

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: ICC-02/11-01/15
Date: 11 October 2021

ARTICLE 85 CHAMBER

Before: Judge Reine Alapini-Gansou, Presiding Judge
Judge Joanna Korner
Judge Sergio Gerardo Ugalde Gordínez

**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 OPCV request for victims to participate in the Article 85
proceedings**

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

The Office of the Prosecutor

Mr Karim A.A. Khan

Mr James Stewart

Counsel for Mr Charles Blé Goudé

Mr Geert-Jan Alexander Knoops

Mr Claver N'dry

Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

Ms Paolina Massidda

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

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Others

1. On 20 September 2021, the Office of Public Counsel for Victims (“OPCV”), on behalf of the victims who had participated in the criminal proceedings against Mr Blé Goudé, requested to present the victims’ views and concerns on Mr Blé Goudé request for compensation pursuant to Article 85 of the Rome Statute (‘Statute’).¹ In response, Mr Blé Goudé’s counsel requested the Chamber, *inter alia*, to strike the OPCV’s filing from the case record.²
2. On 22 September 2021, the Chamber instructed the OPCV to explain on what legal basis it should be permitted to be part of the present Article 85 proceedings and convey the aforementioned views and concerns.³ On 29 September 2021, the OPCV submitted, *inter alia*, that Article 85 proceedings should be considered ‘an extension’ of the criminal proceedings against Mr Blé Goudé and thus as ‘the same case’ for the purposes of Regulation 86(8) of the Regulations of the Court.⁴ The OPCV recognises that the Court’s legal framework does not envisage any role for victims in Article 85 proceedings, but points to ‘the statutory discretion of a Chamber under article 68(3) of the Statute to allow Victims’ participation in the proceedings’.⁵ It further avers that the interests of the victims are affected by the Article 85 proceedings, because 17 victims that participated in the criminal proceedings also gave evidence as prosecution witnesses,⁶ and because Trial Chamber I in its decision acquitting Mr Blé Goudé found that facts alleged by the Office of the Prosecutor (‘Prosecution’) ‘about the victimisation were established’.⁷

¹ Victims’ Response to Mr Blé Goudé’s request for a hearing pursuant to rule 174(2) of the Rules of Procedure and Evidence, ICC-02/11-01/15-1415.

² Blé Goudé Defence consolidated response to the “Prosecution response in relation to Mr Blé Goudé’s request for a hearing in relation to article 85(3) of the Statute and further request to set a timetable for litigation” (ICC-02/11-01/15-1414) and motion to strike the “Victims’ Response to Mr Blé Goudé’s request for a hearing pursuant to rule 174(2) of the Rules of Procedure and Evidence” (ICC-02/11-01/15-1415), 22 September 2021 ICC-02/11-01/15-1417-Conf-Exp. A public redacted version was filed the same day: ICC-02/11-01/15-1417-Red.

³ Order setting a deadline for a response, ICC-02/11-01/15-1418.

⁴ Victims’ submissions on their participation in proceedings held pursuant to article 85 of the Statute, ICC-02/11-01/15-1419, para. 11.

⁵ ICC-02/11-01/15-1419, paras 10-15.

⁶ ICC-02/11-01/15-1419, para. 18.

⁷ ICC-02/11-01/15-1419, para. 19.

3. At the outset of its analysis, the Chamber stresses that the present proceedings are neither part of the criminal trial against Mr Blé Goudé, nor a continuation thereof. The trial ended with the Appeals Chamber's confirmation of Mr Blé Goudé's acquittal by Trial Chamber I. The fact that the Court Management Services of the Registry registered, for practical reasons, the filings related to Mr Blé Goudé's compensation request into the case record of the *Gbagbo and Blé Goudé* case (ICC-02/11-01/15) does not change this.⁸ The judges of the Court are regularly tasked to decide matters of an administrative or civil legal nature that are not necessarily part of the criminal trials. The present proceedings are an example thereof.⁹ To avoid any confusion about the nature of Article 85 proceedings, it may be advisable in the future to create a separate record.

