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Date: **12 March 2015**

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 redacted version
of filing ICC-02/11-01/11-702-Conf**

**Response of the Common Legal Representative of victims to the
"Requête urgente, fondée sur des circonstances humanitaires exceptionnelles, déposée
afin que le Président Gbagbo soit autorisé à se recueillir devant la dépouille de sa
mère et à assister à son enterrement"**

Source: Office of Public Counsel for Victims

Document 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 the Defence

Mr. Emmanuel Altit

Legal Representatives of the Victims

Ms. Paolina Massidda

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

**The Office of Public Counsel for
Victims**

Ms. Paolina Massidda
Mr. Enrique Carnero Rojo
Ms. Ludovica Vetrucchio

**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**

Other

I. PROCEDURAL BACKGROUND

1. On 12 June 2014, Pre-Trial Chamber I issued the “Decision on the confirmation of charges against Laurent Gbagbo” (the “Decision Confirming the Charges”),¹ whereby the Chamber, by majority, confirmed all charges against Mr. Gbagbo under article 61(7)(a) of the Rome Statute and committed him for trial.

2. On 11 September 2014, Pre-Trial Chamber I rejected the Defence’s request for leave to appeal the Decision Confirming the Charges and ordered the transmission of the record of its proceedings to the Presidency.²

3. On 17 September 2014, the Presidency referred the case to Trial Chamber I (the “Chamber”) for trial.³

4. On 22 October 2014, the Defence filed a public redacted version of its “*Requête urgente, fondée sur des circonstances humanitaires exceptionnelles, déposée afin que le Président Gbagbo soit autorisé à se recueillir devant la dépouille de sa mère et à assister à son enterrement*” (the “Defence Request”).⁴

5. On 22 October 2014, the Chamber reduced the time limit to respond to the Defence Request, instructing the Prosecution and the Legal Representative of victims to file a response, if any, by 24 October 2014.⁵

¹ 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 “Decision Confirming the Charges”).

² See the “Decision on the Defence request for leave to appeal the ‘Decision on the Confirmation of Charges against Laurent Gbagbo’” (Pre-Trial Chamber I), No. ICC-02/11-01/11-680, 11 September 2014.

³ 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.

⁴ See the “*Requête urgente, fondée sur des circonstances humanitaires exceptionnelles, déposée afin que le Président Gbagbo soit autorisé à se recueillir devant la dépouille de sa mère et à assister à son enterrement*”, No. ICC-02/11-01/11-697-Red, 21 October 2014 (the “Defence Request”), reclassified pursuant to Trial Chamber I’s decision ICC-02/11-01/11-806 dated 10 March 2015.

⁵ See the “Order reducing the time limit to file a response” (Trial Chamber I), No. ICC-02/11-01/11-698, 22 October 2014, reclassified pursuant to Trial Chamber I’s decision ICC-02/11-01/11-806 dated 10 March 2015.

6. Accordingly, the Principal Counsel of the OPCV, acting as Common Legal Representative of victims (the “Common Legal Representative”),⁶ submits the following response to the Defence Request.

II. RESPONSE OF THE COMMON LEGAL REPRESENTATIVE

7. The Common Legal Representative acknowledges the humanitarian reasons behind the Defence Request and transmits her condolences to Mr. Gbagbo.

8. This tragic event notwithstanding, the Common Legal Representative requests the Chamber, pursuant to rule 119(3) of the Rules of Procedure and Evidence, to ensure that any decision on the Defence Request equally protects the interests of the victims authorised to participate in this case and of the victims that have communicated with the Court in relation with this case.

9. In particular, the Common Legal Representative submits that besides the interest to receive reparations,⁷ which is far from being the sole motivation of the victims,⁸ the core interest of the victims in this case is to effectively exercise their

⁶ 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, pp. 25-26. See also 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-Corr, 6 February 2013, pp. 22-23.

⁷ In this sense, see AMBOS (K.), “El Marco Jurídico de la Justicia de Transición”, Tenus, Bogotá, 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 64th plenary meeting, UN Doc. A/RES/60/147, 16 December 2005, par. 21.

⁸ 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, par. 98.

rights to truth and justice under the Rome Statute,⁹ as generally recognised by international human rights law,¹⁰ doctrine¹¹ and the constant jurisprudence of the Court.¹²

10. For the effective exercise of said rights, victims have been communicating to the Common Legal Representative their personal interests in getting to know what happened in Côte d'Ivoire during the post-electoral violence, seeing those responsible for their harm punished, and eventually receiving reparations for said harm. Moreover, victims have continuously expressed general concerns about the security situation in Côte d'Ivoire.

