

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: **English**

No.: **ICC-02/11-01/11**  
Date: **6 February 2013**

**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**

**Second decision on victims' participation 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**  
Fatou Bensouda

**Counsel for the Defence**  
Emmanuel Altit  
Agathe Bahi Baroan

**Legal Representatives of the Victims**

**Legal Representatives of the Applicants**

**Unrepresented Victims**

**Unrepresented Applicants for Participation/Reparation**

**The Office of Public Counsel for Victims**  
Paolina Massidda

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

**States Representatives**

**Amicus Curiae**

## **REGISTRY**

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**Registrar & Deputy Registrar**  
Silvana Arbia, Registrar  
Didier Preira, Deputy Registrar

**Defence Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations Section**  
Fiona McKay

**Other**

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

## **I. Procedural history**

1. On 4 June 2012, the Single Judge issued the “Decision on Victims’ Participation and Victims’ Common Legal Representation at the Confirmation of Charges Hearing and in the Related Proceedings”, in which she admitted 139 applicants as victims participating at the confirmation of charges hearing and in the related proceedings.<sup>2</sup> In addition, the Single Judge decided to appoint a counsel from the Office of Public counsel for Victims (“OPCV”) as the common legal representative of all the victims admitted to participate by that decision.<sup>3</sup>

2. On 4 December 2012, the Registry transmitted to the Chamber and the Prosecutor unredacted copies of victims’ applications for participation a/20183/12, a/20071/12 and a/20058/12, including supplementary information, which were previously rejected or deferred by the Single Judge.<sup>4</sup> Redacted copies of these applications were transmitted to the Defence.<sup>5</sup>

3. Also on 4 December 2012, the Registry transmitted the “*Demande de participation à l’audience et d’accès aux actes de procédure de consignation des témoignages et de mesures de protection par les 5 victimes en vertu de l’article 68*”

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

<sup>2</sup> ICC-02/11-01/11-138, pp. 25-26.

<sup>3</sup> ICC-02/11-01/11-138, p. 26.

<sup>4</sup> ICC-02/11-01/11-309 and its confidential and *ex parte* annexes.

<sup>5</sup> ICC-02/11-01/11-311 and its confidential annexes.

*alinéa 1 et 3 du Statut de Rome*”,<sup>6</sup> in which the legal representative of applicants a/20188/12, a/20189/12, a/20190/12, a/20191/12 and a/20192/12 requests that the Single Judge authorise the applicants he represents to participate in the confirmation of charges hearing as victims and witnesses in order to present their views and concerns as well as to testify about the crimes that have been committed in Abidjan.<sup>7</sup>

4. On 14 December 2012, the Single Judge issued the “Decision on the date of the confirmation of charges hearing and proceedings leading thereto”, in which she decided that the hearing on the confirmation of charges shall commence on 19 February 2013.<sup>8</sup> The Single Judge held that further applications for victims’ participation received by the Registry shall be transmitted to the Chamber and the parties by 18 January 2013 and that the parties must be allowed to submit their observations, if any, by 25 January 2013.<sup>9</sup>

5. On 17 January 2013, the Prosecutor filed the Document Containing the Charges (“DCC”).<sup>10</sup>

6. Also on 17 January 2013, the Prosecutor submitted her observations on the victims’ applications for participation a/20183/12, a/20071/12 and a/20058/12.<sup>11</sup>

7. On 18 January 2013, the Registry transmitted to the Chamber and the Prosecutor unredacted copies of 59 victims’ applications for participation<sup>12</sup> and redacted copies thereof were transmitted to the Defence.<sup>13</sup>

<sup>6</sup> ICC-02/11-01/11-312 and ICC-02/11-01/11-312-Anx.

<sup>7</sup> ICC-02/11-01/11-312-Anx, p. 3.

<sup>8</sup> ICC-02/11-01/11-325, p. 14.

<sup>9</sup> ICC-02/11-01/11-325, p. 15.

<sup>10</sup> ICC-02/11-01/11-357-Conf-Anx1.

<sup>11</sup> ICC-02/11-01/11-358 and its confidential and *ex parte* annex.

<sup>12</sup> ICC-02/11-01/11-364 and its confidential and *ex parte* annexes.

