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**International
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Court**

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TRIAL CHAMBER III

Before: Judge Sylvia Steiner, Presiding Judge
Judge Joyce Aluoch
Judge Kuniko Ozaki

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC
IN THE CASE OF
THE PROSECUTOR
*v. JEAN-PIERRE BEMBA GOMBO***

Public

Decision on common legal representation of victims for the purpose of trial

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

The Office of the Prosecutor

Ms Fatou Bensouda, Deputy Prosecutor
Ms Petra Kneuer, Senior Trial Lawyer

Counsel for the Defence

Mr Nkwebe Liriss
Mr Aimé Kilolo Musamba

Legal Representatives of the Victims

Ms Marie-Edith Douzima- Lawson

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
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REGISTRY

Registrar

Ms Silvana Arbia

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section Other**

Trial Chamber III (“Trial Chamber” or “Chamber”) of the International Criminal Court (“Court” or “ICC”), in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo* (“Bemba case” or “Case”) issues the following Decision on common legal representation of victims for the purpose of trial.

I. Background

1. On 9 December 2009, the Chamber issued its “Decision on the Observations on legal representation of unrepresented applicants” (“Decision of 9 December 2009”),¹ in which it ordered, *inter alia*, that:²
 - a. the Office of Public Counsel for victims (“OPCV”) shall continue to represent victim applicants it currently represents until the Chamber issues a decision on their application to participate;
 - b. the OPCV shall represent victim applicants who have not chosen a legal representative until a decision is made on their application to participate;
 - c. thereafter, the Registry shall arrange for another legal representative to act for them, unless there are specific reasons, to be set out in a filing addressed to the Chamber and the Registry only, within 7 days of the decision of the Registrar, as to why this course may be detrimental to individual participating victims;
 - d. the issue of the applicants originally represented by the late Mr Wanfiyo Goungaye (“Mr Wanfiyo”) will be dealt with in a later decision on common legal representation; and
 - e. Ms Douzima-Lawson (“Ms Douzima”) shall continue to represent the victims she represented during the proceedings before the Pre-Trial Chamber.

¹ Decision on the Observations on legal representation of unrepresented applicants, 9 December 2009, ICC-01/05-01/08-651.

² ICC-01/05-01/08-651, paragraph 18.

2. On 30 June 2010, the Chamber instructed the Registry to consult with the legal representatives of victims and to file a proposal on common legal representation in accordance with Rule 90(2) of the Rules of Procedure and Evidence (“Rules”) no later than 13 July 2010.³
3. However, on 30 June 2010, the Registry filed its first confidential *ex parte* “Report on common legal representation” (“Report of 30 June 2010”)⁴ and on 13 July 2010, it further filed its confidential *ex parte* “Supplementary report on common legal representation” (“Report of 13 July 2010”).⁵
4. On 24 September 2010, the Registry filed a “Further supplementary report on common legal representation” (“Report of 24 September 2010”),⁶ at the Chamber’s request. In this report, the Registry informs the Chamber that it has identified two legal representatives from the Central African Republic (“CAR”) who would be available to represent victims during trial.⁷
5. In accordance with Article 21(1) of the Rome Statute (“Statute”), the Chamber, in making its determination on the issue of common legal representation, has considered Article 68(3) of the Statute, Rule 90 of the Rules, Regulations 79 to 81 of the Regulations of the Court, and Article 8 of the Code of Professional Conduct for counsel (“Code of Conduct”).

³ Decision on the participation of victims in the trial and on 86 applications by victims to participate in the proceedings, 30 June 2010, ICC-01/05-01/08-807 and confidential *ex parte* Annex, 30 June 2010, ICC-01/05-01/08-807-Conf-Exp-Anx; Corrigendum to this decision, 12 July 2010, ICC-01/05-01/08-807-Corr and Corrigendum to confidential *ex parte* Annex, 19 July 2010, ICC-01/05-01/08-807-Conf-Exp-Anx-Corr.

⁴ Report on common legal representation, 30 June 2010, ICC-01/05-01/08-806-Conf-Exp with seven confidential *ex parte* Annexes.

⁵ Supplementary report on common legal representation, 13 July 2010, ICC-01/05-01/08-821-Conf-Exp with two confidential *ex parte* Annexes.

