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No.: **ICC-02/11-01/11**

Date: **6 June 2012**

PRE-TRIAL CHAMBER I

Before: Judge Silvia Fernández de Gurmendi, Presiding Judge
Judge Hans-Peter Kaul
Judge Christine Van den Wyngaert

SITUATION IN THE REPUBLIC OF CÔTE D'IVOIRE

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

Public

**Information as to the agreement between the Common Legal Representative and
the Prosecution on access to documents
and
Requests in relation to the schedule of the confirmation of the charges hearing**

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

Mr. Luis Moreno-Ocampo
Ms. Fatou Bensouda

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Mr. Emmanuel Altit
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Legal Representatives of Victims

Ms. Paolina Massidda
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Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
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Ms. Paolina Massidda

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States Representatives

Amicus Curiae

REGISTRY

Registrar & Deputy Registrar

Ms. Silvana Arbia & Mr. Didier Preira

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

I. Procedural history

1. On 23 November 2011, Pre-Trial Chamber III issued an arrest warrant for Mr. Laurent Gbagbo,¹ who was surrendered to the Court on 30 November 2011. During the first appearance of Mr. Gbagbo before the Court, on 5 December 2011, the Chamber scheduled the commencement of the confirmation of charges hearing for 18 June 2012.²

2. On 4 May 2012, the Single Judge of Pre-Trial Chamber III requested observations from the parties on the schedule of the confirmation of charges hearing.³

3. On 23 May 2012, the Prosecution⁴ and the Defence⁵ submitted their respective observations for the purposes of establishing a schedule for confirmation of charges hearing.

4. On 4 June 2012, the Single Judge of the Chamber issued a “Decision on Victims’ Participation and Victims’ Common Legal Representation at the Confirmation of Charges Hearing and in the Related Proceedings”⁶ by which she granted 139 victims the right to participate at the confirmation of charges hearing and related proceedings.⁷ Furthermore, the Single Judge appointed a counsel from the Office of Public Counsel for Victims (the “OPCV” or “Office”) as the Common Legal Representative of all the victims admitted to participate in the proceedings

¹ See the “Warrant of Arrest For Laurent Gbagbo” (Pre-Trial Chamber III), No. ICC-02/11-01/11-1, 23 November 2011.

² See the transcripts of the hearing of 5 December 2011, No. ICC-02/11-01/11-T-1-ENG, p. 8.

³ See the “Decision requesting observations from the parties on the schedule of the confirmation of charges hearing” (Pre-Trial Chamber III, Single Judge), No. ICC-02/11-01/11-107, 4 May 2012.

⁴ See the “Prosecution’s observations for the purposes of establishing a schedule for the confirmation hearing”, No. ICC-02/11-01/11-127, 23 May 2012.

⁵ See the “Observations de la Défense concernant le calendrier de l’audience de confirmation des charges”, No. ICC-02/11-01/11-128, 23 May 2012.

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 III, Single Judge), No. ICC-02/11-01/11-138, 4 June 2012.

⁷ *Idem.*, p. 25.

related to the confirmation of charges.⁸ In particular, the Single Judge granted the Common Legal Representative, *inter alia*, (i) the right to make opening and closing statements at the confirmation of charges hearing⁹, (ii) the right to request for leave to make oral submissions during the confirmation of charges hearing,¹⁰ and (ii) the right to request for leave to make written submissions on specific issues of law and/or fact.¹¹

4. The Principal Counsel of the OPCV (the “Common Legal Representative”) wishes, first, to inform the Chamber of the agreement with regard to the access to confidential material she reached with the Prosecution and, second, to file some requests in relation to the conduct of the confirmation of the charges hearing.

II. Agreement as to the access to confidential material in the possession of the Prosecution

5. The Common Legal Representative informs the Chamber that following an agreement with the Prosecution, she will be given access to confidential material in the possession of the Prosecution that it intends to use for the purpose of the confirmation of charges hearing. In this regard, the Common Legal Representative emphasises that the confidential material in question will not be disclosed to either her clients or any third party.

6. The Common Legal Representative also informs the Chamber that the Prosecution has no objection in granting her access to the confidential version of the document containing the charges, as well as to the three confidential annexes thereto. The Common Legal Representative therefore respectfully requests the Chamber to order the Registry to notify said documents to the OPCV.

⁸ *Ibid.*, p. 26.

⁹ *Ibid.*

¹⁰ *Ibid.*, par. 52.

¹¹ *Ibid.*, paras. 59 and 60.

III. Request in relation to opening and closing statements and written submissions on issues to be discussed during the confirmation of charges hearing

7. The Common Legal Representative submits that in accordance with the practice of Pre-Trial Chambers I and II, legal representatives of victims were given 30 minutes to make opening statements and 30 minutes to make closing statements.¹² Furthermore, the legal representatives of victims were granted leave to present, after the conclusion of the hearing, written submissions in relation to issues discussed during the confirmation of charges hearing within a time limit to be set by the Chambers.¹³

8. The Common Legal Representative respectfully requests the Chamber to apply the same principles to the present case.

IV. Request for leave to make submissions on the definition of the mode of individual criminal liability under article 25(3)(a) of the Rome Statute

9. The Common Legal Representative notes that the Prosecution has requested the Chamber to foresee, in the context of the confirmation of the charges hearing, a discussion on the interpretation of the mode of liability prescribed in article 25(3)(a)

¹² See Annex to the « Decision on the Schedule for the Confirmation of Charges Hearing » (Pre-Trial Chamber II, Single Judge), No. ICC-01/09-01/11-294-Anx, 25 August 2011, pp. 2 and 8; and Annex to the « Decision on the Schedule for the Confirmation of Charges Hearing » (Pre-Trial Chamber II, Single Judge), No. ICC-01/09-02/11-321-Anx, 13 September 2011, pp. 2 and 9. See also Annex 1 to the “Second decision on the schedule of the confirmation hearing” (Pre-Trial Chamber I, Single Judge), No. ICC-01/04-01/10-413-Anx1, 12 September 2011, pp. 1 and 3.