8. On 21 January 2013, the Defence filed its observations on the applications for victims' participation a/20183/12, a/20071/12 and a/20058/12, requesting the Single Judge to reject them.<sup>14</sup>
9. Also on 21 January 2012, the Defence filed a request for extension of time, pursuant to regulation 35(2) of the Regulations of the Court, to file its observations on the 59 victims' applications transmitted by the Registry.<sup>15</sup>
10. On 23 January 2012 the Single Judge granted to the Defence until 5 February 2013 to file its observations on the 59 victims' applications transmitted by the Registry.<sup>16</sup>
11. On 25 January 2013, the Prosecutor filed her observations on the 59 victims' applications for participation.<sup>17</sup>
12. On 5 February 2013, the Defence filed the "*Observations de la défense portant sur les cinquante-neuf demandes de participation de victimes transmises par le Greffe le 18 décembre 2012 en version expurgée (ICC-02/11-01/11-366)*", in which it requests the Single Judge to reject all 59 applications for victims' participation.<sup>18</sup>

## II. The Defence observations

13. The Defence submits that the three applications for victims' participation previously deferred by the Single Judge and resubmitted with additional information as well as the 59 new applications transmitted by the Registry should be rejected.<sup>19</sup>

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<sup>13</sup> ICC-02/11-01/11-366 and its annexes.

<sup>14</sup> ICC-02/11-01/11-370-Conf, p. 11.

<sup>15</sup> ICC-02/11-01/11-368, para. 2 and p. 8.

<sup>16</sup> ICC-02/11-01/11-374, p. 6.

<sup>17</sup> ICC-02/11-01/11-377 and its confidential annex.

<sup>18</sup> ICC-02/11-01/11-382 and its confidential annex.

<sup>19</sup> ICC-02/11-01/11-370-Conf, p. 11 and ICC-02/11-01/11-382, p. 15.

**A. Redactions**

14. The Defence contends that the redactions applied to the applications received, with regard to the identification documents of the applicants, dates and locations of the incidents and harm suffered, are excessive and prevent the Defence from submitting proper observations.<sup>20</sup>

**B. Incompleteness of the applications**

15. The Defence submits that the majority of the applications for participation are incomplete, as several applicants failed to provide documentation demonstrating the harm suffered, the death of family members and the kinship between the applicant and the deceased person in case of application on behalf of a relative.<sup>21</sup>

**C. Credibility of the applicants**

16. The Defence also submits that 6 applicants did not include French among the languages that they speak or claim to speak “*un peu*” French.<sup>22</sup> Even though these applicants were assisted by someone in filling in the form, the Defence avers that there is no indication that this person was a qualified interpreter and that he understood the language spoken by the applicants so as to properly reflect their recollection of the events.<sup>23</sup>

**D. Applications on behalf of deceased family members**

17. The Defence notes that a series of applications for participation were submitted on behalf of deceased persons. The Defence submits that participation in proceedings before the Court on behalf of deceased persons is not foreseen by rule 89(3) of the Rules of Procedure and Evidence (the

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<sup>20</sup> ICC-02/11-01/11-370-Conf, paras 21-25; ICC-02/11-01/11-382, paras 24-38.

<sup>21</sup> *Ibid.*, paras 41-43.

<sup>22</sup> *Ibid.*, paras 44-45.

<sup>23</sup> *Ibid.*

“Rules”).<sup>24</sup> The Defence draws the attention of the Single Judge on the fact that some of these applicants have answered question 21 on the application form in the negative, thus denying that they have themselves suffered harm as a result of the death of a family member.<sup>25</sup>

*E. Temporal and material scope of the case*

18. The Defence contends that applicants a/20063/13 and a/20065/13 referred to incidents allegedly occurred on 11 April 2011, therefore outside the temporal scope of the charges brought by the Prosecutor in the DCC.<sup>26</sup> With regard to applicants a/20010/13, a/20033/13 and a/20052/13, the Defence submits that they claimed to have suffered harm as a result of crimes which are not among those with which Mr Gbagbo is charged.<sup>27</sup>

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

19. The Defence alleges that a number of applicants provided a general recollection of the events and that this prevents the parties and the Single Judge from analysing the credibility of the applicants and verifying the existence of a link between the harm suffered and any crimes with which the suspect is charged.<sup>28</sup>

20. Furthermore, according to the Defence the vagueness of the applications extends to the identification of the alleged perpetrators of the crimes. In this regard, the Defence notes that some applicants mentioned “Laurent Gbagbo” or “forces pro Gbagbo” as responsible for the alleged crimes committed, without however explaining why the applicants reached this conclusion.<sup>29</sup>

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<sup>24</sup> *Ibid.*, paras 47-48.