⁶ Further supplementary report on common legal representation, 24 September 2010, ICC-01/05-01/08-902-Conf-Exp with two confidential *ex parte* Annexes.

⁷ ICC-01/05-01/08-902-Conf-Exp, paragraphs 5 to 7.

II. Analysis

6. The Chamber notes that, at present, 135 victims have been allowed to participate in the *Bemba* case, and that around 1200 further applications for participation during trial are currently under examination. In these circumstances, the purpose of the present Decision is to establish a common legal representation scheme for all victims currently allowed and to be allowed to participate in the case.

7. The Chamber further notes that the different options proposed by the Registry as to common legal representation were submitted before the transmission of a large number of victims' applications. A common element to the proposed various scenarios is that Ms Douzima could lead a legal team.⁸ Having considered the time constraints the Chamber is facing as the trial is scheduled to commence on 22 November 2010, and in light of the further information contained in the Report of 24 September 2010, the Chamber is of the view that, to ensure the effectiveness of the proceedings, the Registry shall appoint two common legal representatives of victims in accordance with Rules 90(2) to (5) of the Rules to represent the totality of victims to be allowed to participate in the trial. As suggested by the Registry, Ms Douzima may be one of them as she is familiar with the *Bemba* case.

8. Having considered the Registry's reports and the circumstances of the Case, the Chamber establishes the guidelines set out below for the organisation of an effective common legal representation scheme:

⁸ Table of scenarios in relation to common legal representation, 13 July 2010, ICC-01/05-01/08-821-Conf-Exp-Anx2.

General approach for choosing common legal representatives designated by the Registry:

9. In authorising the designation by the Registry of common legal representatives, the Chamber applies the criteria set out in the ICC legal framework⁹ and the approach to common legal representation as stated in the Court's jurisprudence, in particular:
- a. the need to ensure that the participation of victims, through their legal representatives, is as meaningful as possible, as opposed to "purely symbolic";
 - b. the Chamber's duty to ensure that the proceedings are conducted efficiently and with the appropriate celerity;
 - c. the Chamber's obligation under Article 68(3) of the Statute to ensure that the manner in which victims participate is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.¹⁰
10. In addition, the legal representatives must give reasonable assurance that they will be available and present at the seat of the Court for the entirety of the trial proceedings as well as at the reparation phase, and thus they must not, to the extent possible, be involved in more than one case before the Court.¹¹
11. Given the specific circumstances of the present case, the Chamber places particular emphasis on "the need to respect local traditions" as set out under Regulation 79(2) of the Regulations of the Court and considers it advisable that the common legal representatives speak the victims' language, share their culture and know their realities in order for the victims' representation to be

⁹ See for example, Rule 90(4) of the Rules, and Regulation 79(2) of the Regulations of the Court.

¹⁰ Trial Chamber I, Decision on victims' participation, 18 January 2008, ICC-01/04-01/06-1119, paragraphs 116, 123-125; Trial Chamber II, Order on the organization of common legal representation of victims, 22 July 2010, ICC-01/04-01/07-1328, paragraph 10.

¹¹ See for a similar approach, Trial Chamber II, ICC-01/04-01/07-1328, paragraph 14.

more meaningful.¹² The Chamber is of the view that such an approach could facilitate communications between the common legal representatives and the represented victims. This should further ensure that the victims' views and concerns are effectively transmitted to the parties and to the Chamber during the trial proceedings.

12. The Chamber further endorses the additional criterion mentioned in the Registry Report of 30 June 2010, namely availability, education and experience in representing a large number of victims, and to the extent possible, the familiarity with the *Bemba* case.¹³

13. In addition, the Chamber acknowledges that no conflicts of interest¹⁴ have so far arisen in the representation of victims allowed to participate in the *Bemba* case.¹⁵ Therefore, the common legal representatives to be designated by the Registry will be "responsible for both representing the common interests of the victims and for acting on behalf of specific victims when their individual interests are at stake".¹⁶

14. With regard to the obligation under Regulation 79(2) of the Regulations of the Court to give due consideration to the views of victims when choosing a common legal representative, bearing in mind the important number of victims' applications pending before the Chamber and the proximity of the commencement of trial, the Chamber considers that the views of each victim on such issue can only be taken into account to the extent possible.

