

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-02/11-01/15
Date: 07 January 2016

TRIAL CHAMBER I

Before: Judge Cuno Tarfusser
Judge Olga Herrera Carbuccion
Judge Geoffrey Henderson

**SITUATION IN THE REPUBLIC OF CÔTE D'IVOIRE
IN THE CASE OF
*THE PROSECUTOR v. LAURENT GBAGBO and CHARLES BLÉ GOUDÉ***

**Public
with Public Annexes A and B**

Decision on victims' participation status

Decision to be notified, in accordance with Regulation 31 of the *Regulations of the Court*, to:

The Office of the Prosecutor

Ms Fatou Bensouda
Mr James Stewart
Mr Eric MacDonald

Counsel for Laurent Gbagbo

Mr Emmanuel Altit
Ms Agathe Bahi Baroan

Counsel for Mr Charles Blé Goudé

Mr Geert-Jan Alexander Knoops
Mr Claver N'dry

Legal Representatives of Victims

Ms Paolina Massidda

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

**The Office of Public Counsel for the
Defence**

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Ms Fiona McKay

Others

Trial Chamber I ('Chamber') of the International Criminal Court ('Court'), in the case of *The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé*, with regard to Articles 64(2) and (6) (e), 67(1), 68(1) and (3) of the Rome Statute ('Statute'), Rules 85, 86, 89, 90-92 of the Rules of Procedure and Evidence ('Rules') and Regulation 86 of the Regulations of the Court ('Regulations'), issues the following 'Decision on victims' participation status'.

I. Procedural Background

1. On 6 March 2015, the Chamber rendered the 'Decision on victim participation' in the case of *The Prosecutor v. Laurent Gbagbo* ('Gbagbo case'), in which it determined, *inter alia*, that the 270 victims granted participatory status at the confirmation stage of the case of *The Prosecutor v. Charles Blé Goudé* ('Blé Goudé case') were authorised to participate in the trial proceedings of the *Gbagbo* case,¹ unless otherwise decided by the Chamber on the basis of the observations made by the defence of Mr Gbagbo ('Gbagbo Defence').²
2. In the same decision, the Chamber ordered the Registry to:
 - i. transmit copies of the applications of the 270 victims admitted to participate in the proceedings ('270 Applications') to the Chamber and the Office of the Prosecutor ('Prosecution') in unredacted form;³
 - ii. transmit to the Gbagbo Defence, in consultation with the Legal representative of victims ('LRV'), lesser redacted versions of the applications for participation, including the 270 Applications, following the specifications contained in the annexes of the submissions filed by the LRV and the Gbagbo Defence on the matter;⁴
 - iii. transmit copies of any new applications as soon as possible and no later

¹ Decision on victim participation, 6 March 2015, ICC-02/11-01/11-800, paras 42-46 and page 24.

² Decision on victim participation, ICC-02/11-01/11-800, para. 47.

³ Decision on victim participation, ICC-02/11-01/11-800, page 24.

⁴ Decision on victim participation, ICC-02/11-01/11-800, para. 55 and page 24.

than 60 days prior to trial⁵ (to the Chamber and the Prosecution in unredacted form and to the Defence in redacted form), together with a report pursuant to Regulation 86(5) of the Regulations.⁶ As regards these applications, the Chamber authorised the Registry to use a one-page simplified individual application form and to group applications, if appropriate, by incident.⁷

3. On 11 March 2015, the Chamber joined the *Gbagbo* case and the *Blé Goudé* case, and decided, *inter alia*, that 'all decisions and orders made in these two cases shall continue to apply, as appropriate and until ordered otherwise, in the joint case' ('Joinder Decision').⁸
4. On 19 August 2015, the Registry transmitted to the Chamber and the Prosecution the unredacted versions of the 270 Applications.⁹ It transmitted with lesser redactions 267 of the 270 Applications to the Gbagbo Defence and the defence team of Mr Blé Goudé ('Blé Goudé Defence'; together with the Gbagbo Defence, 'Defence'),¹⁰ considering that three of the 270 Applications concerned dual status witnesses,¹¹ the transmission of which to the Defence is incumbent upon the Prosecution.¹²
5. On 10 September 2015, the Registry transmitted to the Chamber and the

⁵ On 7 May 2015, the Chamber scheduled the opening statements for 10 November 2015. *See*, Order setting the commencement date for trial, 7 May 2015, ICC-02/11-01/15-58, page 12.

⁶ Decision on victim participation, ICC-02/11-01/11-800, para. 52 and page 24.

⁷ Decision on victim participation, ICC-02/11-01/11-800, paras 50 and 52.

⁸ Decision on Prosecution requests to join the cases of *The Prosecutor v. Laurent Gbagbo* and *The Prosecutor v. Charles Blé Goudé* and related matters, 11 March 2015, ICC-02/11-01/15-1, para. 74 and page. 33.

⁹ Transmission to the Trial Chamber and the Prosecutor of unredacted versions of 270 applications for participation in the proceedings, notified on 20 August 2015, ICC-02/11-01/15-184 with 270 confidential *ex parte* annexes.

¹⁰ Transmission to the Defence of lesser redacted versions of 267 applications for participation in the proceedings, notified on 20 August 2015, ICC-02/11-01/15-186 with 267 confidential redacted annexes.

¹¹ ICC-02/11-01/15-186, page 4.

¹² Decision on victim participation, ICC-02/11-01/11-800, para. 56.

Prosecution,¹³ in unredacted form, and to the Defence,¹⁴ in redacted form, 259 newly received applications for participation ('259 Applications').

