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**TRIAL CHAMBER I**

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

**SITUATION IN CÔTE D'IVOIRE**

**IN THE CASE OF  
*THE PROSECUTOR v. LAURENT GBAGBO***

**Public Document**

**Submissions in accordance with the "Order scheduling a status conference and setting a provisional agenda" issued on 8 October 2014**

**Source:** Office of Public Counsel for Victims

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

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## I. PROCEDURAL BACKGROUND

1. On 4 June 2012, the Single Judge of Pre-Trial Chamber I (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”,<sup>1</sup> whereby she authorised 139 victims to participate at the confirmation of charges hearing and in the related proceedings.<sup>2</sup> In addition, the Single Judge appointed a counsel from the Office of Public Counsel for Victims (the “OPCV” or the “Office”) as the common legal representative of all the victims admitted to participate in the proceedings (the “Common Legal Representative”).<sup>3</sup>

2. On 6 February 2013, the Single Judge issued the “Second decision on victims’ participation at the confirmation of charges hearing and in the related proceedings”,<sup>4</sup> whereby she (i) authorised 60 victims to participate at the confirmation of charges hearing and in the related proceedings, (ii) confirmed the appointment of counsel from the Office as Common Legal Representative of all the victims admitted to participate in the proceedings related to the confirmation of charges, and (iii) reminded the modalities of participation of the Common Legal Representative at the confirmation of charges hearing and in the related proceedings.<sup>5</sup>

3. On 12 June 2014, Pre-Trial Chamber I, by majority, issued a decision confirming the charges against Mr. Gbagbo under article 61(7)(a) of the Rome Statute and committing him for trial (the “Confirmation of Charges Decision”).<sup>6</sup>

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<sup>1</sup> See the “Decision on Victims’ Participation and Victims’ Common Legal Representation at the Confirmation of Charges Hearing and in the Related Proceedings” (Pre-Trial Chamber I, Single Judge), No. ICC-02/11-01/11-138, 4 June 2012.

<sup>2</sup> *Idem*, p. 25.

<sup>3</sup> *Ibid.*, p. 26.

<sup>4</sup> See the “Second decision on victims’ participation at the confirmation of charges hearing and in the related proceedings” (Pre-Trial Chamber I, Single Judge), No. ICC-02/11-01/11-384, 6 February 2013.

<sup>5</sup> *Idem*, pp. 22-23.

<sup>6</sup> See the “Decision on the confirmation of charges against Laurent Gbagbo” (Pre-Trial Chamber I), No. ICC-02/11-01/11-656-Red, 12 June 2014 (the “Confirmation of Charges Decision”), p. 131.

4. On 17 September 2014, the Presidency assigned the case to Trial Chamber I.<sup>7</sup>

5. On 8 October 2014, the Trial Chamber issued an Order scheduling a status conference to be held on 4 November 2014 and setting a provisional agenda, instructing the parties and participants to submit their written observations on the provisional agenda and to inform the Chamber of any items they wish to be added to it by 27 October 2014.<sup>8</sup>

6. Accordingly, the Common Legal Representative respectfully submits the following observations.

## **II. VICTIMS' SUBMISSIONS ON ISSUES IDENTIFIED BY THE CHAMBER**

7. The Common Legal Representative hereby presents her submissions on issues arising from points d), e) and f) of the Provisional Agenda, as expressly instructed by the Chamber.<sup>9</sup>

### **1) Regarding issues under point d)**

#### ***i. Status of the victims admitted to participate at the pre-trial stage***

8. The Common Legal Representative notes that the Pre-Trial Chamber admitted 199 victims to participate at the pre-trial stage of the proceedings in the present

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<sup>7</sup> See the "Decision re-constituting Trial Chamber I and referring to it the case of *The Prosecutor v. Laurent Gbagbo*" (Presidency), No. ICC-02/11-01/11-682, 17 September 2014.

<sup>8</sup> See the "Order scheduling a status conference and setting a provisional agenda" (Trial Chamber I), No. ICC-02/11-01/11-692, 8 October 2014.

