

SITUATION EN CÔTE D'IVOIRE
AFFAIRE
LE PROCUREUR c. LAURENT GBAGBO

ANNEXE 3 PUBLIQUE EXPURGÉE

Tableau recensant les erreurs commises par la Représentante Légale des victimes lorsqu'elle utilise de la jurisprudence ou qu'elle fait des citations dans ses soumissions

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13	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.”	“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.	« As a matter of general principle, questioning by the Legal Representatives on behalf of victims who participate in the proceedings must have as its main aim the ascertainment of the truth. »	« questioning » devient « participation of victims through their legal representative »
15	The “fair trial” guarantees shall apply throughout the proceedings and in respect to all the parties and participants, including victims.	Declaration of Basic Principles of Justice for Victims of Crimes and Abuse of Power adopted by the UN General Assembly on its 96th plenary meeting, UN Doc. A/RES/40/34, 29 November 1985, Principles 4 to 7.	Access to justice and fair treatment 4. Victims should be treated with compassion and respect for their dignity. They are entitled to access to the mechanisms of justice and to prompt redress, as provided for by national legislation, for the harm that they have suffered. 5. Judicial and administrative mechanisms should be established and strengthened where necessary to enable victims to obtain redress through formal or informal procedures that are expeditious, fair, inexpensive and accessible. Victims should be informed of their rights in seeking redress through such mechanisms. 6. The responsiveness of judicial and administrative processes to the needs of victims should be facilitated by: (a) Informing victims of their role and the scope, timing and progress of the proceedings and of the disposition of their cases, especially where serious crimes are involved and where they have requested such information; (b) Allowing the views and concerns of victims to be	Aucune mention de « fair trial » guarantees dans la Déclaration.

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			presented and considered at appropriate stages of the proceedings where their personal interests are affected, without prejudice to the accused and consistent with the relevant national criminal justice system; (c) Providing proper assistance to victims throughout the legal process; (d) Taking measures to minimize inconvenience to victims, protect their privacy, when necessary, and ensure their safety, as well as that of their families and witnesses on their behalf, from intimidation and retaliation; (e) Avoiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting awards to victims. 7. Informal mechanisms for the resolution of disputes, including mediation, arbitration and customary justice or indigenous practices, should be utilized where appropriate to facilitate conciliation and redress for victims.	
15	In the same vein, therequirements of the integrity of the proceedings shall apply to all the parties and the participants in the proceedings before the Court, and not only to the suspect/accused.	“Decision on the admission of material from the ‘bar table’” (Trial Chamber I), No. ICC-01/04-01/06-1981, 24 June 2009, par. 42	When deciding whether there has been serious damage to the "integrity of proceedings" as provided in Article 69(7)(b), it has been stressed that "the respect for the integrity of proceedings is necessarily made up of respect for the core values which run through the Rome Statute" It has been suggested that applying this provision involves balancing a number of concerns and values found in the Statute, including "respect for the sovereignty of States, respect for the rights of the person, the protection of victims and witnesses and the effective punishment of those guilty of grave crimes"	La citation ne mentionne ni les « parties » (aucune mention du Procureur) ni les « participants » (la référence aux victimes ne concerne pas la protection à apporter à des victimes participant à la procédure mais concerne une protection plus générale à prendre en considération au moment de prendre des décisions).
79	Consistently with this	“Judgment on the appeal of	43. The use of summaries by the Prosecutor at the	Aucun des deux

