

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: *English*

No: *ICC-02/11-01/15*

Date: **21 October  
2015**

**TRIAL CHAMBER I**

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

**SITUATION IN COTE D'IVOIRE**

**IN THE CASE OF  
*THE PROSECUTOR v. LAURENT GBAGBO AND CHARLES BLE GOUDE***

**Public  
Confidential Annex**

**Defence Observations Concerning the 259 Victims Participation Applications and  
supporting Documents**

**Source:** Defence of Mr Charles Blé Goudé

**Document 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 the Defence of Mr Blé Goudé**

Mr Geert-Jan Alexander Knoops  
Mr Claver N'dry

**Counsel for the Defence of Mr Gbagbo**

Mr Emmanuel Altit  
Ms Agathe Bahi Baroan

**Legal Representatives of the Victims**

Ms. Paolina Massidda

**Legal Representatives of the Applicants**

**Unrepresented Victims**

**Unrepresented Applicants  
(Participation/Reparation)**

**The Office of Public Counsel for Victims**

Ms. Paolina Massidda  
Mr. Enrique Carnero Rojo

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

**States' Representatives**

**Amicus Curiae**

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**REGISTRY**

**Registrar**

Mr Herman von Hebel

**Counsel Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

**Other**

## **I. Introduction**

1. The Defence makes these observations in relation to “Transmission to the Defence of redacted versions of 259 applications for participation in the proceedings”.<sup>1</sup> The Defence requests that most of these requests should be rejected because they do not satisfy the three-pronged criteria set by the Chamber that is: establishing the identity of the applicant, existence of personal harm, and the nexus between the harm and the crimes confirmed in the decision confirming the charges. Furthermore, the Defence observes that some applications have unnecessary redactions and these should be lifted or, in the alternative, these applications should be rejected. Finally, the Defence observes that the narratives presented in certain applications are not credible, for the reasons explained below, and requests that such applications be rejected.

## **II. Procedural history**

2. On 6 March 2015, in the *Gbagbo* case, the Chamber issued the “Decision on victim participation”<sup>2</sup> (“the Decision on Victim Participation”).
3. 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 Goudé* and related matters” (“the Joinder Decision”).<sup>3</sup>
4. On 11 September 2015, the Registry transmitted to the Defence 259 victims’ applications for participation in the proceedings.<sup>4</sup>
5. On 17 September 2015, the Defence filed an “Urgent Defence Request for the setting of a time limit to reply to the ‘Transmission to the Defence of redacted versions of 259 applications for participation in the proceedings’ (ICC-02/11-01/15-213)” (“the Urgent Defence Request”).<sup>5</sup>

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<sup>1</sup> ICC-02/11-01/15-213.

<sup>2</sup> ICC-02/11-01/11-800.

<sup>3</sup> ICC-02/11-01/15-1.

<sup>4</sup> ICC-02/11-01/15-213.

<sup>5</sup> ICC-02/11-01/15-226.

6. On 30 September 2015, the Defence filed the 'Defence Request for Reconsideration of the Decision on Victim Participation (ICC-02/11-01/11-800) and for Extension of Time'<sup>6</sup>
7. On 7 October 2015 the Chamber issued the "Decision setting time limits for submissions on Victims' Applications" in which it ordered the Defence to submit its observations by 21 October 2015.

### III. Applicable Law

8. Rule 85 (1) of the Rules of Evidence and Procedure ("the Rules") provides that: "‘Victims’ means natural persons who have suffered harm as a result of the commission of any crime within the jurisdiction of the Court."
9. Article 68 (1) "The Court shall take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses.... These measures shall not be prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial."
10. In interpreting the provision of Rule 85 (1) of the Rules, the Trial Chamber in *Gbagbo* held that "in order to qualify as victims ... an applicant will have to establish, *prima facie*, the following criteria:
  - i) His or her identity as a natural person must be established;
  - ii) He or she has suffered personal harm; and
  - iii) The harm suffered is as a result of an incident falling within the parameters of the confirmed charges."<sup>7</sup>

Furthermore, the Chamber outlined the category of documents that may be used to establish that a particular applicant is a natural person.<sup>8</sup>

11. The Chamber also stressed the requirement that harm be personal. It stated as follows:
 

"The Chamber recalls that other chambers have considered that 'harm', under Rule 85(a) of the Rules, includes physical injuries, as well as emotional suffering and economic loss. Under the second requirement listed above, applicants must

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<sup>6</sup> ICC-02/11-01/15-246-Conf.

