



## DRC Situation and cases Update August 2014 – June 2015

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### ***Lubanga case: Appeals on conviction, sentence and reparation issued***

- Appeals Chamber confirms Mr Lubanga's conviction
- Appeals Chamber confirms sentence, review hearing coming up
- Appeals Chamber amends Decision on the principles and procedures on reparations

[Background] On 14 March 2012, Trial Chamber I (TC I) convicted Thomas Lubanga as a co-perpetrator of the war crimes of conscripting and enlisting children under fifteen years in the Patriotic Forces for the Liberation of Congo (FPLC) and using them to participate actively in hostilities.<sup>1</sup> The crimes were committed between early September 2002 and 13 August 2003 in Ituri, Democratic Republic of Congo (DRC). On 10 July 2012, Mr Lubanga was sentenced to 14 years in prison.<sup>2</sup> On 7 August 2012, the Chamber issued its decision on reparation.

<sup>1</sup> Judgment pursuant to Article 74 of the Statute, ICC-01/04-01/06-2842, 14 March 2012, <http://www.icc-cpi.int/iccdocs/doc/doc1379838.pdf>.

<sup>2</sup> Decision on Sentence pursuant to Article 76 of the Statute (“Sentencing Decision”), ICC-01/04-01/06-2901, 10 July 2012, <http://www.icc-cpi.int/iccdocs/doc/doc1438370.pdf>.

## Appeals Chamber confirms Mr Lubanga's conviction

On 3 October 2012, Mr Lubanga appealed his conviction. He argued that:

- the Prosecution had failed to:
  - investigate adequately the age of children who were part of the UPC Presidential Guard,
  - sufficiently investigate circumstances that could have exonerated Mr Lubanga and,
  - disclose to Mr Lubanga's defence information that could have shed doubt on the reliability of some of the information it relied on during trial.
- the Chamber was wrong when ruling that:
  - the age of children could be determined from their physical appearance;
  - it was enough to consider whether a child was put at risk as a result of his/her belonging to the armed group to determine whether he/she was 'used to participate in hostilities' (one crime for which Mr Lubanga was convicted).<sup>3</sup>

### *Appeals Chamber's Judgment*

On 1 December 2014, the Appeals Chamber (AC) rejected the appeal.<sup>4</sup> It rejected Mr Lubanga's argument that the Chamber had convicted him on the basis of evidence, including video evidence, which did not allow a clear evaluation of whether children recruited/used were below 15. It clarified that the Appeals Chamber only intervenes if it finds that the conclusions in the original decision were unreasonable. In this instance, the Appeals Chamber considered that this was not the case.

The AC nevertheless found that Trial Chamber 1's approach to the determination of whether a child was 'actively participating in hostilities' was flawed. It clarified that while the terms 'to participate actively in hostilities' reflected a wide variety of activities there should be a link between these activities and the combat in which the armed group of the perpetrator was engaged. However, the AC concluded that this error did not justify reversing Mr Lubanga's conviction.

Judge Ušacka filed a dissenting opinion finding that the charges had not been sufficiently detailed and that the age of alleged child soldiers had not been proven beyond reasonable doubt. As a result, she submitted that the conviction should have been reversed.<sup>5</sup> Judge Song also partly dissented. While finding that it was right to reject Mr Lubanga's appeal, he found that the Trial Chamber erred in convicting him of three separate offences (conscripted, enlistment and use of children to actively participate in hostilities) and that these should instead be considered three separate conducts of a single offence.<sup>6</sup>

## Appeals Chamber upholds sentence, review hearing coming up

On 3 October 2012, Mr Lubanga appealed his sentence. He argued that:

- some of his fundamental rights had been violated, such as his right to be tried without undue delay and to fair treatment, and that the decision should be reduced as a result.
- the time he had spent in detention in DRC prior to being transferred to the ICC (he had been detained from 13 August 2003 until 16 March 2006 by the DRC authorities for his activities as President of the UPC) should have been deducted from the sentence, and that

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<sup>3</sup> Trial Chamber I had ruled that "[t]he decisive factor [...] in deciding if an 'indirect' role is to be treated as active participation in hostilities is whether the support provided by the child to the combatants exposed him or her to real danger as a potential target".

