



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEĆA KOSOVA

In: KSC-BC-2020-06
The Prosecutor v. Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi

Before: Pre-Trial Judge
Judge Nicolas Guillou

Registrar: Dr Fidelma Donlon

Filing Participant: Dr Fidelma Donlon

Date: 11 June 2021

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**Second Supplement to First Registry Report to the Pre-Trial Judge on Victims'
Applications for Participation in the Proceedings**

with one strictly confidential and *ex parte* Annex

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I. INTRODUCTION

1. The Victims' Participation Office ('VPO') hereby files a second supplement ('Second Supplement') to its First Report¹ to the Pre-Trial Judge on victims' applications for participation in the proceedings, pursuant to Rule 113(2) of the Rules² and the Framework Decision.³

2. With this Second Supplement, VPO provides additional information to the Pre-Trial Judge about the deceased applicant Victim-05/06. In addition, VPO submits to the Pre-Trial Judge the application of Victim-26/06, who is a family member of deceased applicant Victim-05/06.

II. PROCEDURAL HISTORY

3. On 26 October 2020, the Pre-Trial Judge confirmed the indictment ('Confirmed Indictment') against Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi (collectively 'the Accused').⁴

4. A public redacted version of the Confirmed Indictment was filed on 4 November 2020, following the arrest and transfer of the Accused to the Detention Facilities of the Specialist Chambers in The Hague, the Netherlands.⁵

5. On 4 January 2021, the Pre-Trial Judge issued the Framework Decision setting out the principles governing the victim application process and the role of VPO.⁶

¹ KSC-BC-2020-06, F00203, Registry, First Registry Report to the Pre-Trial Judge on Victims' Applications for Participation in the Proceedings, 15 February 2021, public ('First Report'), with confidential and *ex parte* Annexes 1-19.

² Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, KSC-BD-03/Rev3/2020, 2 June 2020 ('Rules').

³ F00159, Pre-Trial Judge, Framework Decision on Victims' Applications, 4 January 2021, public, ('Framework Decision').

⁴ F00026/RED, Pre-Trial Judge, Public Redacted Version of Decision on the Confirmation of the Indictment Against Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi, 26 October 2020, public.

⁵ F00045/A03, Specialist Prosecutor, Annex 3 to Submission of Corrected and Public Redacted Versions of Confirmed Indictment and Related Requests, 4 November 2020, public.

⁶ Framework Decision, paras 13-49.

6. On 15 February 2021, VPO filed the First Report with the Pre-Trial Judge, recommending 17 applicants for admission.⁷ In its First Report, VPO recommended for admission applicant Victim-05/06, who claimed to be a direct victim of kidnapping, torture, unlawful detention and cruel treatment at a detention site listed in the Confirmed Indictment.⁸

7. On 1 April 2021, VPO filed a supplement to its First Report ('Supplement')⁹ in which it made a recommendation on grouping for the purposes of common representation. VPO also noted that Victim-05/06 had died since the submission of the First Report and that additional information on this matter would be submitted by VPO to the Pre-Trial Judge in a separate filing.¹⁰

8. On 21 April 2021, the Pre-Trial Judge issued the First Decision on Victims' participation ('First Decision'), admitting nine applicants to the proceedings as participating victims.¹¹ The Pre-Trial Judge also noted that, with regard to the application of deceased Victim-05/06, a separate filing would be submitted by VPO.¹²

III. CLASSIFICATION

9. VPO files this Second Supplement as confidential and *ex parte* in accordance with Rule 113 of the Rules. VPO has no objection to the reclassification of the Second Supplement so that it can be disclosed to the Parties, as it contains no identifying information. In the event that the Pre-Trial Judge decides to re-classify this Second Supplement as public, this Second Supplement also constitutes the Report to the Parties pursuant to Rule 113(2) of the Rules.¹³

⁷ First Report, paras 48-54.

⁸ See First Report, paras 38 and 48.