<sup>9</sup> *Idem*, para. 7.

case.<sup>10</sup> Out of these 199 victims, one passed away in 2013 and the Pre-Trial Chamber terminated her status of victim in relation to the *Blé Goudé* case on 1<sup>st</sup> August 2014.<sup>11</sup>

9. The Common Legal Representative submits that all the victims admitted to participate at the pre-trial 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*, with the exception of victim a/20163/12 for whom the status of victim should be terminated in the present proceedings.

10. This interpretation has been supported by different Trial Chambers of the Court. In particular, Trial Chambers II and III, in the *Katanga & Ngudjolo Chui* case<sup>12</sup> and the *Bemba* case respectively,<sup>13</sup> ruled that victims admitted to participate at the pre-trial stage of the proceedings shall be automatically admitted to participate at the trial stage, without their applications for participation having to be submitted and considered *de novo*. Indeed, according to regulation 86(8) of the Regulations of the Court, “[a] decision taken by a Chamber under rule 89 [of the Rules of Procedure and Evidence] [on the determination of victim status] shall apply throughout the proceedings in the same case, subject to the powers of the relevant Chamber in accordance with rule 91, sub-rule 1.”

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<sup>10</sup> See the “Decision on Victims’ Participation and Victims’ Common Legal Representation at the Confirmation of Charges Hearing and in the Related Proceedings”, *supra* note 1, pp. 25-26; and the “Second decision on victims’ participation at the confirmation of charges hearing and in the related proceedings”, *supra* note 4, pp. 22-23.

<sup>11</sup> The reference is to victim a/20163/12. See the “Second Decision on victims’ participation in the pre-trial proceedings and related issues” (Pre-Trial Chamber I, Single Judge), No. ICC-02/11-02/11-111, 1<sup>st</sup> August 2014.

<sup>12</sup> See the “Decision on the treatment of applications for participation” (Trial Chamber II), No. ICC-01/04-01/07-933-tENG, 26 February 2009, p. 23: “The Chamber decides that the victims authorised by Pre-Trial Chamber I to participate in the proceedings are authorised to participate in the trial, without their applications having to be re-registered.”

<sup>13</sup> See the “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” (Trial Chamber III), No. ICC-01/05-01/08-699, 22 February 2010, para. 22: “Otherwise, as set out above, the victims authorised to participate in the proceedings at the pre-trial stage shall automatically participate at trial, without the need to re-file their applications for assessment by the Trial Chamber.”

11. In this regard, the Common Legal Representative submits that the charges as brought by the Prosecution have been entirely confirmed by the Pre-Trial Chamber.<sup>14</sup>

*ii. Procedure to be adopted with respect to victims authorised to participate at the pre-trial stage of the case against Mr. Blé Goudé*

12. The Common Legal Representative submits that the 271 victims authorised to participate at the pre-trial stage of the case against Mr. Blé Goudé<sup>15</sup> 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. Therefore, the previous assessment of the 271 applications, even if done in the context of the *Blé Goudé* case, remains valid.

13. The Common Legal Representative contends that at this stage of the proceedings the case against Mr. Gbagbo is defined by the charges confirmed in the Chamber's decision dated 12 June 2014 and it is in relation to said charges that the status of victims has to be assessed in accordance with rule 85 of the Rules of Procedure and Evidence.

14. In this regard, the Common Legal Representative notes that the crimes, as well as the events referred to in the document containing the charges against Mr. Blé Goudé, are identical to the ones brought against Mr. Gbagbo.<sup>16</sup>

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<sup>14</sup> See the Confirmation of Charges Decision, *supra* note 6.

<sup>15</sup> See the "Second Decision on victims' participation in the pre-trial proceedings and related issues", *supra* note 11.

<sup>16</sup> See the "Prosecution's Submission of *Document de notification des charges* and *l'Inventaire des éléments de preuve à charge*", No. ICC-02/11-02/11-124, 22 August 2014; in particular, see the references to the crimes and events at paras. 322, 327–329 of said document and the crimes and events described in the Confirmation of Charges Decision, *supra* note 6, paras. 193–206.

