

Annex 2

**Public Redacted Version of
“Annex 2: Explanation of the contents of the individual assessment reports”,
05 April 2012, ICC-01/05-01/08-2187-Conf-Exp-Anx2**

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

Overview

1. In accordance with the instructions given by the Presiding Judge in her memorandum of 26 September 2010,¹ and taking into consideration previous Decisions of the Chamber on victims' participation,² (hereafter, "the Chamber's Decisions"), as well as further guidance provided by the Trial Chamber,³ 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. In making its assessments of the 60 of the 72 applications in the present instance, the Registry referred not only to the original application form, but also to the results of the Mission subsequently undertaken by the Registry, as described in the Registry's previous two reports on Missions conducted in the Central African Republic in 2011.⁴ During the Mission the Registry met with individual victim applicants and heard their account of the events on which their applications for participation are based. A written account was recorded at the end of the interview and is filed along with the application as supplementary information. For the purpose of the present report the Registry uses the term "statement" or "statements" to refer to all information and views provided by the victim during the interview, whether or not it was ultimately recorded and included as supplementary information.

¹ Memorandum dated 16 September 2010 from the Presiding Judge to the Director, Division of Court Services.

² ICC-01/05-01/08-807, ICC-01/05-01/08-1017, ICC-01/05-01/08-1091, ICC-01/05-01/08-1590 and ICC-01/05-01/08-1862.

³ Meeting between the Legal Officer and Associate Legal Officer, Trial Chamber, and the Associate Legal Officers, Victims Participation and Reparations Section, 2 March 2010.

⁴ See ICC-01/05-01/08-1369-Conf-Exp, paragraphs 16 to 42 and ICC-01/05-01/08-1960-Conf-Exp, paragraphs 16 to 33.

3. Each individual assessment has therefore taken into account the following: (1) information contained in the original application form filled in with the assistance of Intermediary 2, (2) information collected during the interview with the individual applicant during the course of the Registry's Mission, and (3) the Registry's Report of Interview with Applicant.
4. For this reason, and in departure from its regular reporting system, each applicant-by-applicant report comprises two main parts: (A) a Report of Interview with Applicant (page 1) and (B) the Registry's usual *Prima facie* Rule 85 assessment report (page 2 and 3).

A. Report of Interview with Applicant

5. Each report sets out, at the top left, the reference number for the application to which it relates. At the top right the date of the meeting between the VPRS and the applicant is indicated.
6. The following three sections of the assessment follow the approach, explained in the Final report of 31 March 2011,⁵ of using objective criteria to assess the outcome of the interview:
 - (1) [REDACTED]
 - (2) [REDACTED]
 - (3) [REDACTED]
7. [REDACTED]

⁵ ICC-01/05-01/08-1369-Conf-Exp, paragraph 27.

1. [REDACTED]

8. [REDACTED]⁶.

9. [REDACTED]

10. [REDACTED].

11. [REDACTED]

⁶ [REDACTED].

2. [REDACTED]

12. [REDACTED].

13. [REDACTED].

14. [REDACTED].

15. [REDACTED]⁷

⁷ [REDACTED]

16. [REDACTED].

17. [REDACTED].

3. [REDACTED]

18. [REDACTED].⁸

19. [REDACTED].

20. [REDACTED].⁹

⁸ [REDACTED].

⁹ [REDACTED].

4. [REDACTED]

21. [REDACTED]

22. [REDACTED].

23. [REDACTED]

24. [REDACTED]¹⁰

¹⁰ [REDACTED].

25. [REDACTED].

B. *Prima facie* Rule 85 assessment - Natural person

1. Grouping

26. On the top right is indicated the “group” (A, B, C or D) into which the applicant falls.

27. 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.

28. The four categories (A, B, C and D) reflect the alleged geographical movement of the MLC troops, 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 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).

29. 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

2. Registry assessments of the elements of rule 85

30. 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.

31. As already noted above, in assessing the applications covered by the present report, the Registry had regard to the original application form as well as any other information collected during the interview.

2.1 Formal requirements

32. 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

33. 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

34. 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”.

35. 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,¹¹ as well as to the Chamber’s Decision of 18 November 2010¹² on this particular aspect.

36. Regarding the question of internal inconsistencies within applications, the Registry has sought to follow the approach adopted by the Chamber and reflected in the Chamber’s Decisions. On this basis, the Registry has assessed as complete those applications which contain only minor 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

¹¹ ICC-01/05-01/08-699, paragraph 36.

¹² ICC-01/05-01/08-1017, paragraph 42.

Registry has assessed the application as complete. Any inconsistencies are, however, recorded in the “Comments” section of the form.

37. In some instances, where an inconsistency does not clearly appear to be 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.
38. 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.¹³
39. 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

40. 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.
41. In this section, the same approach has been taken regarding identity documents, inconsistencies and signatures, as set out above in relation to the applicant.
42. 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

¹³ ICC-01/05-01/08-699, paragraph 35.

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”.

43. In assessing the sufficiency of the authority provided, the Registry has had recourse to the decisions of the Chamber and of 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.¹⁴ In respect of deceased victims, the Registry has assessed whether sufficient information as to kinship be provided, as required by the Chamber’s Decisions.