<sup>7</sup> ICC-02/11-01/11-800 para 30

<sup>8</sup> ICC-02/11-01/11-800 para 31

have personally suffered harm. This personal harm can, however, be suffered directly or indirectly. In this regard, the Chamber recalls that the Appeals Chamber has stated that '[h]arm suffered by one victim as a result of the commission of a crime within the jurisdiction of the Court can give rise to harm suffered by other victims'. Accordingly, relatives of a deceased person wishing to participate in proceedings must show that they have suffered harm personally.” (*Emphasis added*).<sup>9</sup>

#### **IV. Observations**

12. The Defence observes that most of the applications do not meet the three-pronged test set by the Chamber in the determination of victim status: that is establishing the identity of the applicant, the personal harm suffered, and the relationship between the harm suffered and the confirmed charges. Furthermore, some of the applications contain unnecessary redactions, which prevent a proper determination of the aforementioned test, while others do not seem credible.

##### **IV.1 The Defence observes that the identity of certain applicants cannot be established**

13. According to the jurisprudence of the Court, cited above, applicants are required to prove that they are natural persons by presenting a document that confirms their identity.<sup>10</sup> The Chamber adopted a flexible approach and listed a number of documents, which would be acceptable to prove identity.<sup>11</sup> However, the Defence observes that in spite of this flexible approach adopted by the Chamber, some victim applications do not contain valid documents confirming the identity of the applicant. This is the first and most basic fulfilment of the provision of Rule 85 (1) as interpreted by the Chamber. Therefore the Defence submits that the applications that do not satisfy this criterion, in the manner explained below should be rejected.

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<sup>9</sup> ICC-02/11-01/11-800 para 33

<sup>10</sup> See paras. 10 and 11 of these observations.

<sup>11</sup> Ibid.

**a. Concerning the absence of documents confirming applicant's identity**

14. The Defence observes that two applications, a/10183/14, a/10190/14, made by indirect victims do not contain documents confirming the applicants' identity. The Defence observes that in both these applications, the applicants merely provide documents proving the identity of the direct victim, on whose behalf they make the application, but do not provide any of the necessary documents proving the applicants' own identity.
15. The Chamber has previously ruled on this issue by stating that "[A]s regards persons making applications on behalf of victims, the identity of both the victim and the person acting on his/her behalf must be duly established."<sup>12</sup> Because of the missing documents, the identity of the applicant cannot be established and for this reason, the Defence requests that the applications a/10183/14, a/10190/14 be rejected.

**b. Concerning expired identification documents**

16. As stated above, the Chamber stated that applicants have to prove their identity as natural persons by providing proof of their identity. The Defence however observes that an expired document cannot be considered as valid proof of the identity of an applicant. The Defence therefore requests that these applications: a/25004/15, a/25006/15, a/25193/15, a/25198/15, a/25233/15, a/25234/15, a/25237/15, a/25239/15, a/25242/15, a/25249/15, a/25253/15, a/25254/15, should be rejected because the identification documents provided were already expired at the time the application was made.

**IV.2 The Defence observes that some of the victims do not seem to have suffered "harm" within the meaning ascribed by the jurisprudence and for others the harm suffered is unverifiable due to lack of proof or redactions**

17. According to Rule 85 (1), the applicant must have suffered harm as a result of the commission of an alleged crime. In interpretation of this Rule, the Chamber has stated that the harm suffered ought to be personal, which includes physical injuries, as well

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<sup>12</sup> ICC-02/11-01/11-800 para 34.

as emotional suffering and economic loss.<sup>13</sup> The Defence has however observed that many of the applicants do not seem to have suffered harm, which falls within the meaning defined by the jurisprudence. The absence of documents does not permit the Defence to examine the harm suffered by the applicants. This is explained below.

**a. The absence of documents establishing the familial link between the direct and indirect victims**

18. According to the applicable jurisprudence the “relatives of a deceased person wishing to participate in proceedings must show that they have suffered harm personally.”<sup>14</sup> Therefore, it is expected that applicants both prove that they were a relative of the direct victims, and must show that the harm suffered was personal.