15. On the basis of this argument, the 199 victims authorised to participate in the present case have also been automatically admitted to participate in the *Blé Goudé* case.<sup>17</sup> In particular, the Single Judge found that “*the applications for victims’ participation submitted to the Court are not case specific and that, under rule 15(1)(c) of the Rules, it is for the VPRS to link them to existing situations and cases before the Court. Thus, nothing precludes victims’ applications from being “relevant”, as provided for under rule 89(1) of the Rules, for more than one Chamber.*”<sup>18</sup>

16. Following the same approach, in the *Banda & Jerbo* case, Pre-Trial Chamber I concluded that victims already authorised to participate in the *Abu Garda* case fulfilled the criteria under rule 85 of the Rules of Procedure and Evidence to be also authorised to participate in the said case.<sup>19</sup>

17. Finally, the Common Legal Representative informs the Chamber that, out of the 271 victims, one passed away in August 2014,<sup>20</sup> and that the remaining 270 victims have all expressly indicated to her in the course of recent missions in Côte d’Ivoire that they wish to participate also in the *Blé Goudé* case to present their views and concerns.

***iii. Procedure to be adopted with respect to victim applicants who did not participate at the pre-trial stage***

18. The Common Legal Representative submits that any person, organisation or institution meeting the criteria established under rule 85 of the Rules of Procedure and Evidence who did not participate at the pre-trial stage of the proceedings in the present case should be given the possibility to apply for participation at the trial

<sup>17</sup> See the “Decision on victims’ participation in the pre-trial proceedings and related issues”, (Pre-Trial Chamber I, Single Judge), No. ICC-02/11-02/11-83, 11 June 2014, paras. 13-18.

<sup>18</sup> *Idem*, para. 12.

<sup>19</sup> See the “Decision on Victim’s Participation at the Hearing on the Confirmation of the charges” (Pre-Trial Chamber I), No. ICC-02/05-03/09-89, 29 October 2010, paras. 6-10.

<sup>20</sup> The reference is to victim a/10201/14.

stage within a time-limit and under modalities to be determined by the Chamber. Moreover, any said person, organisation and institution deemed to comply with the criteria under rule 85 of the Rules of Procedure and Evidence should be given the possibility to enjoy the right as enshrined under article 68(3) of the Rome Statute to participate at the trial proceedings in an effective and meaningful – as opposed to a purely symbolic – manner, including the possibility to contribute to the establishment of the truth and the rendering of Justice, as well as the possibility to tell their story and to have their story heard within the judicial framework.

**- The procedure adopted must give full effect to the victims' right to be heard**

19. In this regard, article 68(3) of the Rome Statute provides victims in a clear and non-ambiguous manner with the right to participate through their legal representative(s) in proceedings before the Court when their personal interests are affected. The analysis of the preparatory works of said provision leaves no doubt about the fact that victims may participate at all stages of the proceedings before the Court, including trial proceedings.<sup>21</sup>

20. While victims' interests bear some similarities with the Prosecutor's ones, victims undoubtedly have an independent role and voice in the Court's proceedings, including *vis-à-vis* the Prosecutor,<sup>22</sup> and, accordingly, their role cannot be either

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<sup>21</sup> See, for instance, the proposals submitted by France, UN Doc. PCNICC/1999/DP.2, 1<sup>st</sup> February 1999, p. 7; the proposals submitted by Costa Rica, UN Doc. PCNICC/1999/WGRPE/DP.3, 24 February 1999; and the proposals submitted by Colombia, UN Doc. PCNICC/1999/WGRPE/DP.37, 10 August 1999. See also BITTI (G.) and FRIMAN (H.), "Participation of Victims in the Proceedings", in LEE (R.S.) (ed.), *The International Criminal Court: Element of Crimes and Rules of Procedure and Evidence*, Transnational Publishers Inc., New York, 2001, pp. 456-474.

<sup>22</sup> See the "DECISION ON THE APPLICATIONS FOR PARTICIPATION IN THE PROCEEDINGS OF VPRS 1, VPRS 2, VPRS 3, VPRS 4, VPRS 5 AND VPRS 6" (Pre-Trial Chamber I), No. ICC-01/04-101-tEN-Corr, 17 January 2006, para. 51; and the "Decision on "Prosecutor's Application to attend 12 February hearing"" (Pre-Trial Chamber II, Single Judge), No. ICC-02/04-01/05-155, 9 February 2007, p. 4.



