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TRIAL CHAMBER I

Before: Judge Geoffrey Henderson, Presiding Judge
Judge Olga Herrera Carbuccion
Judge Bertram Schmitt

SITUATION IN CÔTE D'IVOIRE

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

Public Document

**Response to Mr Gbagbo's observations on the applications of the 270 victims
authorised to participate at the confirmation stage of the *Blé Goudé* case and
subsequently authorised to participate in the trial proceedings
(ICC-02/11-01/15-217)**

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. Introduction

1. The Common Legal Representative of the victims admitted to participate in the proceedings (the “Legal Representative”)¹ submits that the existing redactions to the 267 applications for participation of victims transmitted to the Defence by the Registry,² as well as the redactions applied to the applications of three dual status individuals transmitted to the Defence by the Prosecution,³ must be maintained in order to protect the safety, physical and psychological well-being, dignity and privacy of the victims, pursuant to article 68(1) of the Rome Statute (the “Statute”) and rule 81(4) of the Rules of Procedure and Evidence (the “Rules”).

2. The Legal Representative further submits that, contrary to the Defence contention, each of the 270 applications for participation is complete and meets the requirements of rule 85 of the Rules of Procedure and Evidence, as assessed in the “Second Decision on victims’ participation in the pre-trial proceedings and related issues” in the *Blé Goudé* case (the “Second *Blé Goudé* Decision on Victims”).⁴

3. At the outset, the Legal Representative notes that the Defence provides its observations by addressing, on the one hand, the redactions applied to the victims’ applications, and, on the other hand, the actual content of the applications. The Defence reaches the conclusion that all 270 applications for participation should be rejected by the Chamber either because of the excessive amount of redactions contained therein, or because of their alleged failure to meet all the applicable criteria.

¹ See the “Directions on the conduct of the proceedings” (Trial Chamber I), No. ICC-02/11-01/15-205, 3 September 2015, p. 24.

² See the “Transmission to the Defence of lesser redacted versions of 267 applications for participation in the proceedings”, No. ICC-02/11-01/15-186, 20 August 2015 (dated 19 August 2015), with 267 confidential redacted annexes.

³ See the “Prosecution’s Communication of Evidence Disclosed to the Defence on 8 June 2015”, No. ICC-02/11-01/15-86, 9 June 2015, with 5 confidential annexes.

⁴ See the “Second Decision on victims’ participation in the pre-trial proceedings and related issues” (Pre-Trial Chamber I, Single Judge), No. ICC-02/11-02/11-111, 1 August 2014 (the “Second *Blé Goudé* Decision on Victims”), paras. 6-13 and pp. 13-15.

4. The Legal Representative refutes these two sets of arguments in this response and submits that the Chamber should not reconsider the status of any of the 270 victims admitted to participate in the proceedings.

II. Background

5. On 1 August 2014, the Single Judge of Pre-Trial Chamber I issued the Second *Blé Goudé* Decision on Victims, admitting at the time 271 victims to participate in the confirmation of charges hearing and in the related proceedings.⁵

6. On 16 January 2015, the Defence of Mr Gbagbo and the Legal Representative filed a joint submission on issues related to the victims' participation at trial (the "Joint Submissions").⁶

7. On 3 February 2015, the Registry filed its observations on the Joint Submissions (the "Registry Observations").⁷

8. On 23 February 2015, the Legal Representative filed a communication on the Registry Observations (the "Supplementary Submissions"),⁸ accompanied by confidential *ex parte* annexes.

9. On 6 March 2015, Trial Chamber I (the "Chamber") issued the "Decision on victim participation" (the "Victims' Participation Decision"),⁹ granting, *inter alia*, the

⁵ *Idem*.

⁶ 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").

⁷ 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, 3 February 2015 (the "Registry Observations").