¹² See for a similar approach, Trial Chamber II, ICC-01/04-01/07-1328, paragraph 15; Pre-Trial Chamber II, Decision on Victims' Participation in the Situation in Proceedings related to the Situation of the Republic of Kenya, 3 November 2010, ICC-01/09-24, paragraph 22.

¹³ ICC-01/05-01/08-806-Conf-Exp, paragraphs 36-45.

¹⁴ See Article 16 of the Code of conduct.

¹⁵ See the position of legal representatives on this issue, ICC-01/05-01/08-806-Conf-Exp, paragraph 34.

¹⁶ ICC-01/04-01/07-1328, paragraph 13.

15. The Chamber therefore adopts Trial Chamber II's approach, according to which:

[...] although victims are free to choose a legal representative this right is subject to the important practical, financial, infrastructural and logistical constraints faced by the Court. Common legal representation is the primary procedural mechanism for reconciling the conflicting requirements of having fair and expeditious proceedings, whilst at the same time ensuring meaningful participation by potentially thousands of victims, all within the bounds of what is practically possible. The Chamber considers, therefore, that the freedom to choose a personal legal representative, set out in rule 90(1) is qualified by rule 90(2) and subject to the inherent and express powers of the Chamber to take all measures necessary if the interests of justice so require.

16. In addition, the Chamber stresses that, pursuant to Rule 90(5) of the Rules, in cases where victims do not have the means to remunerate them, common legal representatives are *chosen by the Court*, as opposed to by the victims themselves. In the present case, the Chamber is mindful that victims or groups of victims allowed to participate in the trial proceedings may lack the necessary means to pay for a legal representative of their own choosing and, thus, may receive financial assistance from the Registry to allow them to be represented by a common legal representative. As stated by Trial Chamber II, victims in this situation have a limited freedom of choice to select their own legal representative.

17. In this respect, the Chamber has reviewed the proposed attached form in Annex 2bis of the Registry's Report of 30 June 2010, consisting of a power of attorney to be filled in by victims allowed to participate in the proceedings in order to permit them to choose their own common legal representative. The use of such a form by the Victims Participation and Reparation Section was proposed before any transmission to the Chamber and the parties of the large number of victims' applications. In the present circumstances, it is unlikely that there will be sufficient time to contact all victims once they are allowed to participate in the proceedings in order to ask them individually whether they

would agree or not to a common legal representative. Therefore, the use of the proposed form is inappropriate at such a late stage of the proceedings.

Grouping of victims

18. In order to assist the Chamber's determination on victims' applications, the Registry made a proposal for grouping the victim applicants into the following four geographical groups, namely:¹⁷

- Group A, applications relating to alleged crimes committed in or around Bangui and PK12;
- Group B, applications relating to alleged crimes committed in or around Damara and Sibut;
- Group C, applications relating to alleged crimes committed in or around Boali, Bossembélé, Bossangoa and Bozoum;
- Group D, applications relating to alleged crimes committed in or around Mongoumba.

19. The Registry submits that this geographical grouping reflects the alleged geographical movement of the *Mouvement de Libération du Congo* ("MLC") troops. The Chamber is of the view that this grouping of applicants can be equally applied to victims once they have been allowed to participate in the proceedings. This grouping will, *inter alia*, allow victims from the same family or community to be represented by the same legal representative. It will also facilitate individual contacts between the victims and their legal representatives and, thus, will render their participation more meaningful.

20. Therefore, the Chamber endorses the geographical grouping of victims into the four abovementioned groups as proposed by the Registry for the purpose

¹⁷Report on applications to participate in the proceedings, 10 December 2009 (notified on 11 December 2009), ICC-01/05-01/08-653-Conf-Exp, paragraph 8; Second report to Trial Chamber III on applications to participate in the Proceedings, 11 June 2010 (notified on 14 June 2010), ICC-01/05-01/08-796-Conf-Exp, paragraphs 6 to 8.

of organising the common legal representation of victims. The Registry is requested to adopt the same grouping to organise the legal representation of the 135 victims already allowed to participate in the *Bemba* case. This approach shall also be applied for the organisation of the legal representation of any applicants who may in the future be allowed to participate in the trial proceedings.

