

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

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Date: 4 June 2012

**PRE-TRIAL CHAMBER I**

**Before: Judge Silvia Fernández de Gurmendi, Single Judge**

**SITUATION IN THE REPUBLIC OF CÔTE D'IVOIRE  
IN THE CASE OF  
*THE PROSECUTOR v. LAURENT GBAGBO***

**URGENT**

**Public document**

**With confidential annex**

**Decision on Victims' Participation and Victims' Common Legal Representation  
at the Confirmation of Charges Hearing and in the Related Proceedings**

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

**The Office of the Prosecutor**

Mr Luis Moreno-Ocampo

Ms Fatou Bensouda

**Counsel for the Defence**

Mr Emmanuel Altit

Ms Agathe Bahi Baroan

Ms Natacha Fauveau Ivanovic

**Legal Representatives of Victims**

**Legal Representatives of Applicants**

**Unrepresented Victims**

**Unrepresented Applicants for  
Participation/Reparation**

**The Office of Public Counsel for  
Victims**

Ms Paolina Massidda

**The Office of Public Counsel for the  
Defence**

**States' Representatives**

*Amicus Curiae*

**REGISTRY**

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**Registrar**

Ms Silvana Arbia

**Detention Section**

**Victims and Witnesses Unit**

**Counsel Support Section**

Esteban Peralta Losilla

**Victims Participation and  
Reparations Section**

Ms Fiona McKay

**Judge Silvia Fernández de Gurmendi**, Single Judge for Pre-Trial Chamber I of the International Criminal Court (“Chamber” and “Court” respectively), responsible for carrying out the functions of the Chamber in relation to the situation in Côte d’Ivoire and the cases emanating therefrom,<sup>1</sup> hereby renders this decision on victims’ participation and victims’ common legal representation at the confirmation of charges hearing and in the related proceedings.

### **I. Procedural History**

1. On 23 November 2011, Pre-Trial Chamber III issued an arrest warrant for Laurent Gbagbo (“Mr Gbagbo”),<sup>2</sup> who was transferred to the Court on 30 November 2011. On 5 December 2011, the first appearance of Mr Gbagbo was held before the Court. During the first appearance hearing, Pre-Trial Chamber III scheduled the commencement of the confirmation of charges hearing for 18 June 2012.<sup>3</sup>

2. On 6 February 2012, the Single Judge issued the “Decision on issues related to the victims’ application process”, ordering the Registry, *inter alia*, to propose to the Chamber an application form that could be used for the purpose of encouraging collective applications in accordance with Rule 89(3) of the Rules of Procedure and Evidence (“Rules”).<sup>4</sup>

3. On 29 February 2012, the Registry filed its “Proposal on a partly collective application form for victims’ participation”.<sup>5</sup>

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<sup>1</sup> ICC-02/11-01/11-61.

<sup>2</sup> Warrant of Arrest For Laurent Gbagbo, 23 November 2011, ICC-02/11-01/11-1.

<sup>3</sup> ICC-02/11-01/11-T-1-ENG, p. 8.

<sup>4</sup> ICC-02/11-01/11-86.

<sup>5</sup> ICC-02/11-01/11-45 and Annexes A and B.

4. On 5 April 2012, the Single Judge issued the “Second decision on issues related to victims’ application process” (“Second Decision on Victims”) whereby she *inter alia*:

- (i) ordered the Registry to modify the collective application form as specified in the decision;
- (ii) ordered the Registry to transmit unredacted copies of the complete victims applications for participation to the Chamber and the Prosecutor and redacted copies of the applications to the Defence as soon as possible and no later than 16 May 2012;
- (iii) ordered the parties to submit their observations on the victims’ applications for participation received no later than 28 May 2012; and
- (iv) instructed the Registry to consult with the applicants as to their wishes with regard to legal representation, to assess whether they could be further grouped for the purposes of common legal representation in accordance with Rule 90 of the Rules, to identify potential common legal representatives and to provide recommendations to the Chamber.

5. On 16 May 2012, the Registrar filed its “First Report on applications to participate in the proceedings”<sup>6</sup> whereby it transmitted to the Chamber 63 applications to participate in the proceedings, including 6 collective application forms and 57 individual applications. On the same day, the Registrar further submitted a “Proposal for the common legal representation of victims” (“Proposal on Common Legal Representation”) whereby the Registrar *inter alia* informed the Chamber of (i) the steps undertaken to identify potential common legal representative of victims in the case, (ii) the proposed structure for the common legal representation team and (iii) the

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<sup>6</sup> ICC-02/11-01/11-123 and its confidential and *ex parte* annexes only available to the Registry.

name of the principal counsel recommended by the panel in charge of the selection process for the common legal representation team.<sup>7</sup>

6. On 28 May 2012, the Prosecutor submitted the “Prosecution’s observations on the victims’ applications to participate in the proceedings” (“Prosecutor Observations”)<sup>8</sup> whereby the Prosecutor submitted in four annexes his analysis of the applications for participation. In particular, he submitted that 112 applicants fulfilled the requirements of rule 85(a) of the Rules whereas the others had not submitted enough documents to demonstrate that those requirements were fulfilled for the following reasons:

- (i) 42 applicants have not submitted the required documents;
- (ii) One applicant submitted an application on behalf of her daughter although the latter is not a minor, she should have thus submitted her own application for participation;
- (iii) Seven applicants are not related to the incidents charged; and
- (iv) Two applications are incomplete.