⁹ F00241, Registry, Supplement to First Registry Report to the Pre-Trial Judge on Victims' Applications for Participation in the Proceedings with Recommendation on Grouping, 1 April 2021, public ('Supplement'), with one confidential and *ex parte* annex.

¹⁰ Supplement, fn. 10.

¹¹ F00257, Pre-Trial Judge, First Decision on Victims' Participation, 21 April 2021, confidential ('First Decision'). A public redacted version was issued on 23 April 2021 (F00257/RED).

¹² Supplement, para. 14.

¹³ See Framework Decision, para. 50.

10. Together with this filing, VPO submits one strictly confidential and *ex parte* Annex.¹⁴ The Annex contains a summary of the application of Victim-26/06, including a summary of the alleged events and harm suffered, as well as any request for protective measures.¹⁵ Since the Annex does contain identifying information, it is filed as strictly confidential and *ex parte* pursuant to Rule 113(2) and Rule 82(1) of the Rules.¹⁶

11. The application form and supporting documentation have been uploaded in Legal Workflow ('LW') and disclosed only to the Pre-Trial Judge in accordance with Rule 113(1) of the Rules, which provides that application forms shall not be disclosed to the Parties.¹⁷

IV. ASSESSMENT OF APPLICATION

12. Following the death of applicant Victim-05/06, VPO received the application of Victim-26/06, who wishes to apply for participation as a direct family member of Victim-05/06 and, therefore, as an indirect victim. The applicant has also indicated a desire to continue with the application of Victim-05/06 as a successor.

13. VPO has assessed the formal completeness of the application form submitted by Victim-26/06 and the content of the application in light of the requirements stemming from the definition of a participating victim under Article 22(1) of the Law on Specialist Chambers and Specialist Prosecutor's Office ('Law') and Rule 113(1) of the Rules.

A. APPLICATION AS AN INDIRECT VICTIM

14. The application of Victim 26/06 can be considered formally **complete**.¹⁸ The applicant is a natural person and submitted a signed application form, as well as

¹⁴ *Id.*, para. 24(e)b.

¹⁵ *Id.*

¹⁶ *See also* First Decision, para. 70.

¹⁷ *See also* Framework Decision, para. 25.

¹⁸ *See* First Report, para. 12.

relevant supporting documentation, including a birth certificate as proof of kinship, an ID card, and the death certificate of Victim-05/06.¹⁹

15. Additionally, as summarised in the First Report, the **alleged crimes** in the application of Victim-05/06 appear to constitute crimes that fall within the temporal and geographical scope of the Confirmed Indictment, namely kidnapping, torture, unlawful detention, and cruel treatment at a detention site in the Confirmed Indictment occurring within the indictment period.²⁰

16. Regarding the requirement that the **harm** has to be suffered *personally*, for indirect victims, VPO assessed whether the applicant has alleged that the harm suffered arises from the harm suffered by the direct victim and whether the harm is a result of a personal relationship with the direct victim.²¹

17. Immediate family members (spouse, parents, children, siblings) are presumed to be in a close personal relationship with the direct victim.²² Other family members having a special bond of affection with or dependence on the direct victim may also be considered to be in a close personal relationship with the direct victim.²³

18. In terms of mental harm suffered by indirect victims, emotional suffering (such as grief, sorrow, bereavement or distress) of an indirect victim as a result of the death or grave injury of a direct victim shall be presumed, provided that the close relationship between them is sufficiently established.²⁴

¹⁹ All documents have been uploaded in LW to the file of Victim-26/06.

²⁰ See First Report, para. 31; F000203/A06, Annex 6 to First Registry Report to the Pre-Trial Judge on Victims' Applications for Participation in the Proceedings, 15 February 2021, confidential and *ex parte* ('Annex 6 to the First Report').

²¹ See Framework Decision, para. 34; First Decision, para. 55.

