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TRIAL CHAMBER I

Before: **Judge Geoffrey Henderson, Presiding Judge**
Judge Olga Herrera Carbuccia
Judge Bertram Schmitt

SITUATION IN CÔTE D'IVOIRE

IN THE CASE OF
THE PROSECUTOR v. LAURENT GBAGBO AND CHARLES BLÉ GOUDÉ

Public Document
with 12 Confidential *EX PARTE* Annexes,
available only to the LRV and the Prosecution

Request to maintain redactions to the identifying and contact information of the intermediaries mentioned in the applications of dual status individuals

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

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

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I. PROCEDURAL BACKGROUND

1. On 15 December 2014, the Single Judge of Trial Chamber I (the "Single Judge") issued the "Decision on the Protocol establishing a redaction regime" in the case of *The Prosecutor v. Laurent Gbagbo* (the "Redaction Decision"),[1] adopting the redaction regime to be followed in said case, as set out in the redaction protocol appended in the annex to said Decision (the "Redaction Protocol").[2]

2. On 16 January 2015, the Defence of Mr. Gbagbo and the legal representative of the victims admitted to participate in the proceedings filed a joint submission on victim participation (the "Joint Submissions").[3]

3. On 3 February 2015, the Registry filed its observations on the Joint Submissions (the "Registry's Observations").[4]

4. On 6 March 2015, Trial Chamber I (the "Chamber") issued the "Decision on victim participation" in the case of *The Prosecutor v. Laurent Gbagbo* (the "Victim Participation Decision"),[5] ruling *inter alia* on the Joint Submission and confirming the status of victims already authorised to participate at the pre-trial stage of the case and of the ones authorised to participate in the case of *The Prosecutor v. Charles Blé Goudé*.[6]

5. On 11 March 2015, the Chamber issued the ''Decision on Prosecution requests to join the cases of *The Prosecutor v. Laurent Gbagbo* and *The Prosecutor v. Charles Blé*

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[1] See the "Decision on the Protocol establishing a redaction regime" (Pre-Trial Chamber I, Single Judge), No. ICC-02/11-01/11-737, 15 December 2014 (the "Redaction Decision").
[2] See the "Protocol establishing a redaction regime in the case of *The Prosecutor v. Laurent Gbagbo*" (Pre-Trial Chamber I), No. ICC-02/11-01/11-737-AnxA, 15 December 2014 (the "Redaction Protocol").
[3] See the "Soumissions conjointes de la Représentante légale des victimes et de la Défense de M. Laurent Gbagbo portant sur certaines questions relatives à la participation des victimes au procès", No. ICC-02/11-01/11-748, 19 January 2015 (dated 16 January 2015) (the "Joint Submissions").
[4] See the "Registry's Observations on the ' Soumissions conjointes de la Représentante légale des victimes et de la Défense de M. Laurent Gbagbo portant sur certaines questions relatives à la participation des victimes au procès' (ICC-02/11-01/11-748)", No. ICC-02/11-01/11-757, 03 February 2015 (the "Registry's Observations").
[5] See the "Decision on victim participation" (Trial Chamber I), No. ICC-02/11-01/11-800, 6 March 2015 (the "Victim Participation Decision").
[6] *Idem*, paras. 54-59 and 61.

Goudé and related matters'' (the "Joinder Decision"),[7] joining the cases and deciding *inter alia* that all decisions and orders issued in both cases shall continue to apply, as appropriate and until ordered otherwise, in the joint case.[8]

6. On 14 April 2015, the Common Legal Representative filed her "Submissions on the Provisional Agenda for the Status Conference to be held on 21 April 2015",[9] *inter alia* reiterating her submissions according to which should the Prosecution intend to seek variation of any of the protective measures already implemented, the Common Legal Representative must be properly informed in advance.[10] This submission was reiterated orally during the 21 April 2015 status conference.[11]

7. On 22 April 2015, the Chamber rejected the Defence requests for leave to appeal the Joinder Decision.[12]

8. On 7 May 2015, the Chamber issued the "Order setting the commencement date for trial", directing the Prosecution *inter alia* to disclose all incriminatory material in the form of witness statements and any other material to be relied on at trial, as well as all article 67(2) and rule 77 material in its possession for inspection to the two Defence teams on a rolling basis and no later than 30 June 2015.[13]

