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No.: ICC-02/11-02/11

Date: 1 August 2014

PRE-TRIAL CHAMBER I

Before: Judge Silvia Fernández de Gurmendi, Single Judge

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

**Public
With confidential Annex**

**Second Decision on victims' participation in the pre-trial proceedings
and related issues**

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

The Office of the Prosecutor

Fatou Bensouda

James Stewart

Counsel for the Defence

Nicholas Kaufman

Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

Paolina Massidda

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

States Representatives

Amicus Curiae

REGISTRY

Registrar

Herman von Hebel

Detention Section

Victims and Witnesses Unit

Others

**Victims Participation and Reparations
Section**

Fiona McKay

Judge Silvia Fernández de Gurmendi, Single Judge for Pre-Trial Chamber I of the International Criminal Court, responsible for carrying out the functions of the Chamber in relation to the situation in the Republic of Côte d'Ivoire and the cases emanating therefrom,¹ issues this second decision on victims' participation in the pre-trial proceedings and related issues.

I. Procedural History

1. On 27 March 2014, Charles Blé Goudé ("Mr Blé Goudé") made his initial appearance before the Single Judge.² On this occasion, the Single Judge set the date of the commencement of the confirmation of charges hearing at 18 August 2014.³

2. On 11 June 2014, the Single Judge issued the "Decision on victims' participation in the pre-trial proceedings and related issues" (the "First Decision on Victims"), in which the Single Judge admitted, as victims in the present case, 199 victims already participating in the case *The Prosecutor v. Laurent Gbagbo*,⁴ on the basis that "the subject-matter of the present case appears to be the same of that of the *Gbagbo* Case as the same crimes are alleged in both cases and the same four incidents support the charges against the two suspects".⁵ The Single Judge also appointed the Office of Public Counsel for Victims (the "OPCV") as common legal representative of these victims, and conferred to the latter a number of rights to be exercised through the common legal representative.⁶

¹ Decision designating a single judge, 16 March 2012, ICC-02/11-02/11-9-tENG.

² ICC-02/11-02/11-T-3-CONF-ENG. A public redacted version is also available, see ICC-02/11-02/11-T-3-Red-ENG.

³ ICC-02/11-02/11-T-3-Red-ENG, p. 12, lines 9-16.

⁴ ICC-02/11-02/11-83, pp. 19-20.

⁵ ICC-02/11-02/11-83, para. 15.

⁶ ICC-02/11-02/11-83, pp. 20-22.

3. On 11 July 2014, the Single Judge issued the “Decision on the ‘Prosecution’s Request for Variation of Time Limits Pursuant to Regulation 35 concerning the Confirmation of Charges’”,⁷ in which she postponed the commencement of the hearing on the confirmation of charges to Monday, 22 September 2014.⁸

4. On 30 June 2014⁹ and 10 July 2014,¹⁰ respectively, the Registrar transmitted to the Chamber and the parties a total of 277 applications for victims’ participation in the present case.

II. Applicable Law and Single Judge’s Determination

5. The Single Judge notes articles 67 and 68 of the Rome Statute (the “Statute”), rules 16, 85, 86 and 89 to 92 of the Rules of Procedure and Evidence (the “Rules”) and regulation 86 of the Regulations of the Court (the “Regulations”).

(i) Whether the applicants meet the requirements of rule 85 of the Rules

6. At the outset, the Single Judge clarifies that for the purpose of assessing the 277 applications for victims’ participation, she refers to the established jurisprudence of the Court with regard to the requirements to be fulfilled under rule 85 of the Rules.¹¹ The Single Judge recalls that she has evaluated the applications against the backdrop of the authoritative document that frames the scope of the case at this stage of the proceedings, namely the “Decision on the Prosecutor's Application Pursuant to Article 58 for a warrant

⁷ ICC-02/11-02/11-108-Red.

⁸ ICC-02/11-02/11-108-Red, p. 7.

⁹ ICC-02/11-02/11-95 and its confidential *ex parte* and confidential redacted annexes.

¹⁰ ICC-02/11-02/11-104 and its confidential *ex parte* and confidential redacted annexes.

¹¹ See ICC-02/11-02/11-83, para. 13 and the jurisprudence referred to in footnote 19.

of arrest against Charles Blé Goudé”¹² (the “Article 58 Decision”) and the “Warrant of Arrest for Charles Blé Goudé”¹³ (the “Warrant of Arrest”) pending the submission by the Prosecutor of the Document Containing the Charges (the “DCC”) pursuant to article 61(3) of the Statute and rule 121(3) of the Rules. In this regard, the Single Judge underlines that, should the Prosecutor decide to modify, in her DCC, the parameters of the case, this may impact the assessment of some of the victims admitted to date in the present case.

