

**Cour
Pénale
Internationale**

**International
Criminal
Court**



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

Date: **09 September 2021**

THE PRESIDENCY

Before: Judge Piotr Hofmański, President
Judge Luz del Carmen Ibáñez Carranza, First Vice-President
Judge Antoine Kesia-Mbe Mindua, Second Vice-President

SITUATION IN COTE D'IVOIRE

IN THE CASE OF

THE PROSECUTOR v. LAURENT GBAGBO AND CHARLES BLÉ GOUDÉ

Public

Public Redacted Version of “Mr Blé Goudé’s Request for Compensation pursuant to Article 85(3) of the Rome Statute” (ICC-02/11-01/15-1411-Conf-Exp), 09 September 2021

Source: Defence of Mr Charles Blé Goudé

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

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I. INTRODUCTION

1. Since his first appearance before the International Criminal Court (“the Court”), Mr Blé Goudé has maintained his innocence and has expressed his strong conviction that, one day, he will return to Côte d’Ivoire.¹ Mr Blé Goudé’s was vindicated when at trial, the exceptional weaknesses of the case put forth by the Office of the Prosecution (“Prosecution”) and, most importantly, its lack of due diligence were demonstrated. This resulted in his acquittal by Trial Chamber I based on a no case to answer (“NCTA”) motion,² which was later confirmed by the Appeals Chamber rejecting the Prosecution’s appeal.³
2. In light of Mr Blé Goudé’s definitive acquittal by the Appeals Chamber, the Defence for Mr Blé Goudé (“the Defence”) hereby presents its request for compensation under Article 85(3) of the Rome Statute (“Statute”). The Defence submits that Mr Blé Goudé was the victim of a wrongful prosecution amounting to a grave and manifest miscarriage of justice, giving thus rise to a request for compensation under Article 85(3) of the Statute. The Defence requests the Chamber to exercise its discretion and award the amount of compensation specified in the present request (“Request”), to remedy Mr Blé Goudé’s wrongful prosecution. In the event the Court does award Mr Blé Goudé compensation, Mr Blé Goudé would like to use part of the damages awarded to assist the victims of the 2010-2011 post-election violence in Côte d’Ivoire. Furthermore, in order to assist the Court in adjudicating this request, the Defence requests the scheduling of a hearing pursuant to Rule 174(2) of the Rules.

II. CONFIDENTIALITY

¹ *The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé*, Transcript of 27 March 2014, ICC-02/11-02-11-T-3-Red-FRA, page 7, lines 25-28 to page 8, line 1: « Madame la juge, contrairement à une certaine opinion qui estime, à tort ou à raison, qu'un voyage à la CPI est un voyage de non-retour, je pense qu'un citoyen qui est suspecté par la CPI peut venir ici, faire l'objet d'un procès, et s'il est innocent, peut repartir chez lui. Et je sais que je repartirai chez moi ».

² *The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé*, Decision of Trial Chamber I of 15 January 2019, ICC-02/11-01/15-T-232ENG, with reasons issued on 16 July 2019, ICC-02/11-01/15-1263 and its annexes.

³ *The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé*, Judgment in the appeal of the Prosecutor against Trial Chamber I’s decision on the no case to answer motions (‘Acquittal Decision’), 31 March 2021, ICC-02/11-01/15-1400.

3. The Request is filed on a confidential *ex parte* basis under Regulation 23bis(1) of the Regulations of the Court since it contains sensitive information relating to Mr Blé Goudé's family and stay in the Netherlands. The Defence will file a public redacted version of the Request shortly.

III. PROCEDURAL HISTORY

4. On 17 January 2013 Mr Blé Goudé was arrested in Ghana and on 22 March 2014 he was surrendered to the Court by the national authorities of Côte d'Ivoire.⁴ From that date onwards, Mr Blé Goudé was detained at the Detention Centre in The Hague.
5. On 15 January 2019, Trial Chamber I, by majority, acquitted Mr Blé Goudé of all charges, pursuant to a NCTA motion filed by the Defence on 3 August 2018.⁵ Following this acquittal, the Appeals Chamber, on 1 February 2019, set conditions to be imposed on Mr Blé Goudé upon his release to a State willing to accept him on its territory and willing and able to enforce the conditions set by the Chamber.⁶
6. On 15 October 2019 the Prosecution filed the 'Document in Support of Appeal'.⁷ On 31 March 2021, the Appeals Chamber confirmed, by majority, Trial Chamber's I decision to acquit Mr Blé Goudé. The Appeals Chamber also revoked all conditions on the release of Mr Blé Goudé and directed the Court's Registrar to make arrangements for his safe transfer to a receiving State or States.⁸

IV. APPLICABLE LAW

7. According to Article 85(3) of the Statute:

⁴ Reuters, "Fugitive Ivorian youth leader Blé Goudé arrested in Ghana", 17 January 2013, <https://www.reuters.com/article/us-ivorycoast-ghana-idUSBRE90G10420130117> (last accessed 28/07/2021); International Criminal Court, "Charles Blé Goudé transferred to the ICC", Press Release 22 March 2014, ICC-CPI-20140322-PR988, <https://www.icc-cpi.int/Pages/item.aspx?name=pr988> (last accessed: 28/07/2021).

⁵ *The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé*, Corrigendum to the "Blé Goudé Defence No Case to Answer Motion" (ICC-02-11-01/15-1198-Conf) 23 July 2018, 3 August 2018, ICC-02/11-01/15-1198-Conf-Corr.

⁶ *The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé*, Judgment on the Prosecutor's appeal against the oral decision of Trial Chamber I pursuant to article 81(3)(c)(i) of the Statute, 1 February 2019, ICC-02/11-01/15-1251-Conf.

⁷ *The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé*, Prosecution Document in Support of Appeal, 15 October 2019, ICC-02/11-01/15-1277-Conf.

⁸ Acquittal Decision, ICC-02/11-01/15-1400.

3. In exceptional circumstances, where the Court finds conclusive facts showing that there has been a grave and manifest miscarriage of justice, it may in its discretion award compensation, according to the criteria provided in the Rules of Procedure and Evidence, to a person who has been released from detention following a final decision of acquittal or a termination of the proceedings for that reason.

