

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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Date: 6 March 2015

TRIAL CHAMBER I

Before: Judge Geoffrey Henderson, Presiding Judge
Judge Cuno Tarfusser
Judge Olga Herrera Carbuccion

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

Public

Decision on victim participation

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

The Office of the Prosecutor

Ms Fatou Bensouda
Mr James Stewart
Mr Eric MacDonald

Counsel for Laurent Gbagbo

Mr Emmanuel Altit
Ms Agathe Bahi Baroan

Legal Representatives of Victims

Ms Paolina Massidda

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

Registrar

Mr Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Ms Fiona McKay

Others

Trial Chamber I ('Chamber') of the International Criminal Court ('Court'), in the case of *The Prosecutor v. Laurent Gbagbo* ('Gbagbo case' or 'case'), having regard to Articles 64(2) and (6)(e), 67(1) and 68(1) and (3) of the Rome Statute ('Statute'), Rules 16, 85, 86, 89 and 90-92 of the Rules of Procedure and Evidence ('Rules') and Regulations 24(2), 79-81 and 86 of the Regulations of the Court ('Regulations'), issues the following 'Decision on victim participation'.

I. Procedural history

1. On 4 June 2012, the Single Judge for Pre-Trial Chamber I admitted 139 victims to participate in the confirmation proceedings, appointed counsel from the Office of Public Counsel for victims ('OPCV' or 'LRV') and ruled on procedural rights to be afforded to the participating victims.¹ On 6 February 2013, the Single Judge admitted 60 additional victims who were also to be represented by the same common legal representative.²
2. On 1 August 2014, the Single Judge for Pre-Trial Chamber I granted victim status to 271 applicants for the purpose of their participation in the confirmation proceedings in the case of *The Prosecutor v. Charles Blé Goudé* ('Blé Goudé case').³
3. On 8 October 2014, the Chamber issued its 'Order scheduling a status conference and setting a provisional agenda',⁴ whereby it requested the parties and participants' submissions on, *inter alia*, 'the procedure for allowing victims to participate in the trial proceedings'.

¹ Decision on Victims' Participation and Victims' Common Legal Representation at the Confirmation of Charges Hearing and in the Related Proceedings, Pre-Trial Chamber I, 4 June 2012, ICC-02/11-01/11-138 ('First *Gbagbo* Victims Decision') and confidential annexes.

² Corrigendum to the Second decision on victims' participation at the confirmation of charges hearing and in the related proceedings, Pre-Trial Chamber I, 6 February 2013 (corrigendum notified on 8 February 2013) ICC-02/11-01/11-384-Corr, and confidential annex.

³ *The Prosecutor v. Charles Blé Goudé*, Pre-Trial Chamber I, Second decision on victims' participation in the pre-trial proceedings and related issues, 1 August 2014, ICC-02/11-02/11-111 ('Second *Blé Goudé* Victims Decision') and confidential annex.

⁴ Order scheduling a status conference and setting a provisional agenda, 8 October 2014, ICC-02/11-01/11-692.

4. On 27 October 2014, the Registry,⁵ the LRV,⁶ the Office of the Prosecutor ('Prosecution')⁷ and the defence team of Mr Laurent Gbagbo ('Defence')⁸ submitted their observations on the admission system for victims to participate in trial proceedings.
5. This issue was also addressed during the first status conference held on 4 November 2014.⁹
6. On 16 January 2015, the Defence and the LRV filed joint submissions on issues related to victim participation at trial ('Joint Submissions').¹⁰
7. On 2 February 2015, the Prosecution indicated that it would not submit a response to the Joint Submissions.¹¹
8. In accordance with an order from the Chamber,¹² on 3 February 2015, the Registry filed observations on the Joint Submissions.¹³
9. On 23 February 2015, the LRV filed a communication on the Registry's observations on the Joint Submissions.¹⁴

⁵ Registry's Observations on the "Order scheduling a status conference and setting a provisional agenda" (ICC-02/11-01/11-692), 27 October 2014, ICC-02/11-01/11-705 ('Registry Observations').

⁶ Submissions in accordance with the "Order scheduling a status conference and setting a provisional agenda" issued on 8 October 2014, 27 October 2014, ICC-02/11-01/11-706 ('LRV Submissions').

⁷ Prosecution's Submissions on the Provisional Agenda for the 4 November 2014 Status Conference, 27 October 2014, ICC-02/11-01/11-708 ('Prosecution Submissions').

⁸ *Observations de la Défense concernant l'ordre du jour de la conférence de mise en état prévue le 4 novembre 2014*, 27 October 2014, ICC-02/11-01/11-709-Conf-Exp ('Defence Submissions') (public redacted version at ICC-02/11-01/11-709-Red2).

⁹ Transcript of hearing of 4 November 2014, ICC-02/11-01/11-T-25-CONF-ENG CT, page 35, line 11 to page 39, line 20.

¹⁰ *Soumissions conjointes de la Représentante légale des victimes et de la Défense de M. Laurent Gbagbo portant sur certaines questions relatives à la participation des victimes au procès*, 16 January 2015, ICC-02/11-01/11-748 and confidential, *ex parte*, annexes. On 6 February 2015, the LRV also informed the Chamber that she was in contact with the Registry in order to coordinate on the lifting of redactions in the victim application forms and that she would revert back to the Chamber by 20 February 2015 (Email correspondence from LRV to Legal Officer of Chamber on 6 February 2015, 11.22).

¹¹ Email correspondence from Prosecution to Legal Office of Chamber, 2 February 2015, 15.54.

¹² Order requesting observations from the Registry and reducing the time limit to file a response in relation to ICC-02/11-01/11-748, 23 January 2014, ICC-02/11-01/11-751-Conf.

¹³ Registry's Observations on the "Soumissions conjointes de la Représentante légale des victimes et de la Défense de M. Laurent Gbagbo portant sur certaines questions relatives à la participation des victimes au procès" (ICC-02/11-01/11-748), 3 February 2015, ICC-02/11-01/11-757-Conf ('Second Registry Observations').