4. Article 68(3) of the Statute, which the OPCV asks the Chamber to rely on, is part of the Statute's section related to "The Trial" and thus not applicable to the current proceedings. The Chamber already noted that the applicable legal framework, including Rule 174 of the Rules, which sets out the procedure to be followed following the filing of a request for compensation, does not mention any role for the victims.¹⁰ Moreover, the personal interests of victims cannot be affected by proceedings dealing with a request for compensation. As these proceedings will not address any conduct vis-à-vis the victims, it is not 'appropriate' to have views and concerns presented as part of these proceedings.¹¹

⁸ Similarly, the cover page referred to 'the case of *The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé*' for practical reasons. More accurate would have been for the cover page to read: 'In the Article 85 proceedings related to the case of *The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé*' (see also the chapeau of ICC-02/11-01/15-1418).

⁹ See also Trial Chamber II, *The Prosecutor v. Mathieu Ngudjolo Chui*, Decision on the request by Counsel for Mathieu Ngudjolo for one or more hearings to be held and for an order to ensure that Mathieu Ngudjolo attends the hearing or hearings, 30 October 2015, ICC-01/04-02/12-299.

¹⁰ ICC-02/11-01/15-1418, para. 3.

¹¹ See Article 68(3) of the Statute, which states in relevant part 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.'

5. Moreover the OPCV clearly stated that the '[v]ictims in the proceedings at hand are not moving participants asserting their rights (e.g. to reparation), but responsive participants addressing claims by the acquitted person regarding criminal proceedings they took part in.' Henceforth, it appears that the interest of the victims, as stated by the OPCV, is to re-litigate issues that have been decided by Trial Chamber I and the Appeals Chamber. The Chamber considers this interest to be inappropriate for Article 85 proceedings, as it challenges the principle of finality of judicial judgements, in this case the acquittal decision as confirmed on appeal.
6. In its recent order, the Chamber noted that legal representatives of victims were not part of previous Article 85 proceedings before the Court.¹² It sees no reason to take a different approach to the role of victims in the present proceedings.
7. Finally, the Chamber emphasises that the present proceedings concern an alleged wrongful prosecution and will not affect any of the findings of Trial Chamber I on the suffering experienced by the victims as a result of the incidents addressed in the context of the *Gbagbo and Blé Goudé* case.¹³
8. As regards the request by Mr Blé Goudé's counsel to strike the OPCV's filing¹⁴ from the case record, the Chamber considers that while the OPCV will not be presenting any views and concerns, its request to be permitted to do so and subsequent submissions thereon, form part of the litigation in the present proceedings. Therefore, although these filings will not be considered by the Chamber when deciding on the merits of the compensation request, they ought to remain part of the case record.

¹² ICC-02/11-01/15-1418, para. 3.

¹³ The Chamber notes, however, that the OPCV, by stating that the Trial Chamber I 'found that the facts alleged by the Prosecution about the victimisation were established' (see ICC-02/11-01/15-1419, para. 19), appears to misrepresent the opinions of the judges of Trial Chamber I.

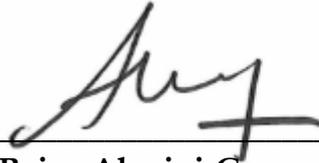
¹⁴ Filing no. ICC-02/11-01/15-1415.

FOR THESE REASONS, THE CHAMBER HEREBY

REJECTS the OPCV's request to present views and concerns; and

REJECTS the request of counsel for Mr Blé Goudé to strike filing ICC-02/11-01/15-1415 from the case record.

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



Judge Reine Alapini-Gansou
Presiding Judge



Judge Joanna Korner



Judge Sergio Gerardo Ugalde Gordínez

11 October 2021

At The Hague, The Netherlands