⁸ See the "Communication to the Chamber following the Registry's Observations on the Joint Submissions (ICC-02/11-01/11-757-Conf)", No. ICC-02/11-01/11-779-Conf, 23 February 2015 (the "Supplementary Submissions").

status of victims in the *Gbagbo* case to the 270 individuals already admitted to participate at the confirmation stage of the *Blé Goudé* case;¹⁰ instructing the Registry to transmit to the Defence, in consultation with the Legal Representative, less redacted versions of the applications for participation contained in the annexes to the Joint Submissions and the Supplementary Submissions;¹¹ and granting the Defence of Mr Gbagbo the opportunity to submit observations on the applications of the 270 victims no later than 21 days after their transmission.¹²

10. On 11 March 2015, the Chamber joined the cases of *The Prosecutor v. Laurent Gbagbo* and *The Prosecutor v. Charles Blé Goudé* (the “Joinder Decision”),¹³ 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.¹⁴

11. On 9 June 2015, the Prosecution disclosed, *inter alia*, to the Defence of Mr Gbagbo the applications of three victims authorised to participate at trial and having dual status, indicating that it had applied redactions upon request of the Legal Representative.¹⁵ The Single Judge of the Chamber subsequently authorised the maintaining of said redactions.¹⁶

⁹ See the “Decision on victim participation” (Trial Chamber I), No. ICC-02/11-01/11-800, 6 March 2015 (the “Victims’ Participation Decision”).

¹⁰ *Idem*, paras. 44-46 and p. 24. Of these 271, one applicant had since passed away, leaving the total number of admitted victims at 270. *Ibid.*, para. 42.

¹¹ *Ibid.*, para. 55 and p. 24.

¹² *Ibid.*, para. 47 and p. 24.

¹³ 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”).

¹⁴ *Idem*, paras. 68 and 74.

¹⁵ See the “Request to maintain redactions to the identifying and contact information of the intermediaries mentioned in the applications of dual status individuals”, No. ICC-02/11-01/15-85, 8 June 2015; and the “Prosecution’s Communication of Evidence Disclosed to the Defence on 8 June 2015”, No. ICC-02/11-01/15-86, 9 June 2015.

¹⁶ See the “Decision on the Legal Representative of Victims’ requests to maintain redactions to information relating to certain intermediaries”(Trial Chamber I), No. ICC-02/11-01/15-202, 2 September 2015.

12. On 20 August 2015, the Registrar transmitted to the Defence of Mr Gbagbo the less redacted versions of the remaining 267 applications for participation, in accordance with the Victims' Participation Decision, read together with the Joinder Decision.¹⁷

13. On 10 September 2015, the Defence of Mr Gbagbo filed its "*Observations [...] portant sur les demandes de participation des « 270 applicants granted victim status at the confirmation stage of the Blé Goudé case [and] authorised to participate in the trial proceedings of the present case »*" (the "Defence Observations"),¹⁸ requesting the Chamber to reject the 270 applications or, in the alternative, to order the transmission to the Defence of a lesser redacted version of said applications.¹⁹

14. On 15 September 2015, the Single Judge of the Chamber instructed the parties and participants by e-mail to provide any response to the Defence Observations by 28 September 2015.²⁰

III. Submissions

1. **The redactions applied by the Registry, in consultation with the Legal Representative, comply with the Chamber's instructions and must be maintained in order to protect the safety, physical and psychological well-being, dignity and privacy of the victims concerned**

15. The Defence argues that the availability to the Prosecution of unredacted versions of the applications for participation violates the principle of equality to its

¹⁷ See *supra* note 2.

¹⁸ See the "*Observations de la Défense portant sur les demandes de participation des '270 applicants granted victim status at the confirmation stage of the Blé Goudé case [and] authorised to participate in the trial proceedings of the present case'*", No. ICC-02/11-01/15-217, 11 September 2015 (the "Defence Observations").

¹⁹ *Idem*, p. 20.

²⁰ See the e-mail from Trial Chamber I received on 15 September 2015 at 14h30.

disadvantage.²¹ However, said inequality does not arise, since the Prosecution must verify whether information in the possession of the applicants could be considered exculpatory in nature and, as the case may be, must collect such evidence and disclose it to the Defence pursuant to the legal texts of the Court.²²

16. Moreover, the Defence argues that the redactions applied by the Registry in consultation with the Legal Representative following the Victims' Participation Decision, do not comply with the instructions of the Chamber to provide the Defence with lesser redacted versions of the applications.²³ In particular, the Defence submits that, since some of the information still redacted refers to one or more categories identified by the Legal Representatives as information which could be disclosed to the Defence, the Registry should have not maintain them redacted without seizing the Chamber of the matter.²⁴