11. Consequently, the Common Legal Representative has collected sufficient information from the victims throughout the proceedings to provide a response to

⁹ 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*, Second Edition, 2008, p. 1279, 1290 and 1291.

¹⁰ See IACHR, *La Cantuta v. Peru*, Judgment of 29 November 2006, Series C, No. 162, par. 222 ; *Vargas-Areco v. Paraguay*, Judgment of 26 September 2006, Series C, No. 155, paras. 153; *Almohacid-Arellano et al v. Chile*, Judgment of 26 September 2006, Series C, No. 154, par. 148; *Moiwana Community v. Suriname*, Judgment of 15 June 2005, Series C, No. 124, par. 204 ; and *Velasquez-Rodriguez 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, par. 79; *Kurt v. Turkey*, Application No. 24276/94, 25 May 1998, par. 140; *Selcuk and Asker v. Turkey*, Application No. 23184/94, 24 April 1998, par. 96; *Aydin v. Turkey*, Application No. 23178/94, 25 September 1997, par. 103; and *Aksoy v. Turkey*, Application No. 21987/93, 18 December 1996, par. 98.

¹¹ 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, 1999, pp. 876-877; 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 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 7, pp. 42-44.

¹² 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; and 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 December 2009, paras. 82-91.

the Defence Request without sharing the existence and content of the latter, filed confidentially,¹³ with the victims.

12. Against this background, the Common Legal Representative wishes to highlight that one of the main concerns that victims have repeatedly conveyed to her during her frequent consultations in the field is indeed their fear that Mr. Gbagbo might return to Côte d'Ivoire in the near future, evading justice and triggering further victimisation.

13. In this regard, as explained on several occasions by the victims, the local tensions between the supporters of the political party created by Mr. Gbagbo, the *Front Patriotique Ivoirien*, and the pro-Ouattara population still remain high. In particular, victims have reiterated that they experience an increase in violence in the neighbourhoods where they live when the possibility of Mr. Gbagbo's return to Côte d'Ivoire is suggested by the press.¹⁴ Indeed, this is what the victims conveyed to the Common Legal Representative after the confirmation hearing was adjourned last year.¹⁵

14. Moreover, with occasion of the periodical review of Mr. Gbagbo's detention, the victims have recently expressed their concerns about "*a wave of releases of pro-Gbagbo prisoners*" – as they describe it – which has been on-going during the last

¹³ See the Code of Professional Conduct for Counsel, article 8(3).

¹⁴ See, *inter alia*, "Dernière prophétie pro-Gbagbo : 'La Grande guerre de libération débutera le 12 novembre après la libération de Gbagbo'", 5 November 2012, available at <http://news.abidjan.net/h/444171.html>; *Notre Voie*, "Cour pénale internationale (Cpi): Laurent Gbagbo sera libéré si...", 13 November 2012, available at http://www.notrevoie.com/a_la_une.asp?id=48665; "Koacinaute Côte d'Ivoire : Konaté Navigué 'Laurent Gbagbo sera libéré !'", 17 June 2013, available at <http://koaci.com/koacinaute-cote-divoire-konate-navigue-laurent-gbagbo-sera-libere--83123.html>; and *Agence de Presse Africaine*, "Le Président Gbagbo sera libéré avant la présidentielle de 2015, annonce Affi N'guessan", 23 February 2014, available on <http://news.abidjan.net/h/488878.html>.

¹⁵ See the "Observations of the common legal representative of victims on the periodic review of Mr Gbagbo's detention", No. ICC-02/11-01/11-444-tENG, 27 August 2013, par. 40.

months,¹⁶ and which has contributed to an increase of the violence in the neighbourhoods and to a worsening of their security situation.¹⁷ In fact, victims have stated similar security concerns when consulted in relation to the previous periodical reviews of Mr. Gbagbo's detention.¹⁸

15. In these circumstances, the Common Legal Representative submits that the presence of Mr. Gbagbo on the territory of Côte d'Ivoire would have a substantial impact on the precarious security situation of the victims and would not ensure the full respect of their right to safety and well-being under article 68(1) of the Rome Statute. Accordingly, the Defence Request must be rejected.

