

**Cour
Pénale
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**International
Criminal
Court**

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No.: **ICC-02/11-01/15**
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TRIAL CHAMBER I

Before: Judge Cuno Tarfusser, Presiding Judge
Judge Olga Herrera Carbuccia
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 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

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Mr James Stewart
Mr Eric MacDonald

Counsel for Mr Laurent Gbagbo

Mr Emmanuel Altit
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Counsel for Mr Charles Blé Goudé

Mr Geert-Jan Alexander Knoops
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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
Gbagbo 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**

Mr Philipp Ambach

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 68(3) of the Rome Statute (“Statute”), and Rules 85 and 89 of the Rules of Procedure and Evidence (“Rules”), issues, this ‘Decision on the resumption of action applications’.

I. Procedural Background

1. On 20 July 2017, the Legal Representatives for Victims (“LRV”) submitted a request for the resumption of action of deceased victims (“Request”).¹
2. On 31 July 2017, the Gbagbo Defence of Mr Gbagbo (“Gbagbo Defence”) filed observations, opposing the Request.²

II. Submissions

3. The LRV request is two-folded, as she: (a) requests that the family members of six deceased victims are allowed to participate in the proceedings; and also (b) makes a general request that the Chamber adopts a procedure for other such cases in the future.
4. As regards the request related to the six deceased victims, the LRV informs that the following victims passed away: a/20163/12 in July 2013; a/20136/12 in September 2014; a/20147/12 in October 2014; a/10228/14 in July 2016; a/10260/14 in October 2016;

¹ Applications for the resumption of action by the family members of deceased victims a/20116/12, 20136/12, a/20147/12, a/20163/12, a/10228/14 and a/10260/14, [ICC-02/11-01/15-994-Conf-Exp \(a confidential redacted version was notified on the same date\)](#). Although the Request was filed confidentially, the Chamber considers that the information in the present decision can be made public.

² Réponse de la Défense à la « Redacted version of the applications for the resumption of action by the family members of deceased victims a/20116/12, 20136/12, a/20147/12, a/20163/12, a/10228/14 and a/10260/14» (ICC-02/11-01/15-994-Red), [ICC-02/11-01/15-997-Conf](#).

and a/20116/12 in October 2016.³ The LRV notes that all but a/20163/12 were authorised to participate in the trial proceedings (the latter passed away before the Chamber issued its Decision on Victims' Participation and thus excluded from participation at trial).⁴ Family members of all six deceased person "seek authorisation to resume the action of their relatives under the same conditions previously granted to the latter".⁵ The LRV submits that she only now makes the request given the difficulty to contact the relatives and the time needed to get their consent and collect relevant information.

5. In general, the LRV refers to the repeated case law of the Court in which such requests have been granted and in which such a procedure has been adopted. The LRV submits that in accordance with this jurisprudence, and for the purpose of resuming the action of a deceased victim, evidence must be provided of (i) the death of the victim who has been authorised to participate; (ii) the relationship of the successor to the deceased victim; and (iii) the mandate authorising the successor to continue the deceased victim's action.⁶ The LRV indicates that all relatives wish to maintain the protective measures already requested by their deceased relatives.⁷
6. As regards the request to adopt a general procedure for future instances of this sort, the LRV notes that this has been adopted in the *Bemba* and *Ntaganda* cases. The procedure is summarised as follows:

Pursuant to said procedure, the Legal Representative assists individuals willing to resume the action of deceased victims by collecting and transmitting to the Registry the relevant documentation accompanied by an application for the resumption of action. In turn, the Registry assesses said applications and transmits them to the Chamber if they comply with the formal and substantive requirements mentioned in paragraphs 22 and 27 above, or alternatively, it informs the Legal Representative if said requirements are not

³ [ICC-02/11-01/15-994-Conf-Exp](#), para. 13.

⁴ Decision on victim participation, 6 March 2015, [ICC-02/11-01/11-800](#), para. 65.

⁵ [ICC-02/11-01/15-994-Conf-Exp](#), para. 15.

⁶ [ICC-02/11-01/15-994-Conf-Exp](#), para. 27.

⁷ [ICC-02/11-01/15-994-Conf-Exp](#), para. 52.

met. Barring an error in the Registry's assessment, the Chamber approves said assessment and authorises the resumption of action.⁸

7. The LRV submits that given the high number of victims and the unexpected length of the trial, such a procedure would be warranted.⁹
8. The Gbagbo Defence argues that: (a) the request comes too late (as some of the victims passed away before pre-trial confirmation); (b) the requests are heavily redacted; (c) the possibility to present views and concerns cannot be transmitted to others; (d) even if succession of participation would be deemed possible, it should be done in accordance with Ivorian civil law; and (e) such a procedure should not be adopted for future similar instances and in any case, the parties should be given right to make submissions if such an issue would arise again in the future.¹⁰
9. As regards the lateness of the request, the Gbagbo Defence refers to the Chamber's order that all victims' applications were to be received by the Registry "no later than 70 days prior to trial".¹¹ Referring to the redactions, the Gbagbo Defence requests that (if the request is not rejected *in limine*) the Chamber orders full disclosure of the unredacted documents to the Gbagbo Defence. In relation to the possibility to express the views and concerns pursuant to Article 68(3) of the Statute, the Gbagbo Defence submits that this is not a "formal right" and therefore cannot be transmitted to others. In its view, only the victim can know how his or her own personal interests affected during the proceedings and his or her views and concerns are therefore personal. The Gbagbo Defence argues that the relatives should have submitted an application to participate on their own behalf (*à titre personnel*) before the start of trial.¹²

⁸ [ICC-02/11-01/15-994-Conf-Exp](#), para. 58.