²² First Decision, para. 50; see also STL, *Prosecutor v. Ayyash et al.*, STL-11-01/PT, Pre-Trial Judge, Decision on Victims' Participation in the Proceedings, 8 May 2012 ('*Ayyash et al.* Decision on Victim Participation'), para. 84.

²³ First Decision, para. 50; see also *Ayyash et al.* Decision on Victim Participation, paras 49-50. Similarly, ICC, *Prosecutor v. Thomas Lubanga Dyilo*, ICC-01/04-01/06-1813, Trial Chamber I, Redacted version of "Decision on 'Indirect Victims'", 8 April 2009, paras 44, 50; ECCC, *Prosecutor v. Kaing Guek Eav alias Duch*, Trial Chamber, Case No. 001/18-07-2007/ECCC, Judgment, 26 July 2010 ('*Duch Judgment*'), para. 643.

²⁴ First Decision, para. 50.

19. The applicant claims to have suffered mental harm because of the harm suffered by an immediate family member, Victim-05/06.²⁵ The applicant also alleges material harm, stating that all of the family's property in Kosovo was confiscated and destroyed.²⁶ VPO requested the submission of any available supporting documentation, and the applicant informed VPO that supporting documentation regarding harm is not available.

20. In light of the *prima facie* standard,²⁷ VPO considers that the requirement of a close personal relationship with the direct victim has been sufficiently demonstrated in the applicant's statements and other available supporting material.²⁸ Accordingly, VPO considers that indirect victim-applicant Victim-26/06 meets *prima facie* the necessary requirements as to harm suffered and the requisite close personal relationship with the direct victim.

21. In relation to the harm being a **direct result** of a crime in the Confirmed Indictment, VPO has also assessed that the applicant meets this requirement on a *prima facie* basis.²⁹

22. In light of the foregoing, VPO recommends that the Pre-Trial Judge admit applicant Victim-26/06 as a participating victim in the proceedings.

B. CONTINUATION WITH AN APPLICATION AS A SUCCESSOR

23. As noted above, applicant Victim-26/06 has also indicated a desire to continue the application of Victim-05/06 as a successor.

24. Article 22 of the Law provides that a victim's personal interests and rights in the criminal proceedings before the Specialist Chambers are notification, acknowledgment, and reparation. Additionally, Articles 3(2)(c) and (4) of the Law

²⁵ See First Report, paras 32-33.

²⁶ Annex 1; see also First Report, para. 38; Annex 6 to the First Report.

²⁷ See First Report, paras 15-16.

²⁸ Annex 1; see also Annex 6 to the First Report.

²⁹ First Decision, para. 55.

provide that provisions of Kosovo law are applicable to proceedings before the Specialist Chambers if they have been expressly incorporated and applied by it. Any relevant provisions of Kosovo law regarding succession³⁰ have not, thus far, been expressly incorporated and applied by the Law.

25. Although there is no explicit provision in the legal framework of the Specialist Chambers concerning the admission of a “successor” to an application of a deceased victim (or victim-applicant), there also appear to be no legal impediments to a favourable consideration of the matter by the Pre-Trial Judge. In addition, consideration may be given to the potential recognition of the applicant as a successor in the context of participation in any future reparations proceedings.

26. Below is a description of relevant jurisprudence of other courts and tribunals regarding: (i) the possibility and conditions for a successor to continue with a victim’s application; and (ii) differences, in practical terms, between participation as an indirect victim and as a successor.

(i) International Criminal Court (‘ICC’)

27. The jurisprudence of the ICC on this matter varies.³¹ Relevant cases at the ICC concerned an application lodged in the name of a deceased victim or a situation where a participating victim died during the proceedings and the relatives wished to continue on the victim’s behalf.

a. Application on behalf of a deceased person

28. Pre-Trial Chamber III (hereafter, the ‘Single Judge’) in the *Bemba* case noted that the victim applicant had submitted the application form acting on her own behalf, but also acting on behalf of her deceased father. The Single Judge took the view that although a deceased person cannot be a participant in the proceedings, his or her

³⁰ Kosovo Criminal Procedure Code, Law No. [04/L-123](#), 2012, art. 528 (entitled “Compensation after Death of Claimant”).