<sup>4</sup> Judgment on the appeal of Mr Thomas Lubanga Dyilo against his conviction, ICC-01/04-01/06-3121-Red, 1 December 2014, <http://www.icc-cpi.int/iccdocs/doc/doc1876833.pdf>.

<sup>5</sup> Dissenting Opinion of Judge Anita Ušacka, ICC-01/04-01/06-3121-Anx2, 1 December 2014, <http://www.icc-cpi.int/iccdocs/doc/doc1877188.pdf>.

<sup>6</sup> Partly Dissenting Opinion of Judge Sang-Hyun Song, Anx1, 1 December 2014, <http://www.icc-cpi.int/iccdocs/doc/doc1877180.pdf>.

- Trial Chamber I had wrongly considered sexual violence and harsh treatment for purposes of the sentence despite the fact that they did not form part of the charges against him.

The Prosecutor also appealed the sentence calling for an increase. She argued that 14 years of prison was manifestly disproportionate in light of the gravity of the crimes for which Mr Lubanga had been convicted. She also argued that the Chamber had not sufficiently considered factors such as the particularly dangerous way young children were used in the UPC/FPLC or the effects enlistment and use in hostilities had on the former child soldiers.

On 1 December 2014, the Appeals Chamber dismissed the appeals.<sup>7</sup> Here as well, the Appeals Chamber clarified that it only intervenes if it finds that the conclusions in the original decision were unreasonable, which it said was not the case in this instance. It also found that Mr Lubanga had not demonstrated that his detention in DRC was related to the conduct for which he had been convicted by the ICC.

On 16 July 2015, the Court will hold a hearing to consider whether Mr Lubanga's sentence should be reduced. Article 110(3) of the Statute indeed provides that once a convicted person has served two thirds of his sentence, 'the Court shall review that sentence to determine if it should be reduced'.

### **Appeals Chamber amends Decision on the principles and procedures on reparations**

On 7 August 2012, Trial Chamber I issued its decision on the principles and procedures to be applied to reparations in the *Lubanga* case.<sup>8</sup> In view of Mr Lubanga's indigence, the Trial Chamber decided that:

- reparation in this case would be implemented "through" the Trust Fund for Victims (the Trust Fund), which will have to propose what reparation in this case will look like following consultations with communities;
- reparation through the Trust Fund would tend to be collective;
- individual applications for reparation submitted by victims would not be considered;
- the Court should formulate and implement reparation awards that are appropriate for the victims of sexual and gender-based violence;
- Mr Lubanga was not responsible to pay for reparation.

### *The appeals*

This Decision was appealed by Mr Lubanga<sup>9</sup> as well as by victims' legal teams.<sup>10</sup> The legal representatives of victims advanced multiple arguments including that:

- the Chamber was wrong in refusing to consider victims' application for reparation;
- the Chamber should not have delegated the consideration of reparations claims and other functions to the Trust Fund;
- the Chamber should have found that Mr Lubanga was liable to contribute to reparations.

Mr Lubanga argued that:

<sup>7</sup> Judgment on the appeals of the Prosecutor and Mr Thomas Lubanga Dyilo against the "Decision on Sentence pursuant to Article 76 of the Statute", ICC-01/04-01/06-3122, 1 December 2014. <http://icc-cpi.int/iccdocs/doc/doc1877186.pdf>

<sup>8</sup> Decision establishing the principles and procedures to be applied to reparation, ICC-01/04-01/06-2904, 7 August 2012, <http://icc-cpi.int/iccdocs/doc/doc1447971.pdf>.

<sup>9</sup> Appeal of the Defence for Mr Thomas Lubanga against Trial Chamber I's "Decision establishing the principles and procedures to be applied to reparation rendered on 7 August 2012", ICC-01/04-01/06-2917, 6 September 2012, <http://icc-cpi.int/iccdocs/doc/doc1467508.pdf>.