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	provision, Chambers have ruled that the use of this type of evidence by the Prosecutor may be sufficient to reach the threshold required for the confirmation of the charges...	Mr. Thomas Lubanga Dyilo against the decision of Pre-Trial Chamber I entitled First Decision on the Prosecution Requests and Amended Requests for Redactions under Rule 81” (Appeals Chamber), No. ICC-01/04-01/06-773 OA5, 14 December 2006, paras. 43 and 47.	confirmation hearing pursuant to article 61 (5), second sentence, of the Statute is not subject to any explicit condition. Neither the Statute nor the Rules of Procedure and Evidence foresee that such summaries must be approved by the Pre-Trial Chamber prior to their presentation at the confirmation hearing. The use of summaries pursuant to article 61 (5) of the Statute leaves the disclosure obligations of the Prosecutor pursuant to article 61 (3) (b) of the Statute and rules 76 et seq. of the Rules of Procedure and Evidence unaffected. 47. The Appeals Chamber is not persuaded by the argument of the appellant that pursuant to rule 81 (5) of the Rules of Procedure and Evidence, the Prosecutor may only rely on the summaries at the confirmation hearing if the underlying statements and other documents have been disclosed to the defence prior to the confirmation hearing. Rule 81 (5) of the Rules of Procedure and Evidence reads as follows: "Where material or information is in the possession or control of the Prosecutor which is withheld under article 68, paragraph 5, such material and information may not be subsequently introduced into evidence during the confirmation hearing or the trial without adequate prior disclosure to the accused."	paragraphes n'indique que « the use of this type of evidence by the Prosecutor may be sufficient to reach the threshold required for the confirmation of charges ».

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79	Consistently with this provision, Chambers have ruled that the use of this type of evidence by the Prosecutor may be sufficient to reach the threshold required for the confirmation of the charges...	“Corrigendum of the ‘Decision on the Confirmation of Charges’” (Pre-Trial Chamber I), No. ICC-02/05-03/09-121-Corr-Red, 8 March 2011, par. 41.	41. The Chamber also reiterates those principles established in the Abu Garda Decision as to the probative value of summaries of interviews of anonymous witnesses submitted by the Prosecutor. Of particular relevance to the present case are the following findings: I. the use of summary evidence is expressly allowed by the legal instruments of the Court and, accordingly, the Prosecutor should not be unduly prejudiced as a result of using such evidence; and II. with a view to preserving the rights of the Defence, statements of anonymous witnesses, whilst admissible, have to be evaluated on a case-by-case basis, depending on whether the information contained therein is corroborated or supported by other evidence presented into the case file.	Ce paragraphe n’indique pas que « the use of this type of evidence by the Prosecutor may be sufficient to reach the threshold required for the confirmation of charges ». Au contraire, il semble suggérer qu’en l’absence de corroboration, ce type de preuve doit être considéré avec prudence.
79	... even if it concerns anonymous witnesses.	“Public Redacted Version of the Decision on the Confirmation of Charges” (Pre-Trial Chamber I), No. ICC-02/05-02/09-243-Red, 8 February 2010, paras. 51-52	51. Accordingly, the Chamber "may [...] determine that the evidence will have a lower probative value if the Defence does not know the witness's identity and only a summary of the Statement, and not the entire statement, may be challenged or assessed". 52. Therefore, statements of anonymous witnesses will be given a lower probative value and will be evaluated on a case-by-case basis, according to whether the information contained therein is corroborated or supported by other evidence tendered into the case file.	Les paragraphes référencés suggèrent que ce type de preuve a une valeur probante réduite, plutôt que de suggérer qu’il serait « sufficient to reach the threshold required for the confirmation of charges ».
79	... even if it concerns anonymous witnesses.	“Decision on the Confirmation of Charges Pursuant to Article 61(7)(a) and (b) of the Rome Statute” (Pre-Trial	The Chamber is aware that the use of anonymous witness statements and summaries is permitted, pursuant to article 61(5) and 68(5) of the Statute and rule 81(4) of the Rules, at the pre-trial stage. However, the Chamber shares the view, adopted in other pre-trial decisions, that	Le paragraphe mentionné par la Représentante suggère que ce type de preuve a une valeur probante réduite et non