16. Assuming *arguendo* that the Chamber grants the Defence Request, the Common Legal Representative requests the adoption of the necessary conditions under article 60(3) of the Rome Statute and rule 119(1) of the Rules of Procedure and Evidence in order to (i) ensure Mr. Gbagbo's appearance at trial, (ii) prevent the

¹⁶ See the "Observations of the Common Legal Representative of victims on the periodic review of Mr. Gbagbo's detention, No. ICC-02/11-01/11-695, 20 October 2014, par. 26.

¹⁷ News on the provisional release of pro-Gbagbo supporters have been broadly reflected in the Ivorian media during the last months. See e.g. *InfoPresse*, "Rencontre FPI-Gouvernement : Rendez-vous du donner et du recevoir", 22 May 2014, available at <http://infopresse.net/rencontre-fpi-gouvernement-rendez-vous-du-donner-et-du-recevoir/>; RTI, "'150 détenus pro-Gbagbo seront libérés dans les heures qui suivent', annonce Affi N'guessan", 22 May 2014, available at http://www.rti.ci/infos_Politique_7119_%AB150-detenus-pro-gbagbo-seront-liberes-dans-les-heures-qui-suivent%BB-annonce-affi-neguessan.html; and *Jeune Afrique*, "Côte d'Ivoire : liberté provisoire pour 50 prisonniers de la crise post-électorale", 1 June 2014, available at <http://www.jeuneafrique.com/Article/DEPAFP20140601112432/laurent-gbagbo-electorale-crise-post-alassane-ouattaraejustice-ivoirienne-cote-d-ivoire-cote-d-ivoire-liberte-provisoire-pour-50-prisonniers-de-la-crise-post-electorale.html>.

¹⁸ See the Common Legal Representative's oral submissions during the hearing on Mr. Gbagbo's detention, transcript of 30 October 2012, No. ICC-02/11-01/11-T-9-ENG ET, p. 18, lines 9-17; the "Observations du Représentant légal commun des victimes relatives au réexamen périodique de la détention de M. Gbagbo", No. ICC-02/11-01/11-444, 30 July 2013, par. 40; the Common Legal Representative's oral submissions during the hearing on Mr. Gbagbo's detention, transcript of 9 October 2013, No. ICC-02/11-01/11-T-22-CONF-ENG ET, p. 24, lines 21-25 and p. 25, lines 1-3 (submissions presented in open session); the "Observations du Représentant légal commun des victimes relatives au réexamen périodique de la détention de M. Gbagbo", No. ICC-02/11-01/11-622, 26 February 2014, par. 22; the "Observations of the Common Legal Representative of victims on the periodic review of Mr. Gbagbo's detention", No. ICC-02/11-01/11-662, 27 June 2014, par. 29; and the "Observations of the Common Legal Representative of victims on the periodic review of Mr. Gbagbo's detention", No. ICC-02/11-01/11-695, 20 October 2014, par. 26.

destruction of evidence and the intimidation of witnesses, and (iii) protect the safety of victims and witnesses.

i. Conditions to ensure Mr. Gbagbo's appearance at trial

17. Given the redactions made in the Defence Request and in previous related filings, the Common Legal Representative is not fully aware of Mr. Gbagbo's health condition. However, considering the delays caused by Mr. Gbagbo's health condition during the proceedings before the Pre-Trial Chamber¹⁹ and the references made in the Defence Request to Mr. Gbagbo's advanced age and to [REDACTED],²⁰ the Common Legal Representative submits that the suggested trip from the seat of the Court and within Côte d'Ivoire may have a negative impact on Mr. Gbagbo's health condition.

18. In addition, although the security situation in Côte d'Ivoire seems to be improving, it cannot be discarded that a trip such as the one requested by the Defence may intentionally or unintentionally result in Mr. Gbagbo's inability to return to The Hague.²¹

19. Consequently, the Common Legal Representative requests the Chamber to limit Mr. Gbagbo's movement upon his arrival in Abidjan to the minimum necessary in order to ensure his subsequent appearance at trial in The Hague.²² In addition, as

¹⁹ See the "Decision on issues related to the proceedings under rule 135 of the Rules of Procedure and Evidence and postponing the date of the confirmation of charges hearing" (Pre-Trial Chamber I, Single Judge), No. ICC-02/11-01/11-201, 3 August 2012; the "Public redacted version - Decision on the fitness of Laurent Gbagbo to take part in the proceedings before this Court" (Pre-Trial Chamber I), No. ICC-02/11-01/11-286-Red, 2 November 2012; and the "Decision on three applications for leave to appeal" (Pre-Trial Chamber I), No. ICC-02/11-01/11-307, 30 November 2012.

