Pursuant to Trial Chamber III's oral order ICC-01/05-01/08-T-370-ENG, dated 18 May 2016, this document is reclassified as "Public"

Annex 1: Explanation of the contents of the individual assessment reports (annex 3)

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Explanation of the contents of the individual assessment reports under regulation 86(5) of the Regulations of the Court

1. Overview

1. In accordance with the instructions given by the Presiding Judge in her memorandum of 26 September 2010,[1] the applicant-by-applicant reports included in the accompanying annex aim to provide the Chamber with the Registry's *prima facie* assessment of each applicant's compliance with rule 85, together with a summary of the application.

2. Reference number and grouping

2.1 Reference number

2. Each report sets out, at the top left, the reference number for the application to which it relates.

2.2 Group

3. On the top right, each report sets out the "group" (A, B, C or D) into which the applicant falls.
4. These four categories relate to the geographical location of the crimes alleged by the applicants. The same grouping was adopted in the Registry's previous reports to the Chamber.[2]
5. The four categories (A, B, C and D) reflect the alleged geographical movement of the MLC troops[3], as set out in the Prosecutor's "Second Amended Document Containing the Charges", Annex B. At paragraphs 18 to 21 of the document, the Prosecutor describes how MLC troops first participated in fighting in Bangui and its outskirts (particularly "PK12") (paragraph 18). After this, it is said that the MLC troops divided into two groups, with each

[1] Memorandum dated 16 September 2010 from the Presiding Judge to the Director, Division of Court Services.
[2] Report on applications to participate in the proceedings, ICC-01/05-01/08-653-Conf-Exp, paragraph 8; and its Second report to Trial Chamber III on applications to participate in the proceedings, ICC-01/05-01/08-796-Conf-Exp, paragraphs 6 to 8, and annex 2 to that report (ICC-01/05-01/08-796-Conf-Exp-Anx2).
[3] This grouping has no other purpose but to give a mapping of the geographical location of the alleged crimes, and has no relation with the potential organization of a common legal representation of victims in the future.

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group following one of the two roads leading to the North of the CAR (paragraph 19). One group moved along the road leading to Damara, and subsequently continued to Sibut. A second group moved along the road to Boali, continuing to Bossembélé, Bossangoa and Bozoum. On withdrawing from the CAR in March 2003, the MLC troops retreated South, including passing through the town of Mongoumba (paragraph 21).

6. Consequently, the four groups are as follows:

- Group A, containing applications relating to alleged crimes in or around Bangui and PK12, whether on arriving or on leaving the DRC
- Group B, containing applications relating to alleged crimes in or around Damara and Sibut
- Group C, containing applications relating to alleged crimes in or around Boali, Bossembélé, Bossangoa and Bozoum
- Group D, containing applications relating to alleged crimes in or around Mongoumba

3. Registry assessments of the elements of rule 85

7. The following sections of the report are intended to indicate to the Chamber the basis on which the Registry has conducted its *prima facie* assessment regarding the specific criteria which must be fulfilled in order for an applicant to meet the requirement of rule 85. These requirements have been grouped into three:

(1) Formal requirements (both relating to the victim and the person acting on behalf, where relevant)

(2) Requirements relating to the alleged crime;

(3) Requirements relating to the harm suffered.

3.1 Formal requirements

8. The Registry assessment reports contain two sections relating to the formal requirements of the application. The first (on the left) relates to the applicant

him/herself. The second (on the right) relates to the person acting on behalf of the applicant, where applicable.