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		Chamber II), No. ICC-01/09-01/11-373, 23 January 2012 (the “Ruto Confirmation Decision”), par. 78	the use of evidence emanating from anonymous sources or from summaries of witnesses statements - regardless of its direct or indirect nature - may impact the ability of the Defence to challenge the credibility of the source and the probative value of such evidence. Therefore, to counterbalance the disadvantage that this might cause to the Defence, such evidence is considered as having a lower probative value than that attached to the statements of witnesses whose identity is known to the Defence and for which full statement has been made available to it. The Chamber will thus analyse anonymous witness statements and summaries on a case-by-case basis and evaluate them for the purposes of the present decision taking into account whether there is corroboration by other evidence.	qu’il serait « sufficient to reach the threshold required for the confirmation of charges ».
79	... even if it concerns anonymous witnesses.	“Decision on the Confirmation of Charges Pursuant to Article 61(7)(a) and (b) of the Rome Statute” (Pre-Trial Chamber II), No. ICC-01/09-02/11-382-Red, 26 January 2012, par. 90.	The Chamber notes that the use of anonymous witness statements and summaries is permitted at the pre-trial stage pursuant to article 61(5) and 68(5) of the Statute and rule 81(4) of the Rules. However, the Chamber shares the view, adopted in other pre-trial decisions, that the use of evidence emanating from anonymous sources or from summaries of witnesses statements - regardless of its direct or indirect nature - may impact on the ability of the Defence to challenge the credibility of the source and the probative value of such evidence. Therefore, to counterbalance the disadvantage that this might cause to the Defence, such evidence is considered as having a lower probative value than that attached to the statements of witnesses whose identity is known to the Defence and for which a full statement has been made available to it. The Chamber will thus analyze anonymous witness statements and summaries on a case-by-case basis and evaluate them for the purposes of the present decision taking into account whether there is corroboration by other evidence.	Le paragraphe mentionné par la Représentante suggère que ce type de preuve a une valeur probante réduite et non qu’il serait « sufficient to reach the threshold required for the confirmation of charges ».

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83	As ruled by the Appeals Chamber, this type of [documentary] evidence may be sufficient for the Prosecutor to reach the lower standard of proof required at the confirmation hearing vis à-vis the standard demanded for conviction at trial.	“Judgment on the appeal of Mr. Thomas Lubanga Dyilo against the decision of Pre-Trial Chamber I entitled Second Decision on the Prosecution Requests and Amended Requests for Redactions under Rule 81” (Appeals Chamber), No. ICC -01/04-01/06-774 OA6, 14 December 2006, par. 47.	The Appeals Chamber, by majority, is not persuaded by the argument of the appellant that even information that is completely unrelated to the charges is necessarily essential to the defence. The appellant submits that such information may be important inter alia to test the credibility of a witness. At the confirmation hearing, the suspect has the right to challenge the evidence presented by the Prosecutor (article 61 (6) (b) of the Statute). As a corollary to this right, the suspect has a right to be informed, prior to the hearing, of the evidence on which the Prosecutor intends to rely (article 61 (3) (b) of the Statute). The right to challenge the evidence, however, must be understood in the context of the confirmation hearing, which does not amount to a determination of the guilt or innocence of the suspect. Pursuant to article 61 (7) (a) of the Statute, the Pre-Trial Chamber shall confirm those charges in relation to which it has determined that there is sufficient evidence to establish substantial grounds to believe that the suspect committed the crime charged. As the threshold for the confirmation of the charges is lower than for a conviction, the Prosecutor may be able to convince the Pre-Trial Chamber that the threshold for the confirmation of the charges has been reached even if the reliability of the witnesses and other evidence was not fully tested.	Le paragraphe référencé ne concerne pas les « documentary evidence ». Il ne dit donc pas qu’une « documentary evidence » serait suffisante « to reach the lower standard of proof required at the confirmation hearing ». En réalité, le paragraphe porte l’étendue du droit qu’a la défense de « tester » la preuve du Procureur, ce qui ne semble pas être ce dont voulait parler la Représentante Légale des Victimes.
86	The Chamber has already recognised that many victims admitted to participate in these proceedings had difficulty in being attended at hospitals at the time of events,...	[EXPURGÉ] (Pre Trial Chamber I, Single Judge), No. ICC-02/11-01/11-138-Conf AnxB, 4 June 2012, pp. 17 and 31 (group form numbers a/20030/12 and a/20046/12).	P17: [EXPURGÉ]. P31: [EXPURGÉ].	Dans les deux extraits, la Chambre ne fait que rapporter les allégations des victimes sans se prononcer sur la réalité de ces allégations.
86	...or could not find doctors to help them because they had fled the area	[EXPURGÉ] (Pre Trial Chamber I, Single Judge), No. ICC-02/11-01/11-138-	[EXPURGÉ]	Dans l’extrait, la Chambre ne fait que rapporter les allégations des victimes