6. On the same day, the Registry also filed a report on the 259 new applications to participate in the proceedings ('First Report')¹⁵, accompanied by two confidential *ex parte* annexes. In Annex 1, the Registry explained the criteria adopted for assessing the new applications,¹⁶ and concluded that, from 260 new applications received, 259 were evaluated as complete and linked to the case.¹⁷ In Annex 2, the Registry included a table presenting its preliminary assessment against the requirements of Rule 85 of the Rules for each of the 259 applications for participation.¹⁸ On the same date, the Registry transmitted to the Chamber and the Prosecution the unredacted versions of the 259 Applications, while it transmitted the same applications in redacted form to the Defence.¹⁹
7. On 11 September 2015, the Gbagbo Defence submitted its observations on the 270 Applications ('First Gbagbo Defence Observations').²⁰
8. On 17 September 2015, upon instruction from the Single Judge,²¹ the Registry transmitted to the Chamber unredacted and consolidated versions of the 259

¹³ Transmission to the Trial Chamber and the Prosecutor of unredacted versions of 259 applications for participation in the proceedings, 10 September 2015, ICC-02/11-01/15-211, with 259 confidential *ex parte* annexes.

¹⁴ Transmission to the Defence of redacted versions of 259 applications for participation in the proceedings, 10 September 2015, ICC-02/11-01/15-213, with 259 confidential redacted *ex parte* annexes.

¹⁵ First Report to the Trial Chamber on applications to participate in the proceedings, ICC-02/11-01/15-215.

¹⁶ Confidential *ex parte* Annex 1 to First Report to the Trial Chamber on applications to participate in the proceedings, 10 September 2015, ICC-02/11-01/15-215, confidential *ex parte* Annex 1, paras. 2-15.

¹⁷ First Report, ICC-02/11-01/15-215, pages 3-4 and confidential *ex parte* Annex 1, paras. 17-25.

¹⁸ First Report, ICC-02/11-01/15-215, page 4 and confidential *ex parte* Annex 2.

¹⁹ Transmission to the Trial Chamber and the Prosecutor of unredacted versions of 259 applications for participation in the proceedings, 10 September 2015, ICC-02/11-01/15-211; Transmission to the Defence of redacted versions of 259 applications for participation in the proceedings, 10 September 2015, ICC-02/11-01/15-213.

²⁰ *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»*, 11 September 2015, ICC-02/11-01/15-217.

²¹ Email from the Chamber to the Registry on 11 September 2015 at 13:47.

Applications, containing all supporting documents.²²

9. On 28 September 2015, the LRV submitted its response to the First Gbagbo Defence Observations' ('LRV Response').²³
10. On 30 September 2015,²⁴ the Chamber notified the parties and the LRV of its decision setting time limits for submissions on the 259 Applications,²⁵ in which it: (i) ordered the Registry to transmit to the parties, by 7 October 2015, the supporting documents of the 259 Applications (to the Prosecution in unredacted form, and to the Defence with any redactions necessary); and (ii) granted an extension of deadline for the parties to file any observations on the 259 Applications no later than 21 October 2015.²⁶
11. On 7 October 2015, the Registry transmitted to the Defence and the Prosecution redacted versions of the 259 Applications, with all supporting documents.²⁷
12. On 21 October 2015, the Gbagbo Defence²⁸ and the Blé Goudé Defence²⁹ each submitted observations on the 259 Applications (respectively, the 'Second Gbagbo Defence Observations' and the 'Blé Goudé Observations').

²² Transmission to the Trial Chamber of unredacted versions of 259 consolidated applications for participation in the proceedings, 17 September 2015, ICC-02/11-01/15-225, with 259 confidential *ex parte* annexes.

²³ 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), 28 September 2015, ICC-02/11-01/15-247.

²⁴ Email communication from Legal Officer of the Chamber to the parties and participants, 30 September 2015 at 17.23.

²⁵ Decision setting time limits for submissions on Victims' Applications, 7 October 2015, ICC-02/11-01/15-276, ('Decision on time limits'), para. 12.

²⁶ Decision on time limits, ICC-02/11-01/15-276, para. 12 and page 8.

²⁷ Transmission to the Prosecutor and the Defence of redacted versions of 259 consolidated applications for participation in the proceedings, notified on 8 October 2015, ICC-02/11-01/15-278, with 259 confidential *ex parte* annexes.

²⁸ *Observations de la Défense portant sur les «redacted versions of 259 consolidated applications for participation in the proceedings» transmises par le Greffe le 8 octobre 2015*, 21 October 2015, ICC-02/11-01/15-304-Conf with one confidential annex. A public redacted version of the observations was filed on the same day, ICC-02/11-01/15-304-Red.

²⁹ Defence Observations Concerning the 259 Victims Participation Applications and supporting Documents, ICC-02/11-01/15-305, 21 October 2015, with one confidential annex.

13. On 28 October 2015, the Chamber rescheduled the opening statements to 28 January 2016.³⁰

II. Submissions on the 270 Applications

Gbagbo Defence First Observations

14. The Gbagbo Defence challenges, in general, the redactions applied by the Registry to the 270 Applications. It contends that transmission of unredacted applications to the Prosecution creates unfairness and is detrimental to the Defence.³¹ It equally submits that the redactions applied do not correspond to the instructions given by the Pre-Trial Single Judge and the Chamber, according to which the type of prejudice, the date and place of the alleged crimes as well as the language spoken by the victim and his or her ethnic group, should not be redacted.³² The Gbagbo Defence further contends that the existing redactions cover information that is essential for its assessment of the applications, including the location of the alleged crimes and the identity of the victims (some of whom do not oppose disclosure), all of which make verification of the applications by the defence impossible.³³
15. The Gbagbo Defence also submits that all 270 Applications fail to comply *prima facie* with the criteria for admission of participation provided for in Rule 85(a) of the Rules. In its view, the victims' identities, personal harm, and causal link between the harm and the charges, have not been established.³⁴
16. More specifically, the Gbagbo Defence challenges the identity documents in relation to some applicants, which it submits are either: (a) absent; (b) unsigned; (c) expired; (d) inconsistent with the information provided in the

³⁰ Decision granting the request of the Gbagbo Defence and re-scheduling opening statements, 28 October 2015, ICC-02/11-01/15-322, page 7.