8. Pursuant to Rule 173(2) of the Rules, the request for compensation shall be submitted no later than six months from the date the person making the request was notified of the decision of the Court concerning *inter alia* the existence of a grave and manifest miscarriage of justice. The request shall contain the grounds and the amount of compensation requested. Furthermore, the Prosecution has a right under Rule 174 of the Rules to make observations on a request for compensation.
9. With respect to Rule 173(2), the Chamber in *Ngudjolo* found that a two-fold approach must be followed by the Chamber; *first*, it must determine whether a grave and manifest miscarriage of justice occurred; *second*, and only in the event that the first question is answered in the affirmative, the Court may, in its discretion, award compensation.⁹
10. With regard to the term of art “grave and manifest miscarriage of justice” for which there is no definition in the Statute, the Chamber in *Ngudjolo* stipulated that “a grave and manifest miscarriage of justice [...] is a certain and undeniable miscarriage of justice following, for example, an erroneous decision by a trial chamber or *wrongful prosecution*”, which must have given rise to “a clear violation of the applicant’s fundamental rights” and “caused serious harm to the applicant”¹⁰ (*emphasis added*). Accordingly, “not every error committed in the course of the proceedings is automatically considered a ‘grave and manifest miscarriage of justice’”.¹¹

V. SUBMISSIONS

a. *Mr Blé Goudé fell victim to a wrongful prosecution.*

11. The Office of the Prosecutor of the ICC, whose role is to conduct an “independent and impartial investigation on behalf of the international community”, is tasked with a very

⁹ *The Prosecutor v. Mathieu Ngudjolo Chui*, Decision on the “*Requête en indemnisation en application des dispositions de l’article 85(1) et (3) du Statut de Rome*”, 16 December 2015, ICC-01/04-02/12-301-tENG (the ‘*Ngudjolo Decision*’), para. 16.

¹⁰ *Ngudjolo Decision*, para. 45.

¹¹ *Ngudjolo Decision*, para. 45.

broad investigative and truth-seeking mandate.¹² As a “minister of justice”, its role is akin to that of counterparts in inquisitorial legal systems.¹³ Its mandate includes investigating incriminating and exonerating evidence equally, pursuant to Article 54(1)(a) of the Statute, which has been described as the “most spectacular and innovative affirmation of prosecutorial impartiality, [...] an obligation usually reserved to an investigative judge”.¹⁴ This mandate also extends to verifying contradictory or weak evidence, which, as held by Judge Van de Wyngaert, is just as important as the collection of the evidence itself.¹⁵ The Prosecution utterly failed to live up to this mandate in its investigation and prosecution of Mr Blé Goudé. The Trial Chamber I’s decision to acquit Mr Blé Goudé at the close of the Prosecution’s presentation of evidence, which was affirmed by the Appeals Chamber, details how the Prosecution did not exercise due diligence in investigating and prosecuting Mr Blé Goudé’s case.¹⁶ This lack of due diligence in investigating and

¹² United Nations, Report of the Preparatory Committee on the Establishment of an International Criminal Court, vol. I, supp. 22 (A/51/22), 13 September 1996, Article 26 (investigation of alleged crimes), para. 226; F. Dorques Lane, C. Madec and S. Godart, ‘Article 54: Devoirs et pouvoirs du procureur en matière d’enquêtes’, in J. Fernandez and X. Pacreau (eds.), *Statut de Rome de la Cour Pénale Internationale: Commentaire Article par Article – Tome II* (2012), 1229 at 1230.

¹³ The text of Article 54(1) ultimately adopted was based on a German proposal made to the Preparatory Committee that found wide support among civil law jurisdictions where Prosecutors have similar obligations. The German delegation observed the particular challenges faced by accused in cases falling within the jurisdiction of the court. It noted that investigations at the Court would be exceptionally time- and money-consuming and ‘extremely difficult’, given that they would be conducted in countries and regions whose structures have been largely destroyed by armed conflict, which justified the attribution of the duty of objective investigations to the Prosecutor, Proposal submitted by Germany for Article 44 (a), Preparatory Committee on the establishment of an International criminal court, Proposal, 23 August 1996 A/AC.249/WP.37, at 1. In its report, the Preparatory Committee concluded that the Prosecutor ‘should conduct an independent and impartial investigation on behalf of the international community and should collect incriminating and exonerating information to determine the truth of the charges and to protect the interests of justice, United Nations, Report of the preparatory Committee on the Establishment of an International Criminal Court, vol. I, supp. 22 (A/51/22), 13 September 1996, Article 26 (investigation of alleged crimes), para 226; *Prosecutor v. Bemba et al.*, Judgment on the Appeal of Mr Fidèle Babala Wandu Against the Decision of Pre-Trial Chamber II of 14 March 2014 entitled “Decision on the ‘Requête urgente de la Défense sollicitant la mise en liberté provisoire de monsieur Fidèle Babala Wandu’”, 11 July 2014, ICC-OI05-01113 OA 3, A. Ch., at 47; C. Kreß ‘The Procedural Law of the International Criminal Court in Outline: Anatomy of a Unique Compromise’ (2003) 1 *Journal of International Criminal Justice* 603, at 608, cited in W. Schabas, *The International Criminal Court: A Commentary on the Rome Statute* (2016), at 849.

¹⁴ L. Côté, ‘Independence and Impartiality’, in L. Reydam, J. Wouters, C. Ryngaert (eds.), *International Prosecutors* (2012), 319 at 359. It ‘tilts the prosecutorial model towards the inquisitorial approach of European continental systems of criminal justice’, by contrast to the ‘Anglo-American perspective, where a prosecutor is more adversarial, and where truth is said to emerge from the judicial duel with the defence’, W. Schabas, *The International Criminal Court: A Commentary on the Rome Statute* (2016), at 849.

¹⁵ *The Prosecutor v. Kenyatta*, Decision on defence application pursuant to Article 64(4) and related requests, Concurring opinion of Judge Christine Van den Wyngaert, ICC-01/09-02/11-728-Anx2, 26 April 2013, para. 4.

¹⁶ See for example *Prosecutor v. Laurent Gbagbo and Charles Blé Goudé*, Opinion of Judge Cuno Tarfusser, 16 July 2019, ICC-02/11-01/15-1263-AnxA (‘Opinion of Judge Tarfusser’), paras 2, 3 and 4; *Prosecutor v. Laurent Gbagbo and Charles Blé Goudé*, Reasons of Judge Geoffrey Henderson, 16 July 2019, ICC-02/11-01/15-1263-Conf-AnxB (‘Reasons of Judge Henderson’), paras 1, 2, 5 and 9.

prosecuting Mr Blé Goudé, from the inception of the case up and through the appeal, resulted in the wrongful prosecution of Mr Blé Goudé.