21. Having grouped the victims according to the geographical locations of the alleged crimes, in the present circumstances, the Chamber finds it appropriate to appoint two common legal representatives as follows: one for group A (Bangui and PK12) and one for groups B, C and D together (other locations in the CAR). This geographical grouping appears to allow each common legal representative to effectively act on behalf of an approximately equal number of victims and to facilitate communications with the victims they represent in the field.

Applicants represented by Mr Wanfiyo

22. In its Decision of 9 December 2009, the Chamber decided that the position of applicants represented by Mr Wanfiyo would be dealt with in a later decision on common legal representation.¹⁸ The Registry submits, in its Report of 30 June 2010, that victims were consulted on common legal representation and that the VPRS was able to contact 38¹⁹ out of 47 in total.²⁰ The Chamber notes that most of the 38 victims contacted agreed to be represented by Ms Douzima.²¹ The Chamber further observes that, in consultation with the Registry, Ms Douzima confirmed in writing that she would accept to

¹⁸ ICC-01/05-01/08-651, paragraph 18.

¹⁹ ICC-01/05-01/08-806-Conf-Exp-Anx2, paragraph 2.

²⁰ ICC-01/05-01/08-807-Conf-Exp-Anx-Corr and ICC-01/05-01/08-806-Conf-Exp-Anx2, paragraph 3. Out of 50 applicants Mr Wanfiyo had represented, 2 applicants died and one was reported as missing.

²¹ ICC-01/05-01/08-806-Conf-Exp-Anx2, paragraph 6.

represent victims who initially chose to be represented by the late Mr Wanfiyo.²²

23. For the purposes of ensuring the effectiveness of the proceedings and the set-up of an efficient common legal representation scheme, the Chamber decides that the Registry shall assign, before the commencement of trial, the victims initially represented by Mr Wanfiyo to the legal representative who will act on behalf of victims belonging to their respective geographical groups as set out under paragraph 18 of the present Decision.

Support teams

24. In its Report of 24 September 2010, the Registry indicates that Ms Douzima is willing to represent a larger number of victims, provided that she receives the necessary and adequate financial resources.²³

25. In these circumstances, the Chamber recalls and adopts Trial Chamber II's approach as to the establishment of a support structure, as described at paragraph 17 of the "Order on the organisation of common legal representation of victims":²⁴

17. In order to allow the common legal representative to perform his or her duties efficiently, the Registry, in consultation with the common legal representative, shall propose a suitable support structure, in order to provide the common legal representative with the necessary legal and administrative support, both at the seat of the Court and in the field. This support structure must, to the extent possible and within the limits of the available legal aid structure, allow the common legal representative to:

- a. Keep his or her clients informed about the progress of the proceedings and any relevant legal or factual issues that may concern them, in accordance with article 15 of the Code of Conduct for Counsel. The support structure should also allow the common legal representative to respond to a reasonable number of specific legal inquiries from individual victims.
- b. Receive general guidelines or instructions from his or her clients as a group and particular requests from individual victims.

²² ICC-01/05-01/08-902-Conf-Exp-Anx1, page 2.

²³ ICC-01/05-01/08-902-Conf-Exp, paragraph 5.

²⁴ ICC-01/04-01/07-1328, paragraph 17.

- c. Maintain up to date files of all participating victims and their whereabouts.
- d. Obtain qualified legal support on a need basis.
- e. Store and process any confidential filings or other information, including the identity of his or her clients, in a safe and secure manner.
- f. Communicate with victims in a language they understand.

26. The Chamber considers that the effectiveness of the common legal representation scheme indeed depends on the assistance, be it in terms of financial or human resources, which the Registry is able to consider under Regulation 83 of the Regulations of the Court, a provision referring to the Court's legal aid system. In this respect, the Chamber notes the Registry's proposal made at paragraph 8 of its Report of 24 September 2010, namely that a core team consists of one counsel (remunerated at the P-5 level) and one assistant (remunerated at the P-1 level).²⁵ The Chamber endorses this proposal provided that each team is composed of two persons, one based in The Hague and the other in the CAR, as the minimum. Should the legal representatives consider that, based on the specific circumstances of the Case, additional resources are necessary, a request should be addressed to the Registry pursuant to Regulation 83(3) of the Regulations of the Court. Indeed, the Chamber is convinced that, for a meaningful representation of victims, it is of crucial importance that the legal representatives are enabled to maintain effective contacts with the victims in the CAR. The Chamber thus emphasises that the support teams should be composed so as to facilitate regular exchanges between the legal representatives appearing in Court in The Hague and their respective assistants based in the field who will liaise with the victims.