³¹ First Gbagbo Defence Observations, ICC-02/11-01/15-217, para. 11.

³² First Gbagbo Defence Observations, ICC-02/11-01/15-217, paras 15-21.

³³ First Gbagbo Defence Observations, ICC-02/11-01/15-217, paras 22-36.

³⁴ First Gbagbo Defence Observations, ICC-02/11-01/15-217, paras 37-65.

application form; or (e) in poor condition.³⁵

17. The Gbagbo Defence further argues that many applications are incomplete, on the basis that some of the following essential information is lacking or defective: (i) documents demonstrating physical harm, such as a medical certificate;³⁶ (ii) documents demonstrating the harm that resulted from the death of a relative;³⁷ (iii) documents proving the relationship between the direct and indirect victims;³⁸ (iv) information on the interpreters who assisted the applicants;³⁹ (v) information about the alleged crime or about the alleged harm;⁴⁰ (vi) the description of the events, which is claimed to be too vague and succinct,⁴¹ confusing,⁴² or similar to the description made in other application forms;⁴³ (vii) information on the alleged perpetrator of crimes;⁴⁴ (viii) description of the harm personally suffered;⁴⁵ and (ix) lack of causal link between the harm and the confirmed charges.⁴⁶

18. In conclusion, the Gbagbo Defence requests that all 270 Applications be rejected and, in the alternative, that all unnecessary redactions are lifted.⁴⁷

LRV Response

19. As regards the redactions, the LRV firstly submits that the access of the Prosecution to unredacted versions of the 270 Applications does not violate the principle of equality of arms, since the Prosecution has the duty to disclose to the Defence any exculpatory evidence.⁴⁸

³⁵ First Gbagbo Defence Observations, ICC-02/11-01/15-217, paras 37-41.

³⁶ First Gbagbo Defence Observations, ICC-02/11-01/15-217, paras 42-44.

³⁷ First Gbagbo Defence Observations, ICC-02/11-01/15-217, para. 45.

³⁸ First Gbagbo Defence Observations, ICC-02/11-01/15-217, para. 46.

³⁹ First Gbagbo Defence Observations, ICC-02/11-01/15-217, paras 47-49.

⁴⁰ First Gbagbo Defence Observations, ICC-02/11-01/15-217, paras 50 and 51.

⁴¹ First Gbagbo Defence Observations, ICC-02/11-01/15-217, ICC-02/11-01/15-217, paras 52 and 53.

⁴² First Gbagbo Defence Observations, ICC-02/11-01/15-217, ICC-02/11-01/15-217, para. 54.

⁴³ First Gbagbo Defence Observations, ICC-02/11-01/15-217, paras 62-65.

⁴⁴ First Gbagbo Defence Observations, ICC-02/11-01/15-217, paras 55 and 56.

⁴⁵ First Gbagbo Defence Observations, ICC-02/11-01/15-217, paras 58-61.

⁴⁶ First Gbagbo Defence Observations, ICC-02/11-01/15-217, paras. 50 and 51.

⁴⁷ First Gbagbo Defence Observations, ICC-02/11-01/15-217, page 20.

⁴⁸ LRV Response, ICC-02/11-01/15-247, para. 15.

20. Concerning the range of redactions, the LRV states that the redactions were applied in accordance with this Chamber's instructions in order to prevent the identification of victims.⁴⁹ Moreover, she submits that the redactions applied are the only available measure to protect applicants or third parties pursuant Articles 64(6)(e) and 68(1) of the Statute.⁵⁰ Accordingly, the LRV states that only the general areas where the events took place were left unredacted and are accessible to the Defence.⁵¹
21. In relation to the redactions applied vis-à-vis applicants who did not indicate an objection to disclose their identities to the Defence at the time of filling in their application forms, the LRV submits that all the victims she represents have expressed objections to such disclosure.⁵² She further highlights that the Court has previously taken a cautious approach in relation to victims who did not object to disclosure of their identities to the defence or did not express a preference in this regard, since safety concerns may arise in the future.⁵³
22. As regards the Gbagbo Defence's challenges to other redactions, the LRV submits that the fact that victims' applications have a limited purpose at this stage of proceedings, insofar as they are not subject to disclosure nor can be 'assimilated to evidence', means that redactions to some information or documents, including those deemed essential, does not cause any prejudice to the Defence.⁵⁴ She also contends that the redactions do not amount to unnecessary restriction of the rights of the accused insofar as they constitute the only available measure to protect the security and safety of applicants.⁵⁵ Finally, she submits that, for some applicants, redactions relate to information and documents that are not essential for the completeness of applications,

⁴⁹ LRV Response ICC-02/11-01/15-247, para.17.

⁵⁰ LRV Response, ICC-02/11-01/15-247, para. 18.

⁵¹ LRV Response, ICC-02/11-01/15-247, paras 20 and 21.

⁵² LRV Response, ICC-02/11-01/15-247, para. 22.