7. On the same day, the Defence submitted the “*Observations de la Défense du Président Gbagbo concernant les 57 demandes individuelles et les 6 demandes collectives de participation des victimes* (ICC/ICC-02/11-01/11-122)” (“Defence Observations”)<sup>9</sup> whereby the Defence requested the Single Judge to find that the information contained in the application forms was insufficient, preventing the Defence from examining the credibility of the applicants, the veracity of the facts alleged and the existence of any prejudice suffered by the applicants.<sup>10</sup> The Defence’s contentions will be hereunder further developed.

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<sup>7</sup> ICC-02/11-01/11-120 and its confidential and *ex parte* annexes only available to the Registry.

<sup>8</sup> ICC-02/11-01/11-131.

<sup>9</sup> ICC-02/11-01/11-133.

<sup>10</sup> ICC-02/11-01/11-133, para. 17.

## II. The Defence's contentions

### 1. Redactions

8. The Defence submits that the redactions applied to the applications forms are disproportionate in comparison to the need to protect, *inter alia*, the safety, privacy, physical and psychological well-being of the victims, in compliance with article 68(1) of the Statute.<sup>11</sup> In particular, the Defence contends that unnecessary redactions were applied to information pertaining to the time and location of the alleged events, the type of injuries allegedly suffered and to certain documentation attached by the applicants to demonstrate their identity or the existence of a kinship with the direct victim.<sup>12</sup>

9. In addition, the Defence submits that redactions have been applied to the application forms despite the fact that some applicants have not expressed the wish to withhold their identity *vis-à-vis* the Defence.<sup>13</sup>

### 2. Incompleteness of the application forms

10. The Defence argues that a number of application forms are incomplete and must therefore be rejected.<sup>14</sup> These applications are missing documents which include: (i) identity cards;<sup>15</sup> (ii) death certificates;<sup>16</sup> (iii) medical certificates;<sup>17</sup> (iv) documents certifying material loss;<sup>18</sup> and (v) official certifications of kinship.<sup>19</sup>

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<sup>11</sup> ICC-02/11-01/11-133, para. 18.

<sup>12</sup> ICC-02/11-01/11-133, paras 22-27.

<sup>13</sup> ICC-02/11-01/11-133, para. 20.

<sup>14</sup> ICC-02/11-01/11-133, paras 29-41.

<sup>15</sup> ICC-02/11-01/11-133, paras 29-31.

<sup>16</sup> ICC-02/11-01/11-133, para. 36.

<sup>17</sup> ICC-02/11-01/11-133, para. 37.

<sup>18</sup> ICC-02/11-01/11-133, para. 38.

<sup>19</sup> ICC-02/11-01/11-133, para. 39.

11. The Defence contends that in Côte d'Ivoire, citizens generally have an official identification document, most notably a national identity card with a picture.<sup>20</sup> Therefore such documentation should be provided to demonstrate the identity of the applicant, of a family member, or their kinship, where applicable. Since most of the applicants have submitted such an identity document, the Defence requests that applications that are supported by a different document or by a national identity card without a picture be rejected.<sup>21</sup>

12. With regard to the material in support of the applicants' allegations as to the harm suffered, the Defence is of the view that, absent such documentation, the Single Judge is not in a position to assess whether the applicants have suffered any harm as a result of a crime with which the suspect is charged.<sup>22</sup>

### 3. Credibility of the applicants

13. The Defence avers that applicant a/20154/12, a/20170/12 and a/20171/12 indicate, in their application forms, that they do not speak French and that they have not benefitted from the services of an interpreter in filling in the form.<sup>23</sup> However, these applicants have been assisted by having someone fill out the form and by having their identity redacted. Since the Defence is not in a position to verify whether the person(s) assisting the applicants speak French as well as the applicants' languages, the Defence is doubtful as to whether the applicants have understood the questions in the application form.<sup>24</sup> In addition, the Defence points out that, given the homogeneity of the answers given by the applicants mentioned above, the recollection of facts

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<sup>20</sup> ICC-02/11-01/11-133, para. 29.

<sup>21</sup> ICC-02/11-01/11-133, paras 30-31.

<sup>22</sup> ICC-02/11-01/11-133, para. 41.

<sup>23</sup> ICC-02/11-01/11-133, para. 42.

<sup>24</sup> ICC-02/11-01/11-133, para. 42.

may not reflect their own version but the version of the person(s) assisting them in the process of filling in their application forms.<sup>25</sup>

#### **4. Geographical, temporal and material scope of the case**

14. The Defence contends that a number of applications should be rejected on the basis that the facts alleged by the applicants do not fall within the geographical, temporal or material parameters of the charges brought by the Prosecutor in the DCC.<sup>26</sup>

#### **5. Vagueness of the applications, identification of the alleged perpetrators and harm suffered**

15. The Defence identifies a series of applications which should be rejected because the applicants use generic formulas and provide general and vague information. According to the Defence, such vagueness does not enable the assessment of whether these applicants have suffered harm as a result of the crimes charged.<sup>27</sup>

16. The Defence further alleges that most of the applications should be rejected on the basis that they vaguely describe the alleged perpetrators of the crimes from which they have allegedly suffered harm. In particular, it notes that the applicants indicate “Laurent Gbagbo” or “*les forces pro-Gbagbo*” as the perpetrators without explaining the reasons of their assertions,<sup>28</sup> or the basis upon which they believe these unidentified individuals belong to pro-Gbagbo forces.<sup>29</sup>

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<sup>25</sup> ICC-02/11-01/11-133, para. 42.