9. Between 11 May and 3 June 2015, the Prosecution informed the Common Legal Representative of the eventual disclosure to the Defence teams of Mr. Gbagbo

[7] See the "Decision on Prosecution requests to join the cases of *The Prosecutor v. Laurent Gbagbo* and *The Prosecutor v. Charles Blé Goudé* and related matters'' (Trial-Chamber I), No. ICC-02/11-01/15-1, 11 March 2015 (the "Joinder Decision").
[8] *Idem*, paras. 68 and 74.
[9] See the "Submissions on the Provisional Agenda for the Status Conference to be held on 21 April 2015", No. ICC-02/11-01/15-36, 14 April 2015.
[10] *Idem*, para. 39.
[11] See the status conference held on 21 April 2015, No. ICC-02/11-01/15-T-1-CONF-ENG, p. 24, line 17 (open session).
[12] See the "Decision on Defence requests for leave to appeal the 'Decision on Prosecution requests to join the cases of The Prosecutor v. Laurent Gbagbo and The Prosecutor v. Charles Blé Goudé and related matters'" (Trial Chamber I), No. ICC-02/11-01/15-42, 22 April 2015.
[13] See the "Order setting the commencement date for trial" (Trial Chamber I), No. ICC-02/11-01/15-58, 07 May 2015, para. 22.

and Mr. Blé Goudé of the applications of 19 dual status individuals as material pursuant to rule 77 of the Rules of Procedure and Evidence (the "Rule 77 Package").

10. In light of the Redaction Protocol and pursuant to article 64(2) and (6)(e), as well as article 68(1) of the Rome Statute, and rule 81(4) of the Rules of Procedure and Evidence, the Principal Counsel of the Office of Public Counsel for Victims, acting as Common Legal Representative of the victims admitted to participate in the proceedings (the "Common Legal Representative"),[14] respectfully submits the following request.

11. Pursuant to regulation 23*bis* (2) of the Regulations of the Court, the Common Legal Representative files this request as public and the 12 Annexes as confidential *ex parte*, only available to the LRV and the Prosecution, because they contain the applications for participation of dual status individuals not yet transmitted in a fully unredacted format to the Defence.

II. REQUEST TO MAINTAIN REDACTIONS

12. The Common Legal Representative requests that the existing redactions to the identifying and contact information of the intermediaries mentioned in the 12 applications for participation of dual status individuals contained in the Rule 77 Package be maintained pursuant to the Redaction Protocol. These redactions are marked with the code "B.3. LRV" in the 12 attached confidential *ex parte* Annexes, which also contain the redactions to be made by the Prosecution pursuant to the Redaction Protocol.

13. At the outset, the Common Legal Representative notes that the Chamber adopted the Redaction Protocol after receiving submissions only from the Prosecution and the Defence,[15] and expressly indicated in the Victim Participation

[14] See *supra* note 6.
[15] See the Redaction Decision, *supra* note 1, paras. 1-7.

Decision that it is for the Prosecution to disclose lesser redacted versions of applications for participation of victims also serving as witnesses for the Prosecution (the "dual status individuals").[16]

14. The Common Legal Representative submits that because she was not involved in the discussions about the Redaction Protocol, she could not put forward observations concerning the need to maintain redacted the identifying and contact information of intermediaries, which should be included under category B.3. of said Protocol. In this regard, while the Common Legal Representative does not oppose the lifting of redactions to said information where the intermediary is also a dual status individual or in very limited instances in which the dual status individual has expressly referred to an intermediary or an organisation in his or her statement and the Prosecution has not redacted this information when disclosing said statement to the Defence, she considers that, as a general principle, the identifying and contact information of intermediaries shall remain redacted.

15. In these circumstances, considering that legal representatives are often well placed to assess the security situation of their clients[17], and consistently with her prior written and oral submissions to the Chamber,[18] the Common Legal Representative discussed with the Prosecution the present risks entailed by lifting the redactions applied to the identity of the intermediaries mentioned in the applications for participation of dual status individuals.

16. In light of said risks, not expressly addressed neither in the Redaction Decision nor in the Victim Participation Decision,[19] the Common Legal

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[16] See the Victim Participation Decision, *supra* note 5, para. 56.

[17] See the "Annex to the Corrigendum to the Decision on the applications by victims to participate in the proceedings" (Trial Chamber I), No. ICC-01/04-01/06-1556-Corr-Anx1, 13 January 2009, paras. 132-133; and the "Corrigendum to Decision on the participation of victims in the trial and on 86 applications by victims to participate in the proceedings" (Trial Chamber III), No. ICC-01/05-01/08-807-Corr, 30 June 2010, paras. 70-72.

