

**Cour
Pénale
Internationale**



**International
Criminal
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

With confidential Annex A and public Annex B

**Decision on “Requête relative à la reprise des actions introduites devant la
Cour par des victimes décédées”**

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

The Office of the Prosecutor

Ms Fatou Bensouda

Mr Jean-Jacques Badibanga

Counsel for the Defence

Mr Peter Haynes

Ms Kate Gibson

Ms Melinda Taylor

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
Victims**

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States Representatives

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REGISTRY

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Counsel Support Section

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Detention Section

**Victims Participation and Reparations
Section**

Ms Isabelle Guibal

Other

Trial Chamber III ("Chamber") of the International Criminal Court ("Court"), in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo* ("Bemba case"), issues the following Decision on "Requête relative à la reprise des actions introduites devant la Cour par des victimes décédées" ("Decision").¹

I. Background

1. On 18 June 2015, Maître Marie-Edith Douzima-Lawson, the legal representative of victims ("Legal Representative"), filed her "Requête relative à la reprise des actions introduites devant la Cour par des victimes décédées" ("Request"), together with nine confidential *ex parte* annexes ("Supporting Documents").² The Legal Representative requests that the Chamber (i) authorise the resumption of actions initiated in the proceedings in the *Bemba* case by nine victims who subsequently died ("Deceased Victims") through the persons mandated by family members to that effect ("Successors"); and (ii) order protective measures, or the maintenance thereof, in relation to the Deceased Victims, Successors, and family members ("Request for protective measures").³
2. On 6 July 2015, the Defence for Mr Jean-Pierre Bemba Gombo ("Defence") filed its "Defence Response to 'Requête relative à la reprise des actions introduites devant la Cour par des victimes décédées'" ("Defence

¹ The Chamber notes that the present Decision was preceded by a number of confidential and confidential *ex parte* filings. However, in the interest of the publicity of proceedings, the present Decision is classified as public and participants are ordered to file redacted versions of their underlying filings or inform the Chamber that the filings can be reclassified as public without redactions. To the extent that this Decision makes reference to the existence and content of documents filed as *ex parte* or confidential, the Chamber considers that the information concerned does not warrant *ex parte* or confidential treatment at this time.

² Requête relative à la reprise des actions introduites devant la Cour par des victimes décédées, 18 June 2015 (notified on 19 June 2015), ICC-01/05-01/08-3256-Conf and Conf-Exp-Anxs1 to 9.

³ ICC-01/05-01/08-3256-Conf, page 13.

Response”),⁴ in which it requests that the Chamber (i) order “the provision of the [Supporting Documents] to the parties, and authorise the making of further submissions upon receipt of this material” (“Request for provision of Supporting Documents”); and (ii) order the Legal Representative “to liaise with those victims who did not oppose their identities being disclosed to the Defence, and provide disclosure of unredacted versions of their application forms once confirmation is obtained” (Request for Disclosure);⁵ and makes submissions on the requirements for the participation by family members of deceased victims.⁶

3. On 20 July 2015, upon leave having been granted by the Chamber,⁷ the Legal Representative filed her “Réplique de la Représentante légale des victimes à la «Réponse de la Défense concernant la Requête relative à la reprise des actions introduites devant la Cour par des victimes décédées» (ICC-01/05-01/08-3263-Conf)” (“First Reply”),⁸ in which she replies to the Request for provision of Supporting Documents;⁹ the Request for Disclosure;¹⁰ and the Defence submissions on the requirements for the participation by family members of deceased victims.¹¹

⁴ Defence Response to ‘Requête relative à la reprise des actions introduites devant la Cour par des victimes décédées’, 6 July 2015, ICC-01/05-01/08-3263-Conf.

⁵ ICC-01/05-01/08-3263-Conf, para. 28.

⁶ ICC-01/05-01/08-3263-Conf, paras 25 to 27.

⁷ Decision on “Demande d’autorisation de répliquer à la Réponse de la Défense concernant la «Requête relative à la reprise des actions introduites devant la Cour par des victimes décédées»”, 15 July 2015, ICC-01/05-01/08-3268-Conf.

⁸ Réplique de la Représentante légale des victimes à la « Réponse de la Défense concernant la Requête relative à la reprise des actions introduites devant la Cour par des victimes décédées » (ICC-01/05-01/08-3263-Conf)", 20 July 2015, ICC-01/05-01/08-3270-Conf.

⁹ ICC-01/05-01/08-3270-Conf, paras 5 to 10.

¹⁰ ICC-01/05-01/08-3270-Conf, paras 11 to 14.

¹¹ ICC-01/05-01/08-3270-Conf, paras 15 to 26.

4. On 24 August 2015, upon the Chamber's instruction,¹² the Legal Representative filed confidential redacted versions of the Supporting Documents.¹³
5. On 8 September 2015, the Defence filed its "Defence Further Submissions on the 'Requête relative à la reprise des actions introduites devant la Cour par des victimes décédées'" ("Further Submissions"),¹⁴ in which it requests that the Chamber (i) reject the Request,¹⁵ submitting *inter alia* that "[t]he Supporting Documents do not support the claim for continued representation";¹⁶ and (ii) order that any outstanding requests for the continued participation of deceased victims be filed, and accompanied by full supporting documentation, by 30 September 2015 ("Request for time limit").¹⁷ In addition, the Defence challenges the redactions applied in the Supporting Documents as not justified, excessive, illogical, and/or as preventing the parties from making any meaningful submissions on their provenance or authenticity ("Challenge to redactions").¹⁸

¹² Email sent by the Chamber to the Legal Representative, the parties and the Registry on 11 August 2015, at 13.36.

¹³ Confidentielle expurgée Annex 1 to 9 to the Requête relative à la reprise des actions introduites devant la Cour par des victimes décédées, 24 August 2015, ICC-01/05-01/08-3256-Conf-Anx1 to 9-Red. The Chamber notes that further to this filing, a decision on the Request for provision of Supporting Document is no longer required.

¹⁴ Defence Further Submissions on the 'Requête relative à la reprise des actions introduites devant la Cour par des victimes décédées', 8 September 2015, ICC-01/05-01/08-3293-Conf.

¹⁵ ICC-01/05-01/08-3293-Conf, para. 65.

¹⁶ ICC-01/05-01/08-3293-Conf, paras 13 to 17.