<sup>25</sup> *Ibid.*, para. 55.

<sup>26</sup> *Ibid.*, para. 46.

<sup>27</sup> *Ibid.*, para. 47.

<sup>28</sup> *Ibid.*, paras 48-49.

<sup>29</sup> *Ibid.*, para. 50 and ICC-02/11-01/11-370-Conf, para. 35

21. Finally, the Defence contends that a series of applicants did not precisely identify the personal harm that they allegedly suffered as a result of the commission of crimes with which the suspect is charged or have otherwise claimed to have suffered harms that are not personal.<sup>30</sup>

### III. The Prosecutor

22. The Prosecutor submits that all 62 applicants qualify as victims under rule 85 of the Rules.<sup>31</sup> The Prosecutor only draws the attention of the Single Judge on applicant a/20038/13, who is applying as an indirect victim for the alleged death of a sibling. In this respect, the Prosecutor notes that it is unclear who the surviving victim is and who the deceased sibling is. Therefore, according to the Prosecutor the identity of the victim should be clarified before he or she is admitted to participate in the proceedings as a victim.<sup>32</sup>

### IV. Applicable law and Single Judge's determination

23. The Single Judge notes articles 21, 57(3)(c), 61, 67 and 68 of the Rome Statute (the "Statute"), rules 16, 85, 89-92 and 121 of the Rules and regulation 86 of the Regulations of the Court (the "Regulations").

24. The Single Judge will hereunder recall her analysis of the notion of victims under rule 85(a) of the Rules as conducted in the First Decision on Victims' Participation and will entertain the main objections raised by the Defence. Other issues, in light of their nature, have been addressed in the confidential annex attached to the present decision, which contains the individual assessment of each application for victim's participation.

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<sup>30</sup> *Ibid.*, paras 53-54.

<sup>31</sup> ICC-02/11-01/11-358 and its confidential annex; ICC-02/11-01/11-377 and its confidential and *ex parte* annex.

<sup>32</sup> ICC-02/11-01/11-377, para. 6.



**A. The definition of victims under rule 85(a) of the Rules**

25. 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.” The Single Judge recalls her interpretation of the notion of victim under this provision as developed in paragraphs 9 to 31 of the First Decision on Victims’ Participation, which is in line with the established jurisprudence of the Court.<sup>33</sup> Accordingly, an applicant qualifies as victim pursuant to the above provision 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 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>34</sup>

26. With regard to the standard applied, the Single Judge underlines that each applicant must prove the above criteria on a *prima facie* basis. In this respect, the Appeals Chamber held 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>35</sup>

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<sup>33</sup> ICC-02/11-01/11-138, paras 9-31.

<sup>34</sup> *Ibid.*, para. 20

<sup>35</sup> Appeals Chamber, *Kony*. Judgment on the appeals of the Defence against the decision entitled ‘Decision on victims’ applications for participation a/0010/06, a/0064/06 to a/0070/06, a/0081/06, a/0082/06, a/0084/06 to a/0089/06, a/0091/06 to a/0097/06, a/0099/06, a/0100/06, a/0102/06 to a/0104/06, a/0111/06, a/0113/06 to a/0117/06, a/0120/06, a/0121/06 and a/0123/06 to a/0127/06 of Pre-Trial Chamber II’, ICC-02/04-179, para. 38.

27. Such assessment will not result in “a process of corroboration *stricto sensu*”<sup>36</sup> but on the merits of its intrinsic coherence, taking into consideration all information available to the Single Judge.<sup>37</sup>

(i) The Applicants’ identity as natural persons

28. Consistent with her previous decision and with the jurisprudence of the Court,<sup>38</sup> the Single Judge considers that the following documents, *inter alia*, may be submitted as proof of the applicants’ identity: (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; (x) certificate of identity; or (xi) a signed declaration from two witnesses, accompanied by their proof of identity, attesting the identity of the applicant.