II. Submissions of the parties and participants

A. The Registry

10. The Registry informs the Chamber that it does not expect the total number of victims seeking to participate in the case to exceed 700.¹⁵ It recalls that, of the 220 applications transmitted to the Pre-Trial Chamber, 199 applicants were authorised to participate at the confirmation stage of the proceedings.¹⁶ It further notes that an additional 271 applicants who suffered harm as a result of the four incidents underlying the charges against Mr Gbagbo were authorised to participate at the confirmation stage of the *Blé Goudé* case.¹⁷ Taking into consideration that the scope of the case remains limited to the four incidents, the Registry does not expect to receive more than 'a further 150 to 200 applications for participation'.¹⁸
11. As for the selection of an admission system for victims to participate in trial proceedings, the Registry would not recommend repeating the partly collective approach adopted at the confirmation stage in the case at hand for two reasons: i) not all victims felt comfortable speaking at the large group meetings organised to effectuate the group application; and ii) group applications may cause difficulty for individual applicants at a later date if they seek to participate in another case.¹⁹ The Registry submits two alternative options for the Chamber's consideration: the judicial consideration of simplified individual application form ('Simplified Form') ('Option 1'); and the registration of applicants through the Registry ('Option 2').

¹⁴ Communication to the Chamber following the Registry's Observations on the Joint Submissions (ICC-02/11-01/11-757-Conf), 23 February 2015, ICC-02/11-01/11-779-Conf ('LRV Supplementary Submissions') and confidential, *ex parte*, annexes.

¹⁵ Registry Observations, ICC-02/11-01/11-705, para. 10.

¹⁶ Registry Observations, ICC-02/11-01/11-705, para. 8.

¹⁷ Registry Observations, ICC-02/11-01/11-705, para. 9.

¹⁸ Registry Observations, ICC-02/11-01/11-705, para. 10.

¹⁹ Registry Observations, ICC-02/11-01/11-705, paras 11-12.

12. *Judicial consideration of Simplified Form.* As a first option, the Registry proposes that the Chamber adopts the system implemented by the Pre-Trial Chamber in the case of *The Prosecution v. Bosco Ntaganda*.²⁰ This system requires the Registry to: i) receive applications for participation; ii) prepare redacted versions of the Simplified Form; and iii) transmit them, in their redacted or unredacted version, to the Chamber and the parties, together with a Report under Regulation 86(6) of the Regulations. Thereafter, the parties may submit their views in accordance with Rule 89(1) of the Rules. Finally, the Chamber will consider the applications individually and grant victim status to qualifying applicants. If Option 1 is selected, the Registry suggests that deadlines, for submission of applications to the Registry as well as for transmission of applications to the Chamber and the parties, would ‘greatly assist’.²¹

13. *Registration of applicants through the Registry.* As a second option, the Registry proposes an amended version of the system adopted by Trial Chamber V.²² Under Option 2, the Chamber would, upon receipt of the parties’ submissions, set criteria for the assessment under Rule 85 of the Rules. The Registry would then apply the criteria to each application received and register qualifying applicants in a database. Finally, the Registry would, upon registration, transmit the applications of the qualifying applicants to the appointed legal representative.

14. The Registry submits that the selection of Option 2 would avoid the most time and resource-consuming elements of Option 1, as the former ‘involves

²⁰ Registry Observations, ICC-02/11-01/11-705, paras 14-17. *See also*, *The Prosecutor v. Bosco Ntaganda*, Pre-Trial Chamber II, Decision Establishing Principles on the Victims’ Application Process, 28 May 2013, ICC-01/04-02/06-67 (*‘Ntaganda Victims Decision’*).

²¹ Registry Observations, ICC-02/11-01/11-705, para. 16.

²² Registry Observations, ICC-02/11-01/11-705, paras 18-23. *See also*, *The Prosecutor v. Francis Kirimi Muthaura and Uhuru Muigai Kenyatta*, Trial Chamber V, Decision on victims’ representation and participation, 3 October 2012, ICC-01/09-02/11-498; *The Prosecutor v. William Samoei Ruto and Joshua Arap Sang*, Trial Chamber V, Decision on victims’ representation and participation, 3 October 2012, ICC-01/09-01/11-460.

significant staff time for the Registry in preparing redactions, as well as preparing victim applications and individual assessment reports for filing, which Option 2 does not'.²³

15. In its observations specifically responding to the Joint Submissions, the Registry submits that the LRV is in the best position to advise on the lifting of redactions to victim applications and therefore recommends that lesser redacted versions of applications be transmitted to the Defence after consultation with the LRV.²⁴ Furthermore, the Registry is of the view that assigning pseudonyms to its intermediaries in the field is not required as the decision on the protocol establishing a redaction regime ('Redaction Decision') is not applicable in this case.²⁵ Finally, the Registry also opposed creating a new reference system for participating victims based on efficiency concerns.²⁶

B. The Prosecution

16. The Prosecution supports a process whereby victims authorised to participate at the confirmation stage of the proceedings are granted victim status without filing new applications for the trial stage.²⁷ It clarifies that, in its view, 'victims who previously qualified for the status of victims pursuant to Rule 85 in the present case should continue to fall within this category for the purposes of trial'.²⁸
17. The Prosecution further suggests that the Registry's Option 1 be selected as an admission system for victims to participate in trial proceedings²⁹ and, as

²³ Registry Observations, ICC-02/11-01/11-705, para. 13.

²⁴ Second Registry Observations, ICC-02/11-01/11-757-Conf, para. 1.

²⁵ Second Registry Observations, ICC-02/11-01/11-757-Conf, para. 7, *referring to* Decision on the Protocol establishing a redaction regime, 15 December 2014 ICC-02/11-01/11-737. *See also*, paras 7-9.

²⁶ Second Registry Observations, ICC-02/11-01/11-757-Conf, paras 10-14.

²⁷ Prosecution Submissions, ICC-02/11-01/11-708, para. 31.

²⁸ Prosecution Submissions, ICC-02/11-01/11-708, para. 31.