Formal requirements relating to the applicant

9. Under the heading "Identity of the individual sufficiently established", a list appears including up to three items:
   - Date of birth is consistent
   - Name is consistent
   - Sufficient proof of identity is provided
10. The report will indicate which of these three items are satisfied according to the assessment made by the Registry. If an inconsistency appears among the names or dates of birth given in the application, or if insufficient proof of identity is provided, the relevant item will not appear in this list of items that are satisfied, and a comment on this issue will be made in the section headed "Comments".
11. In assessing the sufficiency of identity documents provided, the Registry has had regard to the Chamber's Decision of 22 February 2010, in which it endorsed the approach taken by Pre-Trial Chamber III on this issue,[4] as well as to the Annex to the Chamber's Decision of 30 June 2010.[5]
12. The Registry notes that in some cases applicants have provided forms of proof of identity which are not among those expressly endorsed by the Chamber as acceptable, but which appear to the Registry to be equivalent in nature to the recognized forms of identification document. Where this situation arises, it has been noted (in the section headed "Comments").
13. Regarding the question of internal inconsistencies within applications, the Registry has sought to follow the approach adopted by the Chamber and reflected in the Annex to its 30 June 2010 Decision.[6] On this basis, the Registry has assessed as complete those applications which contain only minor

[4] ICC-01/05-01/08-699. paragraph 36.
[5] In particular where it accepted the use of electoral cards (a/0516/08, a/575/08, a/0579/08), NGO membership cards (a/0566/08, a/0567/08), church membership cards (a/0582/08, a/0551/08), baptism certificates (a/0573/08, a/0577/08), a political party membership card (a/0625/08) and tax receipt accompanied by a list of possessions signed by a *Chef du quartier* (a/0513/08).
[6] For example, in relation to victims a/0511/08, a/0513/08 and a/0566/08.

inconsistencies which could be explained as a mistake made by the person assisting in the completion of the application form, or where the reasons for an inconsistency are explained by the applicant. In particular, where a date or the spelling of a name provided in an application form is inconsistent with that given in a supporting document, but verified by a second supporting document, the Registry has assessed the application as complete. Any inconsistencies are, however, recorded in the "Comments" section of the form.

14. In some instances, where an inconsistency appears to be of a nature that has not yet been the subject of a decision of the Chamber and is not clearly a mistake but rather may give rise to doubts about the facts alleged or identity of the applicant, the Registry has indicated that the *prima facie* status of the application is "UNCLEAR". In such cases the nature of the specific inconsistency is indicated, and the Registry's *prima facie* assessment concerning it.

15. The field designated "Signature" indicates "YES" where the applicant has provided a signature or thumb print on the document, at the very least, on the last page of the application, as required by Pre-Trial Chamber III and endorsed by the Chamber.[7]

16. The last field, "Acting on own behalf", indicates that there is no person acting on behalf of the applicant. Where this field indicates "YES", no information is provided in the adjacent section of the report relating to the person acting on behalf of the victim.

Formal requirements relating to the person acting on behalf of the applicant

17. Where a person has applied on behalf of a victim, the "Acting on own behalf" field indicates "NO" and the section on the upper right of the report has been completed.

[7] ICC-01/05-01/08-699, paragraph 35.

18. In this section, the same approach has been taken regarding identity documents, inconsistencies and signatures, as set out above in relation to the applicant.

19. An additional requirement is also dealt with, namely the question of whether there appears to be sufficient authority for the person to act on behalf of the applicant. This field will indicate the type of authority provided, namely one of the following:

- Consent (signature of victim and PAB)
- Proof of kinship (minor or deceased victim)
- Proof of legal guardianship (disabled victim)

If the authority provided to the person acting on behalf of the victim appears to be insufficient or is not clearly established, this field will remain blank and a comment is included in the section headed "Comments".

20. In assessing the sufficiency of the authority provided, the Registry has had recourse to the decisions of the Chamber and Pre-Trial Chamber III. In respect of children, disabled victims and victims who have consent to have a person act on their behalf, the Registry has followed the approach set out by Pre-Trial Chamber III and endorsed by the Chamber.[8] In respect of deceased victims, the Registry has assessed whether sufficient information as to kinship be provided, as required by the Chamber in its 30 June 2010 Decision.[9]

3.2 Crime(s) included in the charges

21. This section of the report is used to indicate whether or not the acts described by the applicant in his or her application appear to be such as could constitute crimes within the charges confirmed in the present case.