27. Furthermore, this proposal of support teams is in line with the approach taken by Trial Chamber II in its "Order on the organisation of common legal representation of victims":²⁶

²⁵ ICC-01/05-01/08-902-Conf-Exp, paragraph 8.

²⁶ ICC-01/04-01/07-1328, paragraph 18.

18. To the extent that this is reconcilable with the Registry's mandate and neutrality, and insofar as this does not affect the independence of the common legal representative, the support structure may rely on resources available to the Registry at the seat of the Court or in the field (e.g. facilities or support staff available in a field office). If the Registry seconds one or more members of its personnel to the support structure of the common legal representative, these persons, although belonging to the Registry for administrative purposes, shall operate under the instruction of the common legal representative.

The OPCV's role

28. On 6 March 2008, Trial Chamber I issued a decision setting out the role of the OPCV.²⁷ The Chamber finds paragraph 32 of this decision of particular relevance:

32. [...] In line with the submissions of the victims' legal representatives, in the opinion of the Trial Chamber, during this early stage in the Court's existence it is critical that the Office concentrates its limited resources on the core functions given to it under the Rome Statute framework which, as set out above, is to provide support and assistance to the legal representatives of victims and to victims who have applied to participate (rather than representing individual victims).

Although the Chamber is aware that the OPCV was appointed as legal representative of victims before Trial Chamber I, it observes that this concerned a very limited number of dual status victims/witnesses ("dual status individuals") and considers that this appointment was made on an exceptional basis.

29. The Chamber further notes that the OPCV does not represent any victim in the case *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*.²⁸ Therefore, in line with the ICC jurisprudence, the Chamber is of the view that the OPCV's role is primarily to assist the legal representatives of victims rather than representing individual victims in court. The OPCV's mandate is to provide support and assistance to legal representatives of victims and to victims. It is only "where appropriate" that the OPCV may appear before the

²⁷ Decision on the role of the Office of Public Counsel for Victims and its request for access to documents, 6 March 2008, ICC-01/04-01/06-1211, paragraph 30-35.

²⁸ Désignation définitive de Me Fidel Nsita Luvengika comme représentant légal commun du groupe principal de victimes et affectation des victimes aux différentes équipes, 22 September 2009, ICC-01/04-01/07-1488.

Chamber, and solely “in respect of *specific* issues”. This restrictive wording supports the interpretation according to which the OPCV should not act, in principle, on behalf of individual victims. In addition, while Regulation 80(2) of the Regulations of the Court mentions that the Chamber has the possibility to appoint counsel of the OPCV, such appointment is to be considered on an exceptional basis when the particular circumstances of an individual victim so require and, in any event, not as a rule for appointing, for instance, as common legal representative for an important number of victims in a case. The Chamber underlines that, in any event, it is for the Chamber to appoint counsel from the OPCV as legal representative of victims pursuant to Regulation 80(2) of the Regulations of the Court and therefore, victims cannot directly choose such a counsel from the OPCV to represent them.

30. In the present case, considering the potentially very significant number of victims to be represented by the legal representatives, the OPCV’s most appropriate role is to assist them pursuant to Regulation 81(4)(a) of the Regulations of the Court, in particular by way of legal research and advice. As the case may be, the designated legal representatives may further need the assistance of OPCV’s assistants in the court room. The two designated legal representatives from the CAR and their respective support teams will thus be able to better focus on their mandate of representation and express the views and concerns of the victims in court. In addition, the Chamber notes that the two CAR legal representatives identified so far by the Registry are French speakers.²⁹ Therefore, the Chamber suggests that the most efficient way to assist the legal representatives of victims is for them to benefit from the support of OPCV’s assistants who are familiar with the *Bemba* case and able to work in both working languages of the Court (English and French).

²⁹ ICC-01/05-01/08-902-Conf-Exp, paragraph 8.