<sup>26</sup> ICC-02/11-01/11-133, paras 43-45.

<sup>27</sup> ICC-02/11-01/11-133, paras 46-47.

<sup>28</sup> ICC-02/11-01/11-133, paras 48-49.

<sup>29</sup> ICC-02/11-01/11-133, para. 50.



17. Finally, the Defence contends that a number of applicants failed to establish their kinship with the direct victim. Accordingly, their application should be rejected as they have not sufficiently demonstrated the moral harm ensuing from the direct victim's suffering.<sup>30</sup>

### **III. Applicable law and Single Judge's determination**

18. For the purpose of the present decision, the Single Judge has considered articles 21, 57(3)(c), 61, 67 and 68 of the Rome Statute ("Statute"), rules 16, 85, 89-92 and 121 of the Rules and regulation 86 of the Regulations of the Court ("Regulations").

19. The Single Judge will hereunder address (i) the requirements to be fulfilled by the applicants to be authorised to participate as victims in the present case; (ii) the common legal representation of those authorised to participate and (iii) the participatory rights of these victims.

#### **A) Whether the applicants meet the requirements of Rule 85 of the Rules**

20. Rule 85(a) of the Rules defines victims as "natural persons who have suffered harm as a result of the commission of any crime within the jurisdiction of the Court." Consistent with the jurisprudence of the Court, the Single Judge recalls that an applicant qualifies as victim under Rule 85(a) of the Rules provided that: (i) his or her identity as a natural person appears duly established; (ii) the events described in the application for participation constitute(s) one or more crimes within the jurisdiction of the Court and with

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<sup>30</sup> ICC-02/11-01/11-133, para. 53.

which the suspect is charged; and (iii) the applicant has suffered harm as a result of the crime(s) with which the suspect is charged.<sup>31</sup>

21. The Single Judge underlines that she will assess whether each applicant has proved the above criteria on a *prima facie* basis. In this respect, the Appeals Chamber has held *inter alia* that “the Pre-Trial Chamber is in the best position to determine the nature and the quantum of evidence it deems necessary and adequate at that stage of the proceedings to establish the elements of rule 85 (a) of the Rules of Procedure and Evidence. What evidence (be it documentary or otherwise) may be sufficient cannot be determined in the abstract, but must be assessed on a case-by-case basis and taking into account all relevant circumstances, including the context in which the Court operates”.<sup>32</sup> Such assessment will not result in “a process of corroboration *stricto sensu*”<sup>33</sup> but will be based on the merits of the applications’ intrinsic coherence, taking into consideration all the information available to the Chamber.<sup>34</sup>

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<sup>31</sup> See, *inter alia*, Pre-Trial Chamber I, *Décision sur les demandes de participation à la procédure a/0004/06 à a/0009/06, a/0016/06 à a/0063/06, a/0071/06 à a/0080/06 et a/0105/06 dans le cadre de l'affaire le Procureur c. Thomas Lubanga Dyilo*, p. 8; Pre-Trial Chamber II, Public Redacted Version of 'Decision on victims' applications for participation a/0010/06, a/0064/06 to a/0070/06, a/0081/06 to a/0104/06 and a/0111/06 to a/0127/06', ICC-02/04-01/05-252, para. 12; Pre-Trial Chamber I, Public Redacted Version of the 'Decision on the 97 Applications for Participation at the Pre-Trial Stage of the Case', para. 65; Pre-Trial Chamber III, Fourth Decision on Victims' Participation, ICC-01/05-01/08-320, para. 30; Pre-Trial Chamber I, Decision on the 34 Applications for Participation at the Pre-Trial Stage of the Case, ICC-02/05-02/09-121, para. 11; Pre-Trial Chamber I, Decision on Victims' Participation at the Hearing on the Confirmation of the Charges, ICC-02/05-03/09-89, para. 2; Trial Chamber III, Decision on 772 applications by victims to participate in the proceedings, ICC-01/05-01/08-1017, para. 38.

<sup>32</sup> AC, *Kony*, ICC-02/04-179, para. 38.

<sup>33</sup> PTC II, *Uganda Situation*, ICC-01/04-101-tEN-Corr, para. 101, see also paras 97-100.

<sup>34</sup> PTC II, *Uganda Situation*, ICC-02/04-101, para. 15; PTC III, *Bemba*, ICC-01/05-01/08-320, para. 31; PTC I, *Katanga*, ICC-01/04-01/07-579, para. 67; PTC I, *Abu Garda*, ICC-02/05-02/09-121, para. 14.