compared or confused with the one of the Prosecutor.<sup>23</sup> Indeed, the very interest of the Prosecutor in the proceedings before the Court is to bring evidence with the aim to prove that the suspect/accused is criminally responsible under the Rome Statute for the crimes charged.<sup>24</sup> In contrast, besides the interest to receive reparations,<sup>25</sup> which is far from being the sole motivation of victims,<sup>26</sup> the core interest of victims in the proceedings is to effectively exercise their rights to truth and Justice; these rights having been recognised as essential for the persons directly affected by the crimes committed by international human rights law,<sup>27</sup> doctrine<sup>28</sup> and the constant jurisprudence of the Court.<sup>29</sup>

<sup>23</sup> See the “Judgment on the appeal of Mr. Thomas Lubanga Dyilo against the decision of Pre-Trial Chamber I entitled ‘Décision sur la demande de mise en liberté provisoire de Thomas Lubanga Dyilo’” (Appeals Chamber), No. ICC-01/04-01/06-824 OA7, 13 February 2007, para. 55.

<sup>24</sup> See the “Judgment on the appeals of The Prosecutor and The Defence against Trial Chamber I’s Decision on Victims’ Participation of 18 January 2008” (Appeals Chamber), No. ICC-01/04-01/06-1432 OA9 OA10, 11 July 2008, para. 93.

<sup>25</sup> In this sense, see AMBOS (K.), *El Marco Jurídico de la Justicia de Transición*, Tenus, Bogota, 2008, notes 107-112. See also the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, adopted by the General Assembly of the United Nations in its resolution No. 60/147 in the 64<sup>th</sup> plenary meeting, UN Doc. A/RES/60/147, 16 December 2005, para. 21.

<sup>26</sup> See the Note prepared by the former Special Rapporteur of the Sub-Commission, Mr. Theo van Boven, in accordance with paragraph 2 of Sub-Commission resolution 1996/28, UN Doc. E/CN.4/1997/104, 16 January 1997, pp. 2-5. See also the Final report prepared by Mr. Joinet pursuant to Sub-Commission decision 1996/119, Question of the impunity of perpetrators of human rights violations (civil and political), UN Doc. E/CN.4/Sub.2/1997/20, 26 June 1997, pp. 3-31. See also the “Decision on victims’ participation” (Trial Chamber I), 18 January 2008, No. ICC-01/04-01/06-1119, para. 98.

<sup>27</sup> See IACHR, *La Cantuta v. Peru*, Judgment of 29 November 2006, Series C, No. 162, para. 222; *Vargas-Areco v. Paraguay*, Judgment of 26 September 2006, Series C, No. 155, paras. 153; *Almohacid-Arellano and al v. Chile*, Judgment of 26 September 2006, Series C, No. 154, para. 148; *Moiwana Community v. Suriname*, Judgment of 15 June 2005, Series C, No. 124, para. 204; and *Velásquez-Rodríguez v. Honduras*, Judgment of 29 July 1988, Series C, No. 7, paras. 162-166 and 174. See also ECHR, *Hugh Jordan v. UK*, Application No. 24746/94, 4 May 2001, paras. 16, 23, 157 and 160; *Selmouni v. France*, Application No. 25803/94, 28 July 1999, para. 79; *Kurt v. Turkey*, Application No. 24276/94, 25 May 1998, para. 140; *Selcuk and Asker v. Turkey*, Application No. 23184/94, 24 April 1998, para. 96; *Aydın v. Turkey*, Application No. 23178/94, 25 September 1997, para. 103; and *Aksoy v. Turkey*, Application No. 21987/93, 18 December 1996, para. 98.

<sup>28</sup> See DONAT-CATTIN (D.), “Article 68”, in TRIFFTERER (O.) (ed.), *Commentary on the Rome Statute of the International Criminal Court, Observers’ Notes, Article by Article*, Nomos, 2008, pp. 1279, 1290, 1291; NAQVI (Y.), “The Right to the Truth in International Law Fact or Fiction”, in (2006) *ICRC International Review*, No. 88, pp. 267-268; MENDEZ (J.), “The Right to Truth”, in JOYNER (Ch.) (ed.), *Reigning in Impunity for International Crimes and Serious Violations of Fundamental Human Rights’ Proceedings of the*