¹⁷ ICC-01/05-01/08-3293-Conf, para. 65.

¹⁸ ICC-01/05-01/08-3293-Conf, paras 18 to 20, 23 to 25, 28 to 30, 34 to 35, 39 to 41, 45 to 47, 50 to 52, 55 to 57, and 59 to 60.

6. On 21 September 2015, with the Chamber's leave,¹⁹ the Legal Representative filed her "Réplique de la Représentante légale des victimes aux «Soumissions supplémentaires de la Défense concernant la 'Requête relative à la reprise des actions introduites devant la Cour par les victimes décédées'»" ("Second Reply"),²⁰ in which she replies to (i) the Challenge to redactions;²¹ (ii) the Defence allegations that the Supporting Documents do not support the claim for continued representation;²² and (iii) the Request for time limit.²³
7. The Office of the Prosecutor ("Prosecution") did not file any submissions in relation to the Request and related documents.
8. On 21 March 2016, the Chamber issued its "Judgment pursuant to Article 74 of the Statute", in which it found Mr Jean-Pierre Bemba Gombo guilty, under Article 28(a) of the Statute, as a person effectively acting as a military commander, of the crimes of murder as a crime against humanity under Article 7(1)(a) of the Statute; murder as a war crime under Article 8(2)(c)(i) of the Statute; rape as a crime against humanity under Article 7(1)(g) of the Statute; rape as a war crime under Article 8(2)(e)(vi) of the Statute; and pillaging as a war crime under Article 8(2)(e)(v) of the Statute.²⁴

¹⁹ Decision on "Demande d'autorisation de répliquer aux «Soumissions supplémentaires de la Défense concernant la 'Requête relative à la reprise des actions introduites devant la Cour par les victimes décédées'» (ICC-01/05-01/08-3293-Conf)", 15 September 2015, ICC-01/05-01/08-3297-Conf, para. 11.

²⁰ Réplique de la Représentante légale des victimes aux «Soumissions supplémentaires de la Défense concernant la 'Requête relative à la reprise des actions introduites devant la Cour par les victimes décédées'», 21 September 2015, ICC-01/05-01/08-3300-Conf.

²¹ ICC-01/05-01/09-3300-Conf, paras 4 to 9.

²² ICC-01/05-01/09-3300-Conf, paras 10 to 21.

²³ ICC-01/05-01/09-3300-Conf, paras 22 to 23.

²⁴ Judgment pursuant to Article 74 of the Statute, 21 March 2016, ICC-01/05-01/08-3343.

II. Submissions and Analysis

9. For the purpose of the present Decision, the Chamber has considered Articles 64, 67, and 68 of the Statute, Rules 85(a) and 89 of the Rules of Procedure and Evidence ("Rules"), and Regulations 20 and 86 of the Regulations of the Court ("Regulations").

Requirements for the resumption of actions initiated by deceased victims

Submissions

10. The Legal Representative submits that in the jurisprudence of the Court, designated persons have been authorised, under certain conditions, to resume the actions initiated by deceased victims on their behalf.²⁵ She highlights that this possibility is also acknowledged in the standard application form,²⁶ and further supported by Article 75 of the Statute²⁷ on reparations.²⁸ She argues that this approach is necessary, given the extreme length of the procedures before the Court, and applies to both participation and, where applicable, reparations.²⁹

²⁵ ICC-01/05-01/08-3256-Conf, para. 7.

²⁶ ICC-01/05-01/08-3256-Conf, para. 7, referring to page 8, point 9 of the standard application form, provided for under Regulation 86 of the Regulations, which provides: "En quelle qualité agissez-vous au nom de la victime? [...] c) La victime est décédée »".

²⁷ Article 75(1) and (2) provides in relevant part: "La Cour établit des principes applicables aux formes de réparation, telles que la restitution, l'indemnisation ou la réhabilitation, à accorder aux victimes *ou à leurs ayants droit* [...] La Cour peut rendre contre une personne condamnée une ordonnance indiquant la réparation qu'il convient d'accorder aux victimes *ou à leurs ayants droit*" (emphasis added). The Chamber notes that the mention "ou à leurs ayants droits" in Article 75(1) and (2) of the French version of the Statute does not appear in the corresponding provisions of the English version of the Statute.

²⁸ ICC-01/05-01/08-3256-Conf, para. 2.

²⁹ ICC-01/05-01/08-3256-Conf, para. 9.

11. The Defence refers to jurisprudence of this Court³⁰ that (i) applications can only be introduced on a victim's behalf if the victim has given his or her consent, or on behalf of a child or a disabled person;³¹ (ii) applications on behalf of deceased persons are to be rejected where the person making the application does not allege moral harm resulting from the death;³² and (iii) relatives of a deceased person will not be able to participate in the proceedings unless they show that they have suffered harm personally as a result of an incident falling within the parameters of the confirmed charges.³³ It further stresses that, in a decision in the *Ngudjolo* case, the Appeals Chamber "recently clarified that, given that the requirements of Article 68(3) mandate that victim participation be based on the personal interests that are affected, the resumption of a deceased victim's action by a successor was not deemed appropriate".³⁴

12. Regarding the individual applications transmitted with the Request, the Defence notes that there is no indication that the deaths of the Deceased Victims are "a result of any acts within the parameters of the confirmed case".³⁵ Accordingly, the Defence submits that the relatives have not suffered harm as a result of incidents falling within the confirmed charges, and are therefore "outside the recognized scope of victims' participation at the ICC".³⁶

³⁰ ICC-01/05-01/08-3263-Conf, paras 5 to 6. *See also* ICC-01/05-01/08-3293-Conf, paras 6 to 12.

³¹ ICC-01/05-01/08-3293-Conf, para. 6, *quoting* ICC-01/04-423-Corr, para. 24.

³² ICC-01/05-01/08-3293-Conf, para. 7, *quoting* ICC-01/04-01/07-579, paras 62 to 63.

³³ ICC-01/05-01/08-3293-Conf, para. 10, *quoting* ICC-01/04-02/06-449, para. 48.

³⁴ ICC-01/05-01/08-3263-Conf, paras 5 to 7, referring to *The Prosecutor v. Mathieu Ngudjolo Chui*, Decision on the participation of anonymous victims in the appeal and on the maintenance of deceased victims on the list of participating victims, 23 September 2013, ICC-01/04-02/12-140, para. 26.