²⁹ ICC-02/11-01/11-T-25-CONF-ENG CT, page 36, lines 3-10.

concerns the deadline for the filing of new applications for participation, it submits that the latest deadline should be the start of trial.³⁰

C. The Victims

18. The LRV submits, since the charges brought by the Prosecution have been confirmed in their entirety by the Pre-Trial Chamber, that all victims admitted to participate at the confirmation stage of the proceedings in the present case should be automatically admitted to participate at the trial stage 'without their victim status being determined *de novo*'.³¹
19. Turning to the applicants granted victim status at the confirmation stage of the *Blé Goudé* case, the LRV considers that they should also be automatically admitted to participate in the present case 'because the two cases focus on the same facts and the same crimes within the same spatial-temporal parameters'.³² In consultation with the Registry, the LRVs proposed to lift some redactions to the applications transmitted to the Defence.³³
20. As concerns the applicants who did not participate at the pre-trial stage of the proceedings, the LRV emphasises that they 'should be given the possibility to apply for participation at the trial stage'.³⁴ In this regard, the LRV recalls that victims' participation should be meaningful, as opposed to 'purely symbolic'

³⁰ Prosecution Submissions, ICC-02/11-01/11-708, para. 32.

³¹ LRV Submissions, ICC-02/11-01/11-706, paras 9-11 referring to *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo*, Trial Chamber II, Decision on the treatment of applications for participation, 26 February 2009, ICC-01/04-01/07-933-tENG ('*Katanga* Participation Decision'), page 23; *The Prosecutor v. Jean-Pierre Bemba Gombo*, 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, 22 February 2010, ICC-01/05-01/08-699 ('*Bemba* Participation Decision'), para. 22. See also, Joint Submissions, ICC-02/11-01/11-748, para. 4.

³² LRV Submissions, ICC-02/11-01/11-706, paras 12-16 referring to *The Prosecutor v. Abdallah Banda Abakaer Nourain and Saleh Mohammed Jerbo Jamus*, Pre-Trial Chamber I, Decision on Victims' Participation at the Hearing on the Confirmation of the Charges, 29 October 2010, ICC-02/05-03/09-89, paras 6-10; *The Prosecutor v. Charles Blé Goudé*, Decision on victims' participation in the pre-trial proceedings and related issues, 11 June 2014, ICC-02/11-02/11-83 ('*First Blé Goudé* Victims Decision'), paras. 12-21.

³³ Confidential annexes to the Joint Submissions, ICC-02/11-01/11-748; Confidential annexes to LRV Supplementary Submissions, ICC-02/11-01/11-779-Conf.

³⁴ LRV Submissions, ICC-02/11-01/11-706, para. 18.

and that victims have an independent role and voice in the Court's proceedings.³⁵ Moreover, the LRV recalls that victims have not only the right to tell their story, but have the right 'to have their story heard within the judicial framework'.³⁶

21. The LRV is of the view that Option 1 simplifies the management of information provided by victims while still providing the Chamber with sufficient information to determine the status of victims.³⁷ It therefore submits that it is a suitable model which complies with the rights of victims to participate in the proceedings under Article 68(3) of the Statute³⁸ and argues that selecting Option 2 would deprive the majority of victims in the present case of the very meaning of their rights enshrined in Article 68(3) of the Statute.³⁹ The LRV however agrees with the Defence that the standard application forms should be used for trial proceedings.⁴⁰

D. The Defence

22. The Defence submits that the Chamber should select neither Option 1 nor Option 2.⁴¹ It considers that the admission system adopted at the confirmation stage of the proceedings in the case at hand should be followed, except for the collective application form and the extent to which these forms were redacted by the Registry.⁴² It further argues that, in the transmission of individual

³⁵ LRV Submissions, ICC-02/11-01/11-706, paras 18-22.

³⁶ LRV Submissions, ICC-02/11-01/11-706, paras 25-26.

³⁷ LRV Submissions, ICC-02/11-01/11-706, para. 31.

³⁸ LRV Submissions, ICC-02/11-01/11-706, para. 30.

³⁹ LRV Submissions, ICC-02/11-01/11-706, para. 33.

⁴⁰ Joint Submissions, ICC-02/11-01/11-748, para. 13. *See also*, LRV Submissions, ICC-02/11-01/11-706, para. 29.

⁴¹ ICC-02/11-01/11-T-25-CONF-ENG CT, page 36, lines 15-16.

⁴² ICC-02/11-01/11-T-25-CONF-ENG CT, page 36, lines 15-20.

application forms, the Prosecution and Defence should be on a level playing field and receive applications without distinction in redactions.⁴³

23. The Defence submits that it should be in a position to analyse the victims' narratives and assess whether crimes alleged by the applicants are covered by the parameters of the case at hand.⁴⁴ Therefore, it submits that redactions should only be applied in exceptional circumstances and that the Defence should know the identity of the applicants.⁴⁵ In their Joint Submissions, the Defence and the LRV further agree to lift some redactions to the applications of victims authorised to participate at the confirmation stage of the proceedings and propose principles applicable to the redaction of newly received applications for participation.

24. The Defence further submits that the Registry should modify the referencing system used for applicants and start using pseudonyms to identify intermediaries involved during the filling of applications for participation.

25. Finally, the Defence stresses the importance of setting a deadline for the submission to the Registry of additional applications for participation.⁴⁶ The Defence argues that applications should be transmitted on an ongoing basis and that it needs to have received all applications for participation at least ten weeks before the start of trial.⁴⁷ Therefore, the Defence suggests that all applications be transmitted to it by the Registry at the latest by 15 April 2015.⁴⁸

⁴³ Defence Submissions, ICC-02/11-01/11-709-Red2, para. 40; ICC-02/11-01/11-T-25-CONF-ENG CT, page 37, lines 5-8.

⁴⁴ ICC-02/11-01/11-T-25-CONF-ENG CT, page 37, lines 1-4. *See also*, lines 18-25.

⁴⁵ Joint Submissions, ICC-02/11-01/11-748, paras 8 and 16.

