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PRE-TRIAL CHAMBER II

Before: Judge Cuno Tarfusser, Single Judge

SITUATION IN UGANDA

IN THE CASE OF *THE PROSECUTOR v. DOMINIC ONGWEN*

Public

**Decision on contested victims' applications for participation, legal
representation of victims and their procedural rights**

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

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Judge Cuno Tarfusser, Single Judge exercising the functions of the Chamber in the present case, issues this decision on contested victims' applications for participation, legal representation of victims and their procedural rights. For the present decision, the Single Judge has considered articles 57(3)(c), 67(1), 68(1) and (3) of the Rome Statute ("Statute"), rules 85, 86, 89, 90, 91 and 103 of the Rules of Procedure and Evidence ("Rules"), regulations 24(2), 80 and 81 of the Regulations of the Court and regulations 113 and 123 of the Regulations of the Registry.

1. On 18 September 2015, the Registry transmitted to the Chamber, the Prosecutor and, in redacted form, to the Defence 209 victims' applications to participate in the proceedings, together with a report on the matter ([ICC-02/04-01/15-303](#) and annexes, [ICC-02/04-01/15-304](#)). The Prosecutor does not object to any of these applications ([ICC-02/04-01/15-309](#)), while the Defence objects to 11 (ICC-02/04-01/15-312-Conf).

2. On 26 October 2015, the Registry transmitted to the Chamber, the Prosecutor and, on 27 October 2015 in redacted form, to the Defence 336 victims' applications to participate in the proceedings, together with a report on the matter ([ICC-02/04-01/15-327](#) and annexes). The Prosecutor states that 335 applicants meet the criteria for admission, while one application requires further information or clarification ([ICC-02/04-01/15-337](#)). The Defence challenges 14 applications ([ICC-02/04-01/15-340](#)).

3. On 4 November 2015, the Single Judge received from Joseph Akwenyu Manoba an application to provide submissions under rule 103 of the Rules, requesting to make submissions on behalf of persons who have applied to participate in the proceedings as victims ([ICC-02/04-01/15-334](#)).

4. On 18 November 2015, the Registry transmitted to the Chamber, the Prosecutor and, on 19 November 2015 in redacted form, to the Defence 663

applications to participate in the proceedings, together with a report on the matter ([ICC-02/04-01/15-344](#) and annexes). The time limit for the parties to raise any objections is 18 December 2015 (see ICC-02/04-01/15-347).

5. On 23 November 2015, the Registry, following an order of the Single Judge ([ICC-02/04-01/15-331](#)), informed the Chamber that it will acknowledge the powers of attorney issued by 249 victims admitted to participate in the proceedings in favour of Joseph Akwenyu Manoba and Francisco Cox (ICC-02/04-01/15-346-Conf-Exp and annexes). On 27 November 2015, the Registry informed the Single Judge by email that applicants a/05029/15 and a/05226/15, whose applications were contested by the Defence, have submitted powers of attorney in favour of the same counsel.

6. In line with the applicable procedure (see [ICC-02/04-01/15-299](#)), the following 198 applicants whose applications were transmitted by the Registry on 18 September 2015 and were not contested by the parties are automatically admitted as of 5 October 2015: a/05000/15, a/05001/15, a/05002/15, a/05003/15, a/05004/15, a/05005/15, a/05006/15, a/05007/15, a/05008/15, a/05009/15, a/05010/15, a/05011/15, a/05012/15, a/05013/15, a/05014/15, a/05015/15, a/05016/15, a/05017/15, a/05018/15, a/05019/15, a/05020/15, a/05021/15, a/05022/15, a/05023/15, a/05024/15, a/05025/15, a/05026/15, a/05027/15, a/05028/15, a/05030/15, a/05031/15, a/05032/15, a/05033/15, a/05034/15, a/05035/15, a/05036/15, a/05037/15, a/05038/15, a/05039/15, a/05040/15, a/05041/15, a/05042/15, a/05043/15, a/05044/15, a/05045/15, a/05046/15, a/05047/15, a/05048/15, a/05050/15, a/05051/15, a/05052/15, a/05053/15, a/05054/15, a/05055/15, a/05056/15, a/05057/15, a/05058/15, a/05059/15, a/05060/15, a/05061/15, a/05063/15, a/05064/15, a/05065/15, a/05066/15, a/05067/15, a/05068/15, a/05069/15, a/05070/15, a/05071/15, a/05072/15, a/05073/15, a/05074/15, a/05075/15, a/05076/15, a/05078/15, a/05079/15, a/05080/15, a/05081/15, a/05082/15, a/05083/15, a/05084/15, a/05085/15,