17. In this regard, the Legal Representative recalls that she identified four categories of information for which redactions could be lifted, namely (i) type of prejudice, (ii) date and place of the crime, (iii) language spoken by the victim, and (iv) ethnic group, with the *caveat* that the lifting of redactions to said information does not lead to indirectly identifying the victims to whom they refer.²⁵

18. The Defence specifically mentions the *caveat* in its observations,²⁶ but fails to take into account the impact of this residual provision on the redactions contained in the 267 applications. The Legal Representative wishes to recall that each redaction has been discussed and agreed upon with the Registry and that the redactions were thus maintained only when they constituted the "*only available measure to protect applicants*

²¹ See the Defence Observations, *supra* note 18, para. 11.

²² See 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, 8 July 2011, para. 8-16.

²³ See the Defence Observations, *supra* note 18, paras. 15-24.

²⁴ *Ibidem*, paras. 19-21.

²⁵ See the Joint Submissions, *supra* note 6, para. 7.

²⁶ See the Defence Observations, *supra* note 18, para. 18.

or third parties under Article 64(6)(e) and 68(1) of the Statute”.²⁷ Since there was no disagreement between the Registry and the Legal Representative there was no need to seize the Chamber on the matter.

19. Turning to the specific redactions challenged in its observations, the Defence firstly argues that 67 applications should be re-transmitted in a lesser redacted version which would include the systematic indication of the date and place of the crimes,²⁸ as to reflect the table annexed to the Second *Blé Goudé* Decision on Victims.²⁹

20. The Legal Representative submits that the Defence contention in this regard is misleading and stems from a misappreciation of the table provided by the Single Judge in the *Blé Goudé* case. Indeed, whether the macro-areas where the events took place have always been indicated, no disclosure has been made of the specific locations where the crimes were committed. This approach is in line with the obligation of the Court under articles 57(3)(c) and 68(1) of the Statute,³⁰ as the specific whereabouts of the victimisation could lead to the identification of the applicants,³¹ especially when they correspond to the residence of the victim, his/her family or innocent third parties.³²

²⁷ See the Victim Participation Decision, *supra* note 9, para. 55.

²⁸ See the Defence Observations, *supra* note 18, paras. 15-17 and 22-24.

²⁹ See the “Annex to the Second Decision on victims’ participation in the pre-trial proceedings and related issues” (Pre-Trial Chamber I, Single Judge), No. ICC-02/11-02/11-111-Conf-Anx, 1 August 2014.

³⁰ See the “Decision on Victims’ Participation at the Confirmation of Charges Hearing and in the Related Proceedings” (Pre-Trial Chamber II, Single Judge), No. ICC-01/09-01/11-249, 5 August 2011, para. 118. See also 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, paras. 31-37.

³¹ See the “Decision on protective measures requested by applicants 01/041/dp to 01/04-6/dp” (Pre-Trial Chamber I), No. ICC-01/04-73, 22 July 2005, p. 3. See also the “Decision on Victims’ Participation at the Confirmation of Charges Hearing and in the Related Proceedings”, *supra* note 30, para. 109.

³² See 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, 7 May 2008, para. 27.

21. In this regard, the Legal Representative also submits that the fact that in few applications the macro-area where the events took place (such as the neighbourhood or a larger area of the city of Abidjan) remained redacted is not prejudicial to the Defence. Indeed, as recognised by the Defence itself,³³ that information is already accessible through the mentioned table annexed to the Second *Blé Goudé* Decision on Victims.³⁴ As such, a transmission of a further less redacted version of those applications is not necessary as there is no material benefit to be gained by ordering the transmission to the Defence of the information identified by the latter as having been unnecessarily redacted.³⁵

22. Secondly, the Defence requests that all the applications in which the victims did not indicate an objection to disclose their identities to the Defence be re-transmitted to the latter without redactions.³⁶ In this regard, the Legal Representative refers to her statement contained in the Joint Submissions, and in particular to the fact that all the victims she represents have been consulted and all of them have firmly expressed their objections to having their identities disclosed to the public and especially to the Defence.³⁷

23. It is further recalled the cautious approach taken by different Chambers with regard to those victims who did not indicate the wish that their identity be withheld from the Defence or expressed no preference in this regard.³⁸ In particular, the Legal Representative stresses the findings in the *Ruto et al.* case in relation to the fact that “the absence of security concerns at the time when the applications have been filled in does

³³ See the Defence Observations, *supra* note 18, paras. 15 and 23.