⁴⁶ Defence Submissions, ICC-02/11-01/11-709-Red2, para. 39.

⁴⁷ Joint Submissions, ICC-02/11-01/11-748, paras 18, 20 and 22. *See also*, annex 204.

⁴⁸ Joint Submissions, ICC-02/11-01/11-748, para. 22 and annex 204.

III. Applicable law

26. Article 68(3) of the Statute establishes the right for victims to participate in proceedings before the Court.⁴⁹ Under this 'founding provision' governing victim participation in the proceedings,⁵⁰ the Chamber shall permit victims whose personal interests are affected at stages of the proceedings determined to be appropriate to have their views and concerns presented and considered in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial. Article 68(3) of the Statute hence requires the Chamber to balance the personal interests of affected victims, including their desire to present any views or concerns, against the rights of the accused to a fair and impartial trial.

27. Rules 89 to 91 of the Rules outline the procedure to be followed in the implementation of the regime of victim participation under Article 68(3) of the Statute.

28. Rule 89, in relevant part, provides:

In order to present their views and concerns, victims shall make written application to the Registry, who shall transmit the application to the relevant Chamber. Subject to the provisions of the Statute, in particular article 68, paragraph 1, the Registrar shall provide a copy of the application to the Prosecutor and the defence, who shall be entitled to reply within a time limit to be set by the Chamber.

29. As concerns this application procedure, Regulation 86 of the Regulations provides for the way the written applications shall be presented, including their timing, the information to be presented, as well as for the manner in which the applications received are to be managed by the Registry and

⁴⁹ *The Prosecutor v. Thomas Lubanga Dyilo*, 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, 11 July 2008, ICC-01/04-01/06-1432, OA 9 OA 10 ('Lubanga OA9-OA10 Judgment'), para. 96.

⁵⁰ *Lubanga OA9-OA10 Judgment*, ICC-01/04-01/06-1432, para. 101.

assessed by the Chamber.

30. Individuals seeking to be admitted as participating victims must demonstrate that they are victims within the meaning of Rule 85 of the Rules.⁵¹ The Chamber, consistent with the jurisprudence of the Court, considers that only those persons who are victims of the crimes charged may participate in trial proceedings.⁵² In order to qualify as victims in the present case, an applicant will have to establish, *prima facie*,⁵³ the following criteria:

- i) his or her identity as a natural person must be established;
- ii) he or she has suffered personal harm; and
- iii) the harm suffered is as a result of an incident falling within the parameters of the confirmed charges.⁵⁴

i. Identity as a natural person

31. In regards to the first requirement, the Chamber adopts the flexible approach

⁵¹ Rule 85 provides: '[f]or the purposes of the Statute and the Rules of Procedure and Evidence: (a) "Victims means natural persons who have suffered harm as a result of the commission of any crime within the jurisdiction of the Court; (b) Victims may include organizations or institutions that have sustained direct harm to any of their property which is dedicated to religion, education, art or science or charitable purposes, and to their historic monuments, hospitals and other places and objects for humanitarian purposes'.

⁵² *Lubanga* OA9-OA10 Judgment, ICC-01/04-01/06-1432, para. 62.

⁵³ *The Prosecutor v. Thomas Lubanga Dyilo*, Trial Chamber I, Decision on victims' participation, 18 January 2008, ICC-01/04-01/06-1119 ('*Lubanga* Participation Decision'), para. 99; *Katanga* Participation Decision, ICC-01/04-01/07-933-tENG, paras 33-34; *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, Trial Chamber II, Grounds for the Decision on the 345 Applications for Participation in the Proceedings Submitted by Victims, ICC-01/04-01/07-1491-Red-tENG, para. 57; *The Prosecutor v. Jean-Pierre Bemba Gombo*, Trial Chamber III, Corrigendum to Decision on the participation of victims in the trial and on 86 applications by victims to participate in the proceedings, 12 July 2010, ICC-01/05-01/08-807-Corr, para. 92; *The Prosecutor v. Abdallah Banda Abakaer Nourain*, Trial Chamber IV, Decision on 19 applications to participate in the proceedings, 12 December 2013, ICC-02/05-03/09-528, para. 22. *See also*, *The Prosecutor v. Joseph Kony et al.*, Appeals Chamber, Judgment on the appeals of the Defence against the decisions entitled "Decision on victims' applications for participation a/0010/06, a/0064/06 to a/0070/06, a/0081/06, a/0082/06, a/0084/006 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, 23 February 2009, ICC-02/04-179, para. 38.

⁵⁴ *See Lubanga* OA9-OA10 Judgment, ICC-01/04-01/06-1432, para. 58; First *Gbagbo* Victims Decision, ICC-02/11-01/11-138, para. 20 footnote 31; *The Prosecutor v. Jean-Pierre Bemba Gombo*, Trial Chamber III, Decision on 772 applications by victims to participate in the proceedings, 18 November 2010, ICC-01/05-01/08-1017, para. 38; *The Prosecutor v. Thomas Lubanga Dyilo*, Pre-Trial Chamber I, Décision sur les demandes de participation à la procédure a/0001/06, a/0002/06 et a/0003/06 dans le cadre de l'affaire *Le Procureur c. Thomas Lubanga Dyilo* et de l'enquête en République démocratique du Congo, 28 July 2006, ICC-01/04-01/06-228, page 7; *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, Trial Chamber II, Corrigendum of Operative part of the Decision on the 345 applications for participation as victims in the proceedings, 5 August 2009 (translation notified 17 January 2013), ICC-01/04-01/07-1347-Corr-tENG, para. 6.

other chambers of this Court have followed and accepts distinct forms of identification, including, *inter alia*:

Passport; birth certificate; national identity card; driving license; electoral card; marriage certificate; consular identity card; death certificate; document pertaining to medical treatment, rehabilitation or education; church membership card; family registration booklet; employee identity card; political party membership card; pension booklet; or a signed declaration from two witnesses accompanied by their proof of identity, attesting the identity of the applicant.⁵⁵