12. The Defence avers that Mr Blé Goudé's detention and subsequent prosecution did not escape judicial scrutiny. Pre-Trial Chamber II may have issued the arrest warrant and the decision to confirm the charges, but it did so with the presumption that the Prosecution was fulfilling its mandate under Article 54(1)(a) as an impartial entity investigating the alleged crimes in Côte d'Ivoire and verifying weak and contradictory evidence. Additionally, the Pre-Trial Chamber presumed, once charges were confirmed, that the Prosecution at trial would present evidence capable of proving guilt beyond a reasonable doubt.¹⁷ As the trial unfolded in this case, these presumptions were rebutted showing that the Prosecution acted in direct contravention of its mandate under Article 54(1)(a). Indeed, the foundation of Trial Chamber I's decision to acquit was not just the weakness of the Prosecution's case which is common to all NCTA decisions, but its exceptional weakness coupled with the improper investigation that was conducted. The lack of due diligence was a recurring phenomenon that ran throughout the proceedings against Mr Blé Goudé from the start of the investigation to the end of the appeal proceedings.
13. Both Judges Henderson and Tarfusser in their written reasons underscored this phenomenon by addressing how the Prosecution's performance was egregious in this case in addition to providing an analysis of the evidence and how it manifestly could not support a conviction. The judges detailed the significant shortcomings of the Prosecution with respect to the collection of documents, the lack of probative value of most of the Prosecution's evidence, and the narrative of the Prosecution.
14. Both judges found that the Prosecution did not ensure that one of the most basic tenants of evidence collection was upheld. Indeed, the Prosecution did seek to establish the

¹⁷ This presumption is based on the proposition that the Prosecutor's investigation "should largely be completed at the stage of the confirmation hearing". *The Prosecutor v. Kenyatta*, Corrigendum to "Decision on the Prosecution's Request to Amend the Final Updated Document Containing the Charges Pursuant to Article 61(9) of the Statute, ICC-01/09-02/11-700-Corr, para. 36; *The Prosecutor v. Yekatom & Ngaïssona*, Decision on the Prosecution's Request to Amend Charges pursuant to Article 61(9) and for Correction of the Decision on the Confirmation of Charges, and Notice of Intention to Add Additional Charges, ICC-01/14-01/18-517, para. 25. See *The Prosecutor v. Thomas Lubanga Dyilo*, Judgment on the Prosecutor's appeal against the decision of Pre-Trial Chamber I entitled "Decision Establishing General Principles Governing Applications to Restrict Disclosure pursuant to Rule 81 (2) and (4) of the Rules of Procedure and Evidence", ICC-01/04-01/06-568, paras 52-54.

authenticity of the documents it collected, showing flagrant disregard for its mandate to seek for the truth since the source of the evidence stemmed primarily from the current government, which was headed by the political opponents of both Mr Blé Goudé and Laurent Gbagbo.¹⁸ There were even instances where credible witnesses would dispute the authenticity of certain documents and the Prosecution did not address or challenge it.¹⁹ Moreover, the Prosecution did not take stock of the fact that most of the evidence it had collected, both documentary and testimonial, relied “on a prodigious scale” on anonymous hearsay, which “raises serious questions about [its] methodology”.²⁰ The Prosecution rarely, if ever, provided the Chamber with adequate information regarding the reliability and credibility of the original source of the hearsay.²¹

15. Both judges also deplored the Prosecution’s narrative which “presented a rather one sided version of the situation in Côte d’Ivoire” and that the Prosecution “systematically omit[ed] or downplay[ed] significant elements of the political and military situation”.²² As Trial Chamber I bore witness to these flagrant shortcomings of the Prosecution’s case as the trial unfolded,²³ it did something extraordinary. For the first time in the Court’s history, the Trial Chamber in unanimity issued the “Order on the further conduct of the proceedings”, (“Order”) inviting the Prosecution to file a trial brief containing a detailed narrative of the case in light of the testimonies heard and the documentary evidence submitted at trial.²⁴ The Chamber also called upon the Prosecution to petition the Chamber as soon as possible in case they intended to withdraw any or all of the charges in accordance with Article 61(9) of the Statute.²⁵

16. Despite these clear indications from the Trial Chamber regarding the overall weakness of the Prosecution’s case and its very strong suggestion that the Prosecution amend its case, the Prosecution held steadfast to its narrative, intent on convicting Mr Blé Goudé at all costs. The Trial Brief filed by the Prosecution contained exactly the same narrative and

¹⁸ ICC-02/11-01/15-1263-AnxB-Red, para 36 ; ICC-02/11-01/15-1263-AnxA, paras. 4, 92.

¹⁹ ICC-02/11-01/15-1263-AnxA, para. 4.

²⁰ ICC-02/11-01/15-1263-AnxB-Red, para 42.

²¹ Ibid., para 43.

²² ICC-02/11-01/15-1263-AnxB-Red, para. 66. See ICC-02/11-01/15-1263-AnxB-Red, paras. 79,81; ICC-02/11-01/15-1263-AnxA, paras. 5, 28,104,107.

²³ ICC-02/11-01/15-1263-AnxA, paras.12, 89-.90,

²⁴ *The Prosecutor v. Gbagbo & Blé Goudé*, “Order on the further conduct of the proceedings”, ICC-02/11-01/15-1124, para. 10.

²⁵ Order, para. 13.

allegations as the Pre-Trial Brief.²⁶ In their decision to acquit Mr Blé Goudé, Judge Henderson found that the Prosecution cherry picked exhibits to support its narrative and ignored the rest. Judge Tarfusser specifically recalled the Prosecution's obligations under Article 54(1) to genuinely search for the truth, and reasoned that it was unacceptable for the Prosecution to not adjust progressively its narrative as the case against Mr Blé Goudé crumbled before the eyes of the Chamber. Judge Tarfusser expressly stated that any Prosecutor, but especially an ICC Prosecutor in light of their responsibilities under Article 54(1), should request an acquittal where the evidence is patently insufficient to sustain a conviction.²⁷

17. The Prosecution's malfeasance continued into the appeal proceedings. Despite having conducted its investigations in Côte d'Ivoire for 9 years and completing its presentation of evidence against Mr Blé Goudé, the Prosecution neither requested the Appeals Chamber to retry Mr Blé Goudé in its appeal, nor did it put forth any substantive arguments relating to alleged errors of fact or to the evidence itself.²⁸ Rather, the Prosecution requested the remedy of a mistrial, and stated that it could only be sure of whether it could try Mr Blé Goudé after the Appeals Chamber's judgment was rendered.²⁹ The Prosecution's uncertainty is unacceptable. The crux of any appeal of a NCTA decision is whether there is sufficient evidence to convict the accused. The Prosecution's inability or unwillingness to request a retrial demonstrated that it was uncertain whether its evidence would be sufficient to convict Mr Blé Goudé before another Trial Chamber. If the Prosecution were sure of its case against Mr Blé Goudé, it would have requested a retrial since in response to the Defence's no case to answer motion, the Prosecution affirmatively submitted to Trial Chamber I that there was sufficient evidence to convict Mr Blé Goudé. Therefore, the Prosecution's appeal in the instant case was frivolous, which is reprehensible given that Mr Blé Goudé was released on conditions that resulted in [REDACTED].³⁰

18. The Prosecution's lack of diligence in its investigations, its incentive to convict Mr Blé Goudé at all costs despite it being clear that its narrative was not supported by the evidence, and its conduct on appeal shows that Mr Blé Goudé fell victim to a wrongful

²⁶ ICC-02/11-01/15-1263-AnxA, 104.