<sup>10</sup> Acte d'appel à l'encontre de la « Decision establishing the principles and procedures to be applied to reparation », ICC-01/04-01/06-2909, 24 August 2012, <http://www.icc-cpi.int/iccdocs/doc/doc1458961.pdf>; Acte d'appel des représentants légaux des victimes, équipe V01 contre la "Decision establishing the principles and procedures to be applied to reparation" du, ICC-01/04-01/06-2914, 3 Septembre 2012, <http://www.icc-cpi.int/iccdocs/doc/doc1469944.pdf>.

- the Chamber was wrong to enable victims of sexual violence to receive reparation (given that this was not a crime for which he was convicted);
- the approach taken by the Trial Chamber was too broad because it delegated to the Registry and experts the evaluation of victims' harm, the determination of reparation measures and the identification of beneficiaries;
- the Chamber had violated the Statute by delegating some functions to the TFV.

### *Appeals Chamber's Judgment*

On 3 March 2015, the Appeals Chamber found that Trial Chamber I's decision contained errors as a result of which the order for reparation needed to be amended.<sup>11</sup> The Appeals Chamber clarified that an order for reparations must contain the following five elements:

- Be made against the convicted person;
- Establish and inform the convicted person of his or her liability;
- Specify the type of reparations, either individual, collective or both;
- Define the harm caused to direct and indirect victims as a result of the crimes for which the person was convicted, as well as identify the appropriate modalities of reparations based on the circumstances of the case;
- Identify the victims eligible to benefit from reparations or set out the criteria of eligibility.

The Appeals Chamber also found that:

- Indigence is of no relevance to the imposition of liability for reparations: it amended the original reparation order which is now directed against Mr Lubanga.
- The Trust Fund has discretion over whether or not to contribute its "other resources" to finance reparation.
- TC I had ordered collective reparations only.
- There was no right for victims to have their individual applications ruled on when reparations were ordered only on a collective basis.
- Mr Lubanga could not be held liable for reparations in respect of crimes for which he had not been convicted, thus he could not be held liable for reparations in respect of sexual and gender-based violence.

The Appeals Chamber instructed the TFV to present a draft plan for collective reparations no later than 3 September 2015. The Appeals Chamber also exceptionally sought the Trust Fund's assistance in assessing 'the anticipated monetary amount that it considers necessary to remedy the harms caused by the crimes for which Mr Lubanga was convicted'. The parties will be able to appeal that finding.

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## **Katanga case: Reparation phase opens**

- Victims set out their expectations for reparation
- Parties and the Trust Fund file observations on reparation
- External parties also make submissions on reparation
- Chamber sets deadline for the transmission of new applications for reparation

[Background] On 7 March 2014, Mr Katanga was convicted of murder as a crime against humanity and murder, attacking a civilian population, destruction of property and pillaging as war crimes in

<sup>11</sup> See, Judgment on the appeals against the "Decision establishing the principles and procedures to be applied to reparations", ICC-01/04-01/06-3129, 7 August 2012, <http://www.icc-cpi.int/iccdocs/doc/doc1919024.pdf>.

relation to an attack on Bogoro (Ituri, DRC) on 24 February 2003.<sup>12</sup> He was sentenced to 12 years of imprisonment.<sup>13</sup> Appeals against the conviction were discontinued and both the conviction and the sentence are thus final.

### Victims set out their expectations for reparation

On 27 August 2014, Trial Chamber II (TC II) ordered the Registry to report on applications for reparations.<sup>14</sup> Following consultations with 305 victims participating in the case, the Registry filed on 21 January 2015 a public version of its report.<sup>15</sup> On 27 January and 15 May 2015, the Legal Representative of Victims, Me Fidel Nsita, also submitted observations.<sup>16</sup>

The filings set out that:

- Victims consulted clearly prefer economic development or financial reparation measures including: support for housing, support for farming, agriculture, livestock and other professional activities, support for financial compensation, support for education and medical, psychological and social measures.
- Collective reparation should be ordered in addition to, not instead of individual reparation.
- Criteria may need to be established for prioritizing the use of resources.
- Any decision on reparation should be accompanied with an information campaign.
- The DRC should also play a role, and could for example contribute to the Trust Fund.