³⁴ See the “Annex to the Second Decision on victims’ participation in the pre-trial proceedings and related issues”, *supra* note 29.

³⁵ See the “Decision on 32 applications to participate in the proceedings” (Appeals Chamber), No. ICC-01/04-01/06-3045-Red2 A4 A5 A6, 27 August 2013, para. 23.

³⁶ See the Defence Observations, *supra* note 18, para. 25.

³⁷ See the Joint Submissions, *supra* note 6, para. 7.

³⁸ See “Decision on Victims’ Participation at the Confirmation of Charges Hearing and in the Related Proceedings”, *supra* note 30, paras. 118-121. See also the “Decision on Victims’ Participation at the Confirmation of Charges Hearing and in the Related Proceedings” (Pre-Trial Chamber II, Single Judge), No. ICC-01/04-02/06-211, Pre-Trial Chamber II, 15 January 2014, paras. 45-46.

not mean that any such concern could not in the meantime have become warranted",³⁹ and regarding the specific role of the victims' legal representative in receiving clear and updated instructions from her or his clients on the matter.⁴⁰

24. Thirdly, the Defence requests the Chamber to reject a number of applications on the ground that the redactions applied to documents proving (i) the identity of the victims, (ii) the relationship between direct and indirect victims, and (iii) the relationship between the victim and the person acting on his or her behalf, do not allow the Defence to verify the information contained therein.⁴¹

25. At the outset, the Legal Representative recalls that victims' applications can under no circumstances be assimilated to evidence⁴² and are not subject to disclosure between the parties,⁴³ but are only transmitted to the parties in order to provide observations thereon.⁴⁴ In other words, the applications do not substantiate either points of fact or law in favour or against the Accused.⁴⁵ Accordingly, the Defence cannot argue to be unduly or disproportionately prejudiced by the non-disclosure of

³⁹ See "Decision on Victims' Participation at the Confirmation of Charges Hearing and in the Related Proceedings", *supra* note 38, para. 118.

⁴⁰ *Ibid.* See also 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.

⁴¹ See the Defence Observations, *supra* note 18, paras. 26-33.

⁴² See, *inter alia*, the "Decision on the Defence Requests in Relation to the Victims' Applications for Participation in the Present Case", *supra* note 22, 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.

⁴³ See the "Decision on the Defence Requests in Relation to the Victims' Applications for Participation in the Present Case", *supra* note 22, para. 18. See also the "Decision on Victims' Participation at the Confirmation of Charges Hearing and in the Related Proceedings", *supra* note 30, para. 119.

⁴⁴ *Idem*, para. 18.

⁴⁵ *Ibid.*, paras. 9-10.

the information requested for the limited purpose of making observations on the applications.⁴⁶

26. Within this context, the Legal Representative further notes that nothing in the legal texts of the Court provides that the Chamber is precluded from ruling on the merits of victims' applications taking into consideration information that has been redacted *vis-à-vis* the parties with a view to protecting the applicants' safety.⁴⁷ Therefore, the redactions to the applicants' identity documents do not amount to an unnecessary restriction of the rights of the Defence in so far as they constitute the only available measures to protect the security and safety of the applicants concerned.⁴⁸

27. The same holds true for the contentions made by the Defence in relation to the identity documents establishing the relationship between direct and indirect victim, and those establishing the relationship between the victim and the person acting on his or her behalf.⁴⁹ Indeed, the applied redactions are the only available measure to protect the security and safety of the victims and those acting on their behalf. On the one hand, the verification of the specific kinship would necessarily entail the identification of both direct and indirect victims. On the other hand, protective measures granted to victims authorised to participate in the proceedings also apply to persons authorised to participate on their behalf.⁵⁰

⁴⁶ See 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, 8 February 2011, para. 37.

⁴⁷ See the "Decision on the Defence Requests in Relation to the Victims' Applications for Participation in the Present Case", *supra* note 22, para. 18.