19. In this regard, the Defence observes that certain victims’ applications lack documents that prove that there was a relationship between the deceased person and the applicant. The Defence is therefore not in a position to verify whether there really is a link between the direct and indirect victim. The Defence observes without proof of this relationship, there is no way to verify this claim. The Defence maintains that if a link cannot be established between the alleged direct and indirect victims, then the harm allegedly suffered by the applicants cannot be said to be personal.

20. The applications concerned are: a/25086/15, a/25087/15, a/25100/15, a/25101/15, a/25137/15. For the foregoing reasons, the Defence requests that these applications be rejected because no relationship between the applicant and the direct victim is established. Therefore, there can be no personal harm.

**b. Concerning redaction of information relating to the physical injuries and financial harm suffered**

21. In certain victims’ applications, the nature of the physical injuries and financial harm suffered are redacted. This is the case of the following applications: a/25131/15, a/25190/15, a/25197/15, a/25211/15, a/25069/15, a/25070/15, a/25096/15, a/25100/15, a/25102/15, a/25106/15, a/25197/15, a/25211/15.

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<sup>13</sup> ICC-02/11-01/11-800, para 33.

<sup>14</sup> Ibid.

22. These redactions are not justified since the disclosure of such information does not constitute any risk. In addition, such redactions prevent the Defence from analyzing the reality and likelihood of the harm suffered and the potential causal link between the harm and the alleged crimes within the meaning of the confirmed charges. It makes it impossible to the Defence to verify whether the alleged injuries or harm suffered are compatible with the alleged facts as described by the Prosecution. With this information being redacted, the Defence is unable to verify whether the harm alleged was really suffered or whether it was personal as required.

23. Hence, these above mentioned applications should be rejected.

**c. Concerning incomplete applications due to missing death and medical certificates**

24. As stated above the applicant is required to prove to have suffered harm, either directly or indirectly, and such harm must be personal. The Defence observes that many of the victims' applications are incomplete, making it impossible for the Chamber and the parties to verify whether there was indeed harm suffered as alleged, and whether the said harm was personal. The Defence observes that any person could easily claim to have suffered harm, if one would not be required to provide any documents to prove it.

25. The applications concerned are as follows: a/25002/15, a/25001/15, a/25000/15, a/10260/14, a/10258/14, a/10253/14, a/10190/14, a/10176/14, a/25003/15, a/25004/15, a/25005/15, a/25006/15, a/25007/15, a/25008/15, a/25009/15, a/25011/15, a/25012/15, a/25013/15, a/25014/15, a/25015/15, a/25016/15, a/25017/15, a/25018/15, a/25019/15, a/25020/15, a/25021/15, a/25022/15 a/25023/15, a/25024/15, a/25025/15, a/25026/15, a/25027/15, a/25028/15, a/25029/15, a/25030/15, a/25031/15, a/25032/15, a/25033/15, a/25035/15, a/25036/15, a/25037/15, a/25038/15, a/25040/15, a/25041/15, a/25042/15, a/25043/15, a/25044/15, a/25045/15, a/25046/15, a/25047/15, a/25048/15, a/25049/15, a/25050/15, a/25051/15, a/25052/15, a/25053/15, a/25054/15, a/25055/15, a/25056/15, a/25057/15, a/25126/15, a/25127/15, a/25128/15, a/25129/15, a/25130/15, a/25131/15, a/25132/15 a/25133/15, a/25134/15, a/25135/15, a/25136/15, a/25137/15, a/25138/15, a/25139/15, a/25140/15, a/25141/15, a/25142/15, a/25143/15, a/25144/15, a/25145/15, a/25146/15, a/25147/15, a/25148/15, a/25149/15, a/25150/15, a/25151/15, a/25152/15, a/25153/15, a/25154/15, a/25155/15, a/25156/15, a/25157/15, a/25158/15, a/25159/15,