2.2 Crime(s) included in the charges

44. This section of the report is used to indicate whether or not the acts described by the applicant in his or her application and/or during the course of the interview¹⁵ appear to be such as could constitute crimes within the charges confirmed in the present case.

45. Four issues are dealt with:

46. 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 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

¹⁴ ICC-01/05-01/08-699, paragraph 35.

¹⁵ The VPRS based its legal analysis on the information collected during the interview, in light of the particular concerns regarding the reliability of the statements originally provided in the forms.

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.

47. 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).¹⁶

48. In determining which acts may suffice to constitute one of these types of crime, the Registry has had particular regard to the Chamber’s Decisions 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.¹⁷

49. 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”.

50. 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. Where there is any doubt as to whether the acts described could have occurred within the territory of the Central African Republic, this issue is indicated in the section headed “Comments”, and the *prima facie* assessment is given as “UNCLEAR”.

51. In particular, the Registry noted the approach of the Chamber as regards applications referring to acts committed on the Oubangui River.¹⁸ The Registry draws to the Chamber’s attention the fact that several applicants met in the

¹⁶ Pages 35 to 38.

¹⁷ ICC-01/05-01/08-424.

¹⁸ ICC-01/05-01/08-1017, paragraph 58.

context of the Mission explain that the crime(s) started, or took place, on islands near Mongoumba. Applicants refer to the islands in different ways, including the following: the island of Izato; an island situated in front of Mongoumba's harbor; the big island of Mongoumba; an island called "Batanga"; a deserted island; a CAR custom post; etc. It has proved difficult for the VPRS staff to ascertain the exact location of such island(s), especially as it seems that people give different names to islands, or describe them according to their own knowledge of the area, which is not always accurate. For example, one applicant explained that "Izato" is the name of a village in the CAR near the Congo-Brazzaville border and that its name is given to the little islands on the river between the border and Mongoumba, and that the name is sometimes "wrongfully" used to describe the big island near Mongoumba, while other applicants refer to Izato as the island in front of Mongoumba. Therefore, it has proved difficult on some occasions to ascertain whether the location described is situated within the territory of the CAR. In such cases, the VPRS has instead endeavoured to gather from the applicant information related to the geographical location of the said island (for instance, on which side of the border is it located, how close to Mongoumba, etc), and any doubt as to whether the said place is located within the territory of the CAR has been indicated in the individual assessments.

52. 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.
53. In this regard, the Registry notes that in some applications the crime is said to have either happened just outside the dates mentioned in the confirmed charges, either just prior to 26 October 2002 or just after 15 March 2003, or on an unspecified date. In particular, the Registry draws the Chamber's attention to the fact that a significant number of the applicants met by the VPRS as part of the Mission ordered by the Chamber do not remember the date of the

events in question, contrary to what is stated in their application form. In these instances, the VPRS endeavoured to assess during the interview whether the applicant was able to situate the event within a broader temporal context. Following the Chamber's approach of analyzing these applications on a case-by-case basis, in light of the overall coherence of the claim and in comparison with other applications, these applications have been assessed as "UNCLEAR".

54. 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" or "the people from the other side of the river" as being responsible, and in some cases noting their Congolese nationality and/or them speaking Lingala. Since these terms are 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.

55. The Registry has also based its assessments on this issue on the Chamber's Decisions in respect of those cases where applicants are not able to establish precisely who committed the crimes alleged.¹⁹ 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".

¹⁹ ICC-01/05-01/08-807, paragraph 94 and ICC-01/05-01/08-1091, paragraph 27.

2.3 Harm suffered

56. 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 categorized as follows:

- 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;
- Psychological harm: Including mental illness, emotional, moral or other form of psychological suffering.

57. For natural persons, no distinction is made in the report between harm suffered directly or indirectly. Both are included in the categorisation described above.

58. In order to comply with the Appeals Chamber judgment of 23 February 2009,²⁰ an additional section was created with regard to applications where the applicant claims to have suffered harm as a result of a crime committed against a close family member. Accordingly, the field designated “The applicant alleges having suffered emotional harm as a result of a crime committed against a relative” indicates a “YES” if the applicant invokes having suffered personal harm as a result of a crime committed against a relative. The report will further indicate underneath this field if the two requirements set out by the Appeals Chamber- evidence with regard to the identity of, and kinship with the relevant family member- are satisfied according to the assessment made by the Registry.

²⁰ ICC-02/04-179.

3. Summaries

59. In the section of the report headed “Summary” the Registry provides an overview of the application.²¹ In an effort to provide information which is of use to the Chamber, the Registry has structured this information according to the guidelines provided by the Chamber. 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.

4. The Registry’s *prima facie* assessments of rule 85 compliance

60. 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.

61. 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.

62. 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

²¹ As for the legal analysis, the VPRS based the summaries on the information collected during the interview, in light of the particular concerns regarding the reliability of the statements originally provided in the forms.

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).²²

63. 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 Decisions has been met in respect of all the required elements.

64. 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”.

65. Furthermore, where the application appears to meet *prima facie* the requirements of rule 85 but the interview revealed inconsistencies which raise a fundamental doubt regarding the reliability of the statements, the Registry has indicated that its *prima facie* status under rule 85 is “UNCLEAR”.

66. The 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;
- 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.

²² ICC-01/05-01/08-699, paragraph 35.