⁴⁸ See the "Decision on Victims' Participation at the Confirmation of Charges Hearing and in the Related Proceedings", *supra* note 30, para. 113. See also "Decision on 32 applications to participate in the proceedings", *supra* note 35, para. 23.

⁴⁹ See the Defence Observations, *supra* note 18, paras. 28-33.

⁵⁰ See the "Decision on the applications to resume action submitted by the family members of deceased Victims a/0025/08, a/0051/08, a/0197/08 and a/0311/09" (Trial Chamber II), No. ICC-01/04-01/07-3018-tENG, 27 October 2011, paras. 32-34.

28. Lastly, the Defence requests the Chamber to dismiss ten applications on the ground that some identifying features of the injuries suffered have been redacted,⁵¹ and to reject seven on the ground that the pictures depicting the injuries have not been transmitted to the Defence.⁵² As regards the redactions applied in relation to the description of specific injuries, the Legal Representative recalls the constant jurisprudence of the Court authorising the redaction of “*characteristics enabling the applicant to be identified from the injury, loss or harm suffered*”.⁵³ Accordingly, the Legal Representative, in consultation with the Registry, proposed the redaction of said information only when the specific nature of the physical prejudice in combination with other personal information, could lead to the identification of the victim concerned.

29. By the same token, pictures depicting the victims and the injuries suffered have been redacted. In this regard, the Legal Representative also recalls that pictures and other visual material is not among the supporting documents required for an application to be complete,⁵⁴ nor is there an obligation for the Chamber under rule

⁵¹ See the Defence Observations, *supra* note 18, para. 34.

⁵² *Idem*, para. 35.

⁵³ See the “Decision on the Registry Report on six applications to participate in the proceedings”, *supra* note 30, para. 33. See also the “Decision on the treatment of applications for participation” (Trial Chamber II), No. ICC-01/04-01/07-933-tENG, 9 July 2009, para. 51; 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”, *supra* note 32, para. 28.

⁵⁴ See the “Decision on the Requests of the Legal Representative of Applicants on application process for victims’ participation and legal representation” (Pre-Trial Chamber I), No. ICC-01/04-374, 17 August 2007, para. 12. See also the “Decision on Applications a/0011/06 to a/0013/06, a/0015/06 and a/0443/09 to a/0450/09 for Participation in the Proceedings at the Pre-Trial Stage of the Case” (Pre-Trial Chamber I, Single Judge), No. ICC-02/05-01/09-62, 10 December 2009, para. 8; the “Decision on Applications a/0655/09, a/0656/09, a/0736/09 to a/0747/09, and a/0750/09 to a/0755/09 for Participation in the Proceedings at the Pre-Trial Stage of the Case” (Pre-Trial Chamber I, Single Judge), No. ICC-02/05-02/09-255, 19 March 2010, para. 4; the “First Decision on Victims’ Participation in the Case” (Pre-Trial Chamber II, Single Judge), No. ICC-01/09-01/11-17, 30 March 2011, para. 19; 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, para. 22; the “Corrigendum to 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, 8 February 2013, paras. 36-37; and the “Decision on victims’

89(1) of the Rules to receive observations from the parties on information contained in other documents extrinsic to the applications themselves.⁵⁵ It is thus submitted that the Defence request to reject the seven applications is not justified.

2. Each of the 270 applications for participation is complete and meets the requirements of rule 85 of the Rules, as assessed in the Second *Blé Goudé* Decision on Victims

30. In the second part of its observations, the Defence argues that a large number of applications do not meet the requirements of rule 85 of the Rules and, as such, should be rejected.⁵⁶ Firstly, in relation to the identity documents attached to the applications, the Defence argues that thirty of those are not valid because (i) they are not signed by the holder; (ii) their date of validity expired; (iii) they indicate a different date of birth from the one in the application form; or (iv) they are in poor condition.⁵⁷

31. At the outset, the Legal Representative recalls that the relevant jurisprudence of the Court requires only a *prima facie* presentation of proof of identity for the purposes of a decision on the applications pursuant to rule 89(1) of the Rules, and allows, if necessary, for additional opportunities to further scrutinize the authenticity of the applicants' identities throughout the proceedings.⁵⁸

participation at the confirmation of charges hearing and in the related proceedings", *supra* note 38, paras. 60-62.