a/25160/15 a/25161/15, a/25162/15, a/25163/15, a/25164/15, a/25165/15, a/25166/15, a/25167/15, a/25168/15, a/25169/15, a/25170/15, a/25171/15, a/25172/15, a/25173/15, a/25174/15, a/25175/15, a/25176/15, a/25177/15, a/25178/15, a/25179/15, a/25180/15, a/25181/15, a/25182/15, a/25183/15, a/25184/15, a/25185/15, a/25186/15, a/25187/15, a/25188/15, a/25189/15, a/25190/15, a/25191/15, a/25192/15, a/25193/15, a/25194/15, a/25196/15, a/25197/15, a/25198/15, a/25199/15, a/25200/15, a/25201/15, a/25202/15, a/25203/15, a/25204/15, a/25205/15, a/25206/15, a/25207/15, a/25208/15, a/25209/15, a/25210/15, a/25211/15, a/25212/15, a/25213/15, a/25214/15, a/25215/15, a/25216/15, a/25217/15, a/25218/15, a/25219/15, a/25220/15, a/25221/15, a/25222/15, a/25223/15, a/25224/15, a/25225/15, a/25226/15, a/25227/15, a/25228/15, a/25229/15, a/25230/15, a/25231/15, a/25232/15, a/25233/15, a/25234/15, a/25235/15, a/25236/15, a/25237/15, a/25238/15, a/25239/15, a/25240/15, a/25241/15, a/25243/15, a/25244/15, a/25245/15, a/25246/15, a/25247/15, a/25248/15, a/25249/15, a/25250/15, a/25251/15, a/25252/15, a/25253/15, a/25254/15, a/25255/15, a/25256/15.

26. The Defence requests that these applications be rejected since without documents proving death or physical injuries, when applicable, harm cannot be established within the meaning of the jurisprudence.

**d. Concerning application in which the harm allegedly suffered is not sufficiently described**

27. The Defence observes that most of the victims' applications do not provide sufficient details relating to the nature of harm suffered. The Chamber and parties are therefore unable to verify whether such harm was indeed suffered, whether it was personal, or whether it arose from the crimes confirmed.
28. The applications concerned are as follows: a/10176/14, a/10183/14, a/10190/14, a/10253/14, a/20212/12, a/25004/15, a/25007/15, a/25008/15, a/25009/15, a/25010/15, a/25014/15, a/25015/15, a/25016/15, a/25017/15, a/25018/15, a/25019/15, a/25020/15, a/25023/15, a/25024/15, a/25026/15, a/25028/15, a/25029/15, a/25030/15, a/25031/15, a/25032/15, a/25033/15, a/25037/15, a/25038/15, a/25039/15, a/25040/15, a/25041/15, a/25042/15, a/25043/15, a/25044/15, a/25045/15, a/25046/15, a/25047/15, a/25048/15, a/25049/15, a/25058/15, a/25059/15, a/25061/15, a/25062/15, a/25063/15, a/25064/15, a/25065/15, a/25066/15, a/25067/15, a/25068/15, a/25069/15, a/25070/15, a/25071/15,

a/25072/15, a/25073/15, a/25074/15, a/25076/15, a/25077/15, a/25078/15, a/25079/15, a/25080/15, a/25081/15, a/25082/15, a/25083/15, a/25084/15, a/25085/15, a/25086/15, a/25087/15, a/25088/15, a/25089/15, a/25090/15, a/25091/15, a/25092/15, a/25093/15, a/25094/15, a/25095/15, a/25096/15, a/25097/15, a/25098/15, a/25099/15, a/25100/15, a/25101/15, a/25102/15, a/25103/15, a/25104/15, a/25106/15, a/25107/15, a/25108/15, a/25109/15, a/25110/15, a/25111/15, a/25112/15, a/25113/15, a/25114/15, a/25115/15, a/25117/15, a/25118/15, a/25119/15, a/25120/15, a/25121/15, a/25122/15, a/25125/15, a/25050/15, a/25051/15, a/25126/15, a/25127/15, a/25128/15, a/25129/15, a/25130/15, a/25131/15, a/25126/15, a/25127/15, a/25128/15, a/25129/15, a/25130/15, a/25131/15, a/25132/15, a/25133/15, a/25144/15, a/25145/15, a/25152/15, a/25167/15, a/25169/15, /25170/15, a/25172/15, a/25177/15, a/25180/15, a/25182/15, a/25192/15, a/25193/15, a/25194/15, a/25196/15, a/25197/15, a/25198/15, a/25199/15, a/25200/15, a/25201/15, a/25202/15, a/25203/15, a/25204/15, a/25205/15, a/25206/15, a/25207/15, a/25208/15, a/25209/15, a/25210/15, a/25211/15, a/25212/15, a/25213/15, a/25214/15, a/25215/15, a/25216/15, a/25217/15, a/25218/15, a/25219/15, a/25220/15, a/25221/15, a/25222/15, a/25223/15, a/25224/15, a/25225/15, a/25226/15, a/25227/15, a/25228/15, a/25229/15, a/25230/15, a/25231/15, a/25232/15, a/25233/15, a/25234/15, a/25235/15, a/25236/15, a/25237/15, a/25238/15, a/25239/15, a/25240/15, a/25241/15, a/25242/15, a/25243/15, a/25244/15, a/25245/15, a/25246/15, a/25247/15, a/25248/15, a/25249/15, a/25250/15, a/25251/15, a/25252/15, a/25253/15, a/25254/15, a/25255/15, a/25256/15.