Dual status individuals

31. The Chamber notes that Ms Douzima may be considered as having particularly good knowledge of the *Bemba* case, as she was representing the majority of victims during the pre-trial proceedings. She was already acting at that stage on behalf of three dual status individuals.³⁰ In these circumstances, the Chamber is convinced that to ensure the effectiveness of the proceedings and in the interests of these victims, Ms Douzima has the appropriate experience to represent dual status individuals during the trial. The Chamber is mindful that if such an option is adopted by the Registry, it will constitute an exception to the grouping of victims referred to in paragraph 18 of the present Decision.

32. As Ms Douzima agreed to represent a larger number of victims, the Chamber thus recommends that she represent all dual status individuals who have so far been allowed to participate in the proceedings, as well as any future dual status individuals. The Chamber expects the OPCV to liaise with Ms Douzima in order to assist her in this task, in particular with regard to the representation of Witnesses 23, 29, 42, 69, 108 and 112. With regard to dual status individuals, the Chamber reiterates its approach set out in paragraphs 15 and 16 of the present Decision that the choice of a common legal representative remains a limited one.

33. The Chamber is convinced that appointing a sole common legal representative to act on behalf of all dual status individuals will serve the purposes of effectiveness and expeditiousness of the proceedings, as Ms Douzima will be able to represent these victims in a consistent manner. Furthermore, this approach will facilitate, as the case may be, the representation of the dual status individuals from the same family.

³⁰ Witnesses 22, 68 and 87.

III. Conclusions

34. Pursuant to Rule 90(2) to (5) of the Rules, and for the purposes of effective trial proceedings, the Chamber authorises the Registry:

- a. to designate two common legal representatives from the CAR to represent the totality of the victims allowed to participate in the *Bemba* case;
- b. to assign, before the commencement of trial, each victim initially represented by Mr Wanfiyo to their appropriate geographical group as set out at paragraph 23 of the present Decision;
- c. to designate the appropriate legal representative to represent victims within the relevant groups as set out in paragraph 18 of the present Decision (Group A on the one hand and Groups B, C and D on the other).

35. The Chamber instructs the Registry to provide both legal representatives with the assistance of a support team as set out under paragraphs 24 to 27 of the present Decision.

36. The Chamber reminds the legal representatives of their professional obligations as set out under the Code of Professional Conduct for counsel, in particular Article 8 of this Code, which relate to the respect for professional secrecy and confidentiality.

37. The Chamber orders the Registry to notify to the legal representatives of victims, as soon as appointed the following documents:

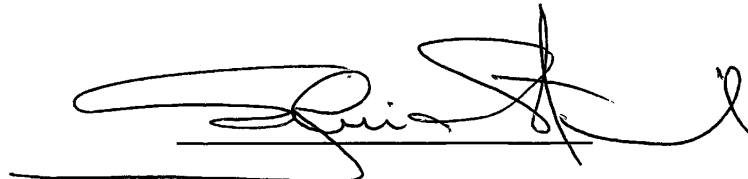
- a. the redacted version of the standard application form of their clients as notified to the prosecution and the defence for the purposes of Rule 89 of the Rules and, as the case may be, as soon as they are allowed to participate in the trial proceedings;
- b. the non redacted version of the Corrected Revised Second Amended Document Containing the Charges (filing 950-Conf-AnxA and AnxB);
- c. the Prosecution Summary of its presentation of evidence and related documents (filings 592-Conf-Exp-AnxA, 595-Conf-Exp-AnxA and B and 669-Conf-Exp-AnxA, B, C and D);
- d. the Updated Consolidated Version of the In-Depth Analysis Chart of Incriminatory Evidence (filing 781-Conf-Exp-AnxA).

38. The Chamber orders the prosecution to provide the statements of the witnesses it intends to rely on at trial, and attached documents and materials if any, to the legal representatives of victims, in the redacted form disclosed to the defence as the case may be, within 7 days of notification of the appointment of any new legal representative for victims.


39. The Chamber instructs the legal representatives of victims who wish to put questions to witnesses who will give evidence during the trial proceedings, to set out in a discrete written application the nature and the detail of their proposed questions to witnesses, at least 7 days before the witness is scheduled to testify.³¹

³¹ See also, ICC-01/05-01/08-807-Corr, paragraph 102, letter h).

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



Judge Sylvia Steiner



Judge Joyce Aluoch



Judge Kuniko Ozaki

Dated this 10 November 2010

At The Hague, The Netherlands