[18] See *supra* notes 10-11.

[19] The Redaction Decision only addresses the risks for intermediaries "assisting the disclosing party in the investigation". See the Redaction Protocol, *supra* note 2, para. 15.

Representative contends that the redaction of identifying and contact information of the intermediaries that assisted dual status individuals in filling in their applications forms falls under category B.3. of the Redaction Protocol, *i.e.* standard redactions related to "[i]*dentifying and contact information of 'other persons at risk as a result of the activities of the Court' (also known as 'innocent third parties')*".[20] As such, ongoing redactions to this information must be applied automatically by the disclosing party, in this instance by the Prosecution.[21]

17. In the alternative, should the Chamber find that said requested redactions fall outside category B.3. of the Redaction Protocol, the Common Legal Representative submits that they must nonetheless be maintained as non-standard redactions (category C of the Redaction Protocol) pursuant to article 68(1) of the Rome Statute and rule 81(4) of the Rules of Procedure and Evidence in order to protect the safety, physical and psychological well-being, dignity and privacy of victims, witnesses and persons at risk on account of the activities of the Court.

1. The identifying and contact information of the intermediaries that assisted dual status individuals must remain redacted as they are "innocent third parties" (category B.3. of the Redaction Protocol)

18. As stated by the Single Judge, rule 81(4) of the Rules of Procedure and Evidence provides for non-disclosure where the disclosure of information would compromise the safety of victims, witnesses, their families, or any other "person at risk on account of activities of the Court".[22]

19. In this regard, the Appeals Chamber found that intermediaries, independently from their specific functions, may be included in the category of persons "*at risk on*

[20] See the Redaction Protocol, *supra* note 2, p. 9, paras. 40-43.
[21] *Idem*, para. 10.
[22] See the Redaction Decision, *supra* note 1, para. 10.

account of the activities of the Court", thereby qualifying for protection.[23] Consequently, most Chambers, including Pre-Trial Chamber I in this case,[24] have systematically authorised redactions to the identifying and contact information of the intermediaries that assisted victims in completing their application forms.[25]

20. The Common Legal Representative submits that there is no reason to deviate from said approach when it comes to the victims' intermediaries in the present instance, and contends that their identities and contact information must remain covered by standard redactions under category B.3. of the Redaction Protocol because the intermediaries (i) have not agreed to be part of the Court process and may not even be aware of it,[26] (ii) may be perceived as potential witnesses or collaborators with the Court,[27] and (iii) are of no relevance to any known issue in the case.[28]

[23] See the "Judgment on the appeal of the Prosecutor against the decision of Trial Chamber I of 8 July 2010 entitled 'Decision on the Prosecution's Urgent Request for Variation of the Time-Limit to Disclose the Identity of Intermediary 143 or Alternatively to Stay Proceedings Pending Further Consultations with the VWU'" (Appeals Chamber), No. ICC-01/04-01/06-2582 OA18, 08 October 2010, footnote 117, referring to the "Judgment on the appeal of the Prosecutor against the decision of Pre-Trial Chamber I entitled 'First Decision on the Prosecution Request for Authorisation to Redact Witness Statements'" (Appeals Chamber), No. ICC-01/04-01/07-475 OA, 13 May 2008, paras. 54-58.
[24] See *inter alia* the "Second decision on issues related to the victims' application process" (Pre-Trial Chamber I, Single Judge), No. ICC-02/11-01/11-86, 5 April 2012, para. 41. See also the "First transmission to the Defence of redacted versions of applications to participate in the proceedings", No. ICC-02/11-01/11-122, 16 May 2012, p. 4.
[25] See *inter alia* the "Decision on the Registry Report on six applications to participate in the Proceedings" (Trial Chamber IV), No. ICC-02/05-03/09-231, 17 October 2011, para. 33.ix); the "Decision defining the status of 54 victims who participated at the pre-trial stage, and inviting the parties' observations on applications for participation by 86 applicants" (Trial Chamber III), No. ICC-01/05-01/08-699, 22 February 2010, para. 33.xi); the "Decision on the treatment of applications for participation" (Trial Chamber II), No. ICC-01/04-01/07-933-tENG, 09 July 2009, para. 49.ix); and the "Decision inviting the parties' observations on applications for participation of a/0001/06 to a/0004/06, a/0047/06 to a/0052/06, a/0077/06, a/0078/06, a/0105/06, a/0221/06, a/0224/06 to a/0233/06, a/0236/06, a/0237/06 to a/0250/06, a/0001/07 to a/0005/07, a/0054/07 to a/0062/07, a/0064/07, a/0065/07, a/0149/07, a/0155/07, a/0156/07, a/0162/07, a/0168/07 to a/0185/07, a/0187/07 to a/0191/07, a/0251/07 to a/0253/07, a/0255/07 to a/0257/07, a/0270/07 to a/0285/07, and a/0007/08" (Trial Chamber I), No. ICC-01/04-01/06-1308, 07 May 2008, para. 28.xi).
[26] See the Redaction Protocol, *supra* note 2, para. 40.
[27] *Idem*.
[28] *Ibid*., para. 43.