29. For the above reason, the Defence requests that these applications be rejected.

#### **IV.3 The Defence observes some of the applicants refer to harm that does not arise or result from the crimes confirmed in the confirmation of charges decision.**

30. According to the applicable jurisprudence, “conduct falling outside the factual parameter of the case, as it currently stands, may not be considered for the purpose of qualifying as participating victims in the present case”<sup>15</sup> Therefore, only the applicants who suffered harm arising directly from the crimes confirmed against Mr. Blé Goudé may be admitted to participate in the proceedings. Most of the applications do not meet this criterion as explained below.

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<sup>15</sup> ICC-02/11-02/11-111, para 13.

**a. Certain applications do not relate to harm arising from crimes contained in the decision confirming the charges**

31. In certain applications, part of the harm allegedly suffered by the applicant arises from incidents that do not form part of the crimes contained in the decision confirming the charges. This is the case for the following applications: a/10183/14, a/10253/14, a/20212/12, a/25081/15, a/25138/15, a/25139/15, a/25141/15, a/25144/15, a/25148/15, a/25158/15, a/25161/15, a/25165/15, a/25170/15, a/25172/15, a/25173/15, a/25176/15, a/25190/15.
32. The Defence submits that these applications ought to be rejected since, according to the Court's jurisprudence, only harm arising from crimes contained in the decision confirming the charges should be considered.

**b. Regarding the unclear and insufficient description of the alleged perpetrators of the alleged crimes**

33. The Defence observes that most applications contain an insufficient description of the alleged perpetrators. In view of the polarised nature of the conflict in Côte d'Ivoire, and the presence of opposing forces, the Defence submits that it is not sufficient to state merely that one was attacked. Rather, it is necessary to provide information as to how the applicant reached the conclusion that the alleged attackers were pro-Gbagbo and what these "pro Gbagbo" forces entail. The Defence submits that once it is not made probable that the alleged attack was committed by pro-Gbagbo forces, then there would be no relationship between the harm suffered and the crimes confirmed.
34. The concerned applications are:
- a/10176/14, a/10183/14, 10190/14, a/10253/14, a/10258/14, a/10260/14, a/20212/12, a/25000/15, a/25001/15, a/25002/15, a/25003/15, a/25004/15, a/25005/15, a/25006/15, a/25007/15, a/25008/15, a/25009/15, a/25010/15, a/25011/15, a/25012/15, a/25015/15, a/25016/15, a/25017/15, a/25018/15, a/25019/15, a/25020/15, a/25021/15, a/25022/15, a/25023/15, a/25024/15, a/25025/15, a/25026/15, a/25027/15, a/25028/15, a/25029/15, a/25030/15, a/25031/15, a/25032/15, a/25033/15, a/25034/15, a/25035/15, a/25036/15, a/