⁵³ LRV Response, ICC-02/11-01/15-247, para. 23.

⁵⁴ LRV Response, ICC-02/11-01/15-247, paras 24 and 25.

⁵⁵ LRV Response, ICC-02/11-01/15-247, paras 26-28.

such as photographs of injuries.⁵⁶

23. In response to the Gbagbo Defence's allegations that a number of applications do not fulfil the requirements contained in Rule 85 of the Rules, the LRV argues that, in relation to identity documents and other documents presented for the purpose of Rule 89(1) of the Rules, only a *prima facie* demonstration of proof of identity is required.⁵⁷ Accordingly, she submits that detailed information on the harm suffered, the qualifications of the interpreters, the link between the alleged crime and the identity of the perpetrators is not required.⁵⁸ She therefore states that all applicants have suffered harm as a result of the charges confirmed, in accordance with the conclusions reached by Pre-Trial Chamber I as regards these 270 Applications.⁵⁹
24. In respect of claims that many of the applications contain vague, confusing and imprecise statements, the LRV contends that this can be overcome on the basis that the present assessment is *prima facie*.⁶⁰
25. With regard to the alleged similarity in the way events are described in several application forms and the doubts as to the scope of the assistance provided by the intermediaries in filling in these applications, the LRV submits that although the answers in particular applications may be similar, they are not identical, and that other chambers have previously observed that similarities between the applications are unsurprising and do not undermine their credibility.⁶¹
26. In conclusion, the LRV requests that all 270 Applicants continue to participate in the current proceedings and that the existing redactions be maintained.⁶²

⁵⁶ LRV Response, ICC-02/11-01/15-247, para. 29.

⁵⁷ LRV Response, ICC-02/11-01/15-247, paras 31-33.

⁵⁸ LRV Response, ICC-02/11-01/15-247, paras 34-39.

⁵⁹ LRV Response, ICC-02/11-01/15-247, para. 36.

⁶⁰ LRV Response, ICC-02/11-01/15-247, para. 37.

⁶¹ LRV Response, ICC-02/11-01/15-247, para. 40.

⁶² LRV Response, ICC-02/11-01/15-247, para. 41.

III. Submissions on the 259 Applications⁶³

Second Gbagbo Defence Observations

27. As regards the new 259 Applications, the Gbagbo Defence repeats its aforesaid arguments, as it questions, with regard to some applications, the absence or defect of particular information and of documents deemed essential for its assessment of the applications.⁶⁴ It also submits that three applicants lack legal standing to submit an application, as they were children pursuant to the law of Côte d'Ivoire at the time they filled out the application form.⁶⁵
28. More specifically, in relation to the completeness of the 259 Applications, the Gbagbo Defence submits that some of the following essential information is lacking or defective: (i) date of birth;⁶⁶ (ii) gender;⁶⁷ (iii) relationship between applicant and direct victim;⁶⁸ (iv) date of incidents;⁶⁹ (v) causal link between the alleged harm and the charges confirmed against Mr Blé Goudé and against Mr Gbagbo;⁷⁰ (vi) interpreters who assisted the applicants;⁷¹ (vii) description of events, which, again, is claimed to be vague and too brief for some applications,⁷² and confusing⁷³ or repetitive for others;⁷⁴ (viii) identification of alleged perpetrators of crimes;⁷⁵ and (ix) the harm personally suffered.⁷⁶
29. The Gbagbo Defence also argues that the redactions applied by the Registry to the 259 Applications are unjustified and unfair,⁷⁷ do not correspond to the

⁶³ The specific submissions per applicant are summarised in Annex A to this Decision.

⁶⁴ Second Gbagbo Defence Observations, ICC-02/11-01/15-304-Red, paras 4-15.

⁶⁵ Second Gbagbo Defence Observations, ICC-02/11-01/15-304-Red, para. 16.

⁶⁶ Second Gbagbo Defence Observations, ICC-02/11-01/15-304-Red, para. 17.

⁶⁷ Second Gbagbo Defence Observations, ICC-02/11-01/15-304-Red, para. 17.

⁶⁸ Second Gbagbo Defence Observations, ICC-02/11-01/15-304-Red, para. 17.

⁶⁹ Second Gbagbo Defence Observations, ICC-02/11-01/15-304-Red, para. 20.

⁷⁰ Second Gbagbo Defence Observations, ICC-02/11-01/15-304-Red, paras 18 and 19.

⁷¹ Second Gbagbo Defence Observations, ICC-02/11-01/15-304-Red, paras 22-25.

⁷² Second Gbagbo Defence Observations, ICC-02/11-01/15-304-Red, paras 26 and 27.

⁷³ Second Gbagbo Defence Observations, ICC-02/11-01/15-304-Red, para. 28.

⁷⁴ Second Gbagbo Defence Observations, ICC-02/11-01/15-304-Red, paras 31-34.

⁷⁵ Second Gbagbo Defence Observations, ICC-02/11-01/15-304-Red, paras 29 and 30.

⁷⁶ Second Gbagbo Defence Observations, ICC-02/11-01/15-304-Red, paras 35-37.