21. Firstly, the intermediaries relied upon by the Registry to establish contact with the victims and to assist the latter to fill in their application forms have not agreed to be part of the Court process and may not even be aware of it.

22. As explained in the "Guidelines Governing the Relations between the Court and Intermediaries", not every intermediary performs the same functions nor does so for the same purpose.[29] In particular, as submitted by the Registry in the *Gbagbo* case, whereas the intermediaries of the Prosecution may have assisted in the conduct of investigations or the contact with potential witnesses, the intermediaries of the Registry only assisted (potential) victims in the submission of their applications for participation and/or reparations.[30]

23. In these circumstances, none of the intermediaries identified in the applications for participation of dual status individuals contained in the Rule 77 Package may be said to have "agreed to be part of the Court process". None of them anticipated that the victims they assisted in the submission of their applications would eventually agree to provide evidence in the proceedings upon the call of the Prosecution. The fact that any of said intermediaries may have already become aware of the *subsequent* dual status of the victim(s) they assisted is immaterial for their consideration as "innocent third parties".[31]

24. In short, by providing their consent in supporting the Registry's activities – *i.e.* contacting and assisting victims in filling application forms – the intermediaries identified in the victims' applications have not agreed to be part of the Court process.

25. Secondly, there is a risk that the intermediaries relied upon by the Registry to establish contact with the victims and assist them to fill in their application forms be perceived as potential witnesses or collaborators with the Court.

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[29] See the "Guidelines Governing the Relations between the Court and Intermediaries for the Organs and Units of the Court and Counsel working with intermediaries", March 2014, pp. 5-6.
[30] See the Registry's Observations, *supra* note 4, para. 7.
[31] See *infra* para. 36.

26. Although the role played by the intermediaries of the Registry is not to assist in the conduct of the investigations, but rather to simply help (potential) victims to fill their application for participation and/or reparations,[32] the Common Legal Representative submits that the risk of intermediaries in Côte d'Ivoire and elsewhere being perceived as potential witnesses or collaborators with the Court remains the same.

27. In this regard, the Common Legal Representative notes the submission by the Registry that the level of support received by intermediaries assisting the work of the latter, particularly regarding protective measures, is assessed differently from intermediaries of other sections and organs of the Court.[33] In these circumstances, the Common Legal Representative contends that redactions to their identities and contact information are even more necessary.

28. Similarly, there is a risk that the intermediaries are prevented from continuing their work to contact and assist victims if their identities do not remain redacted. In this regard, the Common Legal Representative emphasises her past submissions,[34] agreed upon by the Registry,[35] that the intermediaries relied upon to support the victims in this case are in contact not only with the Common Legal Representative but also with other sections of the Registry, such as the Victims Participation and Reparations Section.

29. As a consequence, the disclosure of the intermediaries' identity to the Defence will have an impact on the ongoing collection of applications for participation carried out by the Registry.[36] Should the victims become aware of the fact that the identity of their intermediaries is known to the Defence, they may decline to apply for

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[32] See *supra* para. 22.
[33] See the Registry's Observations, *supra* note 4, para. 8.
[34] See the Joint Submissions, *supra* note 3, para. 15.
[35] See the Registry's Observations, *supra* note 4, para. 8.
[36] See the Victim Participation Decision, *supra* note 5, para. 51.

participation or may decide to disengage from the proceedings out of concerns for the eventual success of their applications and/or for their safety.