(ii) The events described by the applicants appear to constitute one or more crimes with which the suspect is charged

29. The Single Judge recalls that an applicant qualifies as victim pursuant to rule 85(a) of the Rules provided that he or she demonstrates *prima facie* the existence of a link between the events described in the application and the case brought by the Prosecutor against the suspect in the case.<sup>39</sup> At this stage of the proceedings, the scope of the case against Mr. Gbagbo is framed by the DCC. Therefore, the Single Judge has assessed whether the incidents reported by each of the applicants fall within the factual scope of the case that will be

<sup>36</sup> PTC II, *Uganda Situation*, ICC-01/04-101-tEN-Corr, para. 101, see also paras 97-100.

<sup>37</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.

<sup>38</sup> ICC-02/11-01/11-138, para. 25.

<sup>39</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; see also ICC-02/11-01/11-138, para. 27; 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. 46; Pre-Trial Chamber III, Fourth Decision on Victims’ Participation, ICC-01/05-01/08-320, paras 61-63; Pre-Trial Chamber I, “Decision on victims’ modalities of participation at the Pre-Trial Stage of the Case”, ICC-02/05-02/09-121, para 12; Pre-Trial Chamber I, “Decision on Victims’ Participation at the Hearing on the Confirmation of the Charges”, ICC-02/05-03/09-89, para. 4.

discussed at the confirmation of charges hearing, as described by the Prosecutor in her counts of murder, rape, inhumane acts and persecution as crimes against humanity.<sup>40</sup>

30. Accordingly, the Single Judge agrees with the Defence observations that those applicants who claimed to have suffered harm only as a result of crimes with which Mr Gbagbo is not charged, shall not be admitted as participating victims.<sup>41</sup>

(iii) The applicants have suffered harm as a result of a crime with which the suspect is charged

31. The notion of “harm” within the meaning of rule 85(a) of the Rules includes physical injury, emotional suffering and economic loss.<sup>42</sup> In addition, the harm claimed by the applicant must also (i) result from the commission of a crime with which the suspect is charged and (ii) be personally suffered by the applicant.<sup>43</sup>

32. The Single Judge has already stated in the First Decision on Victims’ Participation that the causality between the commission of the crime and the harm suffered by the applicant cannot be established *in abstracto* but shall be assessed on a case-by-case basis, in light of the information available in the application form and the supporting material, when available.<sup>44</sup> 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 applicant does not need to demonstrate that the alleged incidents forming the basis of the charges brought by the Prosecutor are the only or substantial cause of the harm suffered by the applicant. Suffice is to demonstrate that they could have

<sup>40</sup> ICC-02/11-01/11-357-Anx 1-Red, *Chefs d’accusation*, pp. 50, 56-57.

<sup>41</sup> See applicant a/20038/13.

<sup>42</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>43</sup> *Ibid.*

<sup>44</sup> ICC-02/11-01/11-138, para. 29.

objectively contributed to such harm.<sup>45</sup> Nonetheless, when the harm alleged by the applicant appears to be remotely connected to the alleged crimes, his or her application for participation will be rejected or deferred as it does not meet the requirement of Rule 85(a) of the Rules.<sup>46</sup>

33. The Single Judge further 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>47</sup> Accordingly, the Single Judge is of the view that applicants may be admitted as victims in the present proceedings in case 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>48</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 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>49</sup>

<sup>45</sup> ICC-01/05-01-08-320, paras 76-77.

<sup>46</sup> See applicant a/20010/13.

<sup>47</sup> ICC-01/04-01/06-1432, para. 32.

<sup>48</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.

<sup>49</sup> To this purpose, see accepted documentation mentioned in paragraph 28 of the present decision.

**B. *Issues raised by the Defence in its observations***

(i) Redactions

34. The Single Judge is aware, as already stated in the First Decision on Victims' Participation, that the redactions applied to the applications for victims' participation received by the Defence reduced to a certain extent its ability to make observations thereon.<sup>50</sup> However, the Single Judge reiterates that this is inherent in the process of adopting protective measures to protect the victims, as provided for in articles 57(3)(c) and 68(1) of the Statute.<sup>51</sup> In this regard, the Single Judge considers that the level of redactions, as employed for the 62 applicants, was the only available measure to protect them. Moreover, the Single Judge is of the view that these measures are proportionate and necessary and that they do not materially undermine the rights of the suspect under article 67 of the Statute.