### External stakeholders file submissions on reparation

On 1 April 2015, Trial Chamber II authorised four interveners to file observations on reparation in accordance with Article 75 of the Statute.

- *Queen's University Belfast's Human Rights Centre (QUBHRC) and University of Ulster's Transitional Justice Institute (UUTJI)* made observations on the procedural role of victims in reparation proceedings, calling for the Chamber to hear from as many victims as possible and to consider organizing reparation hearings both in Ituri and in The Hague.<sup>17</sup> They highlighted the need for continued consultation with victims and for adequate, up to date and accurate outreach and information. They also underlined the need for reparation ordered by the ICC to be complemented by a comprehensive national reparation program in the DRC.
- In its submission, *REDRESS* considered the circumstances and criteria followed by other courts or decision-making bodies to award collective and/or individual reparation.<sup>18</sup> It explained that the mere belonging of victims to a group had not automatically resulted in a collective reparation award by such bodies, adding that there were various instances in

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<sup>12</sup> Jugement rendu en application de l'article 74 du Statut, ICC-01/04-01/07-3436, 7 March 2014, <http://www.icc-cpi.int/iccdocs/doc/doc1963464.pdf>.

<sup>13</sup> Décision relative à la peine (article 76 du Statut), ICC-01/04-01/07-3484, 23 May 2014, <http://www.icc-cpi.int/iccdocs/doc/doc1771079.pdf> (original in French, no translation available).

<sup>14</sup> Order instructing the Registry to report on applications for reparations, ICC-01/04-01/07-3508, 27 August 2014, <http://www.icc-cpi.int/iccdocs/doc/doc1813891.pdf>.

<sup>15</sup> The Registry's Report on applications for reparations in accordance with Trial Chamber II's Order of 27 August 2014, ICC-01/04-01/07-3512-Anx1-Red2, 21 January 2015, <http://www.icc-cpi.int/iccdocs/doc/doc1902748.pdf>.

<sup>16</sup> Redacted version of Observations des victimes sur les réparations, ICC-01/04-01/07-3514, 27 January 2015, <http://www.icc-cpi.int/iccdocs/doc/doc1902885.pdf>; Observations des victimes sur les principes et la procédure en réparation, ICC-01/04-01/07-3555, 15 May 2015, <http://www.icc-cpi.int/iccdocs/doc/doc1976254.pdf>.

<sup>17</sup> Queen's University Belfast's Human Rights Centre (HRC) and University of Ulster's Transitional Justice Institute (TJI) Submission on Reparations Issues pursuant to Article 75 of the Statute, ICC-01/04-01/07-3551, 14 May 2015, <http://www.icc-cpi.int/iccdocs/doc/doc1977076.pdf>.

<sup>18</sup> Redress Trust observations pursuant to Article 75 of the Statute, ICC-01/04-01/07-3554, 15 May 2015, <http://www.icc-cpi.int/iccdocs/doc/doc1977273.pdf>.

which only individual reparation was ordered despite a large number of claimants with common circumstances. REDRESS also emphasised the importance of involving and consulting potential beneficiaries in discussions about priorities. It finally described how other courts and bodies have tackled situations where beneficiaries are no longer congregated exclusively or mainly in the area where the crimes were committed or where not all potential beneficiaries have been identified.

- MONUSCO, OHCHR, UN Women and the UN Secretary-General Special-Representative on Sexual Violence in Conflict (hereinafter ‘the UN’) filed a joint submission on 14 May 2015.<sup>19</sup> The UN made observations on relevant international norms, standards and jurisprudence as well as guiding principles and good practices on reparation. It called for ‘comprehensive reparations which include an appropriate combination of material, symbolic, individual and collective reparations as well as priority access to services’. The UN stressed that collective reparations were not a substitute for individual reparations but instead could complement them. It also submitted that the Court should consider awarding reparation to victims of sexual violence despite Mr Katanga’s acquittal on this charge.
- LIPADHOJ, a Congolese NGO, submitted that child soldier victims should also be entitled to individual and collective reparation, despite Mr Katanga’s acquittal on these charges.<sup>20</sup>