³⁵ ICC-01/05-01/08-3293-Conf, page 9.

³⁶ ICC-01/05-01/08-3263-Conf, para. 26.

13. Noting the 16 September 2011 deadline for the submission of any new victims' applications to the Registry,³⁷ the Defence submits that "[w]hile the Defence has not yet been informed when the [Legal Representative] learnt about the death of the nine victims in question, the matter is being raised at an extremely late stage of the proceedings, which would certainly justify a ruling by the Trial Chamber that the relatives in question could and should wait for the next phase of the proceedings to seek participatory rights".³⁸

14. Finally, the Defence argues that the views and concerns of the Deceased Victims have, "according to the logic of common legal representation, already shaped the submissions of the [Legal Representative] throughout the entire course of the trial" so that "their continued involvement through their relatives is of little substantive benefit" while their involvement in any forthcoming reparations phase would be "inconsistent with the loss in question having been suffered by the deceased victims themselves during the course of their lifetime, and not by their relatives as a result of their death".³⁹

15. The Legal Representative submits that the Defence interpretation of the decisions relied upon in its Response is incorrect, in so far as it conflates two distinct regimes of participation, namely (i) the application for

³⁷ ICC-01/05-01/08-3263-Conf, para. 13, referencing Corrigendum to the Decision on 401 applications by victims to participate in the proceedings and setting a final deadline for the submission of new victims' applications to the Registry, 21 July 2011, ICC-01/05-01/08-1590-Corr, paras 25 and 38(h), establishing "16 September 2011 as the final deadline for the submission to the Registry of any new victims' applications for participation in the trial proceedings".

³⁸ ICC-01/05-01/08-3263-Conf, para. 13.

³⁹ ICC-01/05-01/08-3263-Conf, para. 27.

participation by a new victim, which requires proof of a causal link between the personal prejudice suffered by the victim and the crimes of the case; and (ii) the resumption of actions by a successor on behalf of a victim who had already been authorised to participate in the proceedings and for which no proof of personal prejudice is required.⁴⁰ In the latter case, the Legal Representative stresses that the successors are only designated for the purpose of continuing the actions initially introduced by the deceased victims and do not intend to initiate any personal action before the Court.⁴¹ Thus, as recognised by Trial Chamber II, the successor is only required to prove the death of the relevant victim, the family link, and the designation as successor by other family members.⁴² She further underlines that in the Central African Republic ("CAR"), individuals attending a *Conseil de famille* can only be close relatives of the deceased victims, which proves the required family link between the Deceased Victim and the Successor.⁴³

16. With reference to the Defence reliance on the Appeals Chamber's Decision in the *Ngudjolo* case, the Legal Representative submits that the Appeals Chamber's decision concerned the appeals stage of the proceedings, and was held to be "without prejudice to any determination on the resumption of participation on behalf of deceased victims in relation to reparation proceedings".⁴⁴ Accordingly, she submits that the Appeals Chamber's decision does not apply to the present case, where no judgment has been

⁴⁰ ICC-01/05-01/08-3270, paras 15 to 17.

⁴¹ ICC-01/05-01/08-3270-Conf, para. 18.

⁴² ICC-01/05-01/08-3270-Conf, para. 18.

⁴³ ICC-01/05-01/08-3256-Conf, para. 8.

⁴⁴ ICC-01/05-01/08-3270-Conf, para. 22, quoting ICC-01/04-02/12-140, paras 25 to 26.

issued by the Chamber and where it would be premature to exclude the Successors of the Deceased Victims.⁴⁵

17. Regarding the Defence complaint about the late filing of the Request, the Legal Representative underlines (i) the time required to familiarise herself with the situation of the victims previously represented by Me Zarambaud; and (ii) the difficulties resulting from the security situation in the CAR.⁴⁶ Regarding the Defence reliance on the 16 September 2011 time limit for the submission of new applications to the Registry, she asserts that this limit has no impact on the resumption of actions initiated by Deceased Victims through their Successors as they do not constitute *new* applications for participation.⁴⁷

18. Finally, the Legal Representative asserts that the resumption of actions of deceased victims by their family members is appropriate and ensures that the personal interests of the deceased continue to be represented, in accordance with Article 68(3) of the Statute.⁴⁸

Analysis

19. The Chamber recalls that in its various decisions on victims' participation, it established different regimes for the participation of deceased victims and their family members in the proceedings. First, the Chamber considered that a deceased victim may be represented by another

⁴⁵ ICC-01/05-01/08-3270-Conf, para. 24.

⁴⁶ ICC-01/05-01/08-3270-Conf, para. 20.

⁴⁷ ICC-01/05-01/08-3270-Conf, para. 21.

⁴⁸ ICC-01/05-01/08-3270-Conf, para. 26.

individual, acting on the deceased victim's behalf, provided that (i) sufficient information has been provided as to the identity of, and kinship between, the deceased victim and the person acting on his or her behalf; and (ii) the deceased victim is, *prima facie*, a victim under Rule 85(a) of the Rules.⁴⁹ Second, the Chamber accepted applications submitted on behalf of deceased victims by relatives who allege having suffered personal harm themselves, on account of crimes committed against the deceased, including the latter's murder, under the condition that sufficient information has been provided as to the identity of, and kinship between, the deceased victim and the individual claiming to have suffered personal harm as a result of the crime committed against the deceased relative.⁵⁰