22. The Single Judge will only assess complete applications, namely applications that contain the following information supported by documentation, if applicable:<sup>35</sup>

- (i) the identity of the applicant;
- (ii) the date of the crime(s);
- (iii) the location of the crime(s);
- (iv) a description of the harm suffered as a result of the commission of any crime within the jurisdiction of the Court;
- (v) proof of identity;
- (vi) if the application is made by a person acting with the consent of the victim, the express consent of that victim;
- (vii) if the application is made by a person acting on behalf of a victim, in the case of a victim who is a child, proof of kinship or legal guardianship; or, in the case of a victim who is disabled, proof of legal guardianship;
- (viii) a signature or thumb-print of the Applicant on the document at the very least on the last page of the application.

23. In this respect, the Single Judge underlines that no provisions of the Statute, the Rules or the Regulations require that the application for participation be filled in by the applicants themselves or that, in case the applicants received the assistance of a person in filling in their forms, the application contains the name and signature of this person who had assisted the applicant. However, the Single Judge notes that when there are indications that the applicant might have been misunderstood or when there is a doubt as to the extent of the person's assistance in the filling in of the applications for participation, the Single Judge will either reject the application for participation or defer its decision until further information pursuant to Regulation 86(7) of the Regulations is received. In the absence of any indicators warning of these concerns, the Single Judge will consider the description contained in the applications as being the appropriate mirror of

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<sup>35</sup> See also, ICC-01/05-01/08-699, paragraph 35.

the applicants' accounts of the events as recalled and the applications will be subject to a *prima facie* assessment.

24. The Single Judge will further provide her case by case assessment in the annex to the present decision.

### *1. The Applicants' identity as natural persons*

25. In line with jurisprudence of the Court, the Single Judge considers that the following range of documents may be submitted as proof of the applicants' identity, notably: (i) passport; (ii) national identity card; (iii) birth certificate; (iv) driving license; (v) electoral card; (vi) consular identity card; (vii) death certificate; (viii) documents pertaining to medical treatment; (ix) family registration booklet; or (x) a signed declaration from two witnesses, accompanied by their proof of identity, attesting the identity of the applicant.

26. The Single Judge observes that, pursuant to rule 89(3) of the Rules, an application for participation may also be made by "a person acting with the consent of the victim or a person acting on behalf of a victim, in the case of a victim who is a child or, when necessary, a victim who is a disabled". The Single Judge further recalls that individual victims could provide their consent for a third person ("contact person") to make a joint single application for all of them. In such cases, the identity of both the applicant and the person acting with the applicant's consent, on his or her behalf or of the contact person must be duly established by the documentation referred to in the paragraph above. When an application is submitted on behalf of a child or a disabled, the link between the person acting on behalf and the applicant must be established, in addition to their respective identities, by the abovementioned documentation.

**2. *The events described by the applicants appear to constitute one or more crimes within the jurisdiction of the Court and with which the suspect is charged***

27. For an applicant to qualify as victim pursuant to rule 85(a) of the Rules, he or she must *prima facie* demonstrate the existence of a link between the events described in the application form and the case brought by the Prosecutor against the suspect.<sup>36</sup> At this stage of the proceedings, the scope of the case against Mr. Gbagbo is delineated by the DCC. Therefore, the Single Judge will assess whether the incidents reported by each of the applicants fall within the factual scope of the case that will be discussed at the confirmation of charges hearing, as described by the Prosecutor in his counts 1 (murder), 2 (rape and other forms of sexual violence), 3 (inhuman acts) and 4 (persecution).<sup>37</sup>

**3. *The applicants have suffered harm as a result of a crime with which the suspect is charged***

28. The Single Judge recalls the established jurisprudence of the Court, according to which the notion of “harm” within the meaning of rule 85(a) of the Rules includes physical injury, emotional suffering and economic loss.<sup>38</sup> In addition, the harm claimed by the applicant must also (i) result from the

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<sup>36</sup> See Appeals Chamber, Judgment on the appeals of the Prosecutor and the Defence against Trial Chamber I's Decision on Victims' Participation of 18 January 2008, ICC-01/04-01/06-1432, para. 58.

<sup>37</sup> ICC-02/11-01/11-124-Anx1-Red, *Chefs d'accusation*, p.43-46

<sup>38</sup> Appeals Chamber, Judgment on the appeals of the Prosecutor and The Defence against Trial Chamber I's Decision on Victims' Participation of 18 January 2008, ICC-01/04-01/06-1432, para. 32; Pre-Trial Chamber II, Decision on Victims' Participation at the Confirmation of Charges Hearing and in the Related Proceedings, ICC-01/09-01/11-249, para. 50; Pre-Trial Chamber I, Decision on Victims' Applications for Participation in the Proceedings, ICC-01/04-101-tEN-Corr; Pre-Trial Chamber III, Fourth Decision on Victims' Participation ICC-01/05-01/08-320; Trial Chamber I, Decision on Victims' Participation, ICC-01/04-01/06-1119; Pre-Trial Chamber I, Decision on the 34 Applications for Participation at the Pre-Trial Stage of the Case, ICC-02/05-02/09-121.

commission of a crime with which the suspect is charged and (ii) be personally suffered by the applicant.<sup>39</sup>

29. The causality between the commission of the crime and the harm suffered by the applicant cannot be established *in abstracto* but shall instead be assessed on a case-by-case basis, in light of the information available in the application form and the supporting material, when available.