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 a/25229/15, a/25231/15, a/25232/15, a/25233/15, a/25234/15,a/25235/15, a/25236/15  
 , a/25237/15, a/25238/15, a/25239/15, a/25240/15,a/25241/15, a/25242/15, a/25243/1  
 5, a/25244/15, a/25245/15, a/25246/15,a/25247/15, a/25248/15, a/25249/15, a/25250/1  
 5, a/25251/15, a/25252/15, a/25253/15 a/25192/15, a/25193/15, a/25194/15,  
 a/25196/15, a/25197/15, a/25198/15, a/25199/15, a/25200/15, a/25201/15, a/25202/15,  
 a/25203/15, a/25204/15, a/25205/15, a/25206/15, a/25207/15, a/25208/15, a/25209/15,  
 a/25210/15, a/25211/15, a/25212/15, a/25213/15, a/25214/15, a/25215/15, a/25216/15,  
 a/25217/15, a/25218/15, a/25219/15, a/25220/15, a/25221/15, a/25222/15,  
 a/25223/15, a/25224/15, a/25225/15, a/25226/15, a/25227/15, a/25228/15, a/25229/15,  
 a/25230/15, a/25231/15, a/25232/15, a/25233/15, a/25234/15, a/25235/15,  
 a/25236/15, a/25237/15, a/25238/15, a/25239/15, a/25240/15, a/25241/15, a/25242/15,

a/25243/15, a/25244/15, a/25245/15, a/25246/15, a/25247/15, a/25248/15, a/25249/15, a/25250/15, a/25251/15, a/25252/15, a/25253/15, a/25254/15, a/25255/15, a/25256/15

32. From the foregoing reasons, the Defence requests that these applications should be rejected since they are neither linked properly the alleged attacks with Pro-Gbagbo forces, nor do they identify what these “pro Gbagbo” forces entail.

**c. Concerning applications which are based on harm that does not result directly from the alleged crime**

33. Certain applications are based on harm which does not result directly from the alleged crime. Some of them arise from alleged maltreatment in the detention such as a/25138/15, a/25139/15, a/25140/15, a/25141/15, a/25142/15, a/25144/15, a/25146/15, a/25148/15, a/25158/15, a/25161/15, a/25165/15, a/25170/15, a/25172/15, a/25173/15, a/25176/15, a/25183/15, a/25190/15, a/25005/15, a/25016/15. Others should be generally rejected as the applications on their face do not show a causal link between the alleged crime and the alleged harm suffered. This is the case for the following applications: a/10183/14, a/10190/14, a/25016/15, a/25019/15, a/25027/15, a/25028/15, a/25030/15, a/25031/15, a/25032/15, a/25033/15, a/25034/15, a/25035/15, a/25037/15, a/25155/15, a/25159/15, a/25162/15, a/25165/15, a/25183/15, a/25184/15.

34. Such applications, which do not result directly from the crimes confirmed in the decision confirming the charges, should be rejected.

**IV.4 The Defence observes that the Registry has maintained unnecessary redactions on certain information that is crucial to verification of the applications by the Defence**

35. Redactions should generally only be maintained when they are necessary to protect the security of the applicant. However, the Defence observes that the Registry has maintained redactions even in instances when such redactions are unnecessary and the information concerned is vital to the parties, in particular the defence. Article 68 (1) provides that the measures taken to protect the safety, physical and psychological

well-being should not be prejudicial to the rights of the accused. For this reason, the Defence requests that the Chamber order that these redactions be removed, or in the alternative, the applications be rejected as explained below:

**a. The unnecessary redaction of the locations where the incidents described by the applicants allegedly occurred**

36. In *Blé Goudé*, the decision of the Pre-trial Chamber made on 1 August 2014, the Court implicitly decided that the redaction of the location where the incidents allegedly occurred was unnecessary and to include these locations in an annex communicated to the Defence.<sup>16</sup>

37. In spite of this, the Registry has continued to apply redactions to the location of the alleged crime. The relevant applications are:

a/25203/15,a/25204/15,a/25205/15,a/25206/15,a/25207/15,a/25208/15,a/25209/15,  
a/25211/15,a/25212/15,a/25215/15,a/25218/15,a/25219/15,a/25220/15,a/25221/15,  
a/25222/15,a/25223/15,a/25224/15,a/25225/15,a/25227/15,a/25228/15,a/25229/15,  
a/25230/15,a/25231/15,a/25232/15,a/25233/15,a/25235/15,a/25236/15,a/25237/15,a/2  
5238/15,a/25238/15,a/25239/15,a/25240/15,a/25241/15,a/25243/15,a/25245/15,a/252  
49/15,a/25250/15,a/25251/15,a/25252/15,a/25253/15,a/25254/15,a/25255/15,a/25256/  
15 a/10176/14, a/10183/14, a/10253/14, a/10258/14, a/10260/14, a/20212/12,  
a/25001/15, a/25002/15, a/25005/15, a/25005/15, a/25060/15, a/25061/15,  
a/25070/15, a/25073/15, a/25076/15, a/25077/15, a/25079/15, a/25080/15,  
a/25081/15, a/25082/15, a/25086/15, a/25090/15, a/25092/15, a/25098/15,  
a/25100/15, a/25101/15, a/25103/15, a/25106/15, a/25112/15, a/25114/15,  
a/25115/15, a/25117/15, a/25118/15, a/25119/15, a/25120/15, a/25121/15,  
a/25122/15, a/25125/15, a/25128/15, a/25129/15, a/25130/15, a/25132/15,  
a/25133/15, a/25137/15, a/25142/15, a/25160/15, a/25174/15, a/25197/15,  
a/25198/15, a/25199/15, a/25200/15, a/25201/15, a/25202/15, a/25203/15,  
a/25204/15, a/25205/15, a/25206/15, a/25207/15, a/25208/15, a/25209/15,  
a/25210/15, a/25211/15, a/25212/15, a/25218/15, a/25219/15, a/25220/15,  
a/25221/15, a/25222/15, a/25223/15, a/25225/15, a/25227/15, a/25228/15,  
a/25229/15, a/25230/15, a/25232/15, a/25233/15, a/25235/15, a/25236/15,

<sup>16</sup> ICC-02/11-02/11-111-Conf-Anx

a/25237/15, a/25238/15, a/25239/15, a/25240/15, a/25241/15, a/25243/15, a/25245/15, a/25249/15, a/25250/15, a/25251/15, a/25252/15, a/25253/15, a/25197/15, a/25198/15, a/25199/15, a/25200/15, a/25201/15, a/25202/15.

38. Without knowing the exact locations where the alleged crimes occurred, the Defence is unable to aptly verify the allegations of the applicants especially with regards to the third requirement that the harm alleged arose from crimes confirmed in the decision confirming the charges.

39. For the foregoing reasons, the Defence requests that such redactions be either lifted or that the victim applications be rejected on this basis.

**b. The unnecessary redactions of the identity of applicants who are not opposed to the communication of this information to the defence**

40. The principle is that protective measures are granted upon the victims' request. Yet, in certain victims' applications, the identity of the applicants has been redacted whereas they had clearly indicated in their application that they did not have any specific reasons to fear for their security, well-being, dignity or private life or those of any other person if their identity were to be disclosed to the Defence. These elements relate to the following applications: a/10258/14, a/10258/14, a/20212/12, a/25059/15, a/25060/15, a/25061/15.

41. The redactions maintained by the Registrar without any valid reasons render the determination of the three-pronged test of the Defence more difficult. For this reason, the Defence requests that these redactions be lifted, or in the alternative, these applications be rejected.

**c. The unnecessary redaction of the language spoken by the applicants**

42. The Defence observes that in some of the applications the languages spoken by the applicant are redacted. The applications involved are: a/10253/14, a/10258/14. The Defence requests that these applications should be rejected since the languages can serve as a verifiable factor of the first criterion of the test.<sup>17</sup>

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<sup>17</sup> See paragraph 10 of these submissions.

**d. Concerning the complete redactions applied to certain identification documents**

43. The Defence observes that some of the identification documents provided by the applicants are completely redacted by the Registry, resulting into a blank page instead of an identity document. The applications concerned are: a/10253/14, a/10253/14, a/25060/15, a/25061/15, a/25073/15, a/25078/15, a/25082/15, a/25086/15, a/25098/15, a/25100/15, a/25102/15, a/25103/15, a/25131/15, a/25167/15, a/25214/15, a/25221/15, a/25245/15, a/25246/15, a/25250/15.

44. Furthermore, the Defence observes that the method of redaction appears to be arbitrary since in some of the applications, such as a/25204/15, a/25206/15, the photos of the applicants remain unredacted. A photo is arguably more identifiable than a name. Therefore, the Defence opines that the redaction method seems arbitrary since the Registry applies extremely strict protective measures in relation to some victims, but does not maintain this level of strictness as to other applications.