### **Parties and the Trust Fund make submissions on reparation**

On 30 April, 13 and 14 May 2015, the Prosecution, the Trust Fund and the Defence respectively filed observations on reparation.<sup>21</sup> Their submissions addressed, amongst others, the following issues:

- *Scope of beneficiaries*

The Defence, the Prosecutor and the Trust Fund agreed that only those who suffered harm as a result of the crimes for which Mr Katanga has been convicted should qualify as direct or indirect victims entitled to reparation. All agreed that the Chamber may consider inviting the Trust Fund to use its assistance mandate to support other victims including those of the crimes for which Mr Katanga was acquitted.

- *Scope of liability for reparation*

The Defence advanced that Mr Katanga’s liability for reparation should be proportional to the degree of his involvement in the crimes for which he was convicted; it stressed that Trial Chamber II had found Mr Katanga guilty on the basis of his awareness of the crimes rather than his intent that they be committed. The Prosecutor and the Trust Fund opposed this position.

- *Collective/individual reparation*

The Trust Fund specified that its ability to complement reparation awards was only applicable to collective reparation and that its ‘other resources’ were not meant to complement individual reparation awards, such as financial compensation. The Defence highlighted that personal reparation awards may be more appropriate, noting that this was also the preference of victims. It opposed the Trust Fund’s submission that it could only contribute to collective reparation.

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<sup>19</sup> United Nations Joint Submission on Reparations, ICC-01/04-01/07-3550, 14 May 2015, <http://www.icc-cpi.int/iccdocs/doc/doc1977022.pdf>.

<sup>20</sup> Observations de la Ligue pour la Paix, les Droits de l'Homme et la Justice (LIPADHOJ) présentées en vertu de l'article 75-3 du Statut, 15 May 2015, ICC-01/04-01/07-3552-Conf. The submission, while reclassified as public is not yet available. It is referred to in the Defence Consolidated Response to the Parties, Participants and Other Interested Persons’ Observations on Reparation, ICC-01/04-01/07-3564, 16 June 2015, <http://www.icc-cpi.int/iccdocs/doc/doc1997243.pdf>.

<sup>21</sup> Prosecution’s Observations on the Procedure for Reparations, ICC-01/04-01/07-3544, 30 April 2005, <http://www.icc-cpi.int/iccdocs/doc/doc1969721.pdf>; Observations on Reparations Procedure, ICC-01/04-01/07-3548, Trust Fund, 13 May 2015, <http://www.icc-cpi.int/iccdocs/doc/doc1976188.pdf>; Defence Observations on Reparations, ICC-01/04-01/07-3549, 14 May 2015, <http://www.icc-cpi.int/iccdocs/doc/doc1977015.pdf>.

- *Procedure for reparation*

The Trust Fund suggested that the Chamber consider holding in situ reparation hearings and seek expert advice on the consequences of the harm suffered by victims. It also suggested that Trial Chamber II issues the reparation order in two successive parts:

- a first non-appealable part containing the principles to be applied to reparation in the case together with the criteria for the eligibility of victims, type of harm, type of reparations and modalities to be considered. The Trust Fund could then submit a draft implementation plan including the number of eligible victims, the extent of their harm and the modalities of reparations appropriate, and the nature and estimated size of the awards.
- a second part, once the Fund has reported on the completion of the first part, setting out the exact scope of Mr Katanga's liability.

### **Chamber sets deadline for new applications for reparation to be submitted**

On 8 May 2015, the Chamber set 1 October 2015 as the deadline for the Registry to submit to the Chamber any new applications for reparations to be received as well as additional information relating to applications that have already been submitted.<sup>22</sup>

## **Ngudjolo Chui's acquittal confirmed on appeal**

[Background] Mathieu Ngudjolo Chui was accused of three counts of crimes against humanity and seven counts of war crimes in relation to an attack against the village of Bogoro (Ituri) in 2003. Whilst Mr Katanga and Mr Ngudjolo's cases were tried jointly, Trial Chamber II severed the cases on 21 November 2012. On 18 December 2012, Trial Chamber II acquitted Mr Ngudjolo finding that the evidence in its possession was not sufficient to establish beyond all reasonable doubt that he committed the alleged crimes. On 20 December 2012, the Prosecution appealed the verdict.