⁹ [ICC-02/11-01/15-994-Conf-Exp](#), para. 59.

¹⁰ [ICC-02/11-01/15-997-Conf](#), paras 4-6.

¹¹ Referring to ICC-02/11-01/11-800, para. 24.

¹² [ICC-02/11-01/15-997-Conf](#), paras 7-32.

10. Alternatively, if the Chamber would still consider that this possibility to participate can be transmitted to a relative of a deceased victim, the Gbagbo Defence submits that minimal requirements should be met, including: the relatives are recognised by Ivorian law as heirs (*ayants-droits*) and that these heirs have in fact inherited the right to participate in the proceedings. The Gbagbo Defence contends that a mandate is very different, as any mandate ceases to exist with the death of the victim. The Gbagbo Defence submits that the previous case law of the Court is arguable and superficial as it did not pinpoint the nature of victims' participation.¹³

III. Analysis and Conclusions

11. The Chamber recalls the applicable procedure for admission of victims to participate in this case.¹⁴ The Chamber also observes the Court's practice as regards the resumption of action during trial proceedings, in which relatives or closely-connected individuals have been allowed to continue the action initiated by deceased victims.¹⁵

12. In particular, the Chamber notes that pursuant to the established practice, in order to resume action on behalf a deceased victim in the course of an ongoing trial, the applicant must provide evidence on the following: (i) of the death of the victim; (ii) of his or her relationship to the victim; and (iii) where the applicant cannot easily be

¹³ ICC-02/11-01/15-997-Conf, paras 33-50.

¹⁴ ICC-02/11-01/11-800.

¹⁵ *Case of the Prosecutor v Bosco Ntaganda*, Fourth decision on victims' participation in trial proceedings, 1 September 2015, [ICC-01/04-02/06-805](#); Seventh decision on victims' participation in trial proceedings, 1 July 2016, [ICC-01/04-02/06-1427](#); *Case of the Prosecutor v. Jean-Pierre Bemba*, Decision on "Requête relative à la reprise des actions introduites devant la Cour par des victimes décédées", 24 March 2016, [ICC-01/05-01/08-3346](#); Second decision on applications for resumption of actions initiated by deceased victims, 29 August 2017, [ICC-01/05-01/08-3558](#); *Case of the Prosecutor v. Al Mahdi*, Decision on LRV Request for Resumption of Action for Deceased Victim a/35084/16, 2 June 2017, [ICC-01/12-01/15-223](#); *Case of the Prosecutor v. Dominic Ongwen*, Decision on LRV Request Concerning the Deaths of Participating Victims, 30 August 2017, [ICC-02/04-01/15-962](#). See also, *Case of the Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, Motifs de la deuxième décision relative aux demandes de participation de victimes à la procédure, 22 December 2009, [ICC-01/04-01/07-1737](#); *Case of the Prosecutor v. Germain Katanga*, Décision relative à la demande de reprise d'instance introduite par un proche de la victime décédée a/0265/09 et de désignation d'un nouveau mandataire pour représenter la victime a/0071/08, 12 December 2016, [ICC-01/04-01/07-3721](#).

presumed to be entitled to continue the action or represent the family, he or she must demonstrate his or her appointment by the deceased victim's family members.¹⁶

13. The Chamber disagrees with the Gbagbo Defence's arguments that the possibility to present views and concerns cannot be transmitted to others and that even if so, such inherited right would be regulated by Ivorian civil law. As the practice at the Court has consistently shown, persons that are closely-connected with the deceased victims may present the views and concerns expressed by the latter. As stated by Trial Chamber II in the *Katanga and Ngudjolo case*:

[... les proches parents de la victime peuvent décider de poursuivre l'action que cette dernière avait engagée devant la Cour mais qu'ils ne peuvent le faire qu'au nom de la victime décédée et dans la limite des vues et préoccupations exposées par celle-ci dans sa demande initiale.¹⁷

14. Accordingly, the resumption of action is not, as suggested by the Gbagbo Defence, a "right" to be inherited, but the possibility to continue the original legal action of a deceased victim, within the limits of the views and concerns expressed by the deceased victim in his or her initial application to participate in the proceedings pursuant to Article 68(3) of the Statute and Rule 89 of the Rules.
15. As regards the relationship between the applicant and the deceased victim, the Chamber deems that any "closely-connected individual" may submit an application for resumption of action, including "the spouse of a deceased victim; an only surviving child of a deceased victim, where the child has reached the age of eighteen and the deceased victim was either unmarried or the victim's spouse is already deceased; or the parents of an unmarried deceased victim who either has no children or whose children are below the age of eighteen".¹⁸

¹⁶ [ICC-01/04-02/06-805](#), para. 8; [ICC-02/04-01/15-962](#), para. 3; [ICC-01/05-01/08-3558](#), paras 3-4.