7. On the basis of such assessment, the Single Judge has concluded that all applicants fulfil the criteria of rule 85(a) of the Rules and, thus, qualify as victims in the present case, subject to the considerations made hereunder. The individual assessment of the applications for victims’ participation is contained in the confidential Annex attached to the present decision.

8. With regard to the 277 applicants dealt with in the present decision, the Single Judge underlines that a certain number of applications present minor discrepancies, most notably between identifying information provided in the application form and the attached document(s).¹⁴ In all these cases, the Single Judge has taken into account the nature of such discrepancies and, unless otherwise stated in the individual assessment in the Annex to the present decision, these have been considered not capable of undermining the identity of the applicants and/or the veracity of the information provided.

9. The Single Judge observes that some applicants stated, in their application forms, that they applied for participation on behalf of deceased

¹² Pre-Trial Chamber III, “Decision on the Prosecutor’s Application Pursuant to Article 58 for a warrant of arrest against Charles Blé Goudé”, ICC-02/11-02/11-3, 6 January 2012.

¹³ Pre-Trial Chamber III, “Warrant of Arrest for Charles Blé Goudé”, ICC-02/11-02/11-1, 21 December 2011.

¹⁴ See for example applicants a/10127/14, a/10132/14, a/10157/14, a/10252/14 and a/10009/14.

relatives, pursuant to rule 89(3) of the Rules.¹⁵ In these instances, the Single Judge has considered the applicants as indirect victims of the crimes as they clearly claim to have suffered personal harm as a result of the victimization of their family member(s).¹⁶

10. Conversely, a limited number of applicants applied for participation with the consent of or on behalf of victims who are not deceased, pursuant to rule 89(3) of the Rules.¹⁷ In these instances, in order for the applications to be considered complete, the Single Judge has evaluated whether the identities of both the victim and the person acting on behalf of or with the consent of the victim are duly established, as well as the relationship between them in case the application is submitted on behalf of a child or a disabled person.¹⁸

11. Further, the Single Judge observes that a number of applicants submitted two application forms, thereby receiving two victim codes, because they made the following claims: (i) as direct victims as well as acting on behalf of another victim, under rule 89(3) of the Rules;¹⁹ (ii) as direct victims of crimes for which the suspect allegedly bears individual criminal responsibility and as indirect victims as a result of the harm suffered by a family member;²⁰ or (iii) as indirect victims as a result of the harm(s) suffered by two distinct family members.²¹ In the cases mentioned under (i), the Single Judge is of the view

¹⁵ See for example applicants a/20089/13, a/10144/14, a/10145/14, a/10146/14.

¹⁶ See also "Second decision on victims' participation at the confirmation of charges hearing and in the related proceedings", ICC-02/11-01/11-384-Corr, 8 February 2013, para. 39.

¹⁷ See for example applicant a/10039/14 and a/20091/13.

¹⁸ See for example Pre-Trial Chamber I, "Decision on victims' participation and victims' common legal representation at the confirmation of charges hearing and in the related proceedings", ICC-02/11-01/11-138, 4 June 2012, para. 26.

¹⁹ See for example applicant a/10040/14 (who also applied as a/10039/14) and a/20090/13 (who also applied as a/20091/13).

²⁰ See for example applicants a/10116/14 (who also applied as a/10129/14) and a/10155/14 (who also applied as a/10154/14).

²¹ See for example applicants a/10194/14 (who also applied as a/10195/14), a/10192/14 (who also applied as a/10149/14), a/10147/14 (who also applied as a/10189/14) and a/10150/14 (who also applied as a/10151/14).

that an applicant can retain two distinct victim codes, as he or she will participate in the present proceedings on his/her own behalf and, at the same time, on behalf or with the consent of another victim. Accordingly, these applications have been assessed separately.

12. To the contrary, in all instances under (ii) and (iii), the Single Judge has assessed the applications jointly, on the basis that one and the same applicant may claim harm as a result of a direct harm and an indirect harm, in so far as these harms arise from the commission of crimes for which the suspect allegedly bears individual criminal responsibility. Accordingly, for reasons of efficiency in keeping track of the victims in the present case, the Single Judge instructs the Victims Participation and Reparations Section (the “VPRS”) to assign only one victim code to these applicants and to notify the Chamber and the parties accordingly. The Single Judge clarifies that, as a result of the joint assessment referred to in this paragraph, the final number of applicants admitted as victims in the present case is lower than the number of applications received, although all applicants qualify as victims pursuant to rule 85(a) of the Rules.