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		Conf AnxB, 4 June 2012, p. 51 (group form number a/20067/12).		sans se prononcer sur la réalité de ces allégations.
91	Other Chambers have also found that participating victims are not prevented from passing information to the Prosecutor, even if said information does not exclusively concern crimes they have suffered from.	“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, par. 83	As a result, the Single Judge considers that granting investigative powers, independent from those of the Prosecution, to those granted the procedural status of victim would not be consistent with the procedural system embraced by the Statute and the Rules. Therefore, if those granted the procedural status of victim find it necessary to undertake certain investigative steps, they must request the Prosecution to undertake such steps.	Le paragraphe référencé ne discute pas de la possibilité pour les victimes de transmettre des informations au Procureur mais de l’obligation pour les victimes de s’adresser au Procureur pour effectuer des enquêtes plutôt que de les faire elles-mêmes. Le paragraphe ne mentionne également pas la question du lien entre les informations et le dommage subi.
98	In this regard, the Appeals Chamber also admitted the possibility for victims to be allowed to lead evidence pertaining to the guilt or innocence of a suspect/accused.	“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, par. 104-105.	104. The Trial Chamber has correctly identified the procedure and confined limits within which it will exercise its powers to permit victims to tender and examine evidence: (i) a discrete application, (ii) notice to the parties, (iii) demonstration of personal interests that are affected by the specific proceedings, (iv) compliance with disclosure obligations and protection orders, (v) determination of appropriateness and (vi) consistency with the rights of the accused and a fair trial. With these safeguards in place, the Appeals Chamber does not consider that the grant of participatory rights to victims to lead evidence pertaining to the guilt or innocence of the accused and to challenge the admissibility or relevance of the evidence is inconsistent with the onus of the Prosecutor to prove the guilt of the accused nor is it inconsistent with the rights of the accused and a fair	L’extrait référencé concerne la phase de procès et non la phase de confirmation des charges.

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			trial. 105. Accordingly, the Appeals Chamber confirms the decision of the Trial Chamber allowing participating victims the possibility to lead evidence pertaining to the guilt or innocence of the accused, and to challenge the admissibility or relevance of evidence in the trial proceedings.	
98	Contrary to the Defence's suggestion, it was the Prosecutor and not the victims who filed documents CIV-OTP 0052-0292-R01 and CIV-OTP-0052-0386-R01 into the record of the case.	« Version confidentielle expurgée du Second corrigendum concernant les Observations écrites de la Défense sur la preuve du Procureur », No. ICC-02/11-01/11-637-Conf-Anx2-Corr2-Red, 25 March 2014, par. 146.	Dans l'affaire <i>Katanga</i> , la Chambre préliminaire I a jugé que le droit applicable à la phase préliminaire « leaves no room for the presentation of additional evidence by those granted the procedural status of victim ».	Il n'est pas dit dans le paragraphe mentionné que ce serait les victimes qui auraient déposé les pièces dans le dossier de l'affaire.