⁴⁹ See Corrigendum to Decision on the participation of victims in the trial and on 86 applications by victims to participate in the proceedings, 12 July 2010, ICC-01/05-01/08-807-Corr, paras 80 and 83, referring to Fourth Decision on Victims' Participation, 12 December 2008, ICC-01/05-01/08-320, paras 39 to 40; *The Prosecutor v. Thomas Lubanga Dyilo*, Order issuing confidential and public redacted versions of Annex a to the "Decision on the applications by 7 victims to participate in the proceedings" of 10 July 2009 (ICC-01/04-01/06-2035), 23 July 2009, ICC-01/04-01/06-2065-Anx2, page 15; and *Situation in Darfur*, Corrigendum to Decision on the Applications for Participation in the Proceedings of Applicants a/0011/06 to a/0015/06, a/0021/07, a/0023/07 to a/0033/07 and a/0035/07 to a/0038/07, 14 December 2007, ICC-02/05-111-Corr, paras 35 to 36. *But see*, *Situation in the Democratic Republic of Congo*, Decision on the applications for participation filed in connection with the investigation in the Democratic Republic of Congo by Applicants a/0047/06 to a/0052/06, a/0163/06 to a/0187/06, a/0221/06, a/0225/06, a/0226/06, a/0231/06 to a/0233/06, a/0237/06 to a/0239/06, and a/0241/06 to a/0250/06, 3 July 2008, ICC-01/04-505, para. 23; and *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, Grounds for the Decision on the 345 Applications for Participation in the Proceedings Submitted by Victims, 23 September 2009 ICC-01/04-01/07-1491-Red, paras 49 to 56. The Chamber follows the approach of Pre-Trial Chamber III and Trial Chamber I, which held that "close relatives may participate personally, but only because of the effect on them of the relative's death, which constitutes personal harm that they suffered", contrary to the approach elucidated by Pre-Trial Chamber I and Trial Chamber II. *See also* Decision on 772 applications by victims to participate in the proceedings, 18 November 2010, ICC-01/05-01/08-1017, para. 43.

⁵⁰ ICC-01/05-01/08-807-Corr, paras 84 to 85. *See also* ICC-01/05-01/08-1017, paras 43 to 44, recalling that the Appeals Chamber confirmed that when an applicant alleges harm as a result of the loss of a family member, the Chamber must require proof of the identity of the family member and of his or her relationship with the applicant; however, what evidence may be sufficient to prove the aforementioned does not necessarily need to fulfil the evidentiary requirements as in respect of the identities of the applicants themselves, *quoting The Prosecutor v. Joseph Kony, et al.*, Judgment on the appeals of the Defence against the decisions entitled "Decision on victims' applications for participation a/001/06, a/0064/06 to a/0070/06, a/0081/06, a/0082/06, a/0084/06 to a/0089/06, a/0091/06 to a/0097/06, a/0099/06, a/0100/06, a/0102/06 to a/0104/06, a/0111/06, a/0113/06 to a/0117/06, a/0120/06, a/0121/06 and a/0123/06 to a/0127/06" of Pre-Trial Chamber II, ICC-02/04-179, paras 1, 36, and 38.

20. The present Request does not fall under either of these regimes. Indeed, rather than containing new applications for participation, it merely transmits applications by individuals who wish to resume the actions initially submitted by victims who have already been authorised to participate in the proceedings. The Defence submissions as to the requirements established by the jurisprudence referenced in paragraph 11 are therefore not relevant to the Request.

21. Both Trial Chambers II and VI recognized the possibility of resuming actions initiated by victims who subsequently died through individuals mandated to that effect, provided that a number of conditions are met. Trial Chamber II held that close relatives of a victim authorised to participate and who subsequently dies may continue the action initiated by the victim before the Court, but they may do so only on behalf of the deceased victim and within the limits of the views and concerns expressed by the victim in his or her initial application.⁵¹ Trial Chamber II further clarified that this was subject to the conditions that (i) the surviving family member demonstrate a *parental link* between the deceased victim and the person acting on his or her behalf; and (ii) the deceased victim's family *mandated* the person acting on behalf to continue on the deceased victim's

⁵¹ *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, Motifs de la deuxième décision relative aux demandes de participation des victimes à la procédure, 23 September 2009, ICC-01/04-01/07-1737, para 30; *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, Decision on the applications to resume action submitted by the family members of deceased Victims a/0025/08, a/0025/08, a/0051/08, a/0197/08 and a/0311/09, 14 June 2011, ICC-01/04-01/07-3018, para. 20; *The Prosecutor v. Germain Katanga*, Decision on the applications for resumption of action submitted by the family members of deceased victims a/0170/08 and a/0294/09, 11 May 2015, ICC-01/04-01/07-3547, para. 8; and *The Prosecutor v. Germain Katanga*, Decision on the application to resume action, submitted by a family member of deceased Victim a/0253/09, 10 June 2013, ICC-01/04-01/07-3383, para 14.

behalf the action initiated by him or her.⁵² Trial Chamber VI followed the jurisprudence of Trial Chamber II, with slight variations, and decided that:⁵³

any closely-connected individual, such as a close relative of a participating victim who is now deceased, may seek leave to continue the action initiated by the participating victim, but may do so only on behalf of the deceased victim and within the limits of the views and concerns expressed by the victim in his or her initial application. To be authorised to resume the action on behalf of a deceased victim, the Chamber considers that an applicant must provide evidence: (i) of the death of the victim; and (ii) of his or her relationship to the victim; and (iii) where the applicant cannot easily be presumed to be entitled to continue the action or represent the family, he or she must demonstrate his or her appointment by the deceased victim's family members.

22. In the present case, the Chamber notes that further to the issuance of the Judgment pursuant to Article 74 of the Statute, victims may still participate in the sentencing as well as in the reparations stage. In this respect, the Chamber considers it appropriate to follow the jurisprudence of Trial Chambers II and VI and, provided that the relevant conditions are met, authorise family members of victims participating in the proceedings and who subsequently dies, or other closely-connected individuals, to resume the actions initiated by the deceased victims, on behalf of the deceased victim and within the limits of the views and concerns expressed by the victim in his or her initial application. As to the Defence reliance on the Appeals Chamber's decision in the *Ngudjolo* case, the Chamber notes that that decision (i) relates to appellate proceedings; and (ii) is, as clarified by the Appeals Chamber itself, "without prejudice to any determination on behalf of deceased victims in relation to reparation

⁵² ICC-01/04-01/07-1737, para 31; and ICC-01/04-01/07-3018, paras 23, 25, 27, and 29.

⁵³ *The Prosecutor v. Bosco Ntaganda*, Fourth decision on victims' participation in trial proceedings, 1 September 2015, ICC-01/04-02/06-805, para. 8 (internal citations omitted).

proceedings”.⁵⁴ Accordingly, noting that the present Decision relates to the sentencing and reparations stage, the Chamber considers that its approach is not inconsistent with the Appeals Chamber’s decision.