a/05086/15, a/05088/15, a/05090/15, a/05091/15, a/05096/15, a/05097/15,
a/05099/15, a/05100/15, a/05101/15, a/05102/15, a/05103/15, a/05104/15,
a/05105/15, a/05106/15, a/05107/15, a/05109/15, a/05110/15, a/05111/15,
a/05112/15, a/05113/15, a/05114/15, a/05115/15, a/05116/15, a/05117/15,
a/05118/15, a/05120/15, a/05123/15, a/05124/15, a/05125/15, a/05127/15,
a/05128/15, a/05129/15, a/05130/15, a/05131/15, a/05132/15, a/05133/15,
a/05135/15, a/05136/15, a/05137/15, a/05138/15, a/05139/15, a/05140/15,
a/05141/15, a/05142/15, a/05143/15, a/05144/15, a/05145/15, a/05147/15,
a/05149/15, a/05151/15, a/05152/15, a/05153/15, a/05154/15, a/05155/15,
a/05157/15, a/05158/15, a/05159/15, a/05161/15, a/05162/15, a/05163/15,
a/05169/15, a/05174/15, a/05181/15, a/05182/15, a/05183/15, a/05185/15,
a/05187/15, a/05190/15, a/05193/15, a/05194/15, a/05196/15, a/05198/15,
a/05200/15, a/05201/15, a/05205/15, a/05207/15, a/05208/15, a/05209/15,
a/05212/15, a/05214/15, a/05216/15, a/05220/15, a/05224/15, a/05225/15,
a/05237/15, a/05242/15, a/05244/15, a/05249/15, a/05250/15, a/05251/15,
a/05254/15, a/05264/15, a/05266/15, a/05267/15, a/05268/15, a/05269/15,
a/05270/15, a/05273/15, a/05274/15, a/05275/15, a/05276/15, a/05277/15,
a/05278/15, a/05279/15, a/05280/15, a/05281/15, a/05282/15, a/05283/15,
a/05284/15, a/05285/15, a/05286/15, a/05287/15, a/05288/15, a/05289/15,
a/05290/15, a/05291/15.

7. The following 322 applicants whose applications were transmitted on 26 and 27 October 2015 and were not contested by the parties are automatically admitted as of 11 November 2015: a/05062/15, a/05077/15, a/05087/15, a/05089/15, a/05098/15, a/05108/15, a/05119/15, a/05121/15, a/05122/15, a/05126/15, a/05146/15, a/05148/15, a/05150/15, a/05166/15, a/05170/15, a/05171/15, a/05172/15, a/05173/15, a/05175/15, a/05176/15, a/05178/15, a/05179/15, a/05180/15, a/05184/15, a/05186/15, a/05191/15, a/05192/15, a/05195/15, a/05197/15, a/05202/15, a/05206/15, a/05210/15, a/05213/15,