30. Lastly, the Common Legal Representative submits that the redactions applied to the identity and contact information of the intermediaries relied upon by the Registry to establish contact and assist dual status individuals to fill in their applications must be maintained because there are of no relevance to any known issue in the case.

31. As stated by the Chamber, under rules 76 and 77 of the Rules of Procedure and Evidence, the Prosecution has a disclosure obligation for all incriminatory material in the form of witness statements and any other material to be relied on at trial, as well as an obligation to disclose material falling under the ambit of article 67(2) of the Rome Statute and to permit inspection of all items that are material to the preparation of the Defence under rule 77 of the Rules of Procedure and Evidence.[37]

32. However, the Common Legal Representative submits that the identity of the dual status individuals' intermediaries does not necessarily fall under any of the categories mentioned in the preceding paragraph, and must therefore not be automatically disclosed to the Defence.

33. In this regard, the Court has determined that the victims' application forms provide information to the Chamber only for the purposes of substantiating their status as victims of the case, and are not evidence on either points of facts or law.[38] Only the statements of dual status individuals are evidence in the case and, as such, must be disclosed to the Defence.

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[37] See the Redaction Decision, *supra* note 1, para. 8.

[38] See *inter alia* the "Decision on the Defence Requests in Relation to the Victims' Applications for Participation in the Present Case" (Pre-Trial Chamber II, Single Judge), No. ICC-01/09-01/11-169, 08 July 2011, paras. 9-10 and 18. See also the "Decision on the confirmation of charges" (Pre-Trial Chamber I), No. ICC-01/04-01/07-717, 1 October 2008, para. 232; and the transcript of the confirmation of charges hearing of 7 July 2008, No. ICC-01/04-01/07-T-44-ENG ET, p. 14, line 25 to p. 15, line 3.

34. Pursuant to the abovementioned approach, the Common Legal Representative facilitated the disclosure to the Defence of information contained in the application forms of dual status individuals in a manner consistent with the information made available in the corresponding witness statements.[39]

35. Regarding the need to disclose the identity of the dual status individuals' intermediaries because of its relevance to an issue in the case, the Pre-Trial Chamber in the *Mbarushimana* case found that the fact that the same intermediaries helped to complete several different application forms was not relevant to the assessment of said applications.[40]

36. The Trial Chamber in the *Lubanga* case shared the opinion above,[41] and further clarified that "[t]*he threshold for disclosure* [of the intermediary's identity] *is whether* prima facie *grounds have been identified for suspecting that the intermediary in question had been in contact with one or more witnesses whose incriminating evidence has been materially called into question, for instance by internal contradictions or by other evidence. In these circumstances, the intermediary's identity is disclosable under Rule 77 of the Rules*".[42]

37. By contrast, the Common Legal Representative submits that no grounds for suspicion regarding the intermediaries or the victims' applications have been identified in the present case.

38. In fact, although the Defence of Mr. Gbagbo expressed its disagreement with the Common Legal Representative regarding the scope of redactions to be lifted in the victims' applications,[43] it did not include the identity of the intermediaries

[39] See the Joint Submissions, *supra* note 3, para. 9. See also *supra* para. 14.
[40] See the "Decision on the 138 applications for victims' participation in the proceedings" (Pre-Trial Chamber I, Single Judge), No. ICC-01/04-01/10-351, 11 August 2011, para. 30.
[41] See the "Redacted version of the Decision on the applications by 7 victims to participate in the proceedings" (Trial Chamber I), No. ICC-01/04-01/06-2764-Red, 25 July 2011, para. 25.
[42] See the "Redacted Decision on Intermediaries" (Trial Chamber I), No. ICC-01/04-01/06-2434-Red2, 31 May 2010, para. 139(b). See also the "Redacted version of the Corrigendum of Decision on the applications by 15 victims to participate in the proceedings" (Trial Chamber I), No. ICC-01/04-01/06-2659-Corr-Red, 08 February 2011, para. 30.
[43] See the Joint Submissions, *supra* note 3, para. 6.

assisting the dual status individuals among the information requested to be unredacted in said applications.[44]

39. In conclusion, the Common Legal Representative submits that non-disclosure of the identity and contact information of the intermediaries that assisted dual status individuals is necessary to protect their safety, dignity, privacy and well-being as innocent third parties, and as such, said redactions must be maintained under category B.3. of the Redaction Protocol. Accordingly, she requests the Chamber to maintain said redactions in the 12 dual status individuals' applications annexed to this request.[45]

2. In the alternative, the identifying and contact information of the intermediaries that assisted dual status individuals must be subject to ongoing non-standard redactions (category C of the Redactions Protocol)[46]

40. If the identities and contact information of the dual status individuals' intermediaries may not be redacted under category B.3. of the Redaction Protocol, the Common Legal Representative submits that their redaction remains justified under category C of the Redaction Protocol.