23. Regarding the conditions to be met for a successor to be authorised to resume the actions initiated by a deceased victim, the Chamber considers that the successor must provide evidence of (i) the death of the victim who had been authorised to participate in the proceedings; (ii) the family link or other close connection between the successor and the deceased victim; and (iii) a mandate authorising the successor to continue the actions on behalf of the deceased victim. The Chamber will therefore analyse the individual applications in line with these criteria.

24. In the analysis below, the Chamber will address a number of general Defence challenges to the applications. A case-by-case analysis of each individual application is provided in Annex A.

Individual Applications

25. First, the Chamber notes the Defence argument that the evidence presented by both the Prosecution and the Defence “impact[s] on the credibility of the claims made by the victims in question”,⁵⁵ and that, while it is “not seeking a review of the Chamber’s decision granting participatory rights to these individuals [...] the credibility of their claim is, in the Defence submission, properly before the Chamber in consideration of whether their participatory rights should be transferred

⁵⁴ ICC-01/04-02/12-140, para. 26, footnote 48.

⁵⁵ ICC-01/05-01/08-3263-Conf, para. 17.

to family members.”⁵⁶ In its Further Submissions, the Defence challenges the credibility of the claims made in each of the original application forms (“Application Forms”) of the Deceased Victims.⁵⁷

26. The Chamber emphasises once again that it is called not to rule upon new applications for participation, but to decide on applications for resumption of actions initiated by the Deceased Victims who have already been authorised to participate in the proceedings. As it will not re-examine the merits of the claims made in the respective Application Forms, the Chamber will not consider whether the challenges to the credibility of the Deceased Victims impact the transmission of participatory rights to the Successor.

27. Second, the Defence submits that the Supporting Documents “do not support the claim for continued representation”,⁵⁸ contending that their dates and content “indicate that these documents were requested and produced for the sole purpose of continued victims’ participation in the *Bemba* case”.⁵⁹ In this context, the Defence further argues that the Supporting Documents “were not contemporaneously requested or prepared”, and do not “address the succession of the deceased’s estate in any meaningful way”, are “missing the majority of salient details”, and as such, “invite close scrutiny by the Trial Chamber”.⁶⁰ “Most significantly”, the Defence claims, “not one of the [S]upporting [D]ocuments indicates

⁵⁶ ICC-01/05-01/08-3263-Conf, para. 24.

⁵⁷ ICC-01/05-01/08-3293-Conf, paras 22, 27, 33, 38, 44, 49, 54, 58, and 63.

⁵⁸ ICC-01/05-01/08-3293-Conf, paras 13 to 17.

⁵⁹ ICC-01/05-01/08-3293-Conf, para. 16.

⁶⁰ ICC-01/05-01/08-3293-Conf, para. 16.

that the '*Conseil de famille*' explicitly mandated an appointed successor to resume the action initiated before the Court, a pre-requisite for continued participation".⁶¹ In its specific observations on the individual applications, the Defence highlights, *inter alia*, that the death certificates contain no birthdate or reference to a birth certificate and do not list the profession of the Deceased Victims.⁶²

28. The Legal Representative retorts that the Supporting Documents are sufficient to support the claims for resumption of actions.⁶³ To that end, she claims that the Defence contention that the Supporting Documents were produced for the sole purpose of continued victims' participation in the *Bemba* case contrasts with the Defence claim that the requests should be rejected for failing to indicate that the *Conseil de famille* explicitly mandated an appointed successor to resume the action initiated before the Court.⁶⁴ Regarding the dates of creation of the Supporting Documents, she recalls the time required to familiarise herself with the files of the victims previously represented by Me Zarambaud, and the situation in the CAR at the time of the deaths, which precluded the families from taking the necessary measures to ensure the successions according to CAR law and as, such, from continuing the actions before the Court.⁶⁵

29. Regarding the Defence submission that the *procès-verbaux* of the *Conseils de famille* are not consistent with CAR law and that the Successors have

⁶¹ ICC-01/05-01/08-3293-Conf, para. 17.

⁶² ICC-01/05-01/08-3293-Conf, paras 21, 32, 37, 43, 48, 53, 62, and page 16.

⁶³ ICC-01/05-01/08-3300-Conf, paras 10 to 21.

⁶⁴ ICC-01/05-01/08-3300-Conf, paras 10 to 11.

⁶⁵ ICC-01/05-01/08-3300-Conf, paras 13 to 14.

not been explicitly mandated by the family members to resume the actions initiated before the Court, she submits that article 750 of the CAR *Code de la famille* does not require that the missions of the successor be recorded in the *procès-verbal* of the *Conseil de famille*.⁶⁶ Further, she stresses that having been homologated by the *Tribunal de Grande Instance de Bimbo*, their conformity with CAR law was verified by a competent judicial institution.⁶⁷ She therefore asserts that, in accordance with CAR law, the *procès-verbaux* effectively mandate the designated persons to continue the actions initiated by the Deceased Victims, and that the Supporting Documents prove the mandate afforded to these persons.⁶⁸ Moreover, she asserts that, by submitting a request for resumption of actions before the Court through the Legal Representative, the Successors have expressed their willingness to continue the actions initiated by the Deceased Victims.⁶⁹

30. Regarding the Defence reliance on Trial Chamber II's decision requiring a "specific mandate", she argues that taking into account the particularities of the CAR law of successions, the specific mandate practice "cannot be applied in the present case".⁷⁰ She further stresses that the Defence misinterprets Trial Chamber II's decision to the extent that Trial Chamber II did not reject the request, but deferred its decision and ordered the legal

⁶⁶ ICC-01/05-01/08-3300-Conf, paras 15 to 16.

⁶⁷ ICC-01/05-01/08-3300-Conf, para. 16.

⁶⁸ ICC-01/05-01/08-3300-Conf, para. 18.

⁶⁹ ICC-01/05-01/08-3300-Conf, para. 19.