a/05218/15, a/05222/15, a/05227/15, a/05232/15, a/05233/15, a/05234/15,
a/05236/15, a/05239/15, a/05240/15, a/05243/15, a/05245/15, a/05246/15,
a/05247/15, a/05248/15, a/05257/15, a/05260/15, a/05261/15, a/05292/15,
a/05294/15, a/05296/15, a/05298/15, a/05299/15, a/05300/15, a/05301/15,
a/05302/15, a/05303/15, a/05304/15, a/05306/15, a/05307/15, a/05308/15,
a/05309/15, a/05311/15, a/05312/15, a/05313/15, a/05314/15, a/05317/15,
a/05318/15, a/05319/15, a/05320/15, a/05322/15, a/05325/15, a/05326/15,
a/05327/15, a/05328/15, a/05329/15, a/05330/15, a/05333/15, a/05335/15,
a/05337/15, a/05338/15, a/05340/15, a/05342/15, a/05343/15, a/05344/15,
a/05345/15, a/05348/15, a/05349/15, a/05350/15, a/05351/15, a/05352/15,
a/05354/15, a/05356/15, a/05358/15, a/05359/15, a/05363/15, a/05364/15,
a/05365/15, a/05366/15, a/05367/15, a/05368/15, a/05369/15, a/05371/15,
a/05374/15, a/05376/15, a/05377/15, a/05379/15, a/05380/15, a/05381/15,
a/05382/15, a/05384/15, a/05385/15, a/05387/15, a/05388/15, a/05389/15,
a/05391/15, a/05392/15, a/05394/15, a/05397/15, a/05400/15, a/05401/15,
a/05402/15, a/05404/15, a/05405/15, a/05406/15, a/05408/15, a/05409/15,
a/05410/15, a/05412/15, a/05414/15, a/05417/15, a/05419/15, a/05422/15,
a/05423/15, a/05424/15, a/05429/15, a/05431/15, a/05432/15, a/05434/15,
a/05435/15, a/05436/15, a/05440/15, a/05441/15, a/05444/15, a/05447/15,
a/05450/15, a/05451/15, a/05453/15, a/05455/15, a/05457/15, a/05458/15,
a/05459/15, a/05460/15, a/05461/15, a/05462/15, a/05464/15, a/05465/15,
a/05466/15, a/05467/15, a/05471/15, a/05473/15, a/05475/15, a/05476/15,
a/05477/15, a/05478/15, a/05479/15, a/05482/15, a/05483/15, a/05487/15,
a/05493/15, a/05494/15, a/05495/15, a/05496/15, a/05497/15, a/05498/15,
a/05500/15, a/05502/15, a/05508/15, a/05509/15, a/05510/15, a/05511/15,
a/05512/15, a/05513/15, a/05514/15, a/05515/15, a/05516/15, a/05518/15,
a/05519/15, a/05521/15, a/05523/15, a/05524/15, a/05526/15, a/05527/15,
a/05528/15, a/05529/15, a/05530/15, a/05531/15, a/05533/15, a/05535/15,
a/05536/15, a/05538/15, a/05541/15, a/05542/15, a/05543/15, a/05545/15,

a/05547/15, a/05549/15, a/05550/15, a/05551/15, a/05552/15, a/05554/15,
a/05556/15, a/05557/15, a/05558/15, a/05559/15, a/05560/15, a/05561/15,
a/05562/15, a/05564/15, a/05565/15, a/05566/15, a/05567/15, a/05568/15,
a/05570/15, a/05571/15, a/05572/15, a/05573/15, a/05576/15, a/05578/15,
a/05579/15, a/05580/15, a/05581/15, a/05585/15, a/05596/15, a/05603/15,
a/05609/15, a/05610/15, a/05611/15, a/05612/15, a/05613/15, a/05614/15,
a/05616/15, a/05617/15, a/05618/15, a/05619/15, a/05620/15, a/05621/15,
a/05622/15, a/05624/15, a/05627/15, a/05628/15, a/05630/15, a/05632/15,
a/05634/15, a/05636/15, a/05637/15, a/05638/15, a/05640/15, a/05642/15,
a/05644/15, a/05645/15, a/05646/15, a/05647/15, a/05649/15, a/05653/15,
a/05655/15, a/05657/15, a/05658/15, a/05661/15, a/05664/15, a/05668/15,
a/05670/15, a/05675/15, a/05676/15, a/05677/15, a/05678/15, a/05679/15,
a/05681/15, a/05682/15, a/05683/15, a/05684/15, a/05686/15, a/05687/15,
a/05688/15, a/05690/15, a/05691/15, a/05694/15, a/05695/15, a/05763/15,
a/05764/15, a/05765/15, a/05766/15, a/05769/15, a/05773/15, a/05777/15,
a/05778/15, a/05779/15, a/05783/15, a/05784/15, a/05786/15, a/05789/15,
a/05791/15, a/05793/15, a/05795/15, a/05801/15, a/05802/15, a/05803/15,
a/05805/15, a/05806/15, a/05817/15, a/05846/15, a/05848/15, a/05879/15,
a/05888/15, a/05891/15, a/05892/15, a/05893/15, a/05894/15, a/05895/15,
a/05904/15.

8. The Single Judge will consider in the present decision the 25 applications which have been contested by the parties (section 1). This decision also addresses the question of legal representation of the victims (section 2) and the procedural rights accorded to the victims in the present case (section 3), as well as other related matters (section 4).

1) *Applications contested by the parties*

9. 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”. For the purpose of participation in the present proceedings, victims are persons who allege to have personally suffered harm, whether direct or indirect, as a result of one or more crimes alleged by the Prosecutor to have been committed by Dominic Ongwen.