²⁷ Ibid.

²⁸ *The Prosecutor v. Gbagbo & Blé Goudé*, "Prosecution Document in Support of Appeal", ICC-02/11-01/15-1277-Conf, paras, 260, 266.

²⁹ Ibid., para. 266.

³⁰ [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED].

prosecution, which led to prolonged proceedings before the Court. The Prosecution continued to pursue legal action against Mr Blé Goudé despite the fact that the case was unfounded and no reasonable Trial Chamber could draw any meaningful conclusions from the evidence, let alone convict Mr Blé Goudé of the charges. The Prosecution was aware of the lack of evidence to support its case, at least at the moment when Trial Chamber I issued the Order and suggested that the Prosecution amend its narrative and that it could withdraw the charges in part or in full. The fact that the Prosecution did not drop any charge in direct response to the Order and was set to continue to pursue litigation against Mr Blé Goudé even after his acquittal on appeal, shows the Prosecution's complete disregard of Mr Blé Goudé's rights.

b. Mr Blé Goudé's wrongful prosecution amounts to a miscarriage of justice.

19. Pursuant to Article 85(3) of the Statute, it is in the Court's discretion to award compensation, according to the criteria provided in the Rules, to a person who has been released from detention following a final decision of acquittal, as long as there are conclusive facts showing that there has been a grave and manifest miscarriage of justice. The Defence submits that the requirements of Article 85(3) of the Statute are met in the present case.
20. As previously analysed, the terms "grave and manifest miscarriage of justice" were defined by the Chamber in *Ngudjolo* as "a certain and undeniable miscarriage of justice following, for example, an erroneous decision by a trial chamber or wrongful prosecution".³¹ The wrongful prosecution of Mr Blé Goudé resulted in a grave and manifest miscarriage of justice as of the inception of the proceedings against him before the Court. The Defence submits that as a result of the Prosecution's failure to respect its mandate under Article 54(1), Mr Blé Goudé became first a suspect, and later an accused at the Court where he was first detained for several years and then released with conditions following his acquittal. The consequences were and continue to be devastating for Mr Blé Goudé who as of the writing of these submissions is yet to return to Côte d'Ivoire. In the alternative, the Defence argues that the wrongful Prosecution of Mr Blé Goudé led to a grave and manifest miscarriage of justice when the Prosecution refused to revise its narrative and drop the charges against Mr Blé Goudé after the Chamber issued

³¹ *Ngudjolo* Decision, para. 45.

receiving state would accommodate him.³⁶ [REDACTED]. It is particularly egregious that the Prosecution would request release with conditions, and in the event such release could not be secured, detention of Mr Blé Goudé,³⁷ while not knowing whether it wished to retry Mr Blé Goudé or not.

22. The complete disregard of Mr Blé Goudé's rights to liberty and right to the presumption of innocence is what the Defence seeks to remedy. While Trial Chamber I's granting of the Defence's NCTA motion might be seen as the remedy for the Prosecution's weak evidence in this case, it does not remedy the Prosecution's lack of due diligence throughout the proceedings and general failure to investigate exonerating and incriminating circumstances equally under Article 54. The Appeals Chamber even highlighted the Prosecution's lack of due diligence when it recalled that the Majority found that the evidence was "exceptionally weak" in this case. Moreover, it showed dismay at the Prosecution's assertion that it could not be expected to show on appeal that the final disposition of the case would have been different, when it found this assertion to be completely unsubstantiated.³⁸ In his separate concurring opinion, Judge Eboe-Osuji deplored this Prosecution argument when he stated "appellate proceedings pursuant to criminal proceedings are not a cocktail party."³⁹
23. This case should be the last case, which is brought before the Court in which the Prosecution did not conduct a thorough investigation to determine the truth but rather to confirm a pre-constructed narrative. The consequences are too devastating in a criminal justice system where almost all individuals who become suspects and later accused remain in detention for several years pending the final verdict.
24. The wrongful prosecution of Mr Blé Goudé had a domino effect on Mr Blé Goudé's right to personal and family life, which is enshrined in major human rights instruments such as

³⁶*The Prosecutor v. Gbagbo & Blé Goudé*, "Decision on counsel for Mr Gbagbo's request for reconsideration of the 'Judgment on the Prosecutor's appeal against the oral decision of Trial Chamber I pursuant to article 81(3)(c)(i) of the Statute' and on the review of the conditions on the release of Mr Gbagbo and Mr Blé Goudé", ICC-02/11-01/15-1355-Conf, para.72.

³⁷ *The Prosecutor v. Gbagbo & Blé Goudé*, "Urgent Prosecution's request pursuant to article 81(3)(c)(i) of the Statute", ICC-02/11-01/15-1235.

³⁸*The Prosecutor v. Gbagbo & Blé Goudé*, "Judgment in the appeal of the Prosecutor against Trial Chamber I's decision on the no case to answer motions", ICC-02/11-01/15-1400, para. 374.

³⁹ , Public Redacted Version to the Corrected Confidential Separate Concurring Opinion of Judge Eboe-Osuji to the "Judgment in the appeal of the Prosecutor against Trial Chamber I's decision on the no case to answer motions", ICC-02/11-01/15-1400-AnxA, para. 13.

Articles 17 and 23 of the International Covenant on Civil and Political Rights (“ICCPR”) and Article 8 of the European Convention on Human Rights (“ECHR”). As far as the Court’s statutory framework is concerned, Rule 175 stipulates that the consequences of the grave and manifest miscarriage of justice on the personal, family, social and professional situation of the person filing the compensation request shall be taken into consideration by the Chamber designated under Rule 173(1) in establishing the amount of compensation.

25. Mr Blé Goudé is 49 years old; nearly five years of his life were spent in detention. [REDACTED].⁴⁰ All these years, Mr Blé Goudé was not free to choose to return to Côte d’Ivoire due to a wrongful prosecution before the Court.
26. As a result, Mr Blé Goudé was unable to spend time with his family and contribute to the upbringing of his children, [REDACTED]. He missed important milestones in his children’s lives and was unable to provide them any form of support and guidance as they were growing up. The long-lasting effect that the lack of a paternal figure had in his children’s lives is immeasurable and might take years to reverse. Additionally, not seeing his children and closest family has taken a toll on Mr Blé Goudé who, day after day, had to wake up in a cell, thousands of kilometers away from his children and family.
27. Furthermore, during the course of these years, Mr Blé Goudé suffered major losses. [REDACTED].⁴¹ He was completely isolated from his support system and had to go through a difficult time as the result of his post-acquittal detention. Evidently, the Prosecution’s refusal to take stock of the exceptional weakness of the case has had a detrimental effect on Mr Blé Goudé’s life even after his acquittal by Trial Chamber I and prevented him from being with his family.
28. Mr Blé Goudé’s political career, which began as early as his bachelor’s studies in the University of Cocody, came to a halt by his wrongful prosecution at the Court. Mr Blé Goudé has devoted his life to politics with the view of serving his country and its people, a goal that he continued to pursue after his nomination as Minister of Youth, Vocational Training and Employment in Laurent Gbagbo’s government. The *Congrès Panafricain*

⁴⁰ *Prosecutor v. Laurent Gbagbo and Charles Blé Goudé*, Judgment on the Prosecutor’s appeal against the oral decision of Trial Chamber I pursuant to article 81(3)(c)(i) of the Statute, 1 February 2019, ICC-02/11-01/15-1251-Conf.