32. The Chamber also believes it necessary, as have other chambers in the past, to extend this flexible approach to possible discrepancies between the application and identity document(s) submitted.⁵⁶ Thus, minor discrepancies which do not call into question the overall credibility of the information provided by the applicant may be accepted.

ii. Harm

33. The Chamber recalls that other chambers have considered that ‘harm’, under Rule 85(a) of the Rules, includes physical injuries, as well as emotional suffering and economic loss.⁵⁷ Under the second requirement listed above, applicants must have *personally* suffered harm.⁵⁸ This personal harm can, however, be suffered *directly* or *indirectly*. In this regard, the Chamber recalls

⁵⁵ See, e.g., *Lubanga* Participation Decision, ICC-01/04-01/06-1119, para. 87; *Katanga* Participation Decision, ICC-01/04-01/07-933-tENG, para. 30; First *Gbagbo* Victims Decision, ICC-02/11-01/11-138, para. 25.

⁵⁶ *Katanga* Participation Decision, ICC-01/04-01/07-933-tENG, paras 33-34; ICC-01/04-01/07-1491-Red-tENG, para. 32; ICC-01/04-02/06-211, para. 23; *The Prosecutor v. Abdallah Banda Abakaer Nourain and Saleh Mohammed Jerbo Jamus*, Trial Chamber IV, Corrigendum to Decision on the Registry Report on six applications to participate in the proceedings, 28 October 2011, ICC-02/05-03/09-231-Corr, para. 24.

⁵⁷ *Lubanga* OA9-OA10 Judgment, ICC-01/04-01/06-1432, para. 32; *The Prosecutor v. Jean-Pierre Bemba Gombo*, Pre-Trial Chamber III, Fourth Decision on Victim’s Participation, 12 December 2008, ICC-01/05-01/08-320 (‘*Bemba* Fourth Decision on Victim’s Participation’); *The Prosecutor v. William Samoei Ruto, Henry Kiprono Kogsey and Joshua Arap Sang*, Pre-Trial Chamber II, 5 August 2011, ICC-01/09-01/11-249, para. 50; First *Gbagbo* Victims Decision, ICC-02/11-01/11-138, para. 28.

⁵⁸ Amended order for reparations in *The Prosecutor v. Thomas Lubanga Dyilo*, Appeals Chamber, Judgment on the appeals against the “Decision establishing the principles and procedures to be applied to reparations” of 7 August 2012, 3 March 2015, ICC-01/04-01/06-3129-AnxA, paras 6 and 10; *Lubanga* OA9-OA10 Judgment, ICC-01/04-01/06-1432, para. 32.

that 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'.⁵⁹ Accordingly, relatives of a deceased person wishing to participate in proceedings must show that they have suffered harm personally.⁶⁰

34. As regards persons making applications on behalf of victims,⁶¹ the identity of both the victim and the person acting on his/her behalf must be duly established, as indicated in paragraph 31 above, as well as the express consent of the victim or, where applicable, the relationship between the victim and the person acting on his or her behalf.⁶²

iii. The harm is a result of a crime charged

35. As concerns the third requirement, the Chamber considers that, as stated by the Appeals Chamber, a confirmation decision 'defines the parameters of the charges at trial.'⁶³

36. The link between the commission of the crime and the harm suffered by the applicant shall be assessed in light of the information available and established on a *prima facie* basis. The Chamber finds it sufficient that an applicant demonstrate, for example, that the alleged crimes could have objectively

⁵⁹ *Lubanga* OA9-OA10 Judgment, ICC-01/04-01/06-1432, para. 32.

⁶⁰ *Lubanga* OA9-OA10 Judgment, ICC-01/04-01/06-1432, para. 32.

⁶¹ Applications may 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' (Rule 89(3) of the Rules).

⁶² *Situation in the Democratic Republic of the Congo*, Pre-Trial Chamber I, Decision on the Requests of the Legal Representative of applicants on application process for victims' participation and legal representation, 17 August 2007, para. 12 (vii); *Lubanga* Participation Decision, ICC-01/04-01/06-1119, para. 88; *Bemba* Fourth Decision on Victim's Participation, ICC-01/05-01/08-320, paras 38 and 81; *The Prosecutor v. Abdallah Banda Abakaer Nourain and Saleh Mohammed Jerbo Jamus*, Trial Chamber IV, Corrigendum to Decision on the Registry Report on six applications to participate in the proceedings, 28 October 2011, ICC-02/05-03/09-231-Corr, para. 21.

⁶³ *The Prosecutor v. Thomas Lubanga Dyilo*, Appeals Chamber, Judgment on the appeal of Mr Thomas Lubanga Dyilo against his conviction, 1 December 2014, ICC-01/04-01/06-3121-Red, para. 124.

contributed to the harm suffered. Accordingly, the crimes charged do not have to be the only cause of the harm suffered by the applicant.⁶⁴

37. Pursuant to Rule 85(b) of the Rules, organisations or institutions applying for victim status must establish 'direct harm to any of [its] property which is dedicated to religion, education, art or science or charitable purposes, and to their historic monuments, hospitals and other places and objects for humanitarian purposes'.

IV. The Chamber's determination

38. Pursuant to Article 68(3) of the Statute, the present decision establishes the procedure for the participation of victims in the trial proceedings of the case at hand. The Chamber will address: i) the status of victims who were authorised to participate at the confirmation stage of the proceedings in this case; ii) the status of victims who were authorised to participate at the confirmation stage in the *Blé Goudé* case; iii) the admission system for additional victims to participate in trial proceedings; iv) other issues raised in the Joint Submissions; and v) the common legal representation of victims.

39. The Chamber will decide on the modalities of victim participation in a subsequent decision.

A. Status of victims who were authorised to participate at the confirmation stage of the proceedings in this case

40. At the outset, the Chamber notes that the Pre-Trial Chamber admitted 199 victims to participate during the confirmation stage of the proceedings in this case, of whom one has since passed away,⁶⁵ leaving 198 for consideration here. The Chamber further notes that the Prosecution, the Defence and the

⁶⁴ *Bemba* Fourth Decision on Victim's Participation, ICC-01/05-01/08-320, paras 76-77.