10. The Defence challenges 22 applications (a/05168/15, a/05188/15, a/05199/15, a/05215/15, a/05221/15, a/05223/15, a/05226/15, a/05228/15, a/05252/15, a/05253/15, a/05255/15, a/05256/15, a/05258/15, a/05259/15, a/05262/15, a/05263/15, a/05265/15, a/05272/15, a/05355/15, a/05360/15, a/05413/15 and a/05428/15), which were made by persons who were under five years old at the time of the relevant events, on the grounds that their allegations of victimisation are based not on personal recollection of the relevant events but on hearsay (ICC-02/04-01/15-312-Conf, paras 6-7; [ICC-02/04-01/15-340](#), para. 5).

11. The Single Judge underlines that the process of admission of victims to participate in the proceedings does not have as its object and purpose the determination of the truthfulness of the claims of the applicants or the reliability of the narrative of the relevant events put forward by the applicants. Rather, its purpose is to determine whether the claim of the applicant fits within the case before the Court, so as to justify participation. To the extent that it is encompassed by the charges, the applicant’s claim is then tested as part of the proceedings on the merits of the case.

12. For these reasons, the Single Judge does not attach any consequences to the fact that the applications challenged by the Defence are not based on the personal recollection of the applicants, but on information that the applicants,

who were in any case very young children at the time of the relevant events and cannot be faulted for not having a recollection, received from members of their families. Considering that the claims of the applicants otherwise fit into the parameters of the case, the Single Judge sees no reason not to admit them to participate.

13. The Defence also disputes the application of applicant a/05189/15 on the ground that the applicant was unable to state either the date of the alleged events or who was responsible (ICC-02/04-01/15-312-Conf, para. 8). In the view of the Single Judge, however, there are sufficient indicators in the information provided by the applicant (location, time of day, direction of attack, weapons used, type of damage caused to the civilian dwellings) to enable the reasonable conclusion that the applicant's claim corresponds to the intended charges of the Prosecutor with respect to the attack on Lukodi on or about 20 May 2004 (see ICC-02/04-01/15-305-Conf, para. 21). Thus, the applicant must be admitted to participate.

14. Similarly, the Defence contests the application of applicant a/05029/15 on the ground that she cannot be a victim of the attack at Lukodi IDP camp, considering that she states that the attack occurred on a Friday, while "[t]he 19th and 20th of May 2004 were Wednesday and Thursday of that week" (ICC-02/04-01/15-312-Conf, para. 9). The Single Judge notes that it is the Prosecutor's submission that the attack at Lukodi IDP camp took place on or about 20 May 2004, which was indeed a Thursday. In the view of the Single Judge, this discrepancy concerns only a minor detail, and the applicant's narrative of her victimisation provides sufficient information for a link to be established with the Prosecutor's intended charges with respect to the attack at Lukodi IDP camp. Thus, this applicant too must be admitted to participate.

15. Finally, both parties consider that applicant a/05156/15 cannot be admitted, on the ground that the application indicates that it was filed by someone else on behalf of a disabled person, and that the proof of relationship between the applicant and this third person has not been provided ([ICC-02/04-01/15-337](#), paras 7-8; [ICC-02/04-01/15-340](#), para. 6). The Single Judge notes, however, that the submitted application form (ICC-02/04-01/15-327-Conf-Exp-Anx14) includes a thumbprint in the field "Signature of the victim". The Registry has confirmed to the Single Judge by email on 13 November 2015 that this is indeed the thumbprint of the applicant. It is the understanding of the Single Judge that the application form was completed by a person acting on behalf of the Registry, to whom the applicant orally provided the requisite information, and then authorised the application as her own by placing her thumbprint. As the Registry has also informed the Single Judge that in its understanding the box "Victim is a disabled adult" was ticked by error, the Single Judge sees it appropriate to consider the application as a complete application submitted by the applicant on her own behalf. The application not being disputed on any other ground, the Single Judge considers it appropriate to admit the applicant to participate in the proceedings. The legal representative of the victim, appointed by the present decision, will then be best placed to confirm that the victim can participate on her own behalf.

