

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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Date: 7 March 2016

TRIAL CHAMBER I

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

SITUATION IN CÔTE D'IVOIRE

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

Public Document

**Communication of the Common Legal Representative
concerning the non-disclosure to the Defence of
the identity of participating victims**

Source: Office of Public Counsel for Victims

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

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Unrepresented Victims

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(Participation/Reparation)**

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I. Introduction

1. On 7 January 2016, Trial Chamber I issued the Decision on participation of victims at trial, authorising 258 new victims to participate in the proceedings and instructing, *inter alia*, the Registry, in consultation with the Legal Representative of Victims (the “Legal Representative”), to contact all participating victims to ascertain whether they have an objection to the disclosure of their identities to the Defence, and, if so, the reasons for such non-disclosure.¹

2. On 13 January 2016, the Legal Representative informed the Chamber by e-mail that she had already consulted the 468 victims previously authorised to participate at trial on the matter and she was able to report their concerns to the Chamber. She also indicated that in relation to the newly authorised 258 victims, she was of the opinion that they should be consulted by their counsel and not by the Registry about the disclosure of their identity.²

3. On 27 January 2016, the Presiding Judge clarified by e-mail that it was not necessary to further approach the 468 victims already consulted by the Legal Representative on the matter and that it was for the Legal Representative to consult with the new clients about the legal issue of the disclosure of their identity.³

4. Following consultation with the victims she represents, the Legal Representative informs the Chamber that all victims have expressed their wish to not disclose their identity to the Defence for the reasons explained *infra*.

5. The present Communication concerns all participating victims with the exception of the ones enjoying the dual status of participating victims and Prosecution’s witnesses for whom the identity has already been disclosed to the

¹ See the “Decision on victims’ participation status” (Trial Chamber I), No. ICC-02/11-01/15-379, 7 January 2016, p. 23.

² See the e-mail sent by the LRV to the Chamber on 13 January 2016 at 12h45.

³ See the e-mail sent by the Legal Officer of the Chamber to the LRV on 27 January 2016 at 11h20.

Defence (namely, a/20008/12, a/20009/12, a/20012/12, a/20016/12, a/20019/12, a/20021/12, a/20082/12, a/20086/12, a/20090/12, a/20091/12, a/20092/12, a/20108/12, a/20128/12, a/20002/13, a/20044/13, a/20063/13, a/20067/13, a/10157/14, a/10212/14, a/10261/14, a/25130/15 and 25211/15).

II. Reasons for non-disclosure of the victims' identity to the Defence

6. As a preliminary remark, the Legal Representative notes that, in accordance with the jurisprudence of the Court, protective measures for victims are often the legal means by which the Court can secure their participation in the proceedings. Such measures do not constitute favours but are instead the rights of victims, enshrined in article 68(1) of the Rome Statute.⁴

7. Indeed, in accordance with the practice of the Court, the legal basis for the non-disclosure of identifying information of the victims is to be found in article 68(1) of the Rome Statute, which mandates the Court to take appropriate measures to protect, *inter alia*, the safety, privacy, physical and psychological well-being of the victims.⁵

8. For the purposes of preparation for trial, the Legal Representative has undertaken several missions in the field between October and December 2015 to consult with her clients, *inter alia*, on the issue of the disclosure of their identity to the Defence. At the end of February 2016 she undertook a mission in the field to meet with the newly admitted victims she represents and on that occasion she also

⁴ See the "Decision on victims' participation" (Trial Chamber I), No. ICC-01/04-01/06-1119, 18 January 2008, paras. 128-129. See also the "Decision defining the status of 54 victims who participated at the pre-trial stage, and inviting the parties' observations on applications for participation by 86 applicants" (Trial Chamber III), No. ICC-01/05-01/08-699, 22 February 2010, para. 24.

⁵ See, *inter alia*, the "Decision on Victims' Participation at the Confirmation of Charges Hearing and in the Related Proceedings" (Pre-Trial Chamber II, Single Judge), No. ICC-01/09-01/11-249, 5 August 2011, paras. 108-113; and the "Decision on victims' participation at the confirmation of charges hearing and in the related proceedings" (Pre-Trial Chamber II), No. ICC-01/04-02/06-211, 15 January 2014, paras. 45-46.

consulted with them with regard to the issue pertaining to the disclosure of their identity to the Defence.

9. In this regard, all victims expressed the view that the situation on the ground is still volatile and that the start of the trial has triggered reactions from the supporters of the Accused. As a result, in different areas where they reside, demonstrations took place. More generally, victims indicated that the pro-Gbagbo network is very active and able to mobilise his supporters. Therefore, there is a risk that violence increases in the neighbourhoods where they live, worsening their security situation. Indeed, they reiterated that they live in places where also pro-Gbagbo supporters live and this mixed environment continues to be source of tensions amongst the different communities.

10. The victims also explained that they were targeted because they are perceived as supporters of Mr Ouattara by reason of their ethnicity, religion, place of residence or type of occupation and that this perception persists. The recollection of what happened to them is still vivid in their memory despite the lapse of 5 years and they do not wish to risk that further crimes be perpetrated if their identity is known. This choice is also dictated by their willingness to protect their children and ensure that they will not go through the events they suffered, and are still suffering, from.

11. A particular concern has been expressed because of the extensive coverage of the trial by the media, which amplifies - in the words of the victims - what happens in the courtroom. Moreover, social networks are used to comment extensively about the trial and often contain speculations about the proceedings, including about names of witnesses or victims.

12. Victims also indicated that they understand that none of the details which could lead to their identification will be disclosed to the Defence without their consent.

13. Finally, victims expressed serious concerns about what happened in the courtroom on 5 February 2016, where the names of several Prosecution witnesses were inadvertently disclosed. They wondered, in particular, whether the system in place to preserve the security and well-being of witnesses and victims can be trusted and if similar incidents could not re-occur in the future.

14. For the reasons explained above, the Legal Representative submits that the non-disclosure of the identity of the participating victims not enjoying dual status to the Defence is justified and does not jeopardise the rights of the Defence.

Respectfully submitted.

A handwritten signature in black ink, reading "Paolina Massidda". The signature is written in a cursive, flowing style with a horizontal line underneath the name.

Paolina Massidda
Principal Counsel

Dated this 7th day of March 2016

At The Hague, The Netherlands