¹³ See the “Second decision on the schedule of the confirmation hearing” (Pre-Trial Chamber I, Single Judge), No. ICC-01/04-01/10-413, 12 September 2011, p. 5. See also the transcripts of the hearing of 8 September 2011 (Pre-Trial Chamber II), No. ICC-01/09-01/11-T-12-ENG ET, p. 76, line 16 to p. 77, line 4; and the transcripts of the hearing of 5 October 2011 (Pre-Trial Chamber II), No. ICC-01/09-02/11-T-15-ENG ET, p. 2, lines 4 to 7 and p. 88, lines 14 to 17.

of the Rome Statute.¹⁴ The Defence has also indicated that it intends to address the mode of liability.¹⁵

10. The Common Legal Representative respectfully requests the Chamber to be granted leave to make submissions, either orally or in writing, on the definition of the mode of individual criminal liability under article 25(3)(a) of the Rome Statute.

11. The Common Legal Representative submits that the question concerning the mode of individual criminal liability of a suspect is one of the essential aspects to be dealt with by the Chamber in determining whether there is sufficient evidence to establish substantial grounds to believe that the person committed each of the crimes charged in accordance with article 61(7) of the Rome Statute. In this regard, she submits that in accordance with the jurisprudence of the Court as developed by Pre-Trial Chambers I and II, *“the interests of victims are affected at [the stage of the confirmation of charges] since this is an essential stage of the proceedings which aims to determine whether there is sufficient evidence providing substantial grounds to believe that the suspects are responsible for the crimes included in the Prosecution Charging Document”*¹⁶ and that *“the issue of the guilt or innocence of the persons charged before this Court is not only relevant, but it also affects the core interests of those granted the procedural status of victim in any case before the Court, because this issue is closely linked to the satisfaction of their right to justice”*.¹⁷ Furthermore, *“the personal interests of victims may be affected by*

¹⁴ See the Annex 1 to the “Soumission de l’Accusation du Document de notification des charges, de l’Inventaire des éléments de preuve à charge et des Tableaux des éléments constitutifs des crimes”, No. ICC-02/11-01/11-124-Anx1-Red, 16 May 2012, par. 58.

¹⁵ See the “Observations de la Défense concernant le calendrier de l’audience de confirmation des charges”, No. ICC-02/11-01/11-128, 23 May 2012, par. 16.

¹⁶ See the “Decision on the Set of Procedural Rules 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, par. 45. See also the “Decision on the Requests for Leave to Appeal the Decision on the Application for Participation of Victims in the Proceedings in the Situation” (Pre-Trial Chamber I, Single Judge), No. ICC-02/05-121, 6 February 2008, pp. 6, 8 and 9.

¹⁷ See the “Decision on the Set of Procedural Rules 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. See also the “Decision on victims’ applications for participation a/0010/06, a/0064/06 to a/0070/06, a/0081/06 to a/0104/06 and a/0111/06 to a/0127/06” (Pre-Trial Chamber II), No. 02/04-01/05-252, 10 August 2007, paras. 9 to 11.

*the outcome of the Confirmation Hearing to the extent that it aims at either (i) confirming the charges against those responsible for perpetrating the crimes which caused them to suffer harm; or (ii) declining to confirm the charges for those not responsible for such crimes, so that the search for those who are criminally liable can continue”.*¹⁸

12. Consequently, the Common Legal Representative contends that the personal interests of the victims she represents are affected by the question on the definition of the mode of individual criminal liability under article 25(3)(a) of the Rome Statute.

FOR THESE REASONS, the Common Legal Representative respectfully requests the Pre-Trial Chamber:

- to acknowledge the agreement regarding the access by the Common Legal Representative to the confidential material in possession of the Prosecution that it intends to use for the purpose of the confirmation of charges hearing;
- to order the Registry the notification to the OPCV of the document ICC-02/11-01/11-124, including its three annexes;
- to grant the Common Legal Representative’s Request in relation to opening and closing statements and written submissions on issues discussed during the confirmation of charges hearing referred to in paragraph 7 ; and

¹⁸ See the “Decision on 138 applications for victims’ participation in the proceedings” (Pre-Trial Chamber I), No. ICC-01/04-01/10-351, 11 August 2011, par. 23.

- to grant the Common Legal Representative's Request to make submissions, either orally or in writing, on the definition of the mode of individual criminal liability under article 25(3)(a) of the Rome Statute.

A handwritten signature in black ink, appearing to read 'Paolina Massidda', with a horizontal line drawn underneath the name.

Paolina Massidda
Principal Counsel

Dated this 6th day of June 2012

At The Hague, The Netherlands