⁶⁵ The OPCV has informed the Chamber that victim a/20163/12 has passed away (LRV Submissions, ICC-02/11-01/11-706, para. 9).

LRV agree that applicants authorised to participate in the confirmation stage of the proceedings should be authorised to participate at trial without having to file a new application.⁶⁶

41. The Chamber recalls the jurisprudence of the Court establishing the automatic admission at trial of victims who participated at the confirmation stage, so long as the basis for the initial determination of the victim status stems from harm resulting from the commission of a crime subsequently confirmed.⁶⁷ Hence, and in light of Article 64(2) of the Statute, together with Regulation 86(8) of the Regulations, all victims previously admitted to participate at the confirmation stage of the proceedings shall be authorised to participate at the trial stage without *de novo* review of their applications.

B. Status of victims who were authorised to participate at the confirmation stage in the *Blé Goudé* case

42. For the purpose of the confirmation stage of the proceedings against Mr Blé Goudé, and in addition to the 198 victims mentioned above,⁶⁸ the Pre-Trial Chamber granted victim status to 271 applicants.⁶⁹ Of these 271, one has since passed away leaving the total number of victims for this Chamber to evaluate for participation at 270.⁷⁰ The Chamber notes that the LRV supports the automatic admission of these victims,⁷¹ while the Defence opposes.⁷² The Prosecution did not address the subject in its oral or written submissions.

⁶⁶ Joint Submissions, ICC-02/11-01/11-748, para. 4; Prosecution's Submissions, ICC-02/11-01/11-708, para. 31.

⁶⁷ Trial Chambers have followed this approach and admitted victims without their applications for participation having to be submitted and considered *de novo*. See, *Katanga* Participation Decision, ICC-01/04-01/07-933-tENG; *Bemba* Participation Decision, ICC-01/05-01/08-699.

⁶⁸ First *Blé Goudé* Victims Decision, ICC-02/11-02/11-83, paras 12-19.

⁶⁹ Second *Blé Goudé* Victims Decision, ICC-02/11-02/11-111.

⁷⁰ The OPCV has informed the Chamber that victim a/10201/14 passed away in August 2014 (LRV Submissions, ICC-02/11-01/11-706, para. 17).

⁷¹ LRV Submissions, ICC-02/11-01/11-706, para 12.

⁷² ICC-02/11-01/11-T-25-CONF-ENG CT, page 38, lines 2-11.

43. The Chamber notes that victims do not apply to participate in a specific case.⁷³

Indeed, under Rule 89(1) of the Rules, it is for the Victims Participation and Reparations Section to link individual applications to the relevant situations and cases before the Court. Thus, nothing precludes applications for participation from being transmitted to more than one 'relevant' chamber.

44. Concerning the identity requirement, the Chamber is satisfied, on the basis of the assessment conducted by Pre-Trial Chamber I, that the identities of the applicants have been duly established.⁷⁴ As concerns the other two requirements, and on the basis of the Pre-Trial Chamber's detailed assessment under Rule 85 in the context of the *Blé Goudé* case,⁷⁵ the Chamber is satisfied that all 270 applicants granted victim status for the confirmation stage of the *Blé Goudé* case have suffered harm as a result of crimes for which Mr Gbagbo allegedly bears individual criminal responsibility.⁷⁶

45. Finally, the Chamber takes note of the fact that the victims themselves, through the LRV, have expressly stated their desire to also participate in the proceedings against Mr Gbagbo.⁷⁷

46. Therefore, in light of the above, the Chamber is satisfied that the 270 applicants fulfil the criteria set out in Rule 85 of the Rules and grants them the status of victims in the present case.

⁷³ First *Blé Goudé* Victims Decision, ICC-02/11-02/11-83, para. 12.

⁷⁴ Annex 1 to Second *Blé Goudé* Victims Decision, ICC-02/11-02/11-111-Conf-Anx.

⁷⁵ Annex 1 to Second *Blé Goudé* Victims Decision, ICC-02/11-02/11-111-Conf-Anx. *See also*, Registry Observations, ICC-02/11-01/11-705, para. 9.

⁷⁶ The Chamber observes that the 270 applicants suffered harm as a result of crimes linked to the four incidents common to the *Gbagbo* and *Blé Goudé* cases (Decision on the confirmation of charges against Laurent Gbagbo, 12 June 2014, ICC-02/11-01/11-656-Conf (public redacted version available at ICC-02/11-01/11-656-Red); Decision on the confirmation of charges against Charles Blé Goudé, 11 December 2014, ICC-02/11-02/11-186.). Specifically, the four common incidents are: i) the attacks related to the demonstrations at the RTI building on 16-19 December 2010; ii) the attack on the women's demonstration in Abobo on 3 March 2011; iii) the shelling of Abobo market and the surrounding area on 17 March 2011; and iv) the attack on Yopougon on or around 12 April 2011.

⁷⁷ LRV Submissions, ICC-02/11-01/11-706, para. 17.

47. The Chamber recalls that, pursuant to Rule 89(1) of the Rules, the Defence is entitled to examine applications for participation and express its views on the assessment of each applicant's status under Rule 85 of the Rules. Based on these submissions, and in accordance with Rule 91(1) of the Rules, the Chamber may, thereafter, reconsider the status of any disputed applicant.

C. Admission system for additional victims to participate in trial proceedings

48. In selecting an admission system, the Chamber has considered Options 1 and 2, as proposed by the Registry, as well as the possibility of maintaining the admission system used at the confirmation stage, as suggested by the Defence. In coming to its decision, the Chamber has also given due regard to the specific circumstances of the present case, including the potential number of victims and the current start date for trial,⁷⁸ as well as the submitted preferences of the parties and participants.