³¹ See Tibori-Szabó, K. & Hirst, M., eds., *Victim Participation in International Criminal Justice: Practitioner’s Guide*, vol. 11, T.M.C. Asser Press, 2017 (‘Practitioner’s Guide’), p. 422.

rights can be represented in the proceedings before the Court by his or her successor, if the successor is a victim recognized as a participant in the proceedings. The Single Judge deemed it appropriate that the successors of a deceased person exercise the rights of the deceased person in the proceedings in order to safeguard claims for any future reparations.³²

29. The Single Judge stated that successors must clearly indicate in the application form whether they act on their own behalf or on behalf of the deceased person. In this case, the applicant had to provide sufficient information on: i) the identity of the deceased person; ii) the identity of the successor; and iii) the kinship between the successor and the deceased.³³

30. The Single Judge further stated that immediate family members and dependants of a deceased person may also allege to have been personally subjected to emotional suffering resulting from the death of their relative, provided that the immediate family member or dependent has made an application to this effect and submitted sufficient information.³⁴

31. The Trial Chamber in the *Bemba* case upheld this approach, noting that “a victim does not lose the right to participate because they have died”, and found that the views and concerns of a deceased victim can be represented by another victim.³⁵ Furthermore, the Chamber acknowledged other instances where relatives acting on behalf of deceased victims had submitted applications in the case and alleged personal harm to themselves, either as a direct consequence of the alleged crimes or on account of crimes committed against the deceased.³⁶ In those instances, the Chamber had

³² ICC, *Prosecutor v. Jean-Pierre Bemba Gombo*, ICC-01/05-01/08-320, Pre-Trial Chamber III, Fourth Decision on Victims’ Participation, 12 December 2008, paras 42-46.

³³ *Id.*, paras 48-49.

³⁴ *Id.*, para. 51.

³⁵ ICC, *Prosecutor v. Jean-Pierre Bemba Gombo*, ICC-01/05-01/08-807-Corr, Trial Chamber III, 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, paras 80-85.

³⁶ *Id.*, para. 84.

treated both the deceased applicant and the person acting on his or her behalf as victims who had suffered personal harm.

32. In the *Lubanga* case, Trial Chamber I permitted the uncle of a victim who had been killed to act on his behalf. Furthermore, Trial Chamber I concluded that the person acting on behalf of a victim in these circumstances does not have to be a relative or a legal guardian of the victim because, within the Rules, the “person acting” is undefined and unrestricted.³⁷

33. By contrast, in the *Situation in the DRC*, Pre-Trial Chamber I 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 have suffered.³⁸ A similar approach was taken in several other cases.³⁹

b. Continuation with an application by a successor

34. In cases where applications had already been submitted and a victim participant subsequently died, successors have been permitted to continue or resume applications on behalf of the deceased victim.

35. In the *Katanga & Ngudjolo Chui* case, Trial Chamber II issued several decisions ruling on requests from successors to continue with the applications of deceased

³⁷ ICC, *Prosecutor v. Thomas Lubanga Dyilo*, ICC-01/04-01/06-2065-Anx2-RSC, Trial Chamber I, Annex 2: 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, pp. 14-15.

³⁸ ICC, *Situation in the Democratic Republic of the Congo*, ICC-01/04-423-Corr-tENG, Pre-Trial Chamber I, Corrigendum to the “Decision on the Applications for Participation Filed in Connection with the Investigation in the Democratic Republic of the Congo by a/0004/06 to a/0009/06, a/0016/06 to a/0063/06, a/0071/06 to a/0080/06 and a/0105/06 to a/0110/06, a/0188/06, a/0128/06 to a/0162/06, a/0199/06, a/0203/06, a/0209/06, a/0214/06, a/0220/06 to a/0222/06, a/0224/06, a/0227/06 to a/0230/06, a/0234/06 to a/0236/06, a/0240/06, 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”, 31 January 2008, paras 23-25.