30. The Single Judge recalls that the personal harm within the meaning of rule 85(a) of the Rules can also be indirectly suffered by victims. In this respect, the Appeals Chamber has stated that “[h]arm suffered by one victim as a result of the commission of a crime within the jurisdiction of the Court can give rise to harm suffered by other victims”.<sup>40</sup> Accordingly, the Single Judge is of the view that applicants may also be admitted as victims in the present proceedings in cases where they have suffered harm (i) as a result of the harm suffered by the direct victim; or (ii) whilst intervening to help direct victims of the case or to prevent the latter from becoming victims as a result of the commission of a crime with which the suspect is charged.<sup>41</sup> With regard to the scenario described in sub (i), indirect victims must establish that, as a result of their relationship with the direct victim, the harm suffered by the

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<sup>39</sup> Appeals Chamber, Judgment on the appeals of The Prosecutor and The Defence against Trial Chamber I's Decision on Victims' Participation of 18 January 2008, ICC-01/04-01/06-1432, para. 32.

<sup>40</sup> Appeals Chamber, Judgment on the appeals of The Prosecutor and The Defence against Trial Chamber I's Decision on Victims' Participation of 18 January 2008, ICC-01/04-01/06-1432, para. 32.

<sup>41</sup> Pre-Trial Chamber II, Decision on Victims' Participation at the Confirmation of Charges Hearing and in the Related Proceedings, ICC-01/09-01/11-249, para. 54; Pre-Trial Chamber I, Decision on the Applications for Participation in the Proceedings Submitted by VPRS 1 to VPRS 6 in the Case the Prosecutor v. Thomas Lubanga Dyilo, ICC-01/04-01/06-172-t-EN, pp. 7-8, Pre-Trial Chamber I, Public Redacted Version of the Decision on the 97 Applications for Participation at the Pre-Trial Stage of the Case, ICC-01/04-01/07-579, para 66; Trial Chamber I, Redacted Version of Decision on indirect victims, ICC-01/04-01/06-1813, para. 51; Pre-Trial Chamber I, Decision on the 34 Applications for Participation at the Pre-Trial Stage of the Case, ICC-02/05- 02/09-121, para. 13.

latter gives rise to their harm. In addition, the identity of both the indirect and direct victims as well as their kinship must be sufficiently proven.<sup>42</sup>

31. The Single Judge recalls that the link between the alleged harm and the crimes charged at this stage must be established on a *prima facie* basis. The standard of causation between the crime and the harm alleged cannot be established with precision *in abstracto* but can only be assessed on a case-by-case basis in light of the information provided in the application from.<sup>43</sup> The applicant does not need to demonstrate that the alleged crimes charged by the Prosecutor are the only or substantial cause of the harm suffered by the applicant; it is sufficient if the applicant demonstrates that the alleged crimes could have objectively contributed to the harm suffered.<sup>44</sup> Nonetheless, when the harm alleged by the applicant is remote in relation to the alleged crimes, his or her application for participation will be rejected as it does not meet the requirement of rule 85(a) of the Rules.<sup>45</sup>

#### 4. *Defence's contention as to the redactions applied*

32. The Single Judge recalls that according to articles 57(3)(c) and 68(1) of the Statute, the Court shall take the appropriate measures to protect the victims. These measures, however, shall not result in the confirmation of the charges, viewed as a whole, to be unfair to the suspect. The Single Judge is mindful that the information provided to the Defence was reduced to a certain extent, which is inherent in the process of taking protective measures

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<sup>42</sup> To that purpose, see accepted documentation mentioned in paragraph 25 of the present decision.

<sup>43</sup> Pre-Trial Chamber II, Decision on Victims' Participation at the Confirmation of Charges Hearing and in the Related Proceedings, ICC-01/09-01/11-249, paras 51-52.

<sup>44</sup> ICC-01/05-01-08-320, paras 76-77.

<sup>45</sup> See for instance *The Prosecutor v. Abdallah banda Abakaer Nourain and Saleh Mohammed Jerbo Jamus*, ICC-02/05-03/09-89 whereby the Pre-Trial Chamber I has found that the experience of an applicant who only alleges having heard gunfire from the direction of the Haskanita camp is an experience of the attack with which the suspects have been charged that is too remote to satisfactorily establish that he suffered psychological harm as a result of it (paras 34-35, see also paras 36-40).

pursuant to the above provisions. The Single Judge considers that redactions of information were the only available measures by which to protect the applicants concerned and that disclosure of any further information would have unnecessarily compromised their safety.

33. The Single Judge further considers that these measures are proportionate and necessary, and they will not materially undermine the fair-trial rights of the suspect. In this respect, the Single Judge recalls that such redactions were applied to protect applicants not yet authorized to participate in the proceedings in the case at hand. Indeed, at later stages of the proceedings, for those granted leave to participate, and depending on the level of suggested participation by individual victims, the redaction of information may be revisited on a case-by-case basis.

34. The Single Judge finally underlines that as part of her assessment of each application and documentation annexed thereto, she has sought to ascertain whether the relevant applicants have sufficiently demonstrated that they are, *prima facie*, victims under rule 85(a) of the Rules on the basis that they suffered personal harm as a result of crimes with which Mr Gbagbo is charged.