41. In the Redaction Decision, the Single Judge set out the requirements for redactions not falling under the standard justifications, namely "(*i) the existence of an 'objectively justifiable risk' to the safety of the person concerned or which may prejudice further or ongoing investigations; (ii) the risk must arise from disclosing the particular information to the Defence; (iii) the infeasibility or insufficiency of less restrictive protective measures; (iv) an assessment as to whether the redactions sought are 'prejudicial to or*

[44] *Idem*, para. 8.
[45] The identity of the intermediaries for the remaining seven dual status persons has already been disclosed to the Defence through said persons' applications and/or statements. See *supra* para. 14.
[46] See the Redaction Protocol, *supra* note 2, paras. 48-50.

inconsistent with the rights of the accused and a fair and impartial trial'; and v) the obligation to periodically review the decision authorising the redactions should circumstances change".[47]

42. The Common Legal Representative discusses below each of the above mentioned requirements, and submits that all of them, *mutatis mutandis*, are fulfilled by the identifying and contact information of the intermediaries that assisted dual status individuals, whose applications must therefore be redacted as provided for in the Annexes to this request.

43. Firstly, the disclosure of the identity and contact information of the intermediaries of dual status individuals poses an objective risk to the safety not only of said intermediaries, as argued above,[48] but also of the very victims assisted by them, be they witnesses or not.

44. Indeed, each of the intermediaries in this case is assisting a large number of victims who have not been called to testify in the proceedings and also those who may have not applied yet for participation. Thus, it is submitted that by disclosing the identity of the intermediaries, the Defence could reasonably discover the identities of victim applicants or victims authorised to participate while investigating the activities of intermediaries. The redaction of the intermediaries' identities is therefore warranted to protect also the victims they have assisted and their families.

45. In this regard, in the *Lubanga* case, Trial Chamber I found that "[n]*on-disclosure of the identities of those who assisted the* [victim] *applicants is necessary in order to protect the applicants, by maintaining their anonymity, pursuant to Article 68(1) of the Statute. This step is not detrimental to rights of the accused*".[49]

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[47] See the Redaction Decision, *supra* note 1, para. 11.
[48] See *supra* paras. 16 and 25-27.
[49] See the "Redacted version of the Corrigendum of Decision on the applications by 15 victims to participate in the proceedings", *supra* note 42, para. 30.

46. Furthermore, the Common Legal Representative submits that the disclosure of the identity and contact information of the intermediaries of dual status individuals poses an objective risk to their ongoing activities, in particular because they continue to support the activities of the Registry.

47. The Redaction Protocol does not expressly consider the danger of disclosing information regarding the intermediaries who assist the Registry in the collection of applications for participation and/or the Common Legal Representative in the establishment of contact with her clients.[50] However, the Redaction Protocol does address the risks arising from the disclosure of the identity and contact information of intermediaries "[a]*ssisting the disclosing party in the investigation*" and of investigators.[51]

48. In this regard, the Common Legal Representative submits that, although the functions played by the intermediaries referred to above are different,[52] the risks arising from disclosing their identifying information are similar in nature. Said disclosure may jeopardize the discharge of their tasks.

49. As argued by the Registry, should the persons assisting applicants in completing their application forms be systematically identified, even by pseudonym, this could lead to the identification of the intermediaries through the identification of patterns and by connecting information found in the application forms.[53]

50. In the same way, the Common Legal Representative counts on a limited pool of intermediaries to contact her clients. Moreover, some of said intermediaries assist in contacting victims in the three cases arising from the situation in Côte d'Ivoire,

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[50] See the Joint Submissions, *supra* note 3, para. 25. See also the Registry's Observations, *supra* note 4, paras. 7-8.
[51] See the Redaction Protocol, *supra* note 2, paras. 23 and 26 (categories A.4 and A.5).
[52] See *supra* note 30. See also the "Guidelines Governing the Relations between the Court and Intermediaries for the Organs and Units of the Court and Counsel working with intermediaries", *supra* note 29, p. 6, letters (c)-(e) and letter (b), respectively.
[53] See the Registry's Observations, *supra* note 4, para. 9.