³⁹ See, e.g., ICC, *Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, ICC-01/04-01/07-579, Pre-Trial Chamber I, Public Redacted Version of the “Decision on the 97 Applications for Participation at the Pre-Trial Stage of the Case”, 10 June 2008, para. 63; *Situation in Darfur, Sudan*, ICC-02/05-111-Corr, Pre-Trial Chamber, Corrigendum to Decision on the Applications for Participation in the Proceedings of Applicants a/0011/06 to a/0015/06, a/0021/07 to a/0033/07 and a/0035/07 to a/0038/07, 14 December 2007, paras 35-36.

victims.⁴⁰ The Chamber accepted that, in cases where a victim dies after having filed an application, a person appointed by the family can continue the action triggered by the victim. The Chamber found that the close relative of the victim can take over the application on behalf of the deceased victim, but only within the limits of the views and concerns expressed by the deceased victim in his or her initial application.⁴¹

36. In its decisions, the Chamber considered whether the family relationship between the deceased victim and the person wishing to act on the victim's behalf has been established and whether it has been shown that the victim's family explicitly mandated that individual to resume the action initiated before the Court.⁴²

37. This approach has been followed and further developed by two other Chambers in the *Ntaganda* and *Bemba* cases.⁴³

38. However, in the appeal against the Judgment in the *Ngudjolo* case, the Appeals Chamber took a divergent approach. The Appeals Chamber noted that victims who

⁴⁰ See, e.g., ICC, *Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, ICC-01/04-01/07-3018, Trial Chamber II, Decision on the applications to resume action submitted by the family members of deceased Victims a/0025/08, a/0051/08, a/0197/08 and a/0311/09, 14 June 2011, paras 18-20; *Prosecutor v. Germain Katanga*, ICC-01/04-01/07-3383, Trial Chamber II, Decision on the application to resume action, submitted by a family member of deceased Victim a/0253/09, 10 June 2013, paras 6-8; *Prosecutor v. Germain Katanga*, ICC-01/04-01/07-3547, Trial Chamber II, Decision on the application for resumption of action submitted by the family members of deceased victims a/0170/08 and a/0294/09, 11 May 2015, paras 6-9. In the *Katanga* case, Trial Chamber II also permitted persons to continue the actions of two deceased victims in the context of reparations proceedings. See ICC, *Prosecutor v. Germain Katanga*, ICC-01/04-01/07-3547, Trial Chamber II, Decision on the application for resumption of action submitted by the family members of deceased victims a/0170/08 and a/0294/09, 11 May 2015, paras 6-9.

⁴¹ See *ibid.*

⁴² The ICC has required a successor to submit certain documentation concerning the death of the victim and his or her relationship to the victim (e.g., a death certificate and proof of kinship), as well as evidence that family members had mandated or appointed the designated person to continue the participation in the proceedings on the deceased victim's behalf. See *ibid.* Trial Chamber VI in the *Ntaganda* case further developed this last requirement, indicating that it would require positive proof of appointment by the deceased victims' family members only where the applicant cannot easily be presumed to be entitled to continue the action or represent the family. See ICC, *Prosecutor v. Bosco Ntaganda*, ICC-01/04-02/06-805, Trial Chamber VI, Fourth decision on victim's participation in trial proceedings, 1 September 2015 ('*Ntaganda* Decision on Victim Participation'), para. 8.