⁴¹ [REDACTED]. [REDACTED].

des Jeunes et des Patriotes (COJEP) that Mr Blé Goudé has founded as a political movement in the early 2000s has become a political party (*Congrès panafricain pour la justice et l'égalité des peuples – Cojep*), gaining more and more followers over the years, demonstrating that Mr Blé Goudé would have had a promising political career had he not spent his most productive years in detention for a case that could not sustain a conviction.

29. From all of the above, it is clear that Mr Blé Goudé's wrongful prosecution violated Mr Blé Goudé's rights and had serious and long-lasting effects on his personal and professional life. The harm Mr Blé Goudé has suffered is irreversible and it is still uncertain how much time it will take for Mr Blé Goudé and his family to heal from this experience and start anew.

30. In the alternative, if the Court were to find Mr Blé Goudé's detention and prosecution were judicially mandated and therefore justifiable, then the Defence submits that there was a grave and manifest miscarriage of justice as of 19 March 2018 when the Prosecution filed its Trial Brief in which it did not reevaluate its case against Mr Blé Goudé. It was only at the stage of filing its response to the Defence NCTA motion that the Prosecution indicated that it did "not oppose" the relief requested by the Defence for Mr Blé Goudé, namely the dismissal of the charges relating to the third and fourth incidents.⁴² The Defence submits that the Prosecution's unwillingness to re-evaluate its case against Mr Blé Goudé amounts to a violation of Mr Blé Goudé's right to expeditious proceeding which is enshrined under Article 67(1)(c). The Prosecution continued to pursue this case on appeal, though it could not affirmatively state whether it would retry Mr Blé Goudé in the event the appeal was granted, thereby making the Prosecution's appeal frivolous. The Prosecution even put forth the argument that it could not be expected that it would demonstrate how no reasonable trial chamber would acquit Mr Blé Goudé since the acquittal decision allegedly was too extensive. Such a statement should never be uttered let alone put forth as a legal argument in the face of an acquitted person [REDACTED].

c. Mr Blé Goudé's case is considered 'exceptional circumstances' under Article 85(3) of the Statute.

⁴² Prosecution's Response to NCTA motions, para. 22.

31. The requirement of Article 85(3) of the Statute that the Court's discretion be exercised only in "exceptional circumstances" where there has been a "grave and manifest" miscarriage of justice suggests that ordinarily, no compensation will be awarded to persons acquitted by the Court, or against whom proceedings are terminated before final judgement.
32. This approach is echoed in the Court's jurisprudence. In *Bemba*, Pre-Trial Chamber II not only fully concurred with the approach taken by Pre-Trial Chamber II in *Ngudjolo* with respect to the definition of the miscarriage of justice, but also took it a step further by stating that not every flaw of the proceedings, or even violation of fair trial rights, can be considered as *per se* amounting to a "grave and manifest miscarriage of justice"; for this threshold to be met, the violation must be so serious and exceptional as to indicate that, in the words of the *Ngudjolo* Chamber, "the proper administration of justice was compromised".⁴³ Scenarios that may be grave enough to reach this threshold are for example the conviction of an innocent person and wrong decisions on the admissibility of evidence. Similarly, grave instances could also include demonstrated or substantiated suspicion of corruption and lack of impartiality on the part of the bench or other examples of gross negligence in the administration of justice to the detriment of the suspect or the accused. All of these are situations which should be regarded as truly exceptional; as such, they share the feature of going beyond typical errors, whether of fact or of law, suitable to be addressed and remedied during appellate proceedings.⁴⁴
33. The Defence submits that the grave and manifest miscarriage of justice Mr Blé Goudé has suffered due to his wrongful prosecution is indeed to be qualified as an "exceptional circumstance". As previously mentioned the Prosecution conducted a faulty investigation and insisted on the continuation of a case that was weak by all accounts. Despite the Chamber's Order prompting the Prosecution to withdraw in part or in full the charges, the Prosecution, only at the stage of filing its response to the Defence NCTA motions, agreed with the withdrawal of the charges relating to the third and fourth incidents,⁴⁵ while the rest remained intact. In the meantime, Mr Blé Goudé continued to live in agony of being

⁴³ *Prosecutor v. Jean-Pierre Bemba Gombo*, Decision on Mr Bemba's claim for compensation and damages, 18 May 2020, ICC-01/05-01/08-3694 (the '*Bemba* Decision'), para. 42.

⁴⁴ *Bemba* Decision, para. 42. See also *Ngudjolo* Decision, paras 41 and 43.

⁴⁵ *Prosecutor v. Laurent Gbagbo and Charles Blé Goudé*, Annex 1 – Prosecution's Consolidated Response to the Defence No Case to Answer, 11 September 2018, ICC-02/11-01/15-1207-Conf-Anx1, para. 22.

prosecuted and detained for several years. While the Trial Chamber tried its best to fulfil its obligation for the proper administration of justice, this seemed impossible given the Prosecution's stance in pursuing a case that could never sustain a conviction

34. Mr Blé Goudé's wrongful prosecution goes beyond the typical errors in the administration of justice that could be brought in appellate proceedings or remedied in any other way. The Prosecution pursued a case that it should have known would never succeed at trial. For years, Mr Blé Goudé sat in a cell, away from his family, friends, community and support system; he had to sit through hours and hours of hearings during which the Prosecution tried to portray him as a man that committed the most heinous crimes, those that shock the conscience of all humanity. Even after his acquittal by Trial Chamber I, Mr Blé Goudé had to face an indecisive Prosecution that after years of investigating a case and even presenting its evidence in full could not determine whether it wanted to retry Mr Blé Goudé.