⁷⁷ Second Gbagbo Defence Observations, ICC-02/11-01/15-304-Red, paras 38-42.

instructions of this Chamber,⁷⁸ are unnecessary⁷⁹ and relate to information which is essential for the Defence's assessment.⁸⁰

30. In conclusion, the Gbagbo Defence requests that all 259 Applications be rejected and, in the alternative, that all unnecessary redactions be lifted.⁸¹

Blé Goudé Defence Observations

31. The Blé Goudé Defence submits that, in general, redactions applied by the Registry to some information and documents are unnecessary and cover information that is crucial for its verification of the applications.⁸² Specifically, it opposes redactions to locations of incidents,⁸³ identity of applicants who do not oppose disclosure to the Defence,⁸⁴ language spoken by applicants,⁸⁵ and certain identity documents.⁸⁶
32. As regards some applications, the Blé Goudé Defence submits that the identity of applicants could not be established even if one follows the flexible approach adopted by the Chamber in relation to supporting identity documents. This is the case in relation to: (i) applications of indirect victims only containing the direct victim's identity document,⁸⁷ and (ii) applications with expired identification documents.⁸⁸
33. The Blé Goudé Defence also raises challenges in relation to the personal harm claimed in some applications on the basis that: (i) documents establishing the familial link between the applicant and the direct victim are absent,⁸⁹ (ii) the

⁷⁸ Second Gbagbo Defence Observations, ICC-02/11-01/15-304-Red, paras 43-47.

⁷⁹ Second Gbagbo Defence Observations, ICC-02/11-01/15-304-Red, paras 48-56.

⁸⁰ Second Gbagbo Defence Observations, ICC-02/11-01/15-304-Red, paras 48-64.

⁸¹ Second Gbagbo Defence Observations, ICC-02/11-01/15-304-Red, page 20.

⁸² Blé Goudé Observations, ICC-02/11-01/15-305, pages 13-15.

⁸³ Blé Goudé Observations, ICC-02/11-01/15-305, paras 36-39.

⁸⁴ Blé Goudé Observations, ICC-02/11-01/15-305, paras. 40 and 41.

⁸⁵ Blé Goudé Observations, ICC-02/11-01/15-305, para. 42.

⁸⁶ Blé Goudé Observations, ICC-02/11-01/15-305, paras 43-45.

⁸⁷ Blé Goudé Observations, ICC-02/11-01/15-305, paras. 14-15.

⁸⁸ Blé Goudé Observations, ICC-02/11-01/15-305, para. 16.

⁸⁹ Blé Goudé Observations, ICC-02/11-01/15-305, paras. 18-20.

specific nature of the physical injuries and the financial harm is redacted;⁹⁰ (iii) proof of harm, such as a death or medical certificate, is missing;⁹¹ and (iv) the harm alleged is not sufficiently described.⁹²

34. Further, the Blé Goudé Defence submits that some applications do not fulfil establish the required link between the harm and the charges.⁹³ It also contends that, in some applications, the description of the alleged perpetrators is unclear and insufficient.⁹⁴ Moreover, it submits that for some applications, the alleged harm is not direct.⁹⁵
35. The Blé Goudé Defence further challenges the narrative of some applications, on the basis that they are vague;⁹⁶ use the same expressions, which call into question their authenticity,⁹⁷ and are stated in a manner that suggests that the applicant was not present during the commission of crimes.⁹⁸
36. In conclusion, the Blé Goudé Defence requests that all applications which do not fulfil the criteria of Rule 85(1) of the Rules be rejected and that all the challenged redactions be lifted or, in the alternative, that the applications in which redactions were applied be rejected.⁹⁹

IV. Analysis

A. Permissible scope of redactions

37. The Chamber recalls that in its Decision on Victim Participation, it ordered the Registry to transmit unredacted versions of the application forms to the Prosecution and redacted versions of these forms to the Defence.¹⁰⁰ Thus, this

⁹⁰ Blé Goudé Observations, ICC-02/11-01/15-305, paras.21-23.

⁹¹ Blé Goudé Observations, ICC-02/11-01/15-305, paras 24-26.

⁹² Blé Goudé Observations, ICC-02/11-01/15-305, paras 27-29.

⁹³ Blé Goudé Observations, ICC-02/11-01/15-305, paras. 31 and 32.

⁹⁴ Blé Goudé Observations, ICC-02/11-01/15-305, pages 11-13.

⁹⁵ Blé Goudé Observations, ICC-02/11-01/15-305, page 13.

⁹⁶ Blé Goudé Observations, ICC-02/11-01/15-305, paras. 47 and 48.

⁹⁷ Blé Goudé Observations, ICC-02/11-01/15-305, paras. 49-51.

⁹⁸ Blé Goudé Observations, ICC-02/11-01/15-305, paras. 52 and 53.

⁹⁹ Blé Goudé Observations, ICC-02/11-01/15-305, paras. 54-56.

¹⁰⁰ Decision on victim participation, ICC-02/11-01/11-800, page 24.

issue has been adjudicated by the Chamber and therefore will not be re-litigated.

38. Moreover, although redactions may limit the Defence's ability to make observations, the Chamber considers that this does not unduly prejudice its right to reply for the purpose of a *prima facie* determination pursuant to Rule 89 of the Rules. The Chamber also notes that redactions are the only available measure available to protect applicants and third parties at this stage of the proceedings.
39. Nevertheless, if the LRV wishes to present evidence on issues concerning the victims' interests, or propose victim(s) who wish to make unsworn statements to present their 'views and concerns', the application by the LRV is required to include, at a minimum, the name and identifying information of the victim.¹⁰¹
40. As regards the specific submissions made by the Gbagbo Defence concerning the 270 Applications which contain redactions to locations of the alleged crimes, the Chamber observes that this information is already available to the Defence in the decision of the Pre-Trial Single Judge which granted participation status to these individuals.¹⁰² Therefore, it is unnecessary to order the Registry to transmit anew lesser redacted versions of these applications. For this reason, considering the limited nature of the *prima facie* determination of the criteria for admission of participation provided for in Rule 85(a) of the Rules, the Chamber considers that, if any further information related to the location of the alleged crimes has been inadvertently redacted, it is not necessary for the Chamber to review these applications or modify the participatory status of these victims pursuant to Rule 91(1) of the Rules.
41. In relation to applications where the identities of the applicants have been redacted, even though they did not oppose their disclosure to the Defence, the

¹⁰¹ Directions on the conduct of the proceedings, 3 September 2015, ICC-02/11-01/15-205, paras 30-31; Decision on victim participation, ICC-02/11-01/11-800, para. 56.