⁴³ *Ntaganda* Decision on Victim Participation, paras 7-13; see also ICC, *Prosecutor v. Jean Pierre Bemba Gombo*, ICC-01/05-01/08-3346, Trial Chamber III, Decision on "Requête relative à la reprise des actions introduites devant la Cour par des victimes décédées", 24 March 2016, para. 22.

are deceased can no longer be considered to be participating victims.⁴⁴ Therefore, although the views and concerns of deceased victims remain a part of the case record under review, the Appeals Chamber found that it would not be appropriate to permit successors to continue or resume participation on behalf of deceased victims.⁴⁵ Yet the Appeals Chamber also specifically noted that its decision was “without prejudice to any determination on the resumption of participation on behalf of deceased victims in relation to reparation proceedings”.⁴⁶

(ii) Extraordinary Chambers in the Courts of Cambodia (‘ECCC’)

39. Successors to deceased victims have also been permitted in proceedings before the ECCC, where a victim may join the proceedings as a civil party essentially in support to the prosecution and to participate in the criminal trial, and “where a request for civil party participation implicitly involves a request for reparations”.⁴⁷

40. In the *Duch* case, the Trial Chamber allowed a successor to act as a civil party on behalf of the deceased victim provided that the deceased had filed a request to appear as a civil party before his or her death. If this was not the case, a successor was only allowed to seek reparation in his/her own right for personal damage arising from the death of the victim provided that the death was linked directly to an offence the accused had been charged with.⁴⁸ As regards documentation, the Chamber required a death certificate and an identification document from the successor.⁴⁹

⁴⁴ ICC, *Prosecutor v. Mathieu Ngudjolo Chui*, ICC-01/04-02/12-140, Appeals Chamber, 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, para. 25.

⁴⁵ *Id.*, paras 25-26.

⁴⁶ *Id.*, para. 26 at fn. 48.

⁴⁷ Practitioner’s Guide, p. 422. It should also be noted that there are differences between the nature of civil parties at the ECCC, which is rooted in the civil law tradition, and victim participation at the ICC, which has blended different traditions. But these differences in victim participation should not be overstated. *See id.*, pp. 4-5.

⁴⁸ ECCC, *Kaing Guek Eav alias Duch*, Trial Chamber, Case No. 001/18-07-2007/ECCC/TC, Doc. E2/5/3, Decision on Motion Regarding Deceased Civil Party, 13 March 2009, paras 10-12; *see also Duch Judgment*, para. 641.

⁴⁹ *See Duch Judgment*, 26 July 2010, para. 641 at fn. 1074.

41. On appeal, the Supreme Court Chamber of the ECCC found that the Trial Chamber's limitation on the scope of eligible successors to circumstances where the direct victim had personally filed a request to appear as a civil party before his/her death had no basis in law.⁵⁰ The Supreme Court Chamber stressed that, under the 2007 Code of Criminal Procedure, a family member of a direct victim may participate in criminal proceedings:

- i. under Article 13, as an indirect victim who has suffered personal injury as a result of the injury of his or her family member (*iure proprio*);
- ii. as a successor of a direct victim by bringing or supporting a claim on behalf of a deceased victim (*iure hereditatis*), under Article 16, which provides that "in case of death of the victim, a civil action may be started or continued by his successors".⁵¹

(iii) Summary of Relevant Jurisprudence

42. As described above, the relevant jurisprudence concerning the possibility of a successor to continue the application or participation of a deceased victim varies.

43. At the ICC, successors have been permitted to: (i) continue with the application on behalf of the deceased; or (ii) submit an application in their own names as indirect victims; or (iii) to apply for both options. At the ECCC, civil parties have the right to submit an application as indirect victims or as successors, and continuation of an application as a successor is undisputed. This is not the case before the ICC, where victims have the right to participate in proceedings by having their views and concerns heard when their personal interests are affected and where it is less clear if such interests are transferrable upon death.⁵²

⁵⁰ ECCC, *Kaing Guek Eav alias Duch*, Supreme Court Chamber, Case No. 001/18-07-2007/ECCC/SC, Doc. No. F28, Appeal Judgement, 3 February 2012, para. 421.

⁵¹ *Id.*, para. 419.

⁵² *See Practitioner's Guide*, p. 422.

C. RECOMMENDATION

44. In light of the foregoing, VPO recommends that the Pre-Trial Judge admit applicant Victim-26/06 for participation in the proceedings as an indirect victim.

