

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: ICC-02/11-01/15
Date: 15 November 2017

TRIAL CHAMBER I

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

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

Public

**Decision on the request for leave to appeal the decision on the resumption of
action applications**

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

The Office of the Prosecutor

Ms Fatou Bensouda
Mr James Stewart
Mr Eric MacDonald

Counsel for Mr Laurent Gbagbo

Mr Emmanuel Altit
Ms Agathe Bahi Baroan

Counsel for Mr Charles Blé Goudé

Mr Geert-Jan Alexander Knoops
Mr Claver N'dry

Legal Representatives of Victims

Paolina Massidda

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

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

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Others

Trial Chamber I (“Chamber”) of the International Criminal Court, in the case of *The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé*, having regard to Article 82(1)(d) of the Rome Statute (“Statute”), Rule 155 of the Rules of Procedure and Evidence (“Rules”), and Regulation 65 of the Regulations of the Court issues this decision on the “*Demande d’autorisation d’interjeter appel de la « Decision on the resumption of action applications »*”, filed on 17 October 2017 (“Request”).¹

1. On 11 October 2017, the Chamber issued its “Decision on the resumption of action applications” (“Decision”).²
2. The Defence of Mr Laurent Gbagbo (“Defence”) seeks leave to appeal the Decision in respect of the following issues:
 - (i) the Chamber erred in the law when it failed to address the Defence’s argument that the request of the Legal Representative of Victims (“LRV”) was late;
 - (ii) the Chamber erred in law when it disregarded the consequences of admitting applications that are redacted and therefore impeded the Defence’s right to respond to the LRV request;
 - (iii) the Chamber erred in law when it based its decision solely on the practice of other Chambers;
 - (iv) the Chamber erred in law when it disregarded the application of Ivorian law and instead adopted its own standards;
 - (v) the Chamber erred when it did not explain how a person substituting a deceased victim can express his/her views and concerns as expressed in the victim’s application form; and
 - (vi) the Chamber erred in law when it did not verify the identity and requests of the applicants.

¹ ICC-02/11-01/15-1053.

² ICC-02/11-01/15-1052.

3. On 23 October 2017, the LRV filed her response, opposing the Request.³
4. The Prosecutor and the Defence of Mr Charles Blé Goudé did not file any observations.
5. The provision applicable for the resolution of the Request is Article 82(1)(d) of the Statute. In brief, an interlocutory appeal can be allowed in respect of issues arising out of the impugned decision, meaning issues essential for the disposition of the matter. In addition, appeal can only be certified in respect of issues which would significantly affect either the fair and expeditious conduct of the proceedings or the outcome of the trial, and for which, in the opinion of the Chamber, immediate appellate resolution may materially advance the proceedings.
6. The Chamber is of the view that issue (i) does not arise from the impugned Decision, as the LRV request did not entail new applications to participate in the proceedings, but a request “to continue the original legal action of a deceased victim”.⁴ As regards a/20163/12, although the victim passed away before the start of trial, he already had participatory status at the confirmation stage. As noted by the LRV, given the automatic admission at trial of victims who participate at the confirmation stage, the 70-day deadline cannot be invoked against him or any other applicant resuming the action of a victim (in the case of a/20163/12, who died before the start of trial).⁵
7. In relation to issue (ii), the Chamber considers that it does not arise from the impugned Decision, as the applied redactions reflect the relevant procedure already set out by the Chamber as regards victims participation.⁶
8. With regard to issues (iii) and (iv), these do not arise from the Decision. The Chamber applied Article 68(3) of the Statute and Rules 85 and 89 of the Rules and used as

³ Response to Mr Gbagbo’s request for leave to appeal the “Decision on the resumption of action applications” (ICC-02/11-01/15-1053), ICC-02/11-01/15-1057.

⁴ ICC-02/11-01/15-1052, para. 14.

⁵ ICC-02/11-01/15-1057, para. 15.

⁶ Decision on victim participation, 6 March 2015, ICC-02/11-01/11-800, para. 51.

guidance the consistent Court's practice to apply the aforesaid provisions in cases of resumption of action of deceased victims.

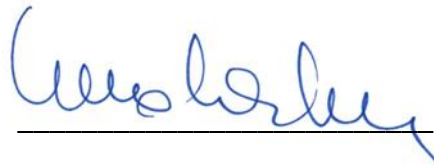
9. Equally, issue (v) does not arise from the Decision. As noted by the LRV, the Defence simply reiterates its general arguments of principle against any individual being able to resume of action of a deceased victim and on the applicable ICC jurisprudence in this regard.⁷
10. Issue (vi) equally does not arise from the decision. The Chamber made a *prima facie* analysis of the information contained within the requests, including the identity of the individuals concerned and their connection with the deceased victims. In doing so, it applied the aforesaid ICC provisions and the consistent ICC jurisprudence in this regard.
11. In light of the above, the Defence has failed to show how the identified issues are appealable within the parameters of Article 82(1)(d) of the Statute.
12. Moreover, the Defence did not demonstrate how the aforesaid issues would significantly affect the fairness and expeditiousness of proceedings, particularly since the Chamber in the impugned Decision clearly indicated the limited purpose of the resumption of action (confined to the views and concerns expressed in the application forms). The Chamber further notes that the individuals concerned (six in total) are represented by the LRV, who has thus far participated in a limited manner in trial and that speaks on behalf of more than 700 others individuals admitted to participate in these proceedings. The Chamber also emphasises that the impugned Decision does not prejudice the Chamber's position as to any potential future applications for the individuals concerned to present their (or the deceased persons') views and concerns in person. Accordingly, the Chamber concludes that the status of these six individuals resuming action on behalf of deceased victims does not significantly affect the fairness of the proceedings or the outcome of the trial.

⁷ ICC-02/11-01/15-1057, para. 23.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

REJECTS the Request.

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



Judge Cuno Tarfusser, Presiding Judge



Judge Olga Herrera Carbuccion



Judge Geoffrey Henderson

Dated 15 November 2017

At The Hague, The Netherlands