35. Mr Blé Goudé's suffering was not remedied by his acquittal by Trial Chamber I and the confirmation of the acquittal by the Appeals Chamber. Had the Prosecution respected its truth seeking mandate, Mr Blé Goudé's case would have never proceeded to trial or, at least, it would have to be terminated by the OTP at an earlier stage in the trial proceedings. [REDACTED],⁴⁶ [REDACTED]. [REDACTED].⁴⁷

36. Although Mr Blé Goudé's acquittal amounts to perhaps moral satisfaction, it is not, however, a remedy for the grave and manifest miscarriage of justice he suffered while being wrongfully prosecuted. The need for compensatory assistance to victims of wrongful prosecution to help them adjust to the life-after and reintegrate into the society has been recognised by the Law Commission of India which recommended amendments to the Code of Criminal Procedure, 1973 (CrPC), to give compensation in cases of miscarriage of justice resulting in wrongful prosecution of persons.⁴⁸

⁴⁶ *Prosecutor v. Laurent Gbagbo and Charles Blé Goudé*, Judgment on the Prosecutor's appeal against the oral decision of Trial Chamber I pursuant to article 81(3)(c)(i) of the Statute, 1 February 2019, ICC-02/11-01/15-1251-Conf.

⁴⁷ [REDACTED].

⁴⁸ Law Commission of India, *Wrongful Prosecution (Miscarriage of Justice): Legal Remedies*, 30 August 2018, Report No. 277. The report follows a Delhi High Court directive in 2016 where the Commission was asked to examine the remedies for wrongful detention.

37. During all these years, Mr Blé Goudé was thousands of kilometres away from his family and could not take part in his children's upbringing; his career was stalled and he was unable to work in order to provide for his family and has suffered significant financial loss. Now, after the proceedings are terminated, Mr Blé Goudé [REDACTED], while trying to rebuild his life again.
38. In light of the notion of "exceptional circumstances", it is only fair that Mr Blé Goudé is compensated for the years he lost and the moral damages he has suffered because of his wrongful prosecution. The unique characteristics of his case attest to that; even though Mr Blé Goudé's case was the second case where a defendant was acquitted by the Trial Chamber and his acquittal was later confirmed by the Appeals Chamber,⁴⁹ his case is the first one where the Trial Chamber unanimously requested the defence teams whether it wished to submit NCTA motions which ultimately led to an acquittal, and in which the exceptional weakness of the case was highlighted by both the Trial Chamber and Appeals Chamber.⁵⁰ Consequently, and given the exceptional circumstances of the case at hand, the Chamber should exercise its discretion in favour of Mr Blé Goudé's request and award him compensation.

VI. DAMAGES AND AMOUNT OF COMPENSATION

a. Legal framework

39. Pursuant to Rule 173(3), the request for compensation shall contain the amount of compensation requested. Neither the Statute nor the Rules, however, elaborate more on the method(s) for calculating the amount of compensation and so far, no standard method has been established in the Court's jurisprudence.⁵¹

⁴⁹ Mathieu Ngudjolo Chui was the first defendant to be acquitted by the Trial Chamber and his acquittal was later confirmed by the Appeals Chamber, see *Prosecutor v. Mathieu Ngudjolo Chui*, Judgment pursuant to article 74 of the Statute, 18 December 2012, ICC-01/04-02/12-3-tENG ; *Prosecutor v. Mathieu Ngudjolo Chui*, Judgement on the Prosecutor's appeal against the decision of Trial Chamber II entitled "Judgment pursuant to article 74 of the Statute », 7 April 2015, ICC-01/04-02/12-271-Corr.

⁵⁰ The *Ruto and Sang* case was the first time the Defence requested the Chamber to terminate the case and acquit the accused, on the basis that the evidence presented by the Prosecution was weak. The Chamber by majority accepted that the case for the Prosecution was weak and, therefore, the case should be terminated. The Chamber, however, declined to enter a judgment of acquittal. In particular, the Chamber made it clear that the case could be prosecuted afresh in future. See *Prosecutor v. William Samoei Ruto and Joshua Arap Sang*, Decision on Defence Applications for Judgments of Acquittal, 5 April 2016, ICC-01/09-01/11-2027-Red-Corr.

⁵¹ See for example *Prosecutor v. Jean-Pierre Bemba Gombo*, Second Public Redacted Version of "Mr Bemba's claim for compensation and damages", 19 March 2019, ICC-01/05-01/08-3673-Red2, Section C titled "The

40. For compensation requests made under Article 85(3) of the Statute in particular, Rule 175 stipulates that

In establishing the amount of any compensation in conformity with article 85, paragraph 3, the Chamber designated under rule 173, sub-rule 1, shall take into consideration the consequences of the grave and manifest miscarriage of justice on the personal, family, social and professional situation of the person filing the request.

41. Evidently, Rule 175 refers to non-material damages which do not entail economic, financial or any other form of tangible damage. Non-material damage encompasses “any damage which is not damage to a person’s assets, wealth or income and which is therefore incapable of being quantified in any objective financial or economic manner by reference to a market”.⁵² According to the arbitral opinion of the U.S. – German Mixed Claims Commission in the Lusitania cases of 1923, non-material damage is “an injury inflicted resulting in mental suffering, injury for his feelings, humiliation, shame, degradation, loss of social position or injury to his credit or to his reputation”.⁵³ Non-material damage also broadly encompasses grief and suffering from the loss of loved ones or the loss of enjoyment of life.⁵⁴

42. The Defence submits that, besides Rule 175’s directions to the Chamber, the compensation to be awarded to Mr Blé Goudé for the non-material damages he has suffered should, by analogy, be calculated based on the Host State’s model for compensation which is designed to calculate non-material damages and offers a reasonable standard. More specifically, in the Netherlands, non-material damages are compensated when the person has spent time in detention and the case ended without a penalty or a measure being imposed, i.e. if the case has ended in an acquittal.⁵⁵ The

appropriate Measurement of loss”; *Prosecutor v. Mathieu Ngudjolo Chui*, Requête en indemnisation sur pied de l’article 58(1) et (3) du Statut de Rome, 14 August 2015, ICC-01/04-02/12-290, Section V titled « La tentative d’évaluation objective des préjudices subis par le requérant ».

⁵² W.V.H. Rogers, ‘Comparative Report of a Project Carried out by the European Centre for Tort and Insurance Law’ in W.V.H. Rogers (ed.), *Damages for Non-Pecuniary Loss in a Comparative Perspective* (Springer: Vienna, 2001), 245, at 246.

⁵³ Opinion in the ‘Lusitania’ Cases (1923) 7 RIAA 32, p.40.

⁵⁴ *United States v. Germany* (Lusitania Cases) (1923) 7 R.I.A.A. 32, page 40; Alexia Solomou, ‘The Contribution of the European Court of Human Rights and the Inter-American Court of Human Rights to the Emergence of a Customary International Rule of Just Satisfaction and the Creative Expansion of its Scope’, *Revista do Instituto Brasileiro de Direitos Humanos*, Año 14, Vol. 14, No. 14 (2014), p. 11.