¹⁷ [ICC-01/04-01/07-1737](#), para. 30.

¹⁸ [ICC-01/04-02/06-805](#), footnote 10.

16. In respect of the procedure to be adopted, the Chamber agrees with the Gbagbo Defence that parties should have the possibility to make submissions in future instances in which a resumption of action application would arise. In light of the valid concern raised by the Gbagbo Defence, it would be inappropriate to adopt a procedure in this case in which the parties would not be able to raise objections in relation to future resumption of action applications.
17. Accordingly, the Chamber deems it appropriate to establish the following procedure for future resumption of action applications, which satisfies the concerns raised by the Gbagbo Defence:
- a. When a participating victim dies, the LRV is to inform the Victims Participation and Reparations Section (“VPRS”). The VPRS is then to amend the consolidated list of participating victims accordingly. The VPRS need not formally file an updated list each time an amendment is required, but an updated consolidated list must be so filed at least twice per calendar year until the conclusion of the proceedings before this Chamber.
 - b. Resumption of action applications, including the necessary supporting materials, must be provided to the VPRS. The VPRS is then to transmit them to the Chamber and, at the same time, to the parties. Redactions may be applied to the versions transmitted as necessary.
 - c. The time limit for any specific objections to the resumption of action is set at 14 days from notification of the relevant application(s).
 - d. In case any objection is raised, the Chamber will assess the contested application and rule accordingly. Conversely, and unless otherwise ordered, when no objection is raised the resumption of action is granted.
 - e. Any granted resumption of action must be reflected in the updated list specified in point (i) above.

18. As regards the specific applications contained within the Request, the Chamber will assess them pursuant to paragraph 17(d) above.
19. In relation to a/20163/12, deceased in July 2013; the Chamber notes that the resumption of action is submitted by the youngest brother of the deceased victim. As a result of the victim's death, the applicant is now the eldest son of the family and thus in charge of the family's needs. The applicant submits death certificates and his identification card. Accordingly, the application meets the requirements set out in paragraph 12 above.
20. In relation to a/20136/12, deceased in September 2014; the Chamber notes that the resumption of action is submitted by the youngest brother of the deceased victim. After the death of the victim, the applicant has become the guardian of the victim's children. The applicant submits a death certificate and his identification card. Accordingly, the application meets the requirements set out in paragraph 12 above.
21. Turning to a/20147/12, deceased in October 2014; the Chamber notes that the resumption of action is submitted by the daughter of the deceased victim and that the applicant has been appointed by the family members to resume action. The applicant submits a death certificate, her identification card and birth certificate. Accordingly, the application meets the requirements set out in paragraph 12 above.
22. Concerning a/10228/14, deceased in July 2016; the Chamber notes that the resumption of action is submitted by the nephew of the deceased victim. The applicant explains that he lived with the deceased victim since he was 12 years old and that the victim was like a father. No other member of the family had a close relationship with the deceased victim. The applicant submits his identification card. The applicant states that he was unable to submit a death certificate, but presents signed declarations of the sister and brother-in-law of the deceased victim as regards the victim's death and his relationship with the applicant. Accordingly, the application meets the requirements set out in paragraph 12 above.

23. As regards a/10260/14, deceased in October 2016; the Chamber notes that the resumption of action is submitted by the daughter of the deceased victim. She is the only adult daughter living in Côte d'Ivoire. She submits a death certificate, her identification card and a declaration attesting her relationship with the deceased victim. Accordingly, the application meets the requirements set out in paragraph 12 above.
24. Finally, in relation to a/20116/12, deceased in October 2016, the Chamber notes that the resumption of action is submitted by the son of the deceased victim and that the applicant has been appointed by the family members to resume action. The applicant submits death certificates and a copy of his identification card. Accordingly, the application meets the requirements set out in paragraph 12 above.
25. Accordingly the Chamber considers it appropriate to authorise the applications nominated in the aforesaid resumption of action applications to resume the actions initiated by the deceased victims above.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

AUTHORISES the applications to resume the actions initiated before the court by the deceased victims a/20163/12, a/20136/12, a/20147/11, a/10228/14, a/10260/14, and a/20116/12.

DIRECTS the parties and the Registry to proceed in accordance with paragraph 17 above for any future resumption of action application in this case, submitting a first consolidated list no later than 31 December 2017.

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



Judge Cuno Tarfusser, Presiding Judge



Judge Olga Herrera Carbuca



Judge Geoffrey Henderson

Dated 11 October 2017

At The Hague, The Netherlands