¹⁰² Second Decision on victims' participation in the pre-trial proceedings and related issues, 1 August 2014, ICC-02/11-02/11-111-Conf-Anx.

Chamber considers the LRV Response on this matter to be of assistance. She confirms that she has requested information from the victims on their consent and that all of them have confirmed they do not want to disclose their identity to the Defence. Although the Chamber recognises that the victims may have had a different view when they completed their application forms, their communication with the LRV should prevail and be regarded as their informed decision on the matter. Accordingly, redactions to their identities vis-à-vis the Defence shall remain. Notwithstanding, for the purpose of trial, the Registry, in consultation with the LRV should contact all participating victims so that they can indicate whether they have an objection to disclosure of their identities to the Defence, and if so, the reasons for non-disclosure.

42. In relation to applications in which certain other information has been redacted (namely, identification and kinship documents, details of injuries and photos that would enable the applicant to be identified), the Court's jurisprudence has consistently held that this can be considered to be identifying information and thus subject to redactions in order to protect the victims' safety and well-being pursuant to Article 68(3) of the Statute.¹⁰³ Moreover, for the limited purpose of *prima facie* analysis, general references to the harm suffered may suffice. Accordingly, insofar as the information is identifying, redactions to identification and kinship documents, injuries suffered, as well as photos, shall remain. As regards the 270 Applicants, there is no reason for the Chamber to re-evaluate or modify their participation pursuant to Rule 91(1) of the Rules. For the same reasons, the Chamber

¹⁰³ See for example, *The Prosecutor v Banda and Jerbo*, Trial Chamber IV, Decision on the Registry Report on six applications to participate in the proceedings, 17 October 2011, ICC-02/05-03/09-231, para. 33; *The Prosecutor v Katanga and Ngudjolo*, Trial Chamber II, Decision on the treatment of applications for participation, 26 February 2009, ICC-01/04-01/07-933-tENG, para. 51; *The Prosecutor v Lubanga Dyilo*, Trial Chamber I, 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, 7 May 2008, ICC-01/04-01/06-1308, paras. 27 and 28.

considers it is unnecessary to transmit lesser redacted versions of the 270 Applications and the 259 Applications to the Defence.

B. Challenges to the 270 Applications

Supporting Documents

43. To recapitulate, in relation to a number of applications, the Gbagbo Defence submits that: (i) their identification documents are not valid (they are not signed, have expired, or are in poor condition); (ii) some do not have documentation such as death certificates and proof of kinship attached; or (iii) the dates therein do not correspond to the information in the application form. For another set of applications, the Gbagbo Defence states that they are incomplete as there is no medical certificate or other document attesting to the alleged harm, or the medical certificate attached is not dated.
44. The Chamber reiterates the Court's jurisprudence, and in particular the determination of the Pre-Trial Single Judge vis-à-vis these 270 Applications. In this regard, the Pre-Trial Single Judge determined, both for victims participating in the *Gbagbo* case as well as the *Blé Goudé* case, that applications will be considered as complete, when they contain the following information, if applicable: (i) the identity of the applicant; (ii) the date of the crime(s); (iii) the location of the crime(s); (iv) a description of the harm suffered as a result of the commission of any crime within the jurisdiction of the Court; (v) proof of identity; (vi) if the application is made by a person acting with the consent of the victim, the express consent of that victim; (vii) if the application is made by a person acting on behalf of a victim, in the case of a victim who is a child, proof of kinship or legal guardianship; or, in the case of a victim who is disabled, proof of legal guardianship; (viii) a signature or thumb-print of the applicant on the document at the very least on the last page of the

application.¹⁰⁴

45. The Chamber also reiterates and endorses the conclusions of the Pre-Trial Single Judge as regards the *prima facie* determination to be made at this stage of the proceedings, which equally reflects established Court jurisprudence.¹⁰⁵ In this regard, and pursuant to Regulation 86(2) of the Regulations, applications for victims' participation shall contain information and supporting documentation *to the extent possible*. Accordingly, applications may not be rejected solely on the basis that they lack information and/or documentation, provided that the applicant has demonstrated *prima facie* that it meets the criteria under Rule 85(a) of the Rules.¹⁰⁶
46. Accordingly, when making a *prima facie* determination, the Chamber may decide on the basis of the intrinsic coherence of the application,¹⁰⁷ even if there are some discrepancies between the application and the supporting documents or lack thereof. More importantly, in accordance with Regulation 86(8) of the Regulations, the Chamber has found no compelling reason to re-evaluate or modify the participation of the victims concerned pursuant to Rule 91(1) of the Rules.¹⁰⁸
47. Nevertheless, as stated in paragraph 39 above, if and when the victims request

¹⁰⁴ See *Gbagbo* case, Corrigendum to the Second decision on victims' participation at the confirmation of charges hearing and in the related proceedings, 8 February 2013, ICC-02/11-01/11-384-Corr, 'Second pre-trial decision on victims' participation', para. 36; *Blé Goudé* case, Decision on victims' participation in the pre-trial proceedings and related issues, 11 June 2014, ICC-02/11-02/11-83, para. 13; ICC-02/11-02/11-111, para. 6.