21. In particular, Trial Chamber II held that:

*“[a]s a matter of general principle, [the participation of victims through their legal representative] must have as its main aim the ascertainment of the truth. The victims are not parties to the trial and certainly have no role to support the case of the Prosecution. Nevertheless, their participation may be an important factor in helping the Chamber to better understand the contentious issues of the case in light of their local knowledge and socio-cultural background.”*<sup>30</sup>

22. In addition, “[t]he object and purpose of article 68(3) of the Statute and rules 91 and 92 of the Rules [of Procedure and Evidence] is to provide victims with a meaningful role in the criminal proceedings before the Court (including at the pre-trial stage of a case) so that they can have a substantial impact in the proceedings”.<sup>31</sup> Accordingly, the participation of victims in the proceedings before the Court shall be “effective and significant as opposed to purely symbolic.”<sup>32</sup>

23. The participation of victims in the proceedings before the Court in an effective and efficient manner is a necessary mechanism to implement their right to Justice and is an essential element of the full realisation of the other elements of that right,

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*Siracusa Conference*, 17-21 September 1998, Eres, Toulouse, 1998, pp. 257; and AMBOS (K.), *El Marco Jurídico de la Justicia de Transición*, op. cit. supra note 25, pp. 42-44.

<sup>29</sup> See, for instance, the “Decision on the Set of Procedural Rights Attached to Procedural Status of Victim at the Pre-Trial Stage of the Case” (Pre-Trial Chamber I, Single Judge), No. ICC-01/04-01/07-474, 13 May 2008, paras. 31-44.

<sup>30</sup> See the “Corrigendum Directions for the conduct of the proceedings and testimony in accordance with rule 140” (Trial Chamber II), No. ICC-01/04-01/07-1665-Corr, 1<sup>st</sup> December 2009, paras. 82-91.

<sup>31</sup> See the “Decision on the Set of Procedural Rights Attached to Procedural Status of Victim at the Pre-Trial Stage of the Case”, supra note 29, para. 157.

<sup>32</sup> See the “Judgment on the Appeals of The Prosecutor and The Defence against Trial Chamber I’s Decision on Victims’ Participation of 18 January 2008”, supra note 24, para. 97; the “Decision on victims’ representation and participation” (Trial Chamber V), No. ICC-01/09-01/11-460, 3 October 2012, para. 10; the “Decision on victims’ representation and participation” (Trial Chamber V), No. ICC-01/09-02/11-498, 3 October 2012, para. 9; and the “Decision on common legal representation of victims for the purpose of trial” (Trial Chamber III), No. ICC-01/05-01/08-1005, 1<sup>st</sup> December 2010 (dated 10 November 2010), para. 9(a).

namely to know the truth and to obtain reparations.<sup>33</sup> Such participation can only be deemed meaningful, rather than purely symbolic, if victims are entitled to positively contribute to the search for the truth. In this respect, any form of positive contribution from victims appears to be crucial for the accomplishment of the Court's function.<sup>34</sup>

24. The Common Legal Representative submits that the possibility to tell their stories and to share their difficult and painful experiences with the judges constitutes one of the ways whereby the victims can positively contribute to the search for the truth. For the absolute majority of victims, except a very limited number of them enjoying the dual status of witness and victim, or appearing in person to present their views and concerns, the process of application for participation appears to be the only way to provide an account of their experience which might be of relevance for the search for the truth.

25. Under the Rome Statute, victims have the right not only to tell their story but also to have their story heard within the judicial framework. Indeed, “[i]n the light of the core content of the right to be heard set out in article 68(3) of the Statute, [...] [said provision] imposes an obligation on the Court vis-à-vis victims. The use of the present tense in the French version of the text (“la Cour permet”) makes it quite clear that the victims’ guaranteed right of access to the Court entails a positive obligation for the Court to enable them to exercise that right concretely and effectively. It follows that the Chamber has a dual obligation: on the one hand, to allow victims to present their views and concerns, and, on the other, to examine them”.<sup>35</sup>

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<sup>33</sup> See DONAT-CATTIN (D.), “Article 68”, in TRIFFTERER (O.), *op. cit. supra* note 28, pp. 1279, 1290 and 1291.

<sup>34</sup> *Idem*, p. 1280.

<sup>35</sup> See the “DECISION ON THE APPLICATIONS FOR PARTICIPATION IN THE PROCEEDINGS OF VPRS 1, VPRS 2, VPRS 3, VPRS 4, VPRS 5 AND VPRS 6”, *supra* note 22, para. 71.