49. The Chamber notes that the Registry has estimated the total number of victims – including the 468 applicants granted victim status by virtue of the present decision – will not exceed 700.⁷⁹ The Registry estimates that 150 to 200 additional applications for participation are expected to be submitted at this stage of the proceedings.⁸⁰ The Chamber considers that this relatively limited number of additional applications allows the Chamber to apply Rule 89(1) of the Rules in a manner that ensures the fair and expeditious conduct of proceedings pursuant to Articles 64(2) and 68(3) of the Statute.

50. Accordingly, the Chamber finds it appropriate to follow Option 1 proposed by the Registry and to consider applications for participation individually,

⁷⁸ Order setting the commencement date for the trial and the time limit for disclosure, 17 November 2014, ICC-02/11-01/11-723.

⁷⁹ Registry Observations, ICC-02/11-01/11-705, para. 10.

⁸⁰ Registry Observations, ICC-02/11-01/11-705, para. 10.

pursuant to Rule 89(1) of the Rules. The Chamber is satisfied that the transmission of the one-page Simplified Forms will enable the parties to make meaningful submissions. Both the Defence and the Prosecution will be provided with applications which contain the information required to make a determination pursuant to Rule 85 of the Rules.⁸¹ Moreover, the one-page Simplified Form will ensure that the process of admitting victims to participate in trial proceedings is both expeditious and effective. However, despite the admission system adopted, any applications already submitted to the Registry using the standard application form may be transmitted and still be considered for participation in trial proceedings.

51. Pursuant to Article 68(3) of the Statute and as requested by the Registry, the Chamber considers it appropriate to set a deadline for submission of applications to the Registry as well as a deadline for the transmission of applications to the Chamber and the parties. Accordingly, all applications must be submitted to the Registry 70 days prior to trial in order to be assessed for participation at trial. On a rolling basis, the Registry shall transmit copies of all complete applications linked to the present case, to the Chamber and the Prosecution, in unredacted form, and to the Defence in redacted form, at the latest 60 days prior to trial.

52. Moreover, all applications are to be transmitted to the Chamber together with a report pursuant to Regulation 86(5) of the Regulations. The *ex parte* reports shall, if appropriate, group applications by incident⁸².

53. In accordance with Rule 89(1) of the Rules, the parties shall have an opportunity to submit observations on the applications for participation. In

⁸¹ *Ntaganda* Victims Decision, ICC-01/04-02/06-67, para. 21. *See also*, para. 22.

⁸² First *Blé Goudé* Victims Decision, ICC-02/11-02/11-83, para. 45. Any supplementary documents relevant for the Chamber's assessment under Rule 85 of the Rules, including, for example, death certificates, shall be made available to the Chamber and referred to in the report.

light of the procedure set out above, the Chamber invites the parties, should they wish to do so, to file their observations within 21 days of each transmission.

IV. Other issues raised in the Joint Submissions

54. The Chamber has duly considered the Joint Submissions and welcomes this joint effort to simplify and harmonise proceedings.

55. As concerns the applications of victims authorised to participate at the confirmation stage of the proceedings, the Chamber agrees with the Registry that the LRV, being in contact with the victims represented, is best placed to advise on any lifting of redactions on the applications of participating victims. It also notes that the Registry indicated it was ready to transmit lesser redacted versions of the applications after consulting with the LRV.⁸³ In this regard, the LRV informed the Chamber that said consultations were undertaken.⁸⁴ In light of the submissions above, the Chamber considers that lesser redacted versions of these applications shall be transmitted to the Defence when the proposals by the LRV contained in the annexes to the Joint Submissions and the LRV Supplementary Submissions are agreeable to the Registry. Whenever in disagreement, and if the Registry is of the view that maintaining redactions is the only available measure by which to protect applicants or third parties under Article 64(6)(e) and 68(1) of the Statute, it shall seise the Chamber of the matter.

56. The aforementioned lesser redacted versions include the applications for participation of five dual status witnesses.⁸⁵ Should additional witnesses apply

⁸³ Second Registry Observations, ICC-02/11-01/11-757-Conf, para. 1.

⁸⁴ LRV Supplementary Submissions, ICC-02/11-01/11-779-Conf, para. 6.

⁸⁵ See, confidential, *ex parte*, Annexes 199 to 203 to Joint Submissions, ICC-02/11-01/11-748-Conf-Exp-Anx199; ICC-02/11-01/11-748-Conf-Exp-Anx200; ICC-02/11-01/11-748-Conf-Exp-Anx201; ICC-02/11-01/11-748-Conf-Exp-Anx202

to participate as victim in the proceedings, the Chamber recalls that, under Rule 76 or 77 of the Rules, it is for the Prosecution to disclose lesser redacted versions of applications for participation of dual status witnesses in accordance with its disclosure obligations and in a manner consistent with the Redaction Decision.⁸⁶

57. With regard to the applications newly received, and in light of the admission system adopted above, the Chamber considers that the use of Simplified Forms should be instrumental in streamlining the process of applying redactions. In principle, the information will be submitted in concise form and should minimise the concerns for identification and, hence, the need to resort to protective measures, ultimately allowing for the transmission of such information to the Defence in non-redacted form, to the extent possible.⁸⁷ As suggested and whenever feasible, the Registry is to apply these limited redactions in consultation with the LRV before their transmission to the Defence.

58. As concerns the referencing system for participating victims, the Chamber fails to see any compelling reason to adopt the modifications proposed by the Defence. In light of the Registry's submission that 'such a modification would have a significant impact' on the 'overall system used in other proceedings before the Court' and that 'the Registry would have to stamp again and transmit again all applications' of participating victims in the present case,⁸⁸ the Chamber considers that modifications are not warranted.

ICC-02/11-01/11-748-Conf-Exp-Anx203. The proposed lesser redacted applications were prepared in consultation with the Prosecution (Joint Submissions, ICC-02/11-01/11-748, para. 12).

⁸⁶ *The Prosecutor v. Bosco Ntaganda*, Decision on Prosecution requests relating to victims applications, 30 January 2015, ICC-01/04-02/06-437, para. 10.

⁸⁷ *See, Ntaganda Victims Decision*, ICC-01/04-02/06-67, para. 22.