2) *Legal representation of victims*

16. The Registry informed the Single Judge that it will acknowledge the appointment of Joseph Akwenyu Manoba and Francisco Cox as legal representatives of 249 victims participating in the proceedings listed in ICC-02/04-01/15-346-Conf-Exp-Anx2. As the Registry reports that it has validated the powers of attorney, there appears to the Single Judge no reason for the Registrar to further delay the acknowledgment of the appointment pursuant

to rule 90(1) of the Rules and regulation 123(1) of the Regulations of the Registry, as this is an essential condition for the appointed legal representatives to have standing in the present proceedings. Considering that by virtue of the present decision also applicants a/05029/15 and a/05226/15 are admitted to participate in the proceedings, the Registry should also complete in their regard as soon as possible the procedure under regulation 123 of the Regulations of the Registry.

17. Under rule 90(1) of the Rules, victims are generally free to choose a legal representative. It is only for reasons of practicality that the Single Judge may disturb this freedom, as regulated in paragraphs 2 and 3 of the same rule. However, considering that, as explained below, common legal representation can be organised for all victims who have not chosen Joseph Akwenyu Manoba and Francisco Cox, the Single Judge considers that there are no practical reasons that would make it necessary to trump the choice made by some victims.

18. At the same time, prompted by certain information provided by the Registry (ICC-02/04-01/15-346-Conf-Exp, paras 11-12), the Single Judge wishes to make the following observation. Rule 90(5) states that “[a] victim or group of victims who lack the necessary means to pay for a common legal representative chosen by the Court may receive assistance from the Registry, including, as appropriate, financial assistance”. Counsel chosen by victims under rule 90(1) of the Rules is not a common legal representative within the meaning of rule 90, and not chosen by the Court. Therefore, the victims that have chosen to appoint Joseph Akwenyu Manoba and Francisco Cox as their legal representatives, even if they lack the means to pay, do not qualify for financial assistance by the Court. Considering that it appears from the information provided by the Registry that counsel appointed by the victims have informed their clients that their representation would be free of charge

as the associated costs could be borne by the Court and that a substantial number of victims even signed powers of attorney indicating that the lawyers would represent them on a *pro bono* basis, it is imperative that the appointed counsel inform their clients that they presently do not qualify for financial assistance by the Court but may, if they so wish, benefit from legal representation free of charge by the common legal representative appointed by the Single Judge .

19. Turning to the issue of the legal representation of the remaining 294 victims participating in the proceedings who are currently unrepresented, the Single Judge considers the best course of action to be the appointment of counsel from the Office of Public Counsel for Victims (OPCV) as common legal representative, under regulation 80(1) of the Regulations of the Court. In this regard, the Single Judge does not identify, at the present time, any conflict of interest which would require the separation of these victims into groups with separate legal representation.

20. The Single Judge considers that the possibility of appointing Joseph Akwenyu Munoba and Francisco Cox as common legal representatives is not appropriate in the present circumstances, considering that they have not been selected pursuant to a transparent and competitive procedure organised by the Registry, considering the reasons identified below which speak in favour of appointment of counsel from the OPCV, and also considering that appointment of external counsel would bring a disproportionate and unjustified burden to the Court's legal aid budget.

21. According to regulation 81 of the Regulations of the Court, the OPCV is an independent office, of which the task is, *inter alia*, to represent victims throughout the proceedings, on the instruction or with the leave of the Chamber, when this is in the interests of justice. Regulation 80 of the

Regulations of the Court, which gives the Chamber the power to appoint a legal representative of victims where the interests of justice so require, explicitly mentions the possibility of appointing counsel from the OPCV. Regulation 113(2) of the Regulations of the Registry also refers to the “possibility of asking the Office of Public Counsel for Victims to act” as a way of reducing the cost of legal representation of victims borne by the Court’s budget.

22. The Single Judge also notes that counsel from the OPCV currently represent certain victims participating in the case against Joseph Kony and Vincent Otti and in the situation in Uganda, of which the applications for participation have also been transmitted by the Registry in the present case (see [ICC-02/04-01/15-344](#), para. 5). While these applications are currently pending, there is a realistic possibility that some, if not all, will be admitted. Appointment of the same counsel to represent the victims in the present case therefore also has the benefit of ensuring continuity of legal representation and of preventing the unnecessary fragmentation of victims into disparate groups.