On 27 February 2015, the Appeals Chamber confirmed (by a majority of 3 judges to 2) Mr Ngudjolo's acquittal.<sup>23</sup> Judge Cuno Tarfusser and Judge Ekaterina Trendafilova dissented finding that Trial Chamber II had erred in refusing to allow the Prosecutor to access some of Mr Ndudjolo's recorded phone conversations and that as a result, the acquittal should have been amended or reversed and a new trial ordered.

## **Ntaganda case moves to trial**

- Trial to open in the Hague, not Bunia
- Chamber sets procedure for victims to apply to participate at trial and legal representation

[Background] On 9 June 2014, the charges against Bosco Ntaganda were unanimously confirmed. He is accused of 13 counts of war crimes (murder and attempted murder; attacking civilians; rape; sexual slavery of civilians; pillaging; displacement of civilians; attacking protected objects; destroying the enemy's property; and rape, sexual slavery, enlistment and conscription of child soldiers under

<sup>22</sup> Décision sur la demande de clarification concernant la mise en œuvre de la Règle 94 du Règlement de procédure et de preuve et étapes ultérieures de la procédure, ICC-01/04-01/07-3546, 8 May 2015, <http://www.icc-cpi.int/iccdocs/doc/doc1974452.pdf>.

<sup>23</sup> See, Judgment on the Prosecutor's appeal against the decision of Trial Chamber II entitled "Judgment pursuant to article 74 of the Statute", ICC-01/04-02/12-271, 27 February 2015, [www.icc-cpi.int/iccdocs/doc/doc1918951.pdf](http://www.icc-cpi.int/iccdocs/doc/doc1918951.pdf).

the age of fifteen years and using them to participate actively in hostilities) and 5 counts of crimes against humanity (murder and attempted murder; rape; sexual slavery; persecution; forcible transfer of population).<sup>24</sup> The alleged crimes relate to events that occurred in 2002-2003 in Ituri, DRC. On 4 July 2014, Pre-Trial Chamber II rejected the Defence's application for leave to appeal the Confirmation of Charges Decision.<sup>25</sup> The trial is set to start on 7 July 2015.<sup>26</sup>

### **Trial to open in The Hague despite earlier recommendation for hearings in Bunia**

On 19 March 2015, Trial Chamber VI recommended to the Presidency that the opening statements of the trial in the *Ntaganda* case should be held in Bunia, DRC.<sup>27</sup> The Chamber considered that holding part of the proceedings *in situ* would bring them closer to affected communities and would be 'in the interests of justice'.

On 15 June 2015, the Presidency ruled against holding the opening hearing in Bunia.<sup>28</sup> Taking into account new submissions by victims, the Prosecutor and the Registry, it decided that the opening statements would be held in The Hague. The Presidency concluded that the potential benefits of holding proceedings in Bunia were outweighed by various concerns including: security risks, the potential costs of holding the proceedings *in situ*, the fact that affected communities would have had limited access to the proceedings, as well as views submitted by victims which expressed fear for their own security, fear of heightened ethnic tension and concern that the accused's return would remind them of the suffering and trauma experienced during the events in the case.

### **Chamber rules on the application process for the participation of victims at trial and legal representation**

On 6 February 2015, the Chamber ruled in favour of a new approach for victims to apply to participate in the trial proceedings.<sup>29</sup> The Chamber distinguished between victims participating directly in proceedings and those participating solely through a common legal representative (CLR). The Chamber indicated that the procedure to allow victims to participate in person would only be decided upon if and when the Chamber decided to allow for this kind of participation.

#### *Application process*

Regarding participation through a CLR, the Chamber endorsed the use of an individual simplified application form. It also delegated part of the application process to the Registry who will be required to:

- Assess applications on the basis of guidance provided by the Chamber;
- Separate applicants into three groups:
  - ➔ *Group A*: applicants who clearly qualify as victims;
  - ➔ *Group B*: applicants who clearly do not qualify as victims<sup>30</sup>;
  - ➔ *Group C*: applicants for whom the Registry cannot make a clear determination.