26. Given the abovementioned right of victims to tell their story and to have their story heard, as well as the obligation imposed upon the Court *vis-à-vis* victims, the Common Legal Representative submits that victims' statements contained in their applications for participation, in particular regarding the relevant events and the harm suffered, might be of relevance for the determination of the truth and should be duly considered and taken into account by the Chamber for the purpose of the trial proceedings.

27. Regarding the model of victims' participation at the trial stage to be adopted in the present case, the Common Legal Representative, while being cognisant of the variety of models currently used within the Court, submits that the model to be adopted should be first and foremost in compliance with the right granted to victims under article 68(3) of the Rome Statute to participate in an effective and meaningful manner in the Court proceedings.<sup>36</sup>

28. The Common Legal Representative notes that the Single Judge of the Pre-Trial Chamber adopted in the present case a "partly collective" approach whereas she decided that victims could apply using the standard application form, as well as a collective application form designed to this effect.<sup>37</sup>

29. In this regard, the Common Legal Representative submits that in accordance with the legal texts of the Court the procedure for application should preserve the individual or individualised character of the victims' participation in compliance with the principle enshrined in article 68(3) of the Rome Statute. Therefore, the available six-page standard application form as revised and approved by the Presidency should be used in the present case.

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<sup>36</sup> See *supra* paras. 19-25.

<sup>37</sup> See the "Second decision on issues related to the victims' application process" (Pre-Trial Chamber I, Single Judge), No. ICC-02/11-01/11-86, 5 April 2012, paras. 16-36.

30. Should the Chamber decide to simplify the application process, the Common Legal Representative submits that the model adopted at the pre-trial stage of the proceedings in the *Bosco Ntaganda* case is a suitable option,<sup>38</sup> as it, on the one hand, will be in compliance with the right of victims to participate in the proceedings under article 68(3) of the Rome Statute and, on the other hand, will significantly assist the VPRS in processing victims' applications and the Chamber in its assessment of the requirements under rule 85 of the Rules of Procedure and Evidence.

31. In particular, said application form, although significantly reduced and simplified, still enables victims both to contribute to the search for the truth by providing specific details in relation to the events within the charges and to tell their story and to have their story heard. At the same time, the simplified application form will provide the Chamber with sufficient information in order to determine the victim status, while simplifying the management of information provided by victims. The resulting advantage will be that the amount of time and resources needed for proceeding and assessing victims' applications are significantly reduced, thereby enabling the Court to deal effectively with a potentially large number of victims.

32. The Common Legal Representatives observes that both models of victims' application process as described *supra* combined with the model of legal representation of victims as adopted and implemented at the pre-trial stage of the present case are in practice sustainable and effective.

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<sup>38</sup> See the "Decision Establishing Principles on the Victims' Application Process" (Pre-Trial Chamber II, Single Judge), No. ICC-01/04-02/06-67, 28 May 2013, with a public Annex.

33. The Common Legal Representative does not favour the model of victims' participation as adopted in the Kenyan cases.<sup>39</sup> Indeed, should the Kenyan cases model be adopted, the absolute majority of victims in the present case would be deprived of the very meaning of their right enshrined in article 68(3) of the Rome Statute, *i.e.* the possibility both to positively contribute to the search for the truth and to tell their story and to have their story heard.<sup>40</sup> This undue limitation to the rights of the victims would arise from the fact that should the Kenyan cases model be adopted (i) only few victims would be invited to fill in an application form to present to the Court evidence in relation to the events and the harm they suffered from,<sup>41</sup> and (ii) no one – neither the parties nor the judges – would ever be in a position to hear the very personal and tragic stories of the other victims, because they would only be invited to register in a manner that is not linked to any judicial context. In other words, should the Kenyan cases model be adopted, for the absolute majority of victims in the present case, the participation in the proceedings before the Court would convert into a purely symbolic one.

## **2) Regarding issues under point e)**

34. The Common Legal Representative is not currently in a position to identify the particular victims with respect to whom she would either seek the Chamber's authorisation to call as witnesses or otherwise request to appear in person before the Chamber to present views and concerns.