45. In addition, VPO recommends that the Pre-Trial Judge give due consideration to applicant Victim-26/06 continuing the application of Victim-05/06 as a successor in addition to participating as an indirect victim and, in any event, that any decision on the matter be without prejudice to resumption or continuation of the action initiated by deceased Victim-05/06 in the context of reparations proceedings.⁵³

V. GROUPING AND COMMON REPRESENTATION

46. In making its recommendation to the Pre-Trial Judge on grouping, VPO has considered the criteria set out in Rule 113(8) of the Rules, as well as the Framework Decision⁵⁴ and the findings of the Pre-Trial Judge in the First Decision.⁵⁵

47. VPO has also considered the general observations and jurisprudence outlined in its Supplement, which included a detailed analysis of grouping for the purposes of common representation and concluded with a recommendation that the Pre-Trial Judge group the victim applicants in one single group (Group 1).⁵⁶

48. In particular, VPO recalls the Pre-Trial Judge's finding in the Framework Decision that a need to divide the applicants into more than one group arises when "the situation or the specificity of the victims is so different that their interests are irreconcilable, making their common representation impracticable."⁵⁷

49. The composition of Group 1 currently includes participating victims of different ethnicities, who reside in different areas, and speak different languages. At the same time, both the direct and indirect victims admitted to the proceedings were subjected

⁵³ *Similarly, Ntaganda* Decision on Victim Participation, para. 14, fn. 23; *See also ICC, Prosecutor v. Jean Pierre Bemba Gombo*, ICC-01/05-01/08-3346, Trial Chamber III, Decision on "Requête relative à la reprise des actions introduites devant la Cour par des victimes décédées", 24 March 2016, para. 22.

⁵⁴ Framework Decision, paras 42-44.

⁵⁵ First Decision, paras 73-77.

⁵⁶ Supplement, paras 11-29.

⁵⁷ Framework Decision, para. 43; *see also* First Decision, para. 76.

to similar crimes at the hands of the same groups of perpetrators and have suffered similar forms of harm, and they all share an interest in participating in the proceedings and pursuing their rights.⁵⁸ The same can be said of Victim-26/06.

50. After carefully analysing the individual circumstances of the applicant and the particularities of the group as a whole, VPO recommends that the Pre-Trial Judge group Victim-26/06 together with the other applicants admitted to the proceedings and represented by Victims' Counsel as one group, Group 1.⁵⁹

VI. PROTECTIVE MEASURES

51. The applicant has requested non-disclosure of identifying information to the public. For the reasons and concerns summarised in the First Decision,⁶⁰ VPO recommends that the Pre-Trial Judge grant applicant Victim-26/06 the following protective measures: (i) the redaction of names and identifying information from the Specialist Chambers' public records (Rule 80(4)(a)(i)); (ii) non-disclosure to the public of any records identifying the applicant (Rule 80(4)(a)(ii)); (iii) the assignment of a pseudonym (Rule 80(4)(a)(vi)); (iv) Anonymity towards the Accused (Rule 80(4)(d)); and (v) Anonymity towards Defence Counsel (Rule 80(4)(e)).

⁵⁸ See First Decision, para. 76; see also F00203/A02, F00203/A03, F00203/A04, F00203/A05, F00203/A06, F00203/A08, F00203/A16, F00203/A19, Annexes 2-6, 8, 16-19 to the First Report, 15 February 2021, confidential and *ex parte*.

⁵⁹ See First Decision, paras 76-77.

⁶⁰ First Decision, paras 67-70.

52. The concerns summarised in the First Decision affect all victims applying for participation, including applicant Victim-26/06, and VPO considers that the above-requested protective measures are strictly necessary, appropriate and proportionate at this stage of the proceedings.⁶¹

Word count: 4390



Dr Fidelma Donlon
Registrar

Friday, 11 June 2021
At The Hague, the Netherlands.

⁶¹ Framework Decision, para 67-70.