¹⁰⁵ See *Blé Goudé* case, Decision on victims' participation in the pre-trial proceedings and related issues, 11 June 2014, ICC-02/11-02/11-83, footnote 19; Situation in the Democratic Republic of Congo, Pre-Trial Chamber I, Decision on the Requests of the Legal Representative of Applicants on application process for victims' participation and legal representation, 17 August 2007, ICC-01/04-374, para. 12; *The Prosecutor v. Al-Bashir*, Pre-Trial Chamber I, 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, 10 December 2009, ICC-02/05-01/09-62, para. 8; *The Prosecutor v. Abu Garda*, 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, 19 March 2010, ICC-02/05-02/09-255, para. 4; *The Prosecutor v. Ruto, Kosgey and Sang*, Pre-trial Chamber II, First Decision on Victims' Participation in the Case, 30 March 2011, ICC-01/09-01/11-17, para. 19.

¹⁰⁶ See also, Second pre-trial decision on victims' participation, ICC-02/11-01/11-384-Corr, para. 37.

¹⁰⁷ See *Gbagbo* case, Corrigendum to the Second decision on victims' participation at the confirmation of charges hearing and in the related proceedings, 8 February 2013, ICC-02/11-01/11-384-Corr, para. 27.

¹⁰⁸ Reasons for the "Decision on the 'Request for the recognition of the right of victims authorized to participate in the case to automatically participate in any interlocutory appeal arising from the case and, in the alternative, application to participate in the interlocutory appeal against the ninth decision on Mr Gbagbo's detention (ICC-02/11-01/15-134-Red3)'" , 31 July 2015, ICC-02/11-01/15-172, para. 17.

more significant participation in the proceedings, the Chamber may require more information to be provided to the Chamber and the parties, or seek clarifications where documents are lacking or contradict other information provided.

Vague, General or Missing Information on the Alleged Events, Perpetrators and Harm Suffered

48. For a significant number of the 270 Applications, the Gbagbo Defence submits that the information provided is vague, incomplete or hearsay,¹⁰⁹ or stereotyped.¹¹⁰
49. As noted above, the Chamber concurs with the conclusions of the Pre-Trial Single Judge as regards the *prima facie* determination to be made at this stage of the proceedings. Accordingly, the conclusions in paragraphs 44-46 above, apply *mutatis mutandis* to the challenges raised by the Gbagbo Defence.

Language Issues

50. As regards the challenges raised by the Gbagbo Defence in relation to language and interpretation issues,¹¹¹ the Chamber notes that there is no requirement that the application forms must be completed by the applicants themselves or that any person assisting the applicants in the process must be a qualified interpreter.¹¹² Applications should only be rejected if it is clear from the application itself that the applicant did not understand the language used therein and no one assisted him/her in the process. Absent such information or any indication that the person assisting the victim or interpreting has influenced the process, the information contained in the application form is

¹⁰⁹ First Gbagbo Defence Observations, ICC-02/11-01/15-217, paras 52-61.

¹¹⁰ First Gbagbo Defence Observations, ICC-02/11-01/15-217, paras 62-65.

¹¹¹ First Gbagbo Defence Observations, ICC-02/11-01/15-217, paras 47-49.

¹¹² Second pre-trial decision on victims' participation, ICC-02/11-01/11-384-Corr, para. 42.

presumed to be an appropriate reflection of the victim's account.¹¹³

Scope of the Charges

51. In relation to 15 of the 270 Applications, the Gbagbo Defence contends that the alleged crimes are not mentioned in the Confirmation of Charges Decision or the harms suffered are the result of crimes not included in the charges.¹¹⁴
52. Concerning this argument, the Chamber is of the view that a case-by-case analysis is required for each of these applications in order for it to determine whether, in light of the Confirmation of Charges Decisions against Mr Gbagbo and against Mr Blé Goudé, and the subsequent joinder of the cases, the alleged harm suffered is sufficiently linked to the crimes charged against either accused. This analysis is necessary as the Pre-Trial Single Judge made her determination on the basis of the Document Containing the Charges in the pre-trial stage, prior to the issuance of the Confirmation of Charges Decision in the Blé Goudé case and the joinder of the two cases.
53. In its individual analysis, the Chamber has considered that Mr Gbagbo and Mr Blé Goudé have had charges confirmed against them which arise from four common alleged incidents, namely: (a) the demonstrations at the *Radiodiffusion-Télévision Ivoirienne* (RTI) headquarters between 16 and 19 December 2010; (b) the attack on a women's demonstration in Abobo on 3 March 2011; (c) the shelling of Abobo market and surrounding area on 17 March 2011, and (d) the attack on Yopougon on or around 12 April 2011.¹¹⁵ Moreover, the Chamber has also taken into account that although solely Mr Blé Goudé is charged with crimes allegedly committed during the attack on Yopougon on 12-28 February 2011, this fifth incident is part of the contextual

¹¹³ Second pre-trial decision on victims' participation, ICC-02/11-01/11-384-Corr, para. 43.

¹¹⁴ First Gbagbo Defence Observations, ICC-02/11-01/15-217, paras 50 and 51. The Gbagbo Defence refers to 16 applications, but they are in fact 15 applications challenged.