⁵⁵ Article 89 of the Dutch Code of Criminal Procedure (Wetboek van Strafvordering – hereinafter “the CCP”) : “If the case ends without any punishment or measure being imposed or such punishment or measure is imposed but for an offence for which pre-trial detention is not permitted, the court may, on application of the former suspect, grant him compensation to be paid by the State for the damages he has incurred as a result of the time

amount corresponds to 100 euros for every day spent in detention.⁵⁶ Depending on the circumstances of the case, the Dutch courts may award compensation two or three times higher than the aforementioned amount. Factors that affect the court's decision and can subsequently increase the amount of compensation are the gravity of the charges, due to the impact they have on the accused's life, the level of publicity which was given to the particular case and the defendant, as well as the impact the criminal case had on the applicant's life, for example missed career opportunities or severe mental suffering, such as PTSD as a result of the criminal case against him or her.⁵⁷

43. In the present case, Mr Blé Goudé is to be considered the victim of a grave and manifest miscarriage of justice which, as previously analysed, has caused multi-faceted, non-material damages to his personal and professional life. *First*, the charges against Mr Blé Goudé were of the most serious nature, irreversibly staining his reputation. Despite his definitive acquittal, Mr Blé Goudé continues to live with the stigma of having been prosecuted by the Court and his reputation is still being tarnished to this day in Côte d'Ivoire.⁵⁸ *Second*, Mr Blé Goudé's political career has stalled. The proceedings against Mr Blé Goudé before the Court have served as a Trojan horse for his political opponents and were used against him in order to eliminate him from the Ivorian political scene. Indicative of the situation [REDACTED]. [REDACTED].⁵⁹ This not only [REDACTED], but also has a ripple effect on other aspects of Mr Blé Goudé's life, such as receiving the Covid-19 vaccine, which has been impossible since [REDACTED]. It is striking that

spent in police custody, clinical observation or pretrial detention. These damages shall include loss other than pecuniary loss".

⁵⁶ De Rechtspraak, Oriëntatiepunten voor straftoemeting en LOVS-afspraken (July 2021), pages 27-28, <https://www.rechtspraak.nl/SiteCollectionDocuments/Oriëntatiepunten-en-afspraken-LOVS.pdf> (last accessed 23/08/2021).

⁵⁷ See for example *Hasselbaink v. The Netherlands*, App no. 73329/16 (ECHR, 9 February 2021), para. 25, where the Rotterdam Regional Court found that part of the applicant's detention had been particularly impactful on his life and had had relatively above-average consequences. It therefore found that reasons in equity entailed that the standard amount of compensation per day be double in respect of this period; see also European Judicial Network, Regional meeting 'Compensation after detention based on an EAW', (Paris, 22 September 2017), page 9, https://www.ejn-crimjust.europa.eu/ejnupload/RM17/NL_Report_Regional_2017.pdf (last accessed 24/08/2021).

⁵⁸ See for example Le Pays, « Manif du Collectif des Victimes de la Crise Post-Électorale en RCI », 10 May 2021, <https://lepays.bf/manif-du-collectif-des-victimes-de-la-crise-post-electorale-en-rci/> (last accessed 25/05/2021); Abidjan.Net, « Réconciliation nationale : des victimes de la crise post-électorale de 2011 demandent à la justice d'agir contre les acteurs de violence », 10 May 2021, <https://news.abidjan.net/h/691984.html> (last accessed 25/05/2021); Koaci, « Côte d'Ivoire : Retour de Gbagbo, que peut réellement faire Issiaka Diaby « ennemi » de la de la Réconciliation ou homme de « Justice » ?, 20 May 2021, https://www.koaci.com/article/2021/05/20/cote-divoire/politique/cote-divoire-retour-de-gbagbo-que-peut-reellement-faire-issiaka-diaby-ennemi-de-la-reconciliation-ou-homme-de-justice_151118.html (last accessed 25/05/2021).

⁵⁹ Registry's Report, paras 13-22.

while [REDACTED] have been vaccinated, Mr Blé Goudé as an acquitted person [REDACTED] is not.

44. *Third*, Mr Blé Goudé's personal and family life has been affected. For all these years, Mr Blé Goudé was far away from his home country, absent from the lives of his children who needed him the most, and has suffered major losses. At the same time, he had to live in constant agony about his future because of a case that should have never been brought before the Court in the first place.

45. All of the above need to be taken into consideration when determining the amount of compensation to be awarded to Mr Blé Goudé pursuant to Rule 175. Moreover, in light of the Dutch model for calculation of compensation, the gravity of the charges against Mr Blé Goudé and the impact the proceedings against him had on his personal and professional life justify an increased amount of compensation.

b. Calculation of compensation

46. Pursuant to the aforementioned Dutch method for the calculation of the amount of compensation, the basis for the calculation is the number of days spent in detention. In Mr Blé Goudé's case, there are three distinct periods that should be taken into account when determining the total number of days.

47. The first period started with Mr Blé Goudé's surrender to the court on 22 March 2014 and lasted until his release on conditions on 1 February 2019 pursuant to the Appeals Chamber's "Judgement on the Prosecutor's appeal against the oral decision of Trial Chamber I pursuant to article 81(3)(c)(i) of the Statute".⁶⁰ That period corresponds to 1778 days.⁶¹

48. The second period started on 1 February 2019, the day Mr Blé Goudé was released from the Detention Centre, until 31 March 2021, when the Appeals Chamber confirmed Mr Blé

⁶⁰ ICC-02/11-01/15-1251-Conf.

⁶¹ In determining the number of days the applicant spent in detention, both the day on which the remand in custody commenced and the day of release are remunerated according to the criterion of a full day, see De Rechtspraak, Oriëntatiepunten voor straftoemeting en LOVS-afspraken (July 2021), page 28, <https://www.rechtspraak.nl/SiteCollectionDocuments/Orientatiepunten-en-afspraken-LOVS.pdf> (last accessed 23/08/2021).

Goudé's acquittal and revoked the conditions of his release.⁶² During that time and due to the unwillingness of States to receive Mr Blé Goudé in their territory while the Prosecution's appeal was pending, Mr Blé Goudé spent 790 days [REDACTED]. [REDACTED]. [REDACTED].

49. [REDACTED]. Despite being acquitted, Mr Blé Goudé [REDACTED] and was not allowed to make any public statement, directly or indirectly, about the case or be in contact with the public or speak to the press about the case.⁶³ Even after the Appeals Chamber's decision on Laurent Gbagbo's request for reconsideration of the conditions, which revoked some of the conditions pending the appeal,⁶⁴ [REDACTED].⁶⁵

50. According to the established jurisprudence of the European Court of Human Rights, [REDACTED] amounts to deprivation of liberty within the meaning of Article 5 of the ECHR.⁶⁶ The fact that the aforementioned conditions were imposed on an acquitted person while the Prosecution was pursuing an appeal for a case that should never have reached that stage, makes the continued violation of Mr Blé Goudé's rights even more flagrant. Therefore, the Defence submits that the 790 days of conditional release need to be added to the 1778 days Mr Blé Goudé spent in detention.