35. The Single Judge points out that despite the ability of the Defence to submit the desired observations was decreased with regard to some applicants, the Single Judge is still mandated to assess that whether applicants meet the requirements of rule 85(a) of the Rules before being admitted as participating victims. Lastly, the Single Judge recalls that the redactions applied may be revisited at a later stage and on a case-by-case basis, depending on the level of participation of each victim.

(ii) Issues concerning the completeness of the applications

36. As previously held, applications for victims' participation will be assessed only if they are complete, namely when they contain the following information supported by documentation, if applicable:<sup>52</sup>

- (i) the identity of the applicant;

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<sup>50</sup> ICC-02/11-01/11-138, para. 32.

<sup>51</sup> ICC-02/11-01/11-138, para. 32; ICC-01/09-02/11-267, para. 38.

<sup>52</sup> ICC-02/11-01/11-138, para. 22.

- (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.

37. In this regard, the Single Judge notes the Defence contentions as to the lack of documentation in support of the applicants' claims as well as to the vagueness in the descriptions of the harm suffered by the applicants and in the identification of the perpetrators of the crimes. However, the Single Judge underlines that regulation 86(2) of the Regulations provides that applications for victims' participation shall contain a series of information, including any relevant supporting documentation, "to the extent possible". Likewise, this provision requires a description of the person or persons the victim believes to be responsible for the harm suffered, but only "to the extent possible". Accordingly, and concurring with other Chambers of the Court, the Single Judge considers that the identification of the perpetrators and any relevant documentation in support of the application are not among the information necessary for an application for victims' participation to be considered complete.<sup>53</sup> Therefore, the Single Judge considers that applications for victims' participation may not be rejected on the sole basis that they lack information

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<sup>53</sup> See Pre-Trial Chamber II, "Decision on Victims' Participation at the Confirmation of Charges Hearing and in the Related Proceedings" ICC-01/09-02/11-267, paras 32-34; Pre-Trial Chamber I, "Decision on the Requests of the Legal Representative of Applicants on application process for victims' participation and legal representation", ICC-01/04-374, 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'", ICC-01/04-01/07-579, para. 44; Pre-Trial Chamber III, "Fourth Decision on Victims' Participation", ICC-01/05-01/08-320, para. 81; 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. 7; Trial Chamber II, "Decision on the treatment of applications for participation", ICC-01/04-01/07-933- tENG, para. 28; Trial Chamber III, "Decision defining the status of 54 victims who participated at the pre-trial stage, and inviting the parties' observations on applications for participation by 86 applicants". ICC-01/05-01/08-699, paras 35 and 36..

and documentation listed in regulation 86(2) of the Regulations, provided that the applicant has demonstrated *prima facie* to meet the criteria of rule 85(a) of the Rules.

(iii) Deceased persons

38. The Single Judge notes the Defence contention with regard to the alleged inexistence, under the legal framework of the Court, of the possibility to apply for victims' participation on behalf of deceased persons. The Single Judge also notes the argument whereby some of the twelve applicants identified by the Defence answered question 21 of the form in the negative or otherwise did not answer, thus allegedly confirming their intention to participate only on behalf of the deceased relative(s).<sup>54</sup>

39. At the outset, the Single Judge recalls that there is no consistent practice in the jurisprudence of the Court on whether an application for victims' participation can be submitted on behalf of a deceased person.<sup>55</sup> The Single Judge also recalls, however, that an individual who has applied for participation on behalf of a deceased relative may still be admitted as an

<sup>54</sup> Question 21 of the application form reads as follows: « *La personne agissant au nom de la victime a-t-elle aussi subi un préjudice du fait des crimes commis ?* ».