13. In some cases, applicants claim to have suffered harm as a result of conduct that does not underlie the crimes for which the suspect allegedly bears individual criminal responsibility, such as pillaging.²² The Single Judge considers, as anticipated above, that 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. Nevertheless, in all such instances, applicants also claimed harm as a result of conduct that constitutes crimes reflected in the Article 58 Decision and in the Warrant of Arrest. Therefore and taken into account that all other conditions

²² See for example applicant a/10227/14, a/10228/14 and a/10229/14.

appear to be met, these applicants also qualify as victims under rule 85(a) of the Rules.

(i) Participation of victims at the confirmation of charges hearing and in related proceedings

i. Common legal representation of victims admitted in the present case

14. In the First Decision on Victims, the Single Judge appointed the OPCV as common legal representative of the 199 victims admitted, based on considerations of efficiency and expertise that the OPCV can offer in the representation of victims at this stage of the proceedings.

15. With a view to ensuring the meaningful and efficient participation of the victims admitted by the present decision, the Single Judge considers it appropriate to extend the mandate of the OPCV as common legal representative of the victims hereby admitted to participate in the confirmation of charges hearing and the related proceedings in the present case.

ii. Victims' participatory rights

16. In the First Decision on Victims, the Single Judge conferred a series of rights to the victims participating in the present proceedings, pursuant to article 68(3) of the Statute, which provides that:

“[w]here the personal interests of the victims are affected, the Court shall permit their views and concerns to be presented and considered at stages of the proceedings determined to be appropriate by the Court and in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.”

17. The Single Judge also recalls that, alongside article 68(3) of the Statute, other provisions explicitly grant certain rights to victims that they can exercise through their legal representative, at the confirmation of charges hearing and

in the related proceedings. The Single Judge will hereunder briefly recall these procedural rights, in line with the First Decision on Victims.²³ This is, however, without prejudice to any other rights that the Chamber may grant to them in the course of the proceedings either *proprio motu* or upon specific request submitted by their legal representative.

a. Attendance and participation at the confirmation of charges hearing

18. Pursuant to rule 91(2) of the Rules, the common legal representative of victims has the right to attend all public sessions of the confirmation of charges hearing as well as all public hearing convened in the related proceedings. The common legal representative shall also be entitled to have access to the transcripts of any such hearings.

19. In the event that the Chamber decides to hold parts of the confirmation hearing *in camera* or *ex parte*, it retains the option to decide, on a case-by-case basis, whether to authorise, *proprio motu* or upon request, the common legal representative to attend those sessions. The same applies to any other *ex parte* or *in camera* hearing convened in the present case. Likewise, the common legal representative shall also be given access to the transcripts of any such hearings to which she has been authorised to attend.

20. In addition, pursuant to rule 89(1) of the Rules, the common legal representative is entitled to make opening and closing statements at the confirmation of charges hearing in compliance with the schedule to be issued by the Single Judge before the commencement of such hearing.

21. The Single Judge further considers that upon request specifying why and how the victims' personal interests are affected by the issues concerned, the common legal representative may be authorised to make oral submissions

²³ ICC-02/11-02/11-83, paras. 26-38.

during the confirmation of charges hearing, subject to any direction given by the Chamber. In its determination, the Chamber will take into consideration, *inter alia*, the stage of the proceedings, the nature of the issue(s) at stake, the rights of the suspect and the principle of fairness and expeditiousness of the proceedings.

b. Access to the public record of the case

22. Rule 121(10) of the Rules states that victims or their legal representative may, subject to any restrictions concerning confidentiality and the protection of national security information, consult the record of all proceedings before the Chamber as created and maintained by the Registrar. Furthermore, according to rule 92(5) and (6) of the Rules, victims' legal representatives shall be notified of the proceedings before the Chamber.

23. Accordingly, the common legal representative of the victims authorised to participate at the pre-trial stage of the present case has the right, during the confirmation hearing and in the related proceedings, to:

- (i) have access to all public filings and public decisions contained in the record of the case;
- (ii) be notified on the same basis as the Prosecutor and the Defence of all public requests, submissions, motions, responses and other procedural documents which are filed as public in the record of the case;
- (iii) be notified of the decisions of the Chamber in the proceedings;
- (iv) have access to the transcripts of hearings held in public sessions;

- (v) be notified on the same basis as the Prosecutor and the Defence of all public proceedings before the Court, including the date of hearings and any postponements thereof, and the date of delivery of the decision; and
- (vi) have access to the public evidence filed by the Prosecutor and the Defence pursuant to rule 121 of the Rules and contained in the record of the case. Such right is, however, subject to the format (*i.e.* unredacted versions, redacted versions or summaries, as well as electronic versions with the *metadata* required by the e-Court Protocol) in which such evidence has been made available to either party.