45. The Defence is not in a position to verify the identity of the above listed applicants, which contravenes the first requirement in the assessment of victims' applications.<sup>18</sup> For this reason the Defence requests that the redactions be removed, or in the alternative, the applications be rejected.

**IV.5 The Defence observes that certain narratives presented in the applications do not seem credible**

46. The Defence observes that certain applications do not seem credible and these should be rejected for the reasons explained below:

**a. Concerning vague applications**

47. In certain applications, the narrative presented does not contain sufficient detail to enable the Defence to perform an in-depth analysis of the allegations. The description of the relevant events is too vague and/or short to allow for any verification. This is the case of:

a/10176/14, a/10183/14, a/10258/14, a/20212/12, a/25001/15, a/25004/15, a/25008/15, a/25010/15, a/25021/15, a/25042/15, a/25064/15, a/25067/15,

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<sup>18</sup> See para 10



a/25126/15, a/25127/15, a/25129/15, a/25131/15, a/25133/15, a/25142/15,  
 a/25157/15, a/25162/15, a/25163/15, a/25177/15, a/25178/15, a/25180/15,  
 a/25181/15, a/25183/15, a/25185/15, a/25190/15, a/25191/15, a/25196/15,  
 a/25244/15, a/25247/15, a/25248/15, a/25194/15,

48. Such vague and unclear statements prevent the Defence from verifying the credibility of the victim and the plausibility of the narrative and, therefore, the causal link between the alleged crime and the harm suffered. Hence, the Defence requests that such applications be rejected.

**b. Applications that appear not to be authentic**

49. The Defence observes that some of the applications appear not to be authentic, which is to say that the applicants use the exact same phrases and expressions to describe different incidents. This gives the impression that the people who assisted the applicants to fill in the application forms, may have substituted their sentiments for that of the applicants. It is for this reason that the Defence finds that these applications lack credibility.

50. The concerned applications are as follows:

a/25065/15, a/25078/15, a/25084/15, a/25093/15, a/25094/15, a/25095/15,  
 a/25097/15, a/25099/15, a/25107/15, a/25108/15, a/25110/15, a/25111/15,  
 a/25126/15, a/25129/15, a/25159/15, a/25169/15.

51. The Defence requests that these applications be rejected.

**c. Concerning applications, relating to direct victims, in which the applicants describe the events in a manner that suggests that they not present during the commission of the alleged crime**

52. Several applicants describe the alleged incidents in a manner that suggests that they were not present during the commission of the alleged crime even though they claim to be direct victims. For this reason, the narrative they present does not seem credible. This is the case for the following applications:

a/25060/15, a/25061/15, a/25087/15, a/25100/15, a/25101/15, a/25103/15,  
a/25104/15, a/25137/15, a/25192/15, a/25205/15, a/25210/15, a/25215/15,  
a/25217/15, a/25220/15, a/25221/15, a/25223/15, a/25224/15, a/25227/15,  
a/25242/15, a/25248/15, a/25192/15, a/25205/15, a/25210/15, a/25215/15,  
a/25217/15, a/25220/15, a/25221/15, a/25223/15, a/25224/15, a/25227/15,  
a/25242/15, a/25248/15

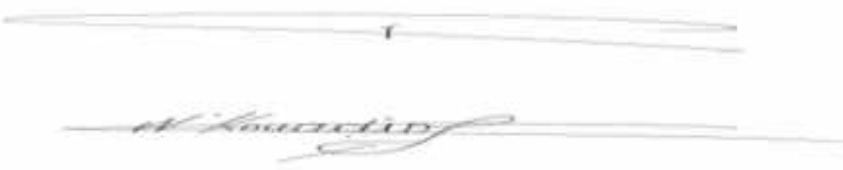
53. Hence, these applications should be rejected.

### **RELIEF SOUGHT**

54. The Defence requests that the applications that fail to meet the three-pronged criteria in relation to identity, harm and nexus of harm to confirmed crimes should be rejected.

55. The Defence requests that the Chamber order the Registry to lift the unnecessary redactions or in the alternative reject the applications in which these redactions are contained.

56. The Defence requests the Chamber to reject the applications that do not appear credible as explained above.



Mr. Knoops, Lead Counsel and Mr. N'Dry, Co-Counsel

Dated this 21 October 2015.

At The Hague, the Netherlands.