<sup>55</sup> For an interpretation of the applicable law ruling out the recognition of applications for participation submitted on behalf of a deceased individual, see, for example: Pre-Trial Chamber II, "Decision on Victims' Participation at the Confirmation of Charges Hearing and in the Related Proceedings", ICC-01/09-02/11-267, paras 45-57; 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'", ICC-01/04-423-Corr-tENG, paras 23-25; 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. 63; Trial Chamber II, "Grounds for the Decision on the 345 Victims' Applications for Participation in the Proceedings", ICC-01/04-01/07-1491-Red-tENG, paras 49-56. In favour of participation in the proceedings of an individual acting on behalf of a deceased person: Pre-Trial Chamber III, "Fourth Decision on Victims' Participation", ICC-01/05-01/08-320, paras 39-51; Trial Chamber I, Annex to "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)", ICC-01/04-01/06-2065-Anx2, p. 15; 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", ICC-01/05-01/08-807-Corr, paras 78-85.

indirect victim insofar as this applicant demonstrates that he or she has suffered personal harm as a result of the death of said person. In this respect, the Single Judge observes that out of the twelve applicants who have submitted an application for participation on behalf of deceased relatives, one was deferred until further information is obtained<sup>56</sup> and eleven applicants stated that they have suffered personal harm as a result of the alleged killing of the family member(s),<sup>57</sup> including four applicants who have answered question 21 in the negative or left it blank.<sup>58</sup> In light of these circumstances, the Single Judge considers that the statement made by the applicants to the effect that they have allegedly suffered personal harm as a result of the killing of a family member is authoritative and indicates their intention to participate in the proceedings as indirect victims.

40. Accordingly, the Single Judge does not consider it necessary to entertain a discussion on whether or not the possibility to apply for participation on behalf of deceased victims is foreseen by the legal framework of the Court.

(iv) Credibility of the applicants

41. The Single Judge notes the Defence contention as to the lack of credibility of the six applicants who did not include French among the languages that they speak or who indicated that they speak basic French.

42. The Single Judge considers that an application for victims' participation shall be rejected only in the event the applicants do not understand the language in which the form is written and do not state that they were assisted by someone in filling in the form.<sup>59</sup> To the contrary, the Single Judge observes, as also noticed by the Defence, that all applicants identified were assisted by

<sup>56</sup> See applicant a/20038/13.

<sup>57</sup> See applicants a/20003/13, a/20005/13, a/20035/13, a/20036/13, a/20037/13, a/20042/13, a/20047/13, a/20048/13, a/20049/13, a/20053/13 and a/20065/13.

<sup>58</sup> See applicants a/20003/13, a/20005/13, a/20042/13 and a/20065/13.

<sup>59</sup> See Pre-Trial Chamber II, "Decision on Victims' Participation at the Confirmation of Charges Hearing and in the Related Proceedings" ICC-01/09-01/11-267, para. 30.



someone in filling in the form. In this respect, the Single Judge underlines that there is no requirement in the legal texts of the Court according to which the application forms must be filled in by the applicants themselves or that any person assisting the applicants must be a qualified interpreter.

43. Thus, the Single Judge considers that, absent any indication that the person assisting the applicant has influenced the latter's recollection of the events, the information contained in the application shall be considered to be the appropriate reflection of the applicant's account.<sup>60</sup>

## **V. Participation of victims at the confirmation of charges hearing and in related proceedings**

### ***A. Legal representation of victims admitted to participate***

44. In the First Decision on Victims' Participation, the Single Judge held 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 Côte d'Ivoire to be paid by the Court's legal aid budget.<sup>61</sup>

45. At the time of the appointment of a Counsel from the OPCV as common legal representative of the victims admitted to participate, the Single Judge considered that this was "the most appropriate and cost-effective system [...] 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".<sup>62</sup> The Single Judge also considered that such system could be revisited at a later stage in light of the views expressed by the victims.<sup>63</sup>

46. The Single Judge notes that there are no indications that the current scheme of legal representation of victims in the case should be modified. Thus,

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<sup>60</sup> ICC-02/11-01/11-138, para. 23.

<sup>61</sup> ICC-02/11-01/11-138, para. 44.

<sup>62</sup> ICC-02/11-01/11-138, para. 45.

<sup>63</sup> ICC-02/11-01/11-138, para. 45.

taking into consideration the upcoming confirmation of charges hearing and with a view to ensuring uniformity and continuity in the legal representation of the victims admitted to participate in the present case, the Single Judge is of the view that the current system of common legal representation can be maintained. Therefore, all victims admitted to participate by the present decision shall be represented in the course of the confirmation of charges hearing and in the related proceedings by a Counsel from the OPCV.