23. The Single Judge notes that the Registry has provided information as to the participating victims’ preferences with regard to legal representation. In particular, the Registry reports that the victims whose applications were transmitted generally agree that one legal representative could represent all the victims participating in the case, and that they would like to be represented by someone from the Acholi region or who speaks Acholi, who will be able to communicate with the victims, and who possesses positive professional and human qualities such as ethical integrity, competence, kindness and sense of caring for the victims. For this reason, the Single Judge expects counsel from the OPCV to follow the approach taken in a recent case where she was appointed as common legal representative of the victims,

which is to include in her team one or more assistants based in Uganda and who possess good knowledge of the social context of the case, if necessary to be financed through the Court's legal aid budget.¹ If this measure is taken, the Single Judge is confident that counsel from the OPCV will be able to satisfy the expectations of the victims.

24. The Single Judge believes that this course of action combines optimally the OPCV's knowledge and experience in the procedure before the Court, which is markedly distinct from national procedures, and the knowledge of the local circumstances and culture of the communities where the participating victims reside, providing for the best possible legal representation of the participating victims, which is in the interests of justice.

3) Procedural rights accorded to the victims in the present case

25. Following the admission procedure, the victims admitted to participate in the proceedings are admitted in the case against Dominic Ongwen, at this and any subsequent stages, unless their participation is at any point terminated.

26. As provided for by rule 89(1) of the Rules, the Single Judge shall specify "the proceedings and manner in which participation is considered appropriate". Rule 91 of the Rules states that "[a] legal representative of a victim shall be entitled to attend and participate in the proceedings in accordance with the terms of the ruling of the Chamber and any modification thereof".

¹ See Pre-Trial Chamber I, 'Decision on Victims' Participation and Victims' Common Legal Representation at the Confirmation of Charges Hearing and in the Related Proceedings', [ICC-02/11-01/11-138](#), 4 June 2012, para. 44.

27. The present decision seeks to establish the general participatory rights of the legal representatives of the participating victims, which, unless modified under rule 91(1) of the Rules, apply at this and any further stages of proceedings in the present case. In due course, the Single Judge will specify the rights of the legal representatives at the confirmation of charges hearing. The Single Judge may also accord to the victims additional rights, either on application or *proprio motu*.

28. The Single Judge notes that some of the rights hereunder enumerated are provided for *expressis verbis* in the legal instruments of the Court, while others are accorded to the legal representatives of the participating victims by the Single Judge under the general provisions of article 68(3) of the Statute and rule 89(1) of the Rules. In the consideration of the matter, the Single Judge has aimed, on the one hand, to give to the participating victims meaningful and, indeed, the greatest possible rights, and, on the other hand, to avoid prejudice to the rights of Dominic Ongwen or to the fair and impartial conduct of the proceedings, as mandated by article 68(3) of the Statute.

29. First, the legal representatives shall have the general right to consult the record of the case, including decisions of the Chamber, submissions of the parties, participants and the Registrar, transcripts and evidence disclosed by the parties and communicated to the Chamber, and shall receive notification of documents filed. This right shall extend to public as well as confidential documents or evidence in the record of the case. Notification of documents or access to evidence communicated to the Chamber shall only be withheld from the legal representatives of victims if there are specific reasons warranting this measure. Documents filed in the record of the case which cannot be notified to the legal representatives of the victims must be marked "confidential, *ex parte* Prosecutor and Defence" or more restrictively if appropriate. The mark "confidential" shall in general include the legal representatives of victims.

30. To this end, the Single Judge considers it necessary to order the parties and the Registrar to review their confidential filings already in the record of the case and identify those for which there are specific reasons why they cannot be notified to the legal representatives of victims. The parties shall also review the evidence that they have thus far communicated to the Chamber. Following the receipt of these submissions, the Single Judge will order notification to the legal representatives of victims of all documents and evidence for which no good reason has been shown to withhold them from the legal representatives. The legal representatives shall in any case immediately be provided with access to the applications of their clients.