22. Four issues are dealt with:

23. The first relates to the type of crimes which could be constituted by the acts described. Here the Registry indicates which of the crimes confirmed against

[8] ICC-01/05-01/08-699, paragraph 35.
[9] ICC-01/05-01/08-807, paragraph 83.

the accused might be constituted by the acts described in the application. The Registry emphasizes that in identifying these crimes, it looks solely at the alleged acts, and does not make any assessment as to the presence of the contextual or mental elements of the crime such as would be necessary to determine whether the acts constitute genocide, a crime against humanity or a war crime.

24. The acts which may constitute crimes among the charges have been categorized into three categories reflecting the five counts in the "Second Amended Document Containing the Charges": rape (in counts one and two), murder (in counts three and four) and pillage (in count five).[10]

25. In determining which acts may suffice to constitute one of these types of crime, the Registry has had particular regard to the Chamber's 30 June 2010 Decision[11] as well as to Pre-Trial Chamber II's Decision Pursuant to Article 61(7) (a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo.[12]

26. Where there is any doubt as to whether the acts described could constitute a crime charged in the case, this issue is indicated in the section headed "Comments", and the *prima facie* assessment is given as "UNCLEAR".

27. A number of applicants allege that they have suffered harm as a result of "sexual violence", but do not provide further details regarding the precise nature of the alleged acts committed against them. In considering whether or not to assess, *prima facie*, such applications as constituting rape and therefore falling within the charges in the case, the Registry has had regard to the Elements of Crimes as well as to Pre-Trial Chamber III's Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo.[13]

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[10] Pages 35 to 38.
[11] ICC-01/05-01/08-807
[12] ICC-01/05-01/08-424
[13] ICC-01/05-01/08-424

28. The Registry notes the particular requirements of the crimes of rape under articles 7(1)(g) and 8(2)(e)(vi) of the Rome Statute. It also notes the evidentiary threshold which the Chamber has applied in the determination of victim status.[14] In light of this evidentiary threshold, in some instances it may be possible to infer that an applicant who refers to "sexual violence" committed against her has suffered a rape. This view reflects the Registry's experience in the field demonstrating that many victims of rape are reluctant to discuss the crimes suffered by them in explicit terms in their applications. A flexible approach to the standard of proof required for indicating that *prima facie* a rape was committed against an applicant finds support among international standards according to which judicial institutions should take steps to minimize the possible re-traumatization of victims. [15]

29. The Registry considers that applications in this category raise a question requiring the determination of the Chamber. As such, until the matter is clarified by the Chamber, they have been identified as having a *prima facie* status which is "UNCLEAR".

30. The second issue dealt with in this section of the report relates to the geographical location of the crime. The report here indicates whether it appears from the application that the alleged crime occurred within the territory of the Central African Republic.

31. Thirdly, it is indicated whether or not the alleged crime is said to have occurred between the dates which delimit the scope of the charges in the present case: namely from on or about 26 October 2002 to 15 March 2003.

32. In this regard, the Registry notes that in some applications the crime is said to have happened just outside the dates mentioned in the confirmed charges, either just prior to 26 October 2002 or just after 15 March 2003. These applications are treated as falling within the relevant time period on the basis that the "Second Amended Document Containing the Charges" states that the

[14] ICC-01/05-01/08-807, paragraph 92

[15] Article 10 of the Basic Principles and Guidelines on the Right to a Remedy and Reparation for victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (UN GA Resolution 60/147, 16 December 2005).

alleged crimes were carried out in the CAR "from on or about 26 October 2002 to 15 March 2003"[16] [our emphasis].

33. Finally, it is indicated whether or not it appears that the alleged crime could have been carried out by the MLC or forces under the control of Mr Jean-Pierre Bemba Gombo. The Registry notes that in some applications the applicant does not specifically name Jean-Pierre Bemba or the MLC, but mentions the "banyamulengués" as being responsible, in some cases noting their Congolese nationality. Since this is a term commonly used in the CAR to describe the Congolese forces accompanying Mr. Bemba, these applications have been included on the basis that this gives an indication of an intention to refer to the MLC forces accompanying Mr. Bemba.