⁵⁵ See the "Decision on the Requests of the OPCD on the Production of Relevant Supporting Documentation Pursuant to Regulation 86(2) (e) of the Regulations of the Court and on the Disclosure of Exculpatory Materials by the Prosecutor" (Pre-Trial Chamber I, Single Judge), No. ICC-02/05-110, 3 December 2007, paras. 15-16.

⁵⁶ See the Defence Observations, *supra* note 18, paras. 37- 65.

⁵⁷ *Idem*, paras. 37-41.

⁵⁸ See, *inter alia*, the "Decision on the applications for participation filed in connection with the investigation in the Democratic Republic of Congo by Applicants a/0047/06 to a/0052/06, a/0163/06 to a/0187/06, a/0221/06, a/0225/06, a/0226/06, a/0231/06 to a/0233/06, a/0237/06 to a/0239/06, and a/0241/06 to a/0250/06" (Pre-Trial Chamber I, Single Judge), No. ICC-01/04-505, 3 July 2008, para. 21; and the "Redacted version of the Corrigendum of Decision on the applications by 15 victims to participate in the proceedings", paras. 28-29.

32. Within this context and in relation to the Defence specific contentions mentioned *supra*,⁵⁹ the Legal Representative notes the flexible approach of the different Chambers in assessing the documents presented by the applicants to substantiate their identity. In particular, she underscores the weight given to the fact that in post-conflict regions the means available to the applicants in receiving new identity documents are limited and that the documents available may not be entirely accurate,⁶⁰ *e.g.* discrepancies may exist between the names and/or dates of birth as they appear on the documents submitted as proof of identity and the names and dates of birth submitted in the application forms of a number of applicants.⁶¹ The Chambers have constantly decided on the basis of the coherence of the identity documents with the identifying information submitted, and taking into account the applicant's personal circumstances.⁶²

33. The same holds true for the Defence contentions in relation to documents proving the death of a person and the relationship between direct and indirect victims.⁶³

⁵⁹ *Supra*, para. 30.

⁶⁰ 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, paras. 27-28; the "Decision on victims' participation at the confirmation of charges hearing and in the related proceedings", *supra* note 38, paras. 21-23; 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, Single Judge), No. ICC-02/04-101, 10 August 2007, para. 16; the "Decision on the Requests of the Legal Representative of Applicants on application process for victims' participation and legal representation", *supra* note 54, paras. 13-14; the "Public Redacted Version of the 'Decision on the 97 Applications for Participation at the Pre-Trial Stage of the Case'" (Pre-Trial Chamber I, Single Judge), No. ICC-01/04-01/07-579, 10 June 2008, para. 45; and the "Decision on victims' participation" (Trial Chamber I), No. ICC-01/04-01/06-1119, 18 January 2008, para. 87.

⁶¹ See the "Decision on the 138 applications for victims' participation in the proceedings", *supra* note 60, paras. 27-28; and the "Decision on victims' participation at the confirmation of charges hearing and in the related proceedings", *supra* note 38, paras. 21-23.

⁶² See the "Decision on the 138 applications for victims' participation in the proceedings", *supra* note 60, paras. 27-28; and the "Decision on victims' participation", *supra* note 60, para. 87.

⁶³ See the Defence Observations, *supra* note 18, paras. 45-46. In this regard, see in particular the "Judgment on the appeals of the Defence against the decisions entitled 'Decision on victims' applications for participation a/0010/06, a/0064/06 to a/0070/06, a/0081/06, a/0082/06, a/0084/06 to a/0089/06, a/0091/06 to a/0097/06, a/0099/06, a/0100/06, a/0102/06 to a/0104/06, a/0111/06, a/0113/06 to a/0117/06, a/0120/06, a/0121/06 and a/0123/06 to a/0127/06' of Pre-Trial Chamber II" (Appeals Chamber), No. ICC-02/04-179 OA, 23 February 2009, para. 38. See also the "No. ICC-01/04-01/07-1491-Red-tENG, Trial Chamber II, 10 March 2010, paras. 36-39.