24. The Single Judge recalls, however, that if a party to or a participant in the present proceedings wishes to notify their own filing classified as confidential to the common legal representative, it may do so by including in the said document the name of the common legal representative to be notified. The Registrar shall notify the parties and the participants accordingly.

25. In relation to those filings that are marked confidential and are not notified to the common legal representative under the conditions set forth in the previous paragraph, the Chamber retains the option to decide on a case-by-case basis, either *proprio motu* or upon specific request, whether to grant the common legal representative access thereto.

26. Finally, the Single Judge decides that, in order for the common legal representative to discharge her duties, she shall be granted access to the redacted and unredacted copies of the applications for participation

submitted by the victims hereby admitted to participate at the confirmation of charges hearing and in the related proceedings.

c. Filing of written submissions

27. In accordance with regulation 24 of the Regulations, the victims' legal representatives are also entitled to file written motions, responses and replies in relation to all matters for which the Statute and the Rules do not exclude their intervention and for which the Chamber has not limited their participation either *proprio motu* or at the request of a party, the Registrar or any other participant.

28. Accordingly, the Single Judge considers that the common legal representative of the victims admitted to participate by the present decision may be authorised by the Chamber to make written submissions on specific issues of law and/or fact. This right may be exercised upon the conditions that (i) the legal representative proves, by way of an application to that effect, that the victims' personal interests are affected by the issue(s) at stake; and (ii) the Chamber deems it appropriate, in light of, *inter alia*, the stage of the proceedings, the nature of the issue(s) concerned, the rights of the suspect and the principle of fairness and expeditiousness of the proceedings.

iii. Issue related to victim a/20163/12

29. The Single Judge notes that victim a/20163/12, who was admitted to participate in the present case by the First Decision on Victims, is deceased.²⁴ In light of these circumstances, the Single Judge considers it appropriate to terminate his status of victim participating in the present case.

²⁴ ICC-02/11-02/11-62-Anx1, para. 6.

FOR THESE REASONS, THE SINGLE JUDGE HEREBY

DECIDES to admit the following applicants as victims participating at the confirmation of charges hearing and in the related proceedings:

- in the group attacks on RTI demonstrations: a/10000/14, a/10004/14, a/20075/13, a/20077/13, a/20076/13, a/20079/13, a/10005/14, a/10006/14, a/10007/14, a/10009/14, a/10010/14, a/10029/14, a/10041/14, a/10031/14, a/10032/14, a/10033/14, a/10034/14, a/10035/14, a/10036/14, a/10037/14, a/10038/14, a/10098/14, a/10101/14, a/10103/14, a/10106/14, a/10107/14, a/10108/14, a/10001/14; a/10110/14, a/10111/14, a/10112/14, a/10113/14, a/10114/14, a/10115/14, a/10116/14, a/10118/14, a/10120/14, a/10121/14, a/10123/14, a/10125/14, a/10126/14, a/10127/14, a/10128/14, a/10130/14, a/10132/14, a/10136/14, a/10137/14, a/10138/14, a/10139/14, a/10140/14, a/10141/14, a/10142/14, a/10156/14, a/10157/14, a/10159/14, a/10160/14, a/10177/14, a/10179/14, a/10180/14, a/10181/14, a/10182/14, a/10218/14, a/10219/14, a/10222/14, a/10224/14, a/10225/14, a/10227/14, a/10228/14, a/10229/14, a/10230/14, a/10235/14, a/10236/14, a/10237/14, a/10240/14, a/10242/14, a/10243/14;

- in the group attack on women's march in Abobo: a/20085/13, a/20086/13, a/20096/13, a/20097/13, a/20098/13, a/20099/13, a/20100/13, a/20101/13, a/20102/13, a/20103/13, a/20104/13, a/20105/13, a/20106/13, a/20107/13, a/20108/13, a/20109/13, a/20110/13, a/20111/13, a/20112/13, a/10003/14, a/10008/14, a/10016/14, a/10017/14, a/10018/14, a/10019/14, a/10020/14, a/10021/14, a/10022/14, a/10023/14, a/10024/14, a/10025/14, a/10026/14, a/10027/14, a/10028/14, a/10030/14, a/10046/14, a/10040/14, a/10042/14, a/10043/14, a/10044/14, a/10045/14, a/10047/14, a/10048/14, a/10049/14, a/10050/14, a/10051/14, a/10052/14, a/10053/14, a/10054/14, a/10055/14,