34. The Registry has also based its assessments on this issue on the Chamber's 30 June 2010 Decision in respect of those cases where applicants are not able to establish precisely who committed the crimes alleged.[17] In light of this Decision, the Registry has indicated "YES" in relation to this question where there appears to the Registry to be *prima facie* evidence that the applicants suffered harm as a result of the relevant crimes between 26 October 2002 and 15 March 2003 in the areas which were at that time controlled by Mr Bemba, even where the applicant does not clearly indicate the identity of the person(s) or group(s) responsible. Where this occurs it has been noted Under "Comments".

3.3 Harm suffered

35. In this section the report indicates the type of harm that is alleged to have been suffered by the applicant and/or the person acting on behalf of the applicant. Only harm which appears to be the result of one or more of the crimes contained in the charges is included in this analysis. Harm has been categorised as follows:

[16] Pages 35 to 38.
[17] ICC-01/05-01/08-807, paragraph 94

- Material harm: including the loss or destruction of property, loss of income or other form of economic loss, including medical costs;
- Physical harm: physical injuries, including when brought about by psychological trauma (for instance, where stress has caused heart conditions or miscarriage);
- Psychological harm: Including mental illness, emotional, moral or other form of psychological suffering.

36. No distinction is made in the report between harm suffered directly or indirectly. Both are included in the categorisation described above.

4. Summaries

37. In the section of the report headed "Summary" the Registry provides an overview of the application. In an effort to provide information which is of use to the Chamber, the Registry has structured this information according to the approach used by the Chamber in the Annex to its 30 June 2010 Decision. Therefore two sections are provided:

- The means of identification

  In this part the type of proof of identity provided by the applicant is given. Any comments or possible problems with the proof of identity are also mentioned here.

- The claim to victim status

  In this part the relevant facts alleged by the applicant are set out, including those which relate to the alleged crime and those concerned with the harm suffered as a consequence of the overall event.

5. The Registry's *prima facie* assessments of rule 85 compliance

38. This part of the report indicates the Registry's views concerning whether or not the application appears, *prima facie*, to meet the requirements of rule 85.

39. This section includes two parts. The first relates to the putative applicant, and the second to the person acting on behalf of the applicant, where relevant. This second section has been used to provide information regarding those

applications where it appears that the person acting on behalf of the victim has also suffered harm as a result of a crime linked to the charges in the case, such that it appears, *prima facie*, that the person acting on behalf of the victim may also be entitled to victim status.

40. The Registry's assessments of *prima facie* victim status under rule 85 are given in the reports as either: "YES", or "UNCLEAR". No reports are included which indicate that the application in question is *prima facie* incomplete or otherwise fails to meet the requirements of rule 85, since such applications will not be filed to the Chamber (in accordance with the 22 February 2010 Decision[18]).

41. Applications are indicated as *prima facie* meeting the requirements of rule 85 where it appears to the Registry that the evidentiary threshold set out by the Chamber in its 30 June 2010 Decision[19] has been met in respect of all the required elements.

42. Where an application appears to the Registry to raise a legal or factual question which has not already been settled by the decisions of the Chamber, and which may affect whether or not the application meets all requirements of rule 85, the Registry has indicated that its *prima facie* status under rule 85 is "UNCLEAR".Further explanation of the issue requiring the Chamber's determination is set out under the heading "Comments".

43. This final field, "Comments", is used to indicate any legal or factual questions which arise in relation to the application and, where relevant, the approach which the Registry has taken in relation to those issues based on the jurisprudence of the Chamber. For example, this field is used to indicate:

- Missing information, and an explanation as to why the application is still assessed as complete or unclear;

[18] ICC-01/05-01/08-699, paragraph 35.
[19] ICC-01/05-01/08-807, paragraph 92

- The fact that further information or documentation has been requested and subsequently received and reflected in the report, where it is considered that this should be drawn to the attention of the Chamber;
- Any discrepancies in information received, such as between dates or other information contained in different documents received from the applicant, including between the application form itself and documents received at the same time or subsequently;
- Any other information that may assist the Chamber in making its decision.