35. Nevertheless, the Common Legal Representative is in a position to inform the Chamber of the languages spoken by the majority of the victims. Indeed, the

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<sup>39</sup> See the "Decision on victims' representation and participation" (Trial Chamber V), No. ICC-01/09-02/11-498, 3 October 2012, paras. 47-54; and the "Decision on victims' representation and participation" (Trial Chamber V), No. ICC-01/09-01/11-460, 3 October 2012, paras. 48-55.

<sup>40</sup> See *supra* paras. 19-25.

<sup>41</sup> See the "Decision on the Conduct of Trial Proceedings (General Directions)" (Trial Chamber V(A)), No. ICC-01/09-01/11-847-Corr, 16 August 2014, para. 21.

languages mostly used by the victims are French, Djoula and Bambara. Therefore, should victims be identified by the Common Legal Representatives to be called to testify or otherwise appear in person before the Chamber, it is most likely that they will use one of said languages.

### 3) Regarding issues under point f)

36. The Common Legal Representative submits that it is of a common interest of the entirety of the victims that the trial proceedings in the present case start as soon as possible and without any undue delay.

37. During various meetings held with the Common Legal Representative, victims expressed their wish for trial proceedings to be carried out in an expeditious manner, and made clear their strong opposition to any delay in the commencement of the trial.

38. As the Assembly of States Parties has recently emphasised, victims have a right *“to expeditious and effective access to justice, protection and support, adequate and prompt reparation for harm suffered, and access to relevant information concerning violations and redress mechanisms”*, all of which *“are essential components of justice”*.<sup>42</sup>

39. However, the Common Legal Representative wishes to note that the confirmation of charges hearing in the case of *The Prosecutor v. Charles Blé Goudé* concluded a few weeks ago and that a decision on the confirmation of the charges is expected before the end of the year. Therefore, should the charges against Mr. Blé Goudé be confirmed, his trial might be joined to that of Mr. Gbagbo.

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<sup>42</sup> See ASP, Resolution No. ICC-ASP/12/Res.5, 27 November 2013, p. 1.

40. The Common Legal Representative reserves her right to submit to the Chamber specific views and concerns expressed by the victims regarding the commencement of the trial once the parties have presented submissions in this regard.

### III. VICTIMS' SUBMISSIONS ON OTHER ISSUES ARISING FROM THE PROVISIONAL AGENDA

41. The Common Legal Representative respectfully submits that in addition to the issues under points d), e) and f) with respect to which the victims were expressly invited to present submissions, the victims should also be able to present submissions on issue b) arising from the Provisional Agenda as it is of direct relevance to their interests.

#### 1) Regarding issues under point b)

42. The Common Legal Representative notes that a number of victims bearing a dual status of witness and victim are already covered by protective measures currently implemented. She submits that should the Prosecution intend to seek variation of any of the protective measures already implemented, or to request for protective measures to be applied in relation to other victims, the Common Legal Representative must be properly informed in advance. This is necessary in order to preserve the security, the safety and the well-being of the victims concerned and to prevent any potential risk in this regard, in conformity with article 68(1) of the Rome Statute. It is also necessary to enable the Common Legal Representative to properly discharge her professional obligations under the Code of Professional Conduct for Counsel, and in particular the duty to *"take into account [their] client's personal circumstances and specific needs"*.<sup>43</sup>

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<sup>43</sup> See the Code of Professional Conduct for counsel, No. ICC-ASP/4/Res.1, article 9(2).



43. The Common Legal Representative submits that for the purpose of ensuring an adequate protection of the security, the safety and the well-being of victims, a comprehensive mechanism regulating the exchange of information and contact with individuals benefiting from dual status should be established in due course on the basis of the current jurisprudence of the Court.<sup>44</sup>

44. Last but not least, the Common Legal Representative informs the Chamber of her availability to continue to represent the interests of the participating victims at the trial stage.

Respectfully submitted.

A handwritten signature in black ink, reading 'Paolina Massidda', with a horizontal line underneath the name.

**Paolina Massidda**  
**Principal Counsel**

Dated this 27<sup>th</sup> day of October 2014

At The Hague, The Netherlands

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<sup>44</sup> See, for instance, the “Decision on certain practicalities regarding individuals who have the dual status of witness and victim” (Trial Chamber I), No. ICC-01/04-01/06-1379, 5 June 2008.