⁷⁰ ICC-01/05-01/08-3300-Conf, para 21, in the French original «ne peut s'appliquer en l'espèce».

representative to submit a declaration of the deceased's family, including a specific designation in order to continue the action before the Court.⁷¹

31. The Chamber is satisfied with the Legal Representative's explanations as to the dates of issuance and content of the Supporting Documents and therefore rejects the Defence challenges to that effect. Regarding the practice of the "specific mandate", followed by Trial Chamber II,⁷² the Chamber notes that Trial Chamber VI took a different approach by accepting a statement attesting to the relationship between the victim and the applicant which "clearly refer[ed] to the applicant's intention to resume the action initiated by [the deceased victim]."⁷³ The Chamber therefore agrees with the Legal Representative that these requirements are case-specific, taking into account, *inter alia*, the specificities of the applicable domestic law. In the present case, and with reference to the requirements under CAR law, the Chamber is of the view that a provision in the *procès-verbal* of the *Conseil de famille*, approved by a *jugement d'homologation*, satisfies the "mandate" criterion.

32. Further, noting the relevant provision of the CAR *Code de la famille*,⁷⁴ the Chamber is satisfied that the family link or other close connection between

⁷¹ ICC-01/05-01/08-3300-Conf, para. 20.

⁷² ICC-01/04-01/07-3018, para. 23, requiring a "statement from the deceased victim's family specifically mandating a person to continue the action initiated by the victim before the Court".

⁷³ ICC-01/04-02/06-805, para. 11.

⁷⁴ See Article 748 of the CAR *Code de la famille* provides: "Le conseil de famille est composé 1°/ des héritiers légaux ; 2°/ des membres de la famille du défunt jusqu'au troisième degré; 3°/ du conjoint survivant ou des conjoints survivants [...]". Article 764 of the CAR *Code de la famille* provides: "Parmi les parents du défunt, sont désignés héritiers légaux: les descendants, les père et mère, le ou les conjoints et les frères et sœurs". Article 753 of the CAR *Code de la famille* provides: "Les décisions du conseil de famille sont écrites, revêtues de la signature de chacun de ses membres. Elles ne prennent effet qu'à compter de l'homologation par le Tribunal".

the Successor and the Deceased Victim is confirmed by the *jugement d'homologation*. Indeed the *jugement d'homologation* validates the decision of the *Conseil de famille*, composed of family members, nominating a person among its members to act as a successor. However, in the interest of clarity, the Chamber orders the Legal Representative to specify, for each of the Individual Applications, the specific family relationship or other close connection between the Successor and the Deceased Victim. For any future requests, this relationship shall be specified directly in the Individual Applications.⁷⁵

33. Finally, the Chamber notes that in relation to two applications, the Defence stresses that in the Application Forms, the victims specified that they were only seeking reparations for themselves, which, according to the Defence, “undermines any claim for continued representation, given that it does not accord with the deceased’s wishes”.⁷⁶ The Chamber notes that this declaration was made by the victims while they were alive and does not address the measures to be taken after their death. Accordingly, the Chamber finds that this declaration does not preclude a Successor from resuming the actions initiated by the Deceased Victims.

Request for protective measures, Request for disclosure, and Challenge to redactions

Submissions

⁷⁵ The specific relationship is to be indicated in the “resumption of actions” form, considered in paragraph 49 below.

⁷⁶ ICC-01/05-01/08-3293-Conf, paras 36 and 61.

34. In her Request, the Legal Representative asks that the Chamber order the following protective measures: (a) maintenance of anonymity of the Deceased Victims in relation to the public; (b) non-disclosure to the parties and the public of the identity and address, or place of residence, of the family members mentioned in the *jugement d'homologation*; and (c) non-disclosure to the parties and the public of the address, or place of residence, of the Successors.⁷⁷

35. In its Response, the Defence notes that in their Application Forms, seven of the nine Deceased Victims did not oppose their identities being provided to the Defence.⁷⁸ Further, the Defence highlights that it previously requested that their identities and Application Forms be disclosed in a lesser redacted form, following the practice of other Chambers.⁷⁹ Submitting that “this opportunity has now been lost for the seven victims in question”, the Defence reiterates its request that the Chamber follow the described practice and order the Legal Representative “to liaise with those victims who did not oppose their identities being disclosed to the Defence, and provide disclosure of unredacted versions of their [A]pplication [F]orms once confirmation is obtained”.⁸⁰

36. In its Further Submissions, in support of its Challenge to redactions,⁸¹ the Defence claims that there is no justification for the redactions in the Application Forms and Supporting Documents of victims who did not

⁷⁷ ICC-01/05-01/08-3256-Conf, page 13.

⁷⁸ ICC-01/05-01/08-3263-Conf, para. 15.

⁷⁹ ICC-01/05-01/08-3263-Conf, paras 15 to 16.

⁸⁰ ICC-01/05-01/08-3263-Conf, paras 16 and 28.

⁸¹ ICC-01/05-01/08-3293-Conf, paras 18 to 20, 23 to 25, 28 to 30, 34 to 35, 39 to 41, 45 to 47, 50 to 52, 55 to 57, and 59 to 60.

request that their identities be withheld from the Defence, therefore reiterating its request for disclosure of unredacted versions of these materials.⁸² The Defence further submits that: (i) the redactions of the dates of death in the Supporting Documents, which are important indicators of the coherence of the three documents, are not consistent with the redactions applied in the Application Forms and “make it impossible for the parties to even know if they relate to the same person”;⁸³ (ii) the redactions of “the names of all people” in the Supporting Documents “preclude[...] even a basic comparison” with the Application Forms;⁸⁴ and (iii) the redactions of the stamps and signatures prevent the parties from making “meaningful submissions on the provenance or authenticity of the Supporting Documents”.⁸⁵

37. In her First Reply, the Legal Representative submits that the Request for disclosure of identities of all victims who did not oppose it is not relevant regarding the object of her Request.⁸⁶ Concerning the identity of the Deceased Victims, she argues that anonymity needs to be maintained until the Chamber has decided on the Request and, if applicable, until the Successor’s position on the matter has been obtained.⁸⁷ In her Second Reply, she submits that disclosure of the identities of the victims who did not oppose disclosure in the Application Forms would risk identifying the

⁸² ICC-01/05-01/08-3293-Conf, paras 18, 23, 28, 39, 45, 50, and 55.

⁸³ ICC-01/05-01/08-3293-Conf, paras 19, 24, 29, 34, 40, 46, 51, and 56.

⁸⁴ ICC-01/05-01/08-3293-Conf, paras 20, 25, 30, 35, 41, 47, 52, 57, and 60.

⁸⁵ ICC-01/05-01/08-3293-Conf, paras 20, 25, 30, 35, 41, 47, 52, 57, and 60.