51. The 31st March 2021 marks the beginning of the third period; after the Appeals Chamber's decision confirming the acquittal and revoking all conditions, Mr Blé Goudé was supposed to be a free man, able to fully enjoy his rights and freedoms, and most importantly, return to his family. The reality, however, was much different.

⁶² Acquittal Decision, para. 381.

⁶³ *Prosecutor v. Laurent Gbagbo and Charles Blé Goudé*, Blé Goudé Defence Request to modify the conditions of his release, 10 December 2019, ICC-02/11-01/15-1293-Conf-Exp, para. 8; *Prosecutor v. Laurent Gbagbo and Charles Blé Goudé*, Judgment on the Prosecutor's appeal against the oral decision of Trial Chamber I pursuant to article 81(3)(c)(i) of the Statute, 1 February 2019, ICC-02/11-01/15-1251-Conf, para. 63.

⁶⁴ *Prosecutor v. Laurent Gbagbo and Charles Blé Goudé*, Decision on counsel for Mr Gbagbo's request for reconsideration of the 'Judgment on the Prosecutor's appeal against the oral decision of Trial Chamber I pursuant to article 81(3)(c)(i) of the Statute' and on the review of the conditions on the release of Mr Gbagbo and Mr Blé Goudé, 28 May 2020, ICC-02/11-01/15-1355-Conf, para. 66.

⁶⁵ [REDACTED].

⁶⁶ *Buzadji v. the Republic of Moldova*, App no. 23755/07 (ECHR, 5 July 2016), paras 103-104; *Mancini v. Italy*, App no. 44955/98 (ECHR, 12 December 2001), para. 17; *Lavents v. Latvia*, App no. 58442/00 (ECHR, 28 November 2002), paras 64-66; *Nikolova v. Bulgaria (no. 2)*, App no. 40896/98, (ECHR, 30 September 2004), para. 60; *Ninescu v. the Republic of Moldova*, App no. 47306/07 (ECHR, 15 July 2014), para. 53; and *Delijorgji v. Albania*, App no. 6858/11 (ECHR, 28 April 2015), para. 75.

[REDACTED].⁶⁷ Aware of the toll the prolongation of this situation would have on Mr Blé Goudé, [REDACTED]. [REDACTED].

52. In light of the above, the calculation of Mr Blé Goudé's compensation should be as follows:

First period	1.778 days
Second period	790 days
Third period	163 days⁶⁸
Total of days	2.731 days

53. The amount of compensation resulting from the multiplication of the total number of days to 100 euros per day⁶⁹ amounts to 273.100 euros. As elaborated previously, the grave and manifest miscarriage of justice Mr Blé Goudé has suffered due to his wrongful prosecution had a serious impact on his personal and professional life, hence an increased amount of compensation is appropriate. Based on these aggravating factors, and based on the calculation for compensation in the Host State, the Defence submits that Mr Blé Goudé should be awarded three times the amount of compensation, i.e. a total of 819.300 euros.

54. In the alternative, if the Chamber were to find that the miscarriage of justice took place at a later stage, i.e. on 19 March 2018 when the Prosecution submitted its Trial Brief in which it did not reevaluate its case against Mr Blé Goudé, then the calculation should be as follows:

First period	320 days⁷⁰
Second period	790 days
Third period	163 days

⁶⁷ [REDACTED].

⁶⁸ The days of the third period were calculated from the day the Appeals Chamber's decision was rendered, i.e. 31 March 2021, until the day the present request is filled, i.e. 09 September 2021. Given that Mr Blé Goudé's transfer from the Host State is still uncertain and he continues to be subject to conditions, the Defence reserves its right to file an amendment to the Request, to reflect the additional days spent until his safe transfer.

⁶⁹ De Rechtspraak, Oriëntatiepunten voor straftoemeting en LOVS-afspraken (July 2021), pages 27-28, <https://www.rechtspraak.nl/SiteCollectionDocuments/Orientatiepunten-en-afspraken-LOVS.pdf> (last accessed 23/08/2021).

⁷⁰ Calculated from 19 March 2018, the day the Prosecution filed its Trial Brief, until 1 February 2019, when Mr Blé Goudé was released on conditions.

Total of days

1.273 days

55. Consequently, the amount of compensation resulting from the multiplication of the total number of days to 100 euros per day amounts to 127.300 euros, which, multiplied by three due to the gravity of the case, amounts to a total of 381.900 euros.

56. The post-election crisis in Côte d'Ivoire has created a deep division among the population and has affected the lives of thousands. Mr Blé Goudé is fully committed to working for a real reconciliation that would allow the country to turn the page of its hurtful past and enter a new era of peace and unity. Besides humbly asking for forgiveness from his Ivorian brothers and sisters for the violence of the past which happened in his country and to those whom he may have hurt or offended,⁷¹ which is not be read as “criminally hurt or offended”, Mr Blé Goudé wishes to contribute in the near future to the transitional process in Côte d'Ivoire. For this reason and in the event the Court does award Mr Blé Goudé compensation, irrespective of its total amount, Mr Blé Goudé would like to use part of the proceeds to assist all the victims of the post-election violence in Côte d'Ivoire.

57. Lastly, pursuant to Rule 174(2), “[a] hearing shall be held if the Prosecutor or the person seeking compensation so requests”. The Defence hereby requests for the scheduling of a public hearing to allow the Defence to present Mr Blé Goudé’s experience and the full extent of the suffering he was subjected due to the Prosecution’s lack of due diligence which amounts to a grave and manifest miscarriage of justice. Since its inception, the present case, which has tarnished Mr Blé Goudé’s reputation, has been widely covered in the media and the people of Côte d'Ivoire continue to have a great interest in it. It is therefore the Defence’s firm belief that the Ivorian public opinion should to be part of this final stage of the proceedings.

VII. RELIEF SOUGHT

58. In light of the above, the Defence respectfully requests the Chamber to

a) **SCHEDULE** a hearing pursuant to Rule 174(2);

⁷¹ France 24, « Je demande pardon aux Ivoiriens, répète Charles Blé Goudé », 1 April 2021, <https://www.france24.com/fr/%C3%A9missions/l-entretien/20210401-je-demande-pardon-aux-ivoiriens-r%C3%A9p%C3%A8te-charles-bl%C3%A9-goud%C3%A9> (last accessed 26/08/2021).

- b) **GRANT** the present request for compensation;
- c) **AWARD** the amount of 819.300 euros to Mr Blé Goudé for the grave and manifest miscarriage of justice he has suffered; **OR** in the alternative
- d) **AWARD** the amount of 381.900 euros to Mr Blé Goudé for the grave and manifest miscarriage of justice he has suffered.

Respectfully submitted,



Mr Knoops, Lead Counsel

Dated this

09 September 2021,

At The Hague, the Netherlands