31. The Single Judge notes that there may, in certain circumstances, be tension between the legal representatives' duty to respect the confidentiality of certain documents or information in the record of the case, and their duty to inform their clients of the developments in the proceedings, including in order to obtain instructions. Indeed, for various reasons the participating victims may not be in position always to recognise and to respect the requirements of confidentiality. Still, the Single Judge considers that it would be disproportionate and inconsistent with effective victim participation to order the legal representatives not to disclose to their clients any confidential document or information. Rather, the Single Judge considers that the legal representatives should be permitted and, indeed, required to divulge to the victims confidential information when necessary, provided that they act prudently and take measures not to cause prejudice to the reasons warranting confidentiality of certain documents or information. In particular, the Single Judge expects the legal representatives not to disseminate physical or electronic copies of confidential documents, but to inform their clients orally, or to show to them a copy of the document while retaining its possession. The legal representatives must also inform their clients of the confidential nature

of the document/information and that as such it cannot be shared with third persons. The Single Judge also considers it appropriate to order the legal representatives to maintain a log of the disclosure of confidential documents or information to their clients, which should record, at least: (i) the document/information disclosed; (ii) the clients to whom the information is disclosed; (iii) the mode of disclosure; (iv) confirmation whether the clients were informed of the confidential nature of the document/information and that as such it cannot be shared with third persons; (v) the date of disclosure; and (vi) the place of disclosure. In case of a (suspected) breach of confidentiality, the Single Judge may order that the record be submitted to the Chamber.

32. Second, the legal representatives of the participating victims shall have the general right to attend all public and non-public hearings in the case.

33. Third, the legal representatives shall have the right to make written submissions to the Chamber, and the right of response as provided for in regulation 24(2) of the Regulations of the Court. As decided at the status conference of 19 May 2015 (ICC-02/04-01/15-T-6-ENG, page 19, lines 1-5), any response must be filed within five days of notification of the document to which the legal representative is responding.

34. The Single Judge notes that the Prosecutor and the Defence have the right of reply, *inter alia*, to any written observation by the legal representative(s), as provided for in rule 91(2) of the Rules. This right can generally be exercised under regulation 24(1) of the Regulations of the Court, within five days of notification of the document as previously ordered. In addition, to allow for the expeditious conduct of the proceedings, the Single Judge considers it appropriate to set a short general time limit of three days for the Prosecutor and the Defence to reply to any response within the

meaning of regulation 24(2) of the Regulations of the Court by the legal representative(s). This time limit applies also when the replying party is not the source of the submission to which the legal representative responded.

35. Fourth, the Single Judge considers it appropriate to accord to the legal representatives the right to lodge written submissions on points of fact and on law, no later than three days before the date of the confirmation of charges hearing, parallel to the right of the Prosecutor and the Defence under rule 121(9) of the Rules.

4) *Other matters*

36. The Single Judge notes that the applications for participation have been transmitted to the Defence by the Registry with the applicants' identity expunged. Following the admission of the applicants as participating victims and following the organisation of legal representatives it is now appropriate to order the legal representatives to consult with their clients and report back to the Single Judge, as soon as practicable, as to whether the identities of the participating victims can be disclosed to the Defence or whether there exist valid reasons to maintain their anonymity vis-à-vis the Defence. In this context, the Single Judge notes that the Prosecutor has already effectively disclosed to the Defence the identity of applicants a/05103/15, a/05335/15, a/05366/15 and a/05603/15, who are all witnesses whose statements were previously disclosed by the Prosecutor to the Defence ([ICC-02/04-01/15-309](#), para. 21, [ICC-02/04-01/15-337](#), paras 9-11). Accordingly, reclassification of their applications is warranted.

37. Finally, in light of the admission of all applicants from the first and second transmissions by the Registrar and in light of the procedural rights accorded to the participating victims in the present decision, the application

by Joseph Akwenyu Munoba to make submissions under rule 103 of the Rules is obsolete and must be rejected.

FOR THESE REASONS, THE SINGLE JUDGE

ADMITS applicants a/05029/15, a/05156/15, a/05168/15, a/05188/15, a/05189/15, a/05199/15, a/05215/15, a/05221/15, a/05223/15, a/05226/15, a/05228/15, a/05252/15, a/05253/15, a/05255/15, a/05256/15, a/05258/15, a/05259/15, a/05262/15, a/05263/15, a/05265/15, a/05272/15, a/05355/15, a/05360/15, a/05413/15 and a/05428/15 to participate in the proceedings in the present case;