⁸⁶ ICC-01/05-01/08-3270-Conf, para. 12. *See also* ICC-01/05-01/08-3270-Conf, para. 11, and footnote 13, arguing that only six victims, and not seven as alleged by the Defence, did not object to the disclosure of their identities. The Chamber notes that all but two Deceased Victims did not oppose their identities being disclosed to the Defence.

⁸⁷ ICC-01/05-01/08-3270-Conf, para. 13.

identity of the Successor and/or place of residence of the potential families concerned.⁸⁸ Therefore, she reiterates her request for maintaining the Deceased Victims' anonymity until the Chamber decides on the Request, and, if applicable, until the Successor's position on the matter has been obtained.⁸⁹

38. Regarding the Challenge to redactions, the Legal Representative purports that the redactions *are* appropriate and comply with the orders of the Chamber.⁹⁰ In this regard, she stresses that the redactions of certain names and signatures are limited to the names and signatures of the Deceased Victims' families,⁹¹ and that redactions of the stamps are limited to the information revealing the locations where the *Conseils de famille* were held, to prevent identification of the places of residence of the Successors and families.⁹² Finally, she emphasizes that the redactions were applied in consultation with the Victims Participation and Reparations Section ("VPRS") and the Office of Public Counsel for victims, and that they are appropriate to guarantee the safety and well-being of the Successors and the relevant families in accordance with Article 68(1) of the Statute.⁹³

Analysis

39. Concerning the Request for protective measures, the Chamber recalls that before the beginning of the trial, it granted anonymity to participating

⁸⁸ ICC-01/05-01/08-3300-Conf, para. 6.

⁸⁹ ICC-01/05-01/08-3300-Conf, para. 6.

⁹⁰ ICC-01/05-01/08-3300-Conf, paras 4 to 9.

⁹¹ ICC-01/05-01/08-3300-Conf, para. 7.

⁹² ICC-01/05-01/08-3300-Conf, para. 8.

⁹³ ICC-01/05-01/08-3300-Conf, para. 9.

victims.⁹⁴ It further found that “[a]t this early stage of the proceedings, on the basis of a preliminary assessment, the suggested non-disclosure of the victims’ identities [...] to the prosecution, the defence, the States Parties or the general public is proportionate and necessary, and will not materially undermine the fair trial rights of the accused”, but clarified that “[a]t later stages of the proceedings, for those granted leave to participate, and depending on the level of suggested participation [...], this approach will be revisited on a case-by-case basis.”⁹⁵ In line with the Chamber’s approach that the need to disclose a victim’s identity was contingent upon the specific modality of participation in the proceedings, victims appearing as witnesses or presenting their views and concerns were required to relinquish their anonymity vis-à-vis the parties.⁹⁶

40. As a result, all participating victims, with the exception of the victims who decided to relinquish their anonymity vis-à-vis the public in the context of their presentation of evidence or views and concerns,⁹⁷ enjoy anonymity vis-à-vis the public. The Chamber sees no reason to depart from this finding in relation to the Deceased Victims. It therefore grants the Legal Representative’s request for maintenance of anonymity of the

⁹⁴ ICC-01/05-01/08-807-Corr, para. 73, ordering that “[u]nless otherwise agreed by the participants or their legal representatives, the participating victims are to be referred to in all filings and all hearings by their pseudonym”.

⁹⁵ Decision defining the status of 54 victims who participated at the pre-trial stage, and inviting the parties’ observations on applications for participation by 86 applicants, 22 February 2010, ICC-01/05-01/08-699, para 31. *See also* ICC-01/05-01/08-1017, para. 60.

⁹⁶ Second order regarding the applications of the legal representatives of victims to present evidence and the views and concerns of victims, 21 December 2011, ICC-01/05-01/08-2027, para. 19.

⁹⁷ V1 (a/0866/10) gave evidence on 1, 2, and 3 May 2012 (T-220, T-221, and T-22) and V2 (a/1317/10) gave evidence on 3, 4, 7, and 8 May 2012 (T-222, T-223, T-224, and T-225), and both decided to testify without protective measures. *See V1*: T-220, page 4, lines 3 to 5; and *V2*: T-222, page 40, lines 12 to 22. Victims a/0542/08 and a/0511/08 presented their views and concerns without protective measures. *See a/0542/08*: T-227, page 3, line 23 to page 4, line 10; and *a/0511/08*: T-228, page 11, line 6.

Deceased Victims in relation to the public. The Chamber is of the view that this protective measure also applies to the Deceased Victims' family members, including the Successors. Accordingly, the Chamber grants the Request for non-communication to the public of the identity and address, or place of residence, of the family members mentioned in the *jugement d'homologation*, and non-communication to the public of the address, or place of residence, of the Successors.⁹⁸

41. Regarding communication of the identities of the Deceased Victims and the Successors to the parties, the Chamber orders the Legal Representative to contact the Successors to determine whether they consent to such communication. In the event the Successors consent, the Legal Representative shall file lesser redacted versions of the Application Forms and Supporting Documents, lifting redactions in accordance with the information obtained from the Successors. In the interest of efficiency, for any future requests for resumption of actions, the Legal Representative shall seek the Successors' position before submitting the request. In case the Successors consent, redactions in the Supporting Documents shall be limited to identifying information in relation to other family members mentioned in the documents and the places of residence of the Successor. Upon submission of the Supporting Documents to the Chamber, in line with the system set out in paragraph 49 below, the VPRS shall further file lesser redacted versions of the Application Forms of the relevant Deceased Victims, lifting redactions of the identities of the Deceased Victims.

⁹⁸ ICC-01/05-01/08-3256-Conf, page 13. For a similar approach, *see* ICC-01/04-01/07-3018, para. 32.

42. As for the Defence Request for disclosure of identities of all participating victims who do not oppose such measure, the Chamber finds that it exceeds the scope of the Request and will not be addressed in the context of the present Decision.

43. Concerning the Defence challenges as to the redactions of the stamps, the Chamber is satisfied with the Legal Representative's explanation that the redactions are necessary to maintain confidentiality of the place where the documents were signed, and are therefore consistent with the Chamber's order.