47. With regard to the participatory rights of the victims, the Single Judge recalls that according to article 68(3) of the Statute “[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.” Alongside article 68(3) of the Statute, a number of other provisions provide certain explicit rights that the victims may exercise through their legal representative, at the confirmation of charges hearing and in the related proceedings.

***B. Participatory rights of victims***

48. In line with the First Decision on Victims’ Participation, the Single Judge considers that the 60 victims admitted to participate by the present decision shall be entitled to the same rights afforded under the Statute to the victims already admitted in the present case, as stated in paragraphs 48 to 60 of the First Decision on Victims’ Participation. The Single Judge will briefly recall these rights below.

(i) Attendance and participation at the confirmation of charges hearing

49. Pursuant to rule 91(2) of the Rules, the Common Legal Representative has the right to attend all public sessions of the confirmation of charges

hearing as well as all public hearing convened in the related proceedings. The Common Legal Representative shall also be entitled to the transcripts of any 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 any such hearings to which 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 of charges hearing in compliance with the schedule to be issued by the Single Judge in due course.

52. The Single Judge further considers that 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.

(ii) Access to the public record of the case

53. 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 the record of all

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

54. Accordingly, the Common Legal Representative of the victims authorised to participate at the pre-trial stage of the present case has 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.

55. The Single Judge recalls, however, 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 of the Common Legal Representative to be notified. The Registry shall notify the parties and the participants accordingly.

56. 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.

57. Finally, the Single Judge decides that, in order for the Common Legal Representative to discharge her duties, 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.

(iii) Filing of written submissions

58. 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.

59. Accordingly, the Single Judge considers that the Common Legal Representative of the 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.

**VI. The request for participation by applicants a/20188/12, a/20189/12, a/20190/12, a/20191/12 and a/20192/12**

60. The Single Judge observes that the request submitted by the legal representative of applicants a/20188/12, a/20189/12, a/20190/12, a/20191/12 and a/20192/12 does not contain the applications for victims' participation of these applicants. Under these circumstances, the Single Judge is not in a position to assess whether the applicants qualify as victims in the present case pursuant to rule 85 of the Rules. Accordingly, the Single Judge dismisses the request for participation of these applicants.

**FOR THESE REASONS, THE SINGLE JUDGE**

**DECIDES** to admit the following applicants as victims participating at the confirmation of charges hearing and in the related proceedings: a/20000/13; a/20001/12; a/20002/13; a/20003/13; a/20004/12; a/20005/13; a/20006/13; a/20007/13; a/20008/13; a/20009/13; a/20011/13; a/20012/13; a/20013/13; a/20014/13; a/20015/13; a/20016/13; a/20017/13; a/20018/13; a/20019/13; a/20020/13; a/20021/13; a/20022/13; a/20023/13; a/20024/13; a/20025/13; a/20026/13; a/20027/13; a/20028/13; a/20029/13; a/20030/13; a/20031/13;

a/20032/13; a/20033/13; a/20034/13; a/20035/13; a/20036/13; a/20037/13;  
a/20041/13; a/20042/13; a/20043/13; a/20044/13; a/20045/13; a/20047/13;  
a/20048/13; a/20049/13; a/20050/13; a/20051/13; a/20052/13; a/20053/13;  
a/20059/13; a/20061/13; a/20063/13; a/20065/13; a/20067/13; a/20068/13;  
a/20069/13; a/20125/13; a/20058/12; a/20071/12; a/20183/12;

**DECIDES** to defer, until further information is provided, applications a/20010/13 and a/20038/13;

**DECIDES** to appoint a counsel from the OPCV as the common legal representative of all the victims admitted to participate by 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;

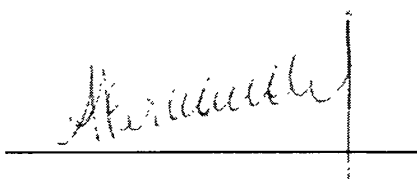
**ORDERS** the Registrar to notify the Common Legal Representative of victims of all public decisions and filings;

**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 the Chamber, as soon as practicable, whether the victims request that their identity be kept confidential;

**DISMISSES** the request for participation of applicants a/20188/12, a/20189/12, a/20190/12, a/20191/12 and a/20192/12.

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



**Judge Silvia Fernández de Gurmendi**

**Single Judge**

Dated this 6 February 2013

At The Hague, The Netherlands