## **B) Participation of victims at the confirmation of charges hearing and in related proceedings**

### **1. Common Legal Representation of victims admitted to participate in the present case**

35. Pursuant to rule 90(1) of the Rules, “victims shall be free to choose a legal representative.” However, such right is not absolute but qualified in accordance with rule 90 of the Rules, sub-rules 2 to 4.



36. In light of these provisions and following an instruction from the Single Judge, the Registry submitted to the Chamber the Proposal on Common Legal Representation.<sup>46</sup>

37. In order to prepare this Proposal, the Registry sought the views and preferences of victims, who submitted their main criteria.<sup>47</sup> The Registry also sought to identify “whether victims appear to have, among themselves, any conflicting or substantially ‘distinct interests’ such as would justify their separate representation or whether there exists any other factor that would also provide a basis for arranging the representation of victims through two or more groups”.

38. The Registrar concluded that to date all victims in the present case could be represented by a single legal team<sup>48</sup> and submitted that, in order to perform its duties in an efficient and expeditious manner, the appropriate team structure should, to the extent possible:

- i. allow the common legal representatives to keep their clients informed and respond to their queries;
- ii. receive instructions and guidelines from them;
- iii. maintain files related to their clients;
- iv. obtain qualified support as necessary; and
- v. store and process confidential material.<sup>49</sup>

39. The Registry identified criteria for the selection of suitable candidates for the legal representation team and conducted a selection process in several steps which crystallized in the recommendations made by the selection panel (“Panel”), submitted in Annex 3 to the Proposal on Common Legal

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<sup>46</sup> ICC-02/11-01/11-120.

<sup>47</sup> ICC-02/11-01/11-120, para.10.

<sup>48</sup> ICC-02/11-01/11-120, paras 6-8.

<sup>49</sup> ICC-02/11-01/11-120, para.19.

Representation. The Panel recommended, *inter alia*, the name of principal counsel and identified a person of Ivorian nationality as a suitable candidate to be the team member based in the field. With respect to the latter, the Panel submitted that this counsel had demonstrated a “strong understanding of the case as well as of the local political context”, concluding that this person would have the capacity to provide the Lead Counsel with “first-hand experience of the local context and a capacity to rapidly obtain the trust of victims in the case.”<sup>50</sup> The Registrar indicated that the costs of the proposed common legal representative would likely rely on the Court’s legal aid scheme under rule 90(5) of the Rules.<sup>51</sup>

40. For the reasons given by the Registrar, the Single Judge considers that there are no reasons for dividing the victims into different groups and appointing more than one common legal representative. She endorses the team structure proposed by the Registrar which should therefore be comprised of (i) a principal counsel; (ii) a team member based in the field and (iii) a case manager.

41. The Single Judge also endorses the criteria identified by the Registry for the selection of candidates. Such criteria goes beyond the minimum requirements for counsel set out in rule 22 of the Rules and regulation 67 of the Regulations of the Court; these criteria are also based upon relevant jurisprudence from this Court as well as the experience of the Registry on the matter to date.<sup>52</sup>

42. However, the Single Judge is of the view that in light of the short time remaining until the scheduled date for the confirmation hearing,

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<sup>50</sup> ICC-02/11-01/11-120-Conf-Exp-Anx3, para.8.

<sup>51</sup> ICC-02/11-01/11-120, para.22. The Registrar advances a cost of “a maximum of €24,879 per month, plus the costs of the activities carried out in the field.”

<sup>52</sup> ICC-02/11-01/11-120, para.10 and Annex1.

consideration should be given to the possibility of asking the Office of Public Counsel for Victims to act on behalf of victims, pursuant to Regulation 113 (2) of the Regulations of the Registry and Regulation 80 (2) of the Regulations.

43. The Single Judge emphasizes that such an appointment should be without prejudice of benefiting from the expertise already identified in the selection process endeavoured by the Registrar. The Single Judge fully shares the view of the Panel that the presence of a person with first-hand experience of the local context “within a team, and under the responsibility of the Principal Counsel would provide the Principal Counsel with valuable complementary experience and expertise that will be required for the representation of victims in the case, and in particular the capacity to rapidly become familiar with the team’s clients’ circumstances and views.”<sup>53</sup>

44. Therefore, the Single Judge is of the view that a Counsel from the OPCV should be appointed as the lead Counsel within the common legal representation team for the victims authorised to participate in the present case and that such Counsel should be assisted by a team member with wide knowledge of the context and based in Cote d’Ivoire to be paid by the Court’s legal aid budget.

45. The Single Judge believes that this is the most appropriate and cost-effective system at this stage as it would enable to combine understanding of the local context with experience and expertise of proceedings before the Court, without causing undue delay in the case at hand. This system may be revisited at a later stage in light of the views expressed by the victims.

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<sup>53</sup> ICC-02/11-01/11-120, para.8 and Conf-Exp-Anx3.