34. Secondly, the Defence argues that a large number of applications should be rejected as they do not append a document proving the physical harm suffered by the victim.⁶⁴ In this regard, the Legal Representative recalls that for the purposes of a decision under rule 89(1) of the Rules the applicant only needs to provide a description of the harm suffered and that a medical certificate is not among the documents required for an application to be assessed as complete.⁶⁵

35. Thirdly, the Defence argues that a limited number of applications should be rejected because they are submitted by applicants who cannot speak French or because they make no reference to the interpreter assisting the victims.⁶⁶ In this regard, the Legal Representative recalls that there is no requirement in the legal texts of the Court according to which the application forms must be filled in by the applicants themselves or that any person assisting the applicants must be a qualified interpreter.⁶⁷ Therefore, there is no need to test the qualifications of the interpreters or of those assisting the applicants to fill in the application forms.

36. Fourthly, the Defence requests the Chamber to reject sixteen applications on the ground that they do not refer to the crimes identified in the charges or because

⁶⁴ See the Defence Observations, *supra* note 18, paras. 43-44.

⁶⁵ See the "First Decision on Victims' Participation in the Case", *supra* note 54, paras. 18-19; the "First Decision on Victims' Participation in the Case" (Pre-Trial Chamber II, Single Judge), No. ICC-01/09-02/11-23, 30 March 2011, para. 19; the "Decision on the Requests of the Legal Representative of Applicants on application process for victims' participation and legal representation", *supra* note 54, para. 12; "Decision on Applications a/0011/06 to a/0013/06, a/0015/06 and a/0443/09 to a/0450/09 for Participation in the Proceedings at the Pre-Trial Stage of the Case", *supra* note 54, para. 8; the "Decision on Applications a/0655/09, a/0656/09, a/0736/09 to a/0747/09, and a/0750/09 to a/0755/09 for Participation in the Proceedings at the Pre-Trial Stage of the Case", *supra* note 54, para. 4; the "Decision on Victims' Participation and Victims' Common Legal Representation at the Confirmation of Charges Hearing and in the Related Proceedings", *supra* note 54, para. 22; and the "Decision on victims' participation at the confirmation of charges hearing and in the related proceedings", *supra* note 38, paras. 60- 62.

⁶⁶ See the Defence Observations, *supra* note 18, paras. 47-49.

⁶⁷ See the "Corrigendum to the Second decision on victims' participation at the confirmation of charges hearing and in the related proceedings", *supra* note 54, para. 42. See also the "Corrigendum to Decision on the Applications for Participation in the Proceedings of Applicants a/0011/06 to a/0015/06, a/0021/07, a/0023/07 to a/0033/07 and a/0035/07 to a/0038/07" (Pre-Trial Chamber I, Single Judge), No. ICC-02/05-111-Corr, 14 December 2007, para. 24.

only part of the harm alleged by the applicants is related to said crimes.⁶⁸ In this regard, the Legal Representative contends the contrary; indeed, on the basis of the Second *Blé Goudé* Decision on Victims, all said applicants suffered harm as a consequence of the charges confirmed by Pre-Trial Chamber I.⁶⁹

37. Fifthly, the Defence requests the rejection of a large number of applications on the basis that the statements of events contained therein are vague, confusing and imprecise,⁷⁰ or because the applications provide a vague and unfounded identification of the alleged perpetrators.⁷¹ In this regard, the Legal Representative reiterates that the obligation on an applicant is limited to providing the Chamber with sufficient material to establish, *prima facie*, his or her identity and the link between the harm and the crimes allegedly committed by the Accused.⁷² Consequently, it is the overall picture provided by the applicant to the Chamber what must be taken into account in order to reach a *prima facie* determination as to whether the applicant suffered harm as a result of a crime included in the charges against the Accused.⁷³

38. Moreover, it is consolidated jurisprudence of the Court that the identification of the perpetrators is not a requirement for an application for participation to be considered complete.⁷⁴ At most, Chambers have checked in the past whether the

⁶⁸ See the Defence Observations, *supra* note 18, paras. 50-51.