<sup>24</sup> Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Bosco Ntaganda, ICC-01/04-02/06-309, 9 June 2014, <http://icc-cpi.int/iccdocs/doc/doc1783301.pdf>.

<sup>25</sup> Decision on the "Requête de la Défense sollicitant l'autorisation d'interjeter appel de la Décision sur la confirmation des charges datée du 9 juin 2014", ICC-01/04-02/06-322, 4 July 2014, <http://icc-cpi.int/iccdocs/doc/doc1796795.pdf>.

<sup>26</sup> At the time of writing the Defence has applied for the start of the trial to be postponed.

<sup>27</sup> Recommendation to the Presidency on holding part of the trial in the State concerned, ICC-01/04-02/06-526, 19 March 2015, [www.icc-cpi.int/iccdocs/doc/doc1945380.pdf](http://www.icc-cpi.int/iccdocs/doc/doc1945380.pdf).

<sup>28</sup> Presidency Decision on the recommendation to the Presidency on holding part of the trial in the State concerned, ICC-01/04-02/06-645-Red, 15 June 2015, <http://www.icc-cpi.int/iccdocs/doc/doc1985625.pdf>.

<sup>29</sup> Decision on victims' participation in trial proceedings, 6 February 2015, ICC-01/04-02/06-449, <http://www.icc-cpi.int/iccdocs/doc/doc1915167.pdf>

<sup>30</sup> The Chamber indicated that Group B victims' applications should be further sub-divided as follows: (i) applicants who failed to demonstrate their identity or kinship; (ii) applicants who suffered alleged harm outside the temporal scope of the charges; (iii) applicants who suffered alleged harm outside the geographic scope of the charges and (iv) applicants who were rejected for any other reason.



- Report to the Chamber, the Prosecution, the Defence and the LRVs.

The Chamber ruled that only applications that fall within Group C would go to the parties for observations and then be individually reviewed by the judges. The Chamber will endorse the Registry's assessment for Group A and B applications unless there is a clear error.

The Registry is also tasked, every four months, to provide a detailed report, in coordination with the LRVs, about the general situation of participating victims.

#### *Legal representation*

In its 6 February decision, the Chamber had directed the Registry to consult with victims who participated during the confirmation stage on whether the current legal representation system (two counsels from OPCV) should be maintained. On 16 March 2016, the Registry recommended that OPCV continue to represent victims participating in the case<sup>31</sup>, indicating that 81% of the victims consulted wished to continue to be represented by their current counsel. The Registry also stressed that victims had called for increased and more regular interactions with their lawyers. It thus submitted that the composition of and resources available to the legal representatives' team should allow for frequent and quality contact between the legal representatives' team and their clients.

On 16 June 2015, the Majority of the Chamber endorsed the Registry's recommendation explaining that it could not identify any concrete reason to change a system that appeared to be functioning very well so far.<sup>32</sup> Judge Ozaki dissented. She submitted that counsel from OPCV may not be or be perceived to be independent as they are part of the institution and that as a result an external counsel, based in DRC should have been appointed.<sup>33</sup>

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<sup>31</sup> Registry's Report on Consultation with victims pursuant to Decision ICC-01/04-02/06-499, ICC-01/04-02/06-513-Conf-Exp, 16 March 2014, <http://www.icc-cpi.int/iccdocs/doc/doc1936284.pdf>. However, the Registry also explained that many victims felt that they did not have enough information to be in a position to assess the performance of their legal representative and to make an informed decision on whether they should continue to represent them.

<sup>32</sup> Second decision on victims' participation in trial proceedings, ICC-01/04-02/06-650, 16 June 2015, <http://www.icc-cpi.int/iccdocs/doc/doc1997136.pdf>.

<sup>33</sup> Partly Dissenting Opinion of Judge Ozaki, ICC-01/04-02/06-650-Anx, 16 June 2015, <http://www.icc-cpi.int/iccdocs/doc/doc1997137.pdf>.