¹¹⁵ Joinder Decision, ICC-02/11-01/15-1, para. 53.

elements of the charges of crimes against humanity against Mr Gbagbo.¹¹⁶

54. Accordingly, the Chamber has individually analysed these 15 applicants in Annex A to this decision and found that in relation to all of these individuals, there is sufficient information to determine, on a *prima facie* basis, that they suffered personal harm as a result of events that come within the parameters of the charges against Mr Gbagbo and/or Mr Blé Goudé. In particular, one victim suffered harm during the alleged attack on a women's demonstration in Abobo on 3 March 2011, five victims suffered harm as a result of the alleged attacks related to the demonstrations at the RTI headquarters between 16 and 19 December 2010, while nine victims suffered harm as a result of the alleged attacks on Yopougon on or about 12 April 2011.

C. The 259 Applications

55. The Defence submitted observations on the redacted versions of the 259 Applications, which the Chamber has taken into consideration when examining each application. In the present Decision, the Chamber will address general observations submitted by the Defence. A case-by-case analysis of the applications for participation is appended hereto in Annex B, and should be read in conjunction with the present Decision. Annex B deals with more specific challenges submitted by the Defence in respect of individual applications for participation, while Defence observations which may be applicable to a significant group of applications will be addressed in this Decision and are thus not discussed in the corresponding annex.

Supporting Documents

56. As noted above, in relation to a number of the 259 Applications, the Defence submits that identification documents are not valid, lacking or contrary to

¹¹⁶ Joinder Decision, ICC-02/11-01/15-1, para. 54.

information provided in the application form.

57. The Chamber reiterates its findings in paragraphs 44-46 above.

58. Accordingly, when making a *prima facie* determination, the Chamber may make a decision on the basis of the application itself, even if there are some discrepancies between the application and the identity documents, supporting documents or lack thereof. Moreover, minor discrepancies may be not be given significant weight when making a determination pursuant to Rule 89 of the Rules. The Chamber has therefore taken the above reasoning into consideration when analysing the individual applications forms in Annex B to this decision.

59. Nevertheless, as stated in paragraph 39 above, if and when the victims request to give evidence or express their views and concerns in the proceedings, the Chamber may require more information or clarification where documents are lacking or contradict other information provided.

Child Applicants

60. The Chamber considers that, pursuant to Article 21(3) of the Statute, read in conjunction with Article 12(1) of the Convention on the Rights of the Child,¹¹⁷ victims cannot be excluded from participating solely on the basis of their age. Moreover, pursuant to Article 1 of the Convention on the Rights of the Child, any person below the age of 18 should be considered a child, unless the age of majority is attained earlier. Moreover, even if the Chamber were to take into consideration the age of majority of any domestic legislation, it should be noted that the statutory framework provides that an adult may act on behalf of a child. Therefore, this is not an essential requirement for participation.¹¹⁸

¹¹⁷ Convention on the Rights of the Child, adopted on 20 November 1989 and entered into force on 2 September 1990, United Nations, Treaty Series, vol. 1577, page 3.

¹¹⁸ *The Prosecutor v Thomas Lubanga Dyilo*, Trial Chamber I, Decision on the applications by victims to participate in the proceedings, 15 December 2008, ICC-01/04-01/06-1556-Corr-Anx1, paras 95-96. In that Decision, Trial Chamber I also referred to the Committee on the Rights of the Child, Final Recommendations,

Vague, General or Missing Information on the Alleged Perpetrators and Harms Suffered

61. For a significant number of the 259 Applications, the Defence submits that the information provided is vague, incomplete or amounts to hearsay.
62. As noted above, the Chamber concurs with the conclusions of the Pre-Trial Single Judge as regards the *prima facie* determination to be made at this stage of the proceedings. Accordingly, paragraphs 44-46 above apply *mutatis mutandis* to the challenges raised by the Defence, and the Chamber has analysed the applications pursuant to this approach in Annex B attached to this decision.

Language Issues

63. As regards a substantial number of the 259 Applications, the Gbagbo Defence contests again their credibility due to lack of information on the interpreters assisting the applicants when filling in the application forms.
64. The Chamber reiterates its findings in paragraph 50 above. On that basis, the Chamber has proceeded to analyse the relevant applications in Annex B attached to this decision.

Scope of the Charges

65. As regards a limited number of the 259 Applications, the Defence contests that the alleged crimes or the harm suffered do not relate to the crimes that are mentioned in the Confirmation of Charges Decision made against either of the accused.
66. The Chamber reiterates its findings in paragraph 53 above. On that basis, the Chamber has analysed the applications in Annex B to this decision.

Day of General Discussion on the Right of the Child to be Heard, 43rd Session, 29 September 2006, paras. 51-52.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

DECIDES to reject the application a/10183/14;

DECIDES to admit all other applicants included in filings ICC-02/11-01/15-184+Conf-Exp-Anxs and ICC-02/11-01/15-225+Conf-Exp-Anxs to participate in the trial proceedings;

DECIDES that all victims admitted to participate shall be represented by the LRV;

INSTRUCTS the Registry to:

- a) contact all participating victims, in consultation with the LRV, so that they can indicate whether the victims admitted to participate in the proceedings have an objection to disclosure of their identities to the Defence, and if so, the reasons, for non-disclosure, and;
- b) transmit to the LRV the redacted and unredacted versions of the application forms of all victims admitted to participate in the proceedings, as well as any relevant supporting documentation contained therein; and

DISMISSES all other requests.

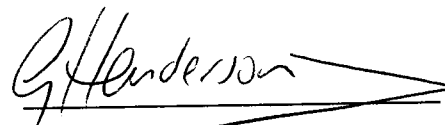
Done in both English and French, the English version being authoritative



Judge Cuno Tarfusser



Judge Olga Herrera Carbuccion



Judge Geoffrey Henderson

Dated 07 January 2016

At The Hague, The Netherlands