⁶⁹ See annex No. ICC-02/11-02/11-111-Conf-Anx to the Second *Blé Goudé* Decision on Victims, *supra* note 4, pp. 5; 51; 65; 68; 83; 86; 118 and 122-126. See also the “Decision on the confirmation of charges against Laurent Gbagbo” (Pre-Trial Chamber I), No. ICC-02/11-01/11-656-Conf, 12 June 2014, para. 278 and the “Decision on the confirmation of charges against Charles Blé Goudé” (Pre-Trial Chamber I), No. ICC-02/11-02/11-186, 11 December 2014, para. 194.

⁷⁰ See the Defence Observations, *supra* note 18, paras. 52-54.

⁷¹ *Idem*, *supra* note 18, paras. 55-56.

⁷² See *supra* note 58.

⁷³ See the “Redacted version of the Corrigendum of Decision on the applications by 15 victims to participate in the proceedings”, *supra* note 46, para. 28; and the “Decision on the 138 applications for victims’ participation in the proceedings”, *supra* note 60, paras. 36 and 39.

⁷⁴ See the “Decision on Victims’ Participation at the Confirmation of Charges Hearing and in the Related Proceedings”, *supra* note 30, paras. 22-24; the “Decision on the 138 applications for victims’ participation in the proceedings”, *supra* note 60, para. 36; the “Decision on Victims’ Participation at the Confirmation of Charges Hearing and in the Related Proceedings” (Pre-Trial Chamber II, Single Judge), No. ICC-01/09-02/11-267, 26 August 2011, paras. 32-34; the “Corrigendum to the Second

applicants mention unequivocally that the perpetrators of the crimes from which they suffered personal harm from are individuals or entities that are not related to the charges against the accused.⁷⁵ In this regard, the Legal Representative submits that none of the applications, granted in the Second *Blé Goudé* Decision on Victims, mentions individuals or entities not related to the Accused.

39. Sixthly, the Defence requests the Chamber to dismiss over ninety applications on the ground that the harm alleged by the applicants is not personal, direct, precise or properly placed in the application form.⁷⁶ In this regard, the Legal Representative recalls that applicants are not required to detail the nature of the physical, psychological or material prejudice that they suffered from but to describe, including in their own words, the harm suffered as a result of the commission of the crime(s) allegedly committed by the accused. More precise information detailing the prejudice suffered by victims may become relevant for the purposes of reparation proceedings before a Trial Chamber, in the event the Accused are convicted at trial.⁷⁷

40. Lastly, the Defence contends in general that all the applications with a similar description of the events raise doubts as to the scope of the assistance provided by the intermediaries in filling said applications, and, as a consequence, must be rejected.⁷⁸ In this regard, the Legal Representative notes that, although the answers in the particular application forms referred to by the Defence are similar, they are not identical, and that other Chambers have previously observed, in broadly analogous

decision on victims' participation at the confirmation of charges hearing and in the related proceedings", *supra* note 54, para. 37; and the "Decision on Victims' Participation at the Confirmation of Charges Hearing and in the Related Proceedings", *supra* note 38, para. 64.

⁷⁵ See the "Decision on Victims' Participation at the Confirmation of Charges Hearing and in the Related Proceedings", *supra* note 38, para. 64.

⁷⁶ See the Defence Observations, *supra* note 18, paras. 57-61.

⁷⁷ See the "Decision on Victims' Participation at the Confirmation of Charges Hearing and in the Related Proceedings", *supra* note 38, para. 62.

⁷⁸ See the Defence Observations, *supra* note 18, paras. 62-65.

circumstances, that the similarities between the applications are unsurprising and do not in any way undermine their credibility.⁷⁹

IV. Conclusion

41. For the foregoing reasons, the Legal Representative respectfully requests the Chamber to reject the Defence's requests to reconsider the status of any of the 270 victims participating in the current proceedings, and to maintain the current redactions in their applications for participation.

A handwritten signature in black ink, reading "Paolina Massidda". The signature is written in a cursive, flowing style. The name "Paolina" is written in a larger, more prominent script than "Massidda". The signature is underlined with a single horizontal line.

Paolina Massidda
Principal Counsel

Dated this 28th day of September of 2015

At The Hague, The Netherlands

⁷⁹ See the "Redacted version of the Corrigendum of Decision on the applications by 15 victims to participate in the proceedings", *supra* note 46, para. 29.