44. However, noting the Defence observation that while the exact dates of death are provided in the Request, the specific days of death are redacted in the Supporting Documents,⁹⁹ the Chamber considers that these redactions are not justified. The Chamber therefore orders the Legal Representative to lift the relevant redactions and file lesser redacted versions of the Supporting Documents.

Request for time limit

Submissions

45. In its Further Submissions, the Defence requests that the Chamber order that any outstanding requests for the continued participation of deceased

⁹⁹ The Chamber also notes that in ICC-01/05-01/08- 3256-Conf, paras 11 to 19, and ICC-01/05-01/08-3256-Conf-Anx7-Red, page 2, the exact dates of death are not redacted.

victims be filed, and accompanied by full supporting documentation, by 30 September 2015.¹⁰⁰

46. The Legal Representative urges the Chamber to reject this request, arguing that (i) on 11 August 2015, the Chamber ordered the Legal Representative to submit any additional request *without* imposing a time limit; (ii) the situation in the field and the number of Deceased Victims render the collection of documents for the preparation of a file for the resumption of actions tedious; and (iii) a time limit would risk unfairly excluding numerous victims from the procedure.¹⁰¹

Analysis

47. The Chamber recalls that the 16 September 2011 time limit applied to the submission of any *new* victims' applications to the Registry. As set out above, the requests for resumption of actions do not constitute new applications. The Chamber also notes the Legal Representative's explanations as to the time required for the preparation of the required case files. In these circumstances, the Chamber finds that at this stage, the imposition of a time limit for future requests for resumption of actions is neither warranted nor appropriate. This finding may be revisited once the Chamber has established a schedule for reparations proceedings.

¹⁰⁰ ICC-01/05-01/08-3293-Conf, para. 65.

¹⁰¹ ICC-01/05-01/08-3300-Conf, para. 23.

48. However, regarding the Legal Representative notice that she was informed of the death of approximately 130 victims,¹⁰² the Chamber considers it appropriate to amend its order communicated via email on 11 August 2015,¹⁰³ and set up a streamlined regime for the submission and processing of future applications for resumption of actions.¹⁰⁴

System for the submission of future requests for resumption of actions

49. The Chamber decides that any new applications for resumption of actions shall be submitted and processed in line with the following system:

- i. When the Legal Representative is informed that a participating victim has passed away and a family member or other closely-connected individual wishes to resume the action before the Court, she shall assist that individual to collect the relevant documents, i.e., for example, a death certificate and a *jugement d'homologation*, for the creation of a dossier. They will then submit the dossier to the Registry, together with a "resumption of action" application form, to be prepared by the Registry following the format included in Annex B, and duly completed by the individual with the assistance of the Legal Representative.

¹⁰² ICC-01/05-01/08-3300-Conf, footnote 28.

¹⁰³ In its email of 11 August 2015, the Chamber, *inter alia*, ordered that the Legal Representative file any additional requests for resumption of actions and confidential redacted versions in the record of the case.

¹⁰⁴ The Chamber is guided by the system adopted by Trial Chamber VI in *The Prosecutor v. Bosco Ntaganda*: ICC-01/04-02/06-805.

- ii. Upon receipt of such application, the Registry shall assess it in accordance with the criteria set out in paragraph 23 of the present Decision.
 - a) Should the Registry consider that the applicable requirements are met, the Registry shall transmit it, with any relevant documents in its possession, to the Chamber.
 - b) Should the Registry consider that a resumption application is incomplete or does not, for any other reason, meet the applicable requirements, it shall inform the Legal Representative so that, if appropriate, the Successor is given a further opportunity to provide the necessary information or supporting documents.
- iii. Upon receipt of the application, and barring a clear and material error apparent in the Registry's assessment, the Chamber will approve such assessment and authorise the applicant to resume the actions initiated by the deceased victim.¹⁰⁵

¹⁰⁵ The Chamber notes that this streamlined system does not provide for the submission of observations by the parties. In this regard, the Chamber recalls that resumption of actions applications do not constitute *new* applications for participation, and, therefore, the requirements under Rule 89(1) for the transmission of the application forms to the parties for their observations are not applicable. The Chamber further notes that it has established clear criteria for the analysis of the applications, which were informed by the Defence observations on the first set of applications. Finally, the parties will be provided with the Chamber's assessment of the resumption of actions applications, the Registry report and the Supporting Documents after the Chamber has approved the Registry's assessment. Accordingly, the Chamber finds that the streamlined system does not prejudice the rights of the defence or the fairness of the proceedings.

III. Conclusions

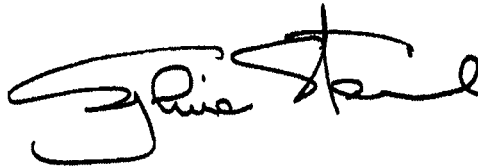
50. In view of the above, the Chamber hereby:

- i. **AUTHORISES** the Successors of a/1841/10, a/1443/10, a/16402/11, a/1610/11, a/2695/10, a/2291/10, a/1829/10, a/1710/10, and a/0497/11 to resume the actions initiated before the Court by the respective Deceased Victim;
- ii. **REJECTS** the Request for imposition of a time limit;
- iii. **ADOPTS** the procedure for the resumption of action by family members of deceased victims set out in paragraph 49 of the Decision;
- iv. **ORDERS** the Legal Representative to lift the redactions of the dates of death in the Supporting Documents and to file confidential lesser redacted versions of the Supporting Documents;
- v. **ORDERS** the Legal Representative to indicate the family relationship or other close connection between the Successor and the Deceased Victims in the Individual Applications;
- vi. **ORDERS** the Legal Representative and the Defence, by 14 April 2016, to consult on any necessary redactions to be applied to the Request (without the Supporting Documents), the First Reply, the Second Reply, the Defence Response, and the Defence Further

Submissions, and to either file redacted versions of the relevant documents or to inform the Chamber that the documents can be reclassified as public without redactions;

- vii. **ORDERS** the Legal Representative to inform the Chamber, by 14 April 2016, as to whether any redactions are required for Annex A of this Decision to be reclassified as public; and
- viii. **ORDERS** that Decisions ICC-01/05-01/08-3268-Conf and ICC-01/05-01/08-3297-Conf be reclassified as public.

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



Judge Sylvia Steiner



Judge Joyce Aluoch



Judge Kuniko Ozaki

Dated this 24 March 2016

At The Hague, the Netherlands