APPOINTS Paolina Massidda from the OPCV as common legal representative of victims a/05000/15, a/05002/15, a/05005/15, a/05007/15, a/05008/15, a/05009/15, a/05010/15, a/05014/15, a/05017/15, a/05027/15, a/05030/15, a/05034/15, a/05038/15, a/05040/15, a/05042/15, a/05043/15, a/05046/15, a/05048/15, a/05054/15, a/05055/15, a/05057/15, a/05058/15, a/05061/15, a/05064/15, a/05068/15, a/05070/15, a/05071/15, a/05072/15, a/05074/15, a/05075/15, a/05077/15, a/05078/15, a/05079/15, a/05082/15, a/05085/15, a/05086/15, a/05087/15, a/05097/15, a/05098/15, a/05099/15, a/05103/15, a/05107/15, a/05108/15, a/05109/15, a/05111/15, a/05112/15, a/05117/15, a/05120/15, a/05121/15, a/05123/15, a/05125/15, a/05126/15, a/05127/15, a/05131/15, a/05132/15, a/05137/15, a/05141/15, a/05142/15, a/05145/15, a/05147/15, a/05148/15, a/05149/15, a/05150/15, a/05152/15, a/05155/15, a/05156/15, a/05157/15, a/05158/15, a/05159/15, a/05161/15, a/05162/15, a/05163/15, a/05168/15, a/05170/15, a/05171/15, a/05172/15, a/05173/15, a/05175/15, a/05176/15, a/05178/15, a/05181/15, a/05183/15, a/05184/15, a/05185/15, a/05186/15, a/05188/15, a/05189/15, a/05190/15, a/05192/15, a/05193/15, a/05195/15, a/05196/15, a/05197/15, a/05198/15, a/05199/15, a/05200/15, a/05202/15, a/05205/15, a/05206/15, a/05207/15,

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a/05803/15, a/05805/15, a/05806/15, a/05848/15, a/05891/15, a/05893/15,
a/05894/15, a/05895/15;

DECIDES that Joseph Akwenyu Manoba and Francisco Cox shall have the rights accorded in the present decision as of the acknowledgement by the Registrar of their appointment as legal representatives of the participating victims;

ORDERS the Registrar to notify to the legal representatives the unredacted and redacted applications for participation of the victims they represent;

ORDERS the legal representatives to consult with their clients about the need for anonymity vis-à-vis the Defence and report to the Single Judge as soon as practicable;

ORDERS the Registrar to reclassify documents ICC-02/04-01/15-303-Conf-Exp-Anx94, ICC-02/04-01/15-327-Conf-Exp-Anx91, ICC-02/04-01/15-327-Conf-Exp-Anx113 and ICC-02/04-01/15-327-Conf-Exp-Anx251 as “confidential”;

DECIDES that the legal representatives shall have the right:

- (i) to consult the record of the case and to receive notification of documents filed;
- (ii) to attend hearings in the case;
- (iii) to make written submissions; and
- (iv) to lodge written submissions on points of fact and on law, no later than three days before the date of the confirmation of charges hearing;

ORDERS the legal representatives to observe the instructions specified at paragraph 31 above in relation to the disclosure of confidential documents or information to the participating victims;

ORDERS the Registrar, henceforth, to notify to the legal representatives all public and confidential documents in the record of the case, unless they are marked “confidential, *ex parte*” and the legal representative is not indicated as intended recipient;

ORDERS the Registrar to provide access to the legal representatives to all public evidence already communicated to the Chamber;

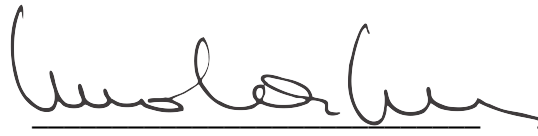
ORDERS the Registrar, henceforth, to grant access to the legal representatives to all evidence which is communicated to the Chamber, unless the communicating party indicates that it cannot be made available to the legal representatives;

ORDERS the Prosecutor, the Defence and the Registrar to review their confidential filings in the record of the case as well as, in the case of the Prosecutor and the Defence, the evidence that they have so far communicated to the Chamber, and to inform the Single Judge, by 11 December 2015, whether any such documents or evidence cannot be notified to the legal representatives, and why;

SETS the time limit of three days upon notification for replies of the Prosecutor and the Defence to any submission of the legal representative(s) which is a response under regulation 24(2) of the Regulations of the Court; and

REJECTS the application to make observations under rule 103 of the Rules, submitted by Joseph Akwenyu Munoba on 4 November 2015.

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

A handwritten signature in black ink, appearing to read 'Cuno Tarfusser', written over a horizontal line.

Judge Cuno Tarfusser
Single Judge

Dated this 27 November 2015

At The Hague, The Netherlands