## 2. Victims' participatory Rights

46. Article 68(3) of the Statute provides that “[w]here the personal interests of the victims are affected, the Court shall permit their views and concerns to be presented and considered at stages of the proceedings determined to be appropriate by the Court and in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.” As stated by the Appeals Chamber, the participation of victims within the meaning of article 68(3) of the Statute “can take place only within the context of judicial proceedings.”<sup>54</sup> An assessment thereof cannot thus be conducted in the abstract, but should be performed on a case-by-case basis, upon specific and motivated request submitted by the legal representative of victims. The language of article 68(3) of the Statute further vests the Chamber with discretion in determining the modalities of victims’ participation in the proceedings, which should not result in any prejudice to the rights of the suspects and to a fair and impartial trial.

47. The Single Judge also observes that, alongside article 68(3) of the Statute, a number of other provisions grant certain explicit rights to victims that they can exercise through their legal representative, at the confirmation of charges hearing and in the related proceedings. The Single Judge will hereunder enumerate these procedural rights. This is, however, without prejudice to any other right that the Chamber may grant to them in the course of the proceedings either *proprio motu* or upon specific and motivated request submitted by the legal representative

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<sup>54</sup> Appeals Chamber, ICC-01/04-556, para.45.

Attendance and participation at the confirmation of charges hearing

48. Pursuant to rule 91(2) of the Rules, the Common Legal Representative of victims' right to attend and participate in the proceedings shall include participation in hearings, unless, in the circumstances of the case, the Chamber is of the view that his or her intervention should be confined to written observations or submissions.

49. Accordingly, the Single Judge considers that the Common Legal Representative has the right to attend all public sessions of the confirmation of charges hearing as well as all public hearings convened in the related proceedings. Likewise, the Common Legal Representative shall be given access to the transcripts of such hearings.

50. In the event that the Chamber decides to hold parts of the confirmation hearing *in camera* or *ex parte*, it retains the option to decide, on a case-by-case basis, whether to authorise, *proprio motu* or upon a motivated request, the Common Legal Representative to attend those sessions. The same applies to any other *ex parte* or *in camera* hearing convened in the present case. Likewise, the Common Legal Representative shall also be given access to the transcripts of such hearings to which he/she has been authorised to attend.

51. In addition, pursuant to rule 89(1) of the Rules, the Common Legal Representative is entitled to make opening and closing statements at the confirmation hearing in compliance with the schedule to be issued by the Single Judge in due course.

52. The Single Judge further considers that in the present case, upon a motivated request specifying why and how the victims' personal interests are affected by the issues concerned, the Common Legal Representative may be

authorized to make oral submissions during the confirmation of charges hearing, subject to any direction given by the Chamber. In its determination, the Chamber will take into consideration; *inter alia*, the stage of the proceedings, the nature of the issue(s) at stake, the rights of the suspect and the principle of fairness and expeditiousness of the proceedings.

*Access to the public record of the case*

53. Pursuant to rule 121(10) of the Rules, the Registry shall create and maintain a full and accurate record of all proceedings before the Pre-Trial Chamber. Rule 121(10) of the Rules further states that victims or their legal representatives may, subject to any restrictions concerning confidentiality and the protection of national security information, consult such record.

54. Furthermore, according to rule 92(5) and (6) of the Rules, victims' legal representatives shall be notified of the proceedings before the Chamber.

55. Accordingly, the Common Legal Representative of the victims authorised to participate at the pre-trial stage of the present case have the right, during the confirmation hearing and in the related proceedings, to:

- (i) have access to all public filings and public decisions contained in the record of the case;
- (ii) be notified on the same basis as the Prosecutor and the Defence of all public requests, submissions, motions, responses and other procedural documents which are filed as public in the record of the case;
- (iii) be notified of the decisions of the Chamber in the proceedings;

- (iv) have access to the transcripts of hearings held in public sessions;
- (v) be notified on the same basis as the Prosecutor and the Defence of all public proceedings before the Court, including the date of hearings and any postponements thereof, and the date of delivery of the decision; and
- (vi) have access to the public evidence filed by the Prosecutor and the Defence pursuant to rule 121 of the Rules and contained in the record of the case. Such right is, however, subject to the format (*i.e.* unredacted versions, redacted versions or summaries, as well as electronic versions with the *metadata* required by the e-Court Protocol) in which such evidence has been made available to either party.

56. The Chamber, however, notes that if a party to or a participant in the present proceedings wishes to notify a document classified as confidential to the victims' Common Legal Representative, it may do so by including in the said document the name Common Legal Representative to be notified. The Registry shall then notify the parties and the participants accordingly.

57. In relation to those filings that are marked confidential and are not notified to the victims' Common Legal Representative under the conditions set forth in the previous paragraph, the Chamber retains the option to decide on a case-by-case basis, either *proprio motu* or upon receipt of a specific and motivated request, whether to grant the Common Legal Representative of victims access thereto.

58. Finally, the Single Judge decides that, in order for the Common Legal Representative to discharge his/herself of his/her duties, he/she shall be granted access to the redacted and unredacted copies of the applications for participation submitted by the victims hereby admitted to participate at the confirmation of charges hearing and in the related proceedings.

*Filing of written submissions*

59. In accordance with regulation 24 of the Regulations, the victims' legal representatives are also entitled to file written motions, responses and replies in relation to all matters for which the Statute and the Rules does not exclude their intervention and for which the Chamber has not limited their participation either *proprio motu* or at the request of the parties, the Registry or any other participants.