²⁰ See the Defence Request, *supra* note 4, paras. 34 and 40.

²¹ See the "Fourth decision on the review of Laurent Gbagbo's detention pursuant to article 60(3) of the Rome Statute" (Pre-Trial Chamber I), No. ICC-02/11-01/11-558, 11 November 2013, paras. 51-52.

²² See the Defence Request, *supra* note 4, paras. 36-37 and 40.

agreed by the Defence,²³ Mr. Gbagbo should be escorted at all times by members of the Registry of the Court.

ii. Conditions to prevent the destruction of evidence and the intimidation of witnesses

20. Given the current security and political situation in Côte d'Ivoire,²⁴ the Common Legal Representative submits that Mr. Gbagbo's eventual journey and stay for the time necessary to perform the funerary rituals described by the Defence may lead to public disorders resulting in the destruction of evidence and the intimidation of witnesses.

21. In fact, based on past conversations with the victims participating in this case and the news coverage of the Decision Confirming the Charges and the periodical reviews of Mr. Gbagbo's detention,²⁵ the Common Legal Representative submits that the very news of Mr. Gbagbo's return to Côte d'Ivoire will *per se* cause severe distress among the victims and may as such intimidate witnesses.

22. Accordingly, in addition to the conditions agreed by the Defence not to hold meetings of a political nature,²⁶ not to have contact with the media²⁷ and not to have

²³ *Idem*, par. 39.

²⁴ See, *inter alia*, *Notre Voie*, "Lutte pour la libération de Laurent Gbagbo: Prenons de la hauteur !", 22 October 2014, available at <http://www.notrevoie.com/develop.asp?id=59437>; *Notre Voie*, "Détenition arbitraire à la CPI - " Solidarité pour Laurent Gbagbo " écrit à Ban Ki-moon", 26 September 2014, available at http://notrevoie.com/a_la_une.asp?id=59036; and *Notre Voie*, "En se retirant de la Cei, le FPI formel - Gbagbo et ensuite... le reste", 19 September 2014, available at <http://www.notrevoie.com/develop.asp?id=58918>.

²⁵ See e.g. *L'Intelligent d'Abidjan*, "Mobilisation pour la libération de Laurent Gbagbo - Affi N'Guessan annonce la nomination d'un secrétaire national spécial", 30 June 2014, available at <http://lintelligentdabidjan.ci/component/k2/2102-3141/7883-front-populaire-ivoirien-mobilisation-pour-la-liberation-de-laurent-gbagbo.html>; *Notre Voie*, "En tournée dans la région des montagnes Koua Justin - 'Le peuple attend la liberté totale de Laurent Gbagbo'", 7 November 2013, available at <http://www.notrevoie.com/develop.asp?id=54694>; and *Notre Voie*, "Gbagbo face aux juges ce 9 octobre - Voici ce qui peut se passer à la CPI", 9 October 2013, available at <http://fr.allafrica.com/stories/201310091459.html>.

²⁶ See the Defence Request, *supra* note 4, paras. 35 and 40.

unlimited and unmonitored telephonic contact,²⁸ the Common Legal Representative requests the Chamber to condition the provisional release to keeping Mr. Gbagbo's trip from the seat of the Court and within Côte d'Ivoire entirely confidential. More concretely, Mr. Gbagbo's trip to Côte d'Ivoire should not be made public before it takes place and the locations he may visit in Côte d'Ivoire should not be made known to the public in advance. Otherwise, it is likely that public disorders will follow, potentially resulting in the destruction of evidence and the intimidation of witnesses.

23. Moreover, in order to ensure that Mr. Gbagbo may not give directions to destroy evidence and/or intimidate witnesses, all his meetings and communications ought to be supervised by staff member(s) of the Court.²⁹

iii. Conditions to protect the safety of victims and witnesses

24. The Common Legal Representative informs the Chamber that the trial of Mr. Gbagbo's wife, against whom a warrant of arrest issued by Pre-Trial Chamber I is still pending,³⁰ was due to start in Côte d'Ivoire on 20 October 2014 and was reportedly suspended *sine die* on 22 October 2014.³¹ In these circumstances, the presence of Mr. Gbagbo in Côte d'Ivoire may not be properly understood by the population and may result in public unrest, increasing the existing risks to the safety of the victims participating in this case.