⁸⁸ Second Registry Observations, ICC-02/11-01/11-757, para. 13.

59. Finally, the Chamber finds that the Registry does not have to assign pseudonyms to intermediaries assisting applicants in completing applications as the Redaction Decision does not, in principle, apply to the transmission of applications for participation to the Defence.⁸⁹

V. Common legal representation of victims

60. Pursuant to Rule 90(1) of the Rules, '[a] victim shall be free to choose a legal representative'. However, the Chamber is of the view that the remainder of Rule 90 makes it clear that this right is not absolute and that, 'where there are a number of victims' and 'for the purposes of ensuring the effectiveness of the proceedings', a legal representative can be chosen by the Court taking into consideration the distinct interests of the victims and avoiding any conflict of interest.

61. The Chamber recalls that victims admitted to participate at the confirmation stage of the proceedings are all currently represented by: i) an appointed counsel from the OPCV; supported by ii) a team member based in the field with wide knowledge of the situation on the ground; and (iii) a case manager.⁹⁰ The Chamber further notes that the Pre-Trial Chamber appointed the OPCV and adopted the same team structure for the legal representation of victims admitted to participate at the confirmation stage in the *Blé Goudé* case.⁹¹ Therefore, the 468 applicants granted victim status and authorised to participate in the trial proceedings by virtue of the present decision have been and are currently being represented by the same common legal representative.

⁸⁹ As provided above, disclosure obligations exist for applications for participation of dual status witnesses.

⁹⁰ First *Gbagbo* Victims Decision, ICC-02/11-01/11-138, para. 40. *See also*, Corrigendum to the Second decision on victims' participation at the confirmation of charges hearing and in the related proceedings, 6 February 2013 (corrigendum notified on 8 February 2013) ICC-02/11-01/11-384-Corr, paras 44-46; Proposal for the common legal representation of victims, 16 May 2012, ICC-02/11-01/11-120.

⁹¹ First *Blé Goudé* Victims Decision, ICC-02/11-02/11-83, paras 22-25. *See also*, Second *Blé Goudé* Victims Decision, ICC-02/11-02/11-111, para. 15.

62. The Chamber takes note of the OPCV's availability to continue representing victims authorised to participate in the trial stage of the proceedings pursuant to the present decision.⁹²

63. The Chamber is cognisant of the previous report submitted by the Registry on legal representation⁹³ and, subject to any further submissions, the Chamber does not currently see any reason to depart from the current system of legal representation. However, the Chamber considers that it will be better positioned to make a ruling on the future legal representation of participating victims after having received complementary observations on the matter pursuant to Rule 90 of the Rules. The Chamber therefore directs the Registry to submit a report on the legal representation of victims for the purpose of trial proceedings in the present case updating the information provided to the Chamber on, *inter alia*: i) the victims' preferences; ii) the grouping of victims; as well as iii) the composition of the legal team supported by the legal aid scheme. In the preparation of this report, the Registry shall consult, as appropriate, with the victims, the applicants and with their representatives.

⁹² LRV Submissions, ICC-02/11-01/11-706, para. 44.

⁹³ Proposal for the common legal representation of victims, 16 May 2012, ICC-02/11-01/11-120 and annexes.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

DECIDES that the 198 applicants granted victim status at the confirmation stage of the proceedings are authorised to participate in trial proceedings;

DECIDES to terminate the status of applicant a/20163/12;

INSTRUCTS the Registry to transmit to the Defence, in consultation with the LRV, lesser redacted versions of the applications for participation contained in the annexes to the Joint Submissions and the LRV Further Submissions, and otherwise seise the Chamber with any disagreements;

DECIDES that the 270 applicants granted victim status at the confirmation stage of the *Blé Goudé* case are authorised to participate in the trial proceedings of the present case;

ORDERS the Registry to transmit copies of the applications of the 270 victims admitted to participate in the proceedings by the present decision, to the Chamber and the Prosecutor in unredacted form and to the Defence in redacted form, as soon as practicable;

ORDERS the Defence to submit, should it wish to do so, observations on the applications of the 270 victims admitted to participate in the proceedings by the present decision no later than 21 days after their transmission;

DECIDES that all victim applications, in order to be assessed for participation at trial, shall be received by the Registry by no later than 70 days prior to trial;

ORDERS the Registry to transmit copies of the complete and relevant victim applications received, to the Chamber and the Prosecution in unredacted form and to the Defence in redacted form, as soon as possible and, if appropriate, on a continuous basis, by no later than 60 days prior to trial;

ORDERS the Registry to submit to the Chamber, in accordance with paragraph 52 of the present decision and together with each transmission, a report pursuant to Regulation 86(5) of the Regulations;

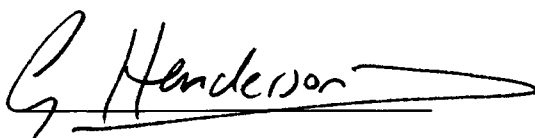
ORDERS the Prosecutor and the Defence to submit any observations on each batch of victim applications for participation 21 days after each transmission;

ORDERS the parties and participants to refer to the applicants only by the numbers assigned to them by the Registry;

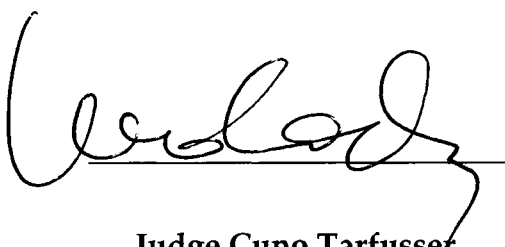
DIRECTS the Registry, in accordance with paragraph 63 of the present decision, to submit a report on the legal representation of victims by 30 April 2015;

INSTRUCTS the Registry to reclassify as public ICC-02/11-01/11-751-Conf and ICC-02/11-01/11-757-Conf.

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



Judge Geoffrey Henderson, Presiding Judge



Judge Cuno Tarfusser



Judge Olga Herrera Carbuccion

Dated 6 March 2015

At The Hague, The Netherlands