and in distributing applications to victims who have not applied yet. In these circumstances, if the identity of the intermediaries were to be disclosed and known to a greater number of individuals, entities or the public, the ongoing contact with the victims could be put at risk and the ongoing application process could be jeopardised, as argued above.[54]

51. The Common Legal Representative understands that this reality, similar to the one considered in the Redaction Decision when addressing the redactions of investigators and Prosecution intermediaries' identifying information,[55] was factored by Pre-Trial Chamber I when it granted the Registry authorisation to redact the identity and contact information of the victims' intermediaries.[56] The Pre-Trial Chamber authorised said redactions for the pre-trial stage of the proceedings, but for the reasons outlined just above, it is submitted that said redactions should be ongoing.

52. Secondly, the Common Legal Representative submits that there are factors indicating that if the identifying and contact information of the victims' intermediaries is disclosed to the Defence, the latter may pass said information to others or conduct other investigative measures resulting in an increase of the objective risks identified above.

53. As already indicated, a limited number of intermediaries are assisting a large number of victims authorised to participate in the case, most of whom will not testify in the current proceedings. In these circumstances, if the identity of the intermediaries of dual status individuals is disclosed to the Defence, the latter may conduct investigations on said intermediaries and thereby discover the identities of other victims assisted by the same intermediaries but who will not testify in the proceedings.

[54] See *supra* para. 29.
[55] See the Redaction Decision, *supra* note 1, paras. 35 and 39.
[56] See *supra* note 24.

54. In this regard, as stated by the Single Judge, article 68(1) of the Rome Statute and rule 81(4) of the Rules of Procedure and Evidence are meant to ensure that the involvement of victims in the proceedings does not lead to a situation where their safety and well-being are put at stake, all the more where they are not part of the Court process by providing testimony.[57]

55. Thirdly, the Common Legal Representative submits that maintaining the redactions to the identifying and contact information of the victims' intermediaries is the only available measure to overcome or reduce the risks identified above. At this stage there are no less intrusive alternative measures available for this purpose.

56. The pool of intermediaries is very limited and the work of the Registry to circulate applications and of the Common Legal Representative to collect the views and concerns of the victims for the subsequent submission to the Chamber, respectively, depends to a great extent on the intermediaries. As a consequence and in light of the risks identified above, neither the Registry nor the Common Legal Representative will be able to fulfil their duties if the redactions to the identity and contact information of the intermediaries mentioned in the application forms are lifted.

57. Fourthly, maintaining said redactions is not *per se* prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial. In fact, the information redacted in the dual status individuals' applications is very limited and apparently the Prosecution does not intend to rely on said information at trial. Moreover, the redacted information does not render the victims' applications unintelligible or unusable, and is not mentioned in their witness statements.

58. In short, the Common Legal Representative submits that the identity and contact information of the dual status individuals' intermediaries must remain

[57] See the Redaction Decision, *supra* note 1, para. 49.

redacted because currently it is of no relevance to a known issue in the case. Its lack of relevance is evidenced by the fact that the Defence of Mr. Gbagbo did not request access to this information when discussing with the Common Legal Representative the lifting of redactions in the victims' applications.[58]

59. Lastly, the Common Legal Representative agrees to the immediate lifting of the redactions applied to victims' intermediaries who are themselves dual status individuals, and notes that the Defence will always be in a position to seek lifting in specific future circumstances that may warrant access to the contact and identifying information of intermediaries who are not dual status individuals. Moreover, the Common Legal Representative will also bring to the attention of the Chamber any factors that may warrant a variation of a ruling on non-disclosure. In this manner, the Chamber will always be in a position to balance the rights of the Defence against the interests of the victims.

[58] See *supra* note 44.

FOR THE FOREGOING REASONS, the Common Legal Representative respectfully requests the Chamber to rule that the identifying and contact information of the intermediaries mentioned in the attached 12 applications for participation of dual status individuals falls under category B.3. of the Redaction Protocol and shall therefore remained redacted. In the alternative, the Common Legal Representative respectfully requests the Chamber to maintain said information redacted as falling under category C of the Redaction Protocol.

Paolina Massidda
Principal Counsel

Dated this 8th day of June of 2015

At The Hague, The Netherlands