²⁷ *Idem*, paras. 38 and 40. See also the "PUBLIC REDACTED VERSION OF ICC-01/05-01/08-1099-Conf Decision on the Defence Request for Mr Jean-Pierre Bemba to attend his Stepmother's Funeral" (Trial Chamber III), No. ICC-01/05-01/08-1099-Red, 12 January 2011, par. 17(v).

²⁸ See the Defence Request, *supra* note 4, par. 40.

²⁹ See e.g. the "PUBLIC REDACTED VERSION OF ICC-01/05-01/08-1099-Conf Decision on the Defence Request for Mr Jean-Pierre Bemba to attend his Stepmother's Funeral", *supra* note 27, paras. 17(iii) and 18(a).

³⁰ See the "Warrant of Arrest for Simone Gbagbo" (Pre-Trial Chamber III), No. ICC-02/11-01/12-1, 29 February 2012.

³¹ See *Jeune Afrique*, "Côte d'Ivoire : le procès de Simone Gbagbo reporté *sine die*", 22 October 2014, available at <http://www.jeuneafrique.com/Article/ARTJAWEB20141022184108/simone-gbagbo-gouvernement-ivoirien-justice-ivoirienne-justice-ivoirienne-cote-d-ivoire-le-proces-de-simone-gbagbo-reporté-sine-die.html>.

25. Moreover, the several trips and stopovers in at least three different locations within Côte d'Ivoire for which the Defence requests authorisation (Gagnoa, Blouzon and Mama) will increase the existing tensions between the pro-Gbagbo and the pro-Outtara supporters around those areas, and more importantly, will affect the safety, well-being and dignity of the victims living in said areas.

26. In these circumstances, the Common Legal Representative requests the Chamber to ensure the lack of publicity of Mr. Gbagbo's trip and stay in Côte d'Ivoire,³² and to order Mr. Gbagbo and the Defence to stay away from the victims' places of residence.³³

27. Needless to say, should the Defence Request be granted, Mr. Gbagbo and the Defence must still comply with their ethical and legal obligation not to disclose confidential information, such as the identity of witnesses,³⁴ and not to contact victims in any case without prior consultation with the Common Legal Representative.³⁵

28. Finally, in order to ensure the safety of victims and witnesses, in addition to the condition agreed by the Defence not to contact the press,³⁶ the Common Legal Representative submits that Mr. Gbagbo must not be allowed to communicate with

³² See *supra* par. 22.

³³ See by analogy the "PUBLIC REDACTED VERSION OF ICC-01/05-01/08-1099-Conf Decision on the Defence Request for Mr Jean-Pierre Bemba to attend his Stepmother's Funeral", *supra* note 27, par. 17(iv).

³⁴ See the Defence Request, *supra* note 4, par. 40. See also the Code of Professional Conduct for Counsel, article 8(4).

³⁵ See the Defence Request, *supra* note 4, par. 40. See also the "Decision on the arrangements for contact between represented victims and the parties" (Trial Chamber II), No. ICC-01/04-01/07-2571-tENG, 23 November 2010, par. 29.

³⁶ See the Defence Request, *supra* note 4, par. 38. See also the "PUBLIC REDACTED VERSION OF ICC-01/05-01/08-1099-Conf Decision on the Defence Request for Mr Jean-Pierre Bemba to attend his Stepmother's Funeral", *supra* note 27, par. 17(vi).

anyone, except for the members of his close family or persons assigned for his protection.³⁷

FOR THE FOREGOING REASONS, the Common Legal Representative respectfully requests the Trial Chamber to

- reject the Defence Request in the interest of victims, or
- if the Defence Request is granted, to adopt the measures proposed in paragraphs 19, 22, 23, 26, 27 and 28 above, and/or any other measure that the Chamber may consider necessary in order to address the concerns and risks of the victims.



Paolina Massidda
Principal Counsel

Dated this 12th day of March 2015

At The Hague, The Netherlands

³⁷ See *e.g.* the “PUBLIC REDACTED VERSION OF ICC-01/05-01/08-1099-Conf Decision on the Defence Request for Mr Jean-Pierre Bemba to attend his Stepmother's Funeral”, *supra* note 27, par. 17(vii).