a/10056/14, a/10058/14, a/10039/14, a/10059/14, a/10060/14, a/10061/14,
a/10062/14, a/10063/14, a/10064/14, a/10065/14, a/10066/14, a/10067/14,
a/10068/14, a/10069/14, a/10070/14, a/10071/14, a/10072/14, a/10073/14,
a/10074/14, a/10075/14, a/10076/14, a/10077/14, a/10078/14, a/10079/14,
a/10080/14, a/10081/14, a/10082/14, a/10083/14, a/10084/14, a/10085/14,
a/10086/14, a/10087/14, a/10088/14, a/10089/14, a/10090/14, a/10091/14,
a/10092/14, a/10093/14, a/10094/14, a/10095/14, a/10096/14, a/10097/14,
a/10099/14, a/10100/14, a/10102/14, a/10104/14, a/10105/14, a/10109/14,
a/20010/13, a/20084/13; a/10117/14, a/10119/14, a/10122/14, a/10131/14,
a/10133/14, a/10134/14, a/10158/14, a/10167/14, a/10203/14, a/10204/14,
a/10205/14, a/10208/14, a/10213/14, a/10214/14, a/10215/14, a/10217/14,
a/10220/14, a/10221/14, a/10223/14, a/10226/14, a/10234/14, a/10238/14,
a/10239/14, a/10241/14, a/10244/14, a/10245/14;

- in the group Abobo market shelling: a/20081/13, a/20082/13, a/20083/13,
a/20087/13, a/20088/13, a/20089/13, a/20090/13, a/20091/13, a/20092/13,
a/20093/13, a/20094/13, a/20095/13, a/10002/14, a/10011/14, a/10012/14,
a/10013/14, a/10014/14, a/10015/14; a/10124/14, a/10135/14, a/10178/14,
a/10206/14, a/10207/14, a/10216/14;

- in the group Yopougon massacre: a/20038/13, a/10129/14, a/10143/14,
a/10144/14, a/10145/14, a/10146/14, a/10147/14,²⁵ a/10148/14, a/10149/14,²⁶
a/10150/14,²⁷ a/10152/14, a/10153/14, a/10154/14,²⁸ a/10161/14, a/10162/14,
a/10163/14, a/10164/14, a/10165/14, a/10166/14, a/10184/14, a/10185/14,
a/10186/14, a/10187/14, a/10188/14, a/10191/14, a/10193/14, a/10194/14,²⁹

²⁵ Assessed jointly with a/10189/14, in accordance with paragraph 12 of the present decision.

²⁶ Assessed jointly with a/10192/14, in accordance with paragraph 12 of the present decision.

²⁷ Assessed jointly with a/10151/14, in accordance with paragraph 12 of the present decision.

²⁸ Assessed jointly with a/10155/14, in accordance with paragraph 12 of the present decision.

²⁹ Assessed jointly with a/10195/14, in accordance with paragraph 12 of the present decision.

a/10196/14, a/10197/14, a/10198/14, a/10199/14, a/10200/14, a/10201/14, a/10202/14, a/10209/14, a/10210/14, a/10211/14, a/10212/14, a/10231/14, a/10232/14, a/10233/14, a/10246/14, a/10247/14, a/10252/14, a/10254/14, a/10261/14;

DECIDES to appoint the OPCV as the common legal representative of all victims admitted to participate in the proceedings by the present decision;

ORDERS the Registrar to transmit to the common legal representative of victims redacted and unredacted copies of the applications of victims admitted to participate in the proceedings by the present decision;

GRANTS the common legal representative of victims the right to attend all public sessions of the confirmation of charges hearing as well as all public hearings convened in the related proceedings;

GRANTS the common legal representative of victims the right to make brief opening and closing statements at the confirmation of charges hearing in accordance with the schedule thereof;

ORDERS the Registrar to provide the common legal representative of victims with access to the public record of the case, including public evidence disclosed by the parties;

ORDERS the Registrar to notify the common legal representative of victims of all public decisions and filings;

ORDERS the parties and participants in the proceedings to refer to the applicants only by the numbers assigned to them by the Registrar;

DECIDES to terminate the status of applicant a/20163/12 as victim in the present proceedings.

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



Judge Silvia Fernández de Gurmendi
Single Judge

Dated this Friday, 1 August 2014

At The Hague, The Netherlands