said application should be deemed complete;
- 2) in cases where an applicant is deceased and a member of the family has subsequently expressed his/her willingness to continue the action on behalf of the deceased victim, the Legal Representatives posit that said application should be deemed complete.

Indeed, it is submitted that this course of event responds to the expeditiousness and efficiency of the proceedings, while fully respecting the right of victims to avoid a cumbersome application process, particularly in light of the fact that a number of applications were received by the Registry several years ago. Furthermore, the Legal Representatives recall that the Chamber has set 18 July 2025 as the deadline for the Registry to assess all applications for participation. In the circumstances, not considering said applications as complete (while complying with all criteria established by the Court's practice so far) would cause an irreparable prejudice to the victims concerned.

Respectfully submitted,

From: Pre-Trial Chamber III Communications [REDACTED]
Sent: 14 May 2025 09:20
To: VPRS-UGANDA [REDACTED]; Office of the Director DJSS [REDACTED]
Cc: OTP Kony Communications [REDACTED]; D35 Kony Defence team [REDACTED]; Kony LRV Team OPCV [REDACTED]; Chamber Decisions Communication [REDACTED]; Court Management-Court Records [REDACTED]; Pre-Trial Chamber III Communications [REDACTED]
Subject: ICC-02/04-01/05 - Single Judge order on responses to VPRS inquiry on two issues relating to the processing of applications - public

[ICC] RESTRICTED

Dear Registry,

The Single Judge, having noted the Registry's submission below, considers it appropriate to reclassify it as public and to provide parties and participants with an opportunity to respond, should they so wish.

Responses shall be submitted via email, by no later than **Friday 23 May 2025**.

Thank you and kind regards.

On behalf of Judge Alexis-Windsor, Single Judge

From: [REDACTED]
Sent: 12 May 2025 15:45
To: Pre-Trial Chamber III Communications [REDACTED]
Cc: VPRS-UGANDA [REDACTED]; Office of the Director DJSS [REDACTED]
Subject: KONY - VPRS inquiry on two issues relating to the processing of applications

[ICC] RESTRICTED

Dear Pre-Trial Chamber III,

The Registry kindly seeks the Chamber's guidance in relation to the two matters described below which arose during the processing of the applications, and whether the Chamber considers that these matters can be resolved by way of informal exchange or should be raised by way of a formal filing.

(1) *Completeness – Age of Maturity*

Certain applications were submitted by minors who do not have a person acting on their behalf ("PAB"). Most of these applicants are former children abducted who allege that they have been victims of the crimes of enslavement, conscripting children under the age of 15 years and using them to participate actively in hostilities as detailed in the amended document containing the charges ("Amended DCC"). In line with the ICC's applicable legal framework, the Registry trained its intermediaries to request, to the extent possible, that applicants below the age of 18 have a parent, relative or legal guardian present their applications on their behalf. The Registry however found in the course of its activities that former abducted children were often not in a position to have a PAB complete their application forms, either because of the sensitive nature of the harm they reported to have suffered, or because they did not have relatives or a legal guardian anymore (for example, the applicant's parents are deceased or have rejected them) or because, for various reasons, they did not want to involve their relatives or legal guardian.

The Registry would thus appreciate the Chamber's guidance on:

(i) whether it may consider as complete an application from a minor who has no PAB, but for whom:

(a) there is enough contextual information in his/her/their file to demonstrate the maturity of the applicant; or

(b) the age at the time of the signature was close to 18 and who have turned 18 since the signature of the application or latest signed supplementary information in the file.

(ii) whether the Chamber would prefer that the Registry raises this matter through a formal submission.

(2) *Deceased applicants*

In its submission dated 8 May 2024 (ICC-02/04-01/05-500), the Registry noted at para. 15 that: "for the recognition of deceased victims of the *Ongwen* case (where a resumption of action has been submitted) as victims in the *Kony* case, the Registry suggests adopting the same approach as in the *Yekatom and Ngaïssona* case. Furthermore, the Registry requests authorization to apply the same approach for any deceased victims in the *Kony* case."

In response, the Chamber (ICC-02/04-01/05-540) stated at para. 64 that "The Chamber finds that the applications from the *Ongwen* case that are to be transferred to this case shall be reassessed anew, following the A-B-C admission procedure. This procedure shall also include applications from deceased victims that have been complemented by a request for resumption of action granted by Trial Chamber IX."

The Registry would like to seek the Chamber's clarification on other deceased victims, who were not participating in the *Ongwen* case. Specifically, and considering the approach taken by previous Chambers on the same question (*Bemba* case, Pre-Trial Chamber III, "Bemba Fourth Decision on Victims' Participation", 12 December 2008, ICC-01/05-01/08-320, paras 47-51; *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, para. 52; *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. 36.), the Registry would appreciate the Chamber's guidance on:

(i) whether it may consider as complete an application from a deceased person who has a PAB who is also applying for participation; or

(ii) whether the Chamber would prefer that the Registry raises this matter through a formal submission.

Respectfully,

██████

VPRS

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