60. Accordingly, the Single Judge considers that the Common Legal Representative of victims admitted to participate by the present decision may be authorised by the Chamber to make written submissions on specific issues of law and/or fact. This right may be exercised upon the conditions that (i) the legal representative proves, by way of an application to that effect, that the victims' personal interests are affected by the issue(s) at stake; and (ii) the Chamber deems it appropriate, in light of, *inter alia*, the stage of the proceedings, the nature of the issue(s) concerned, the rights of the suspects and the principle of fairness and expeditiousness of the proceedings.



**FOR THESE REASONS THE SINGLE JUDGE HEREBY**

**DECIDES** to admit the following applicants as victims participating at the confirmation of charges hearing and in the related proceedings: a/20006/12; a/20007/12; a/20008/12; a/20009/12; a/20010/12; a/20011/12; a/20012/12; a/20013/12; a/20014/12; a/20015/12; a/20016/12; a/20017/12; a/20018/12; a/20019/12; a/20020/12; a/20021/12; a/20031/12; a/20032/12; a/20033/12; a/20034/12; a/20035/12; a/20036/12; a/20037/12; a/20038/12; a/20039/12; a/20040/12; a/20041/12; a/20042/12; a/20043/12; a/20044/12; a/20045/12; a/20047/12; a/20048/12; a/20049/12; a/20050/12; a/20051/12; a/20052/12; a/20055/12; a/20056/12; a/20057/12; a/20059/12; a/20060/12; a/20061/12; a/20062/12; a/20063/12; a/20064/12; a/20065/12; a/20068/12; a/20069/12; a/20070/12; a/20072/12; a/20073/12; a/20074/12; a/20075/12; a/20076/12; a/20077/12; a/20078/12; a/20079/12; a/20080/12; a/20081/12; a/20082/12; a/20083/12; a/20084/12; a/20086/12; a/20087/12; a/20088/12; a/20090/12; a/20091/12; a/20092/12; a/20093/12; a/20095/12; a/20096/12; a/20097/12; a/20098/12; a/20099/12; a/20100/12; a/20105/12; a/20107/12; a/20108/12; a/20109/12; a/20110/12; a/20111/12; a/20112/12; a/20113/12; a/20114/12; a/20115/12; a/20116/12; a/20117/12; a/20118/12; a/20119/12; a/20120/12; a/20002/12; a/20089/12; a/20122/12; a/20124/12; a/20126/12; a/20127/12; a/20128/12; a/20129/12; a/20130/12; a/20131/12; a/20132/12; a/20133/12; a/20134/12; a/20135/12; a/20136/12; a/20137/12; a/20139/12; a/20140/12; a/20141/12; a/20142/12; a/20143/12; a/20146/12; a/20147/12; a/20148/12; a/20149/12; a/20150/12; a/20151/12; a/20152/12; a/20154/12; a/20155/12; a/20156/12; a/20157/12; a/20158/12; a/20159/12; a/20160/12; a/20161/12; a/20162/12; a/20163/12; a/20164/12; a/20165/12; a/20166/12; a/20167/12; a/20168/12; a/20169/12; a/20170/12; a/20171/12; a/20172/12; and a/20185/12;

**DECIDES** to reject the applications for participation submitted by applicants:  
a/20053/12; a/20054/12; a/20071/12; a/20094/12; a/20102/12; a/20103/12;  
a/20104/12; a/20106/12; a/20121/12; a/20153/12; a/20173/12; a/20179/12;  
a/20181/12; a/20182/12; a/20183/12; a/20184/12; a/20186/12; and a/20187/12;

**DECIDES** to defer until further information is provided, application  
a/20058/12;

**DECIDES** to appoint a counsel from the OPCV as the common legal representative of all the victims admitted to participate by the present decision and **ORDERS** the Registrar to provide the OPCV with the relevant information as to the suitable candidates for a position of team member based in the field, in order to proceed with the necessary appointment as soon as possible in consultation and coordination with the Counsel Support Section within the Registry;

**ORDERS** the Registrar to notify the OPCV of the confidential annex attached to the present decision;

**GRANTS** the Common Legal Representative of victims the right to attend all public sessions of the confirmation of charges hearing as well as all public hearings convened in the related proceedings;

**GRANTS** the Common Legal Representative the right to make brief opening and closing statements at the confirmation of charges hearing in accordance with the schedule thereof;

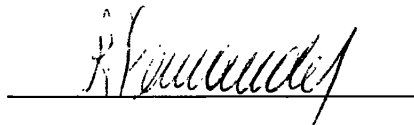
**ORDERS** the Registrar to provide the Common Legal Representative of victims with access to the public record of the case, including public evidence disclosed by the parties;

**ORDERS** the Registrar to notify the Common Legal Representative of victims of all public decisions and filings, effective as to the date of the present decision;

**ORDERS** the Registrar to transmit to the Common Legal Representative of victims the redacted and unredacted copies of the applications for participation submitted by the victims admitted to participate by the present decision;

**ORDERS** the Common Legal Representative to inform as soon as practicable whether their clients request their identity to remain confidential.

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



**Judge Silvia Fernández de Gurmendi**

**Single Judge**

Dated this 4 June 2012

At The Hague, The Netherlands