

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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TRIAL CHAMBER I

Before: Judge Cuno Tarfusser, Presiding Judge
Judge Olga Herrera-Carbuccia
Judge Geoffrey Henderson

SITUATION IN CÔTE D'IVOIRE

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

Public

Defence Response to the “Communication of the Common Legal Representative concerning the non-disclosure to the Defence of the identity of participating victims” (ICC-02/11-01/15-460)

Source: Defence of Mr Charles Blé Goudé

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

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I. Introduction

1. On 7 March 2016, the Legal Representative of Victims (“the LRV”) communicated to the parties a request for non-disclosure to the Defence of the identity of participating victims (“the Request”).¹ Through its Request, the LRV is seeking to conceal the identity of 258 victims who were authorized to participate in the proceedings following Trial Chamber I’s “Decision on victims’ participation status” dated 7 January 2016.²
2. The Defence of Mr Charles Blé Goudé (“the Defence”) respectfully submits that blanket non-disclosure of the identity of 258 new participating victims is not justified and must thus be rejected.

II. Applicable Law

3. Article 68(1) of the Rome Statute (“the Statute”) provides that measures can be taken to protect the “*safety, physical and psychological well-being, dignity and privacy of victims and witnesses*”, when their security so requires. However, this provision further provides that protective measures must be proportional, and “*shall not be prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial*”.³
4. The fundamental right of an accused to a public, fair and impartial trial is enshrined in Article 67(1) of the Statute. Subsection Article 67(1)(a) further protects the right of an accused to be informed promptly and in detail of the

¹ “Communication of the Common Legal Representative concerning the non-disclosure to the Defence of the identity of participating victims”, No. ICC-02/11-01/15, 7 March 2016.

² “Decision on victims’ participation status” (Trial Chamber I), No. ICC-02/11-01/15-379, 7 January 2016, p. 23.

³ Rome Statute of the International Criminal Court, Article 68(1).

nature, cause and content of the charge, in a language which the accused fully understands and speaks.⁴

5. As a result, while the safety and security of victims is a key responsibility of the Court, the Court must ensure that the rights of the defence are respected and that the trial remains fair.⁵

III. Submissions

6. The Defence submits that the grounds raised by the LRV in support of non-disclosure to the Defence of the identity of a large number of participating victims do not outweigh the fundamental rights of the Accused to a fair, transparent and impartial trial. Moreover, it is the Defence's view that in light of the lack of objective basis for such non-disclosure, and in view of the applicable law, the LRV's Request should be rejected.

A. Blanket non-disclosure of the identity of 258 participating victims is not justified

7. Protective measures for victims must be proportional to the rights of the Accused to a fair and impartial trial. Indeed, the Trial Chamber I in *Lubanga* found that the scope of protective measures should restrict the rights of the suspect or accused only as far as necessary.⁶

⁴ Rome Statute of the International Criminal Court, Article 67(1)(a).

⁵ Prosecutor v. Ngudjolo, "Decision on the participation of anonymous victims in the appeal and on the maintenance of deceased victims on the list of participating victims" (Appeals Chambers) No. ICC-01/04-02/12 A, 23 September 2013, par. 16.

⁶ Prosecutor v. Lubanga, 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, ICC-01/05-01/08-699, 22 February 2009, par. 25.

8. The Defence recalls Trial Chamber I's "Decision on victims' participation" in the *Lubanga* case, where the Court found that "extreme care" must be exercised before permitting the participation of anonymous victims :

130. [...] Although the Trial Chamber recognizes that it is preferable that the identities of victims are disclosed in full to the parties, the Chamber is also conscious of the particularly vulnerable position of many of these victims, who live in an area of ongoing conflict where it is difficult to ensure their safety.

131. However, the Trial Chamber is of the view that extreme care must be exercised before permitting the participation of anonymous victims, particularly in relation to the rights of the accused. While the safety and security of victims is a central responsibility of the Court, their participation in the proceedings cannot be allowed to undermine the fundamental guarantee of a fair trial. The greater the extent and the significance of the proposed participation, the more likely it will be that the Chamber will require the victim to identify himself or herself. Accordingly, when resolving a request for anonymity by a victim who has applied to participate, the Chamber will scrutinize carefully the precise circumstances and the potential prejudice to the parties and other participants. Given the Chamber will always know the victim's true identity, it will be well placed to assess the extent and the impact of the prejudice whenever it arises, and to determine whether steps that fall short of revealing the victim's identity can sufficiently mitigate the prejudice.⁷

9. The Defence notes that the 258 new victims have already been afforded participative rights in the proceedings. In contrast to the application of protective measures at the initial stages of proceedings, proportionality weighs all the more in favour of disclosure of victims' identity, who may participate in potential reparations proceedings, in accordance with the Accused's right to a fair trial.

⁷ Prosecutor v. Lubanga, Decision on victims' participation, ICC-01/04-01/06-1119, 18 January 2008, par. 130, 131 [emphasis added] ; see Prosecutor v. Lubanga, 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, ICC-01/05-01/08-699, 22 February 2009, par. 24.

B. There is no objective factual or evidentiary basis to support the LRV's Request for non-disclosure

10. The Defence respectfully submits that the LRV has failed to provide factual or evidentiary grounds to support its Request for non-disclosure. As stated by Trial Chamber I, the entitlement of victims and witnesses to appropriate protection by the Court is an essentially “fact-sensitive decision”.⁸
11. In the above-cited *Lubanga* decision, the Trial Chamber I stated that “it is preferable that the identities of victims are disclosed in full to the parties”, although the vulnerable position of some victims, “who live in an area of ongoing conflict where it is difficult to ensure their safety” must be taken into consideration.⁹
12. The Defence submits that there is no objective basis to the suggestion that certain areas in Côte d’Ivoire are experiencing “ongoing conflict”, or to suggest that the situation is hostile towards those who could be perceived, by virtue of the disclosure of their identity to the Defence, as supporters of Mr Ouattara. The LRV’s general assertions in support of its Request extending to all 258 victims without any differentiation, and whom the LRV met in February 2016, do not justify the drastic measures of blanket non-disclosure to the Defence.
13. Moreover, there is no objective evidence or basis to suggest that the security forces in Côte d’Ivoire, which enjoys security and peace, are unable to protect its citizens, regardless of their political, religious, or geographical affiliations, real or perceived.

⁸ Prosecutor v. Lubanga, Decision on the defence application for disclosure of victims application, ICC-01/04-01/06, par. 10

⁹ Prosecutor v. Lubanga, Decision on victims’ participation, ICC-01/04-01/06-1119, par. 130 [emphasis added].

14. Although the Defence appreciates the views expressed by the victims as to the nature of their perceived insecurities, the Defence submits that no objective basis, or evidence of a demonstrable impact was provided by the LRV in support of these assertions, which could allow the Chamber to evaluate the alleged risks against the rights of the Accused, was raised.
15. Finally, the Defence submits that the LRV's Request prevents the Defence from investigating the reliability of the victims' allegations and their applications. As such, the Defence has no basis upon which to evaluate whether non-disclosure of the identity of the 258 new victims is justified in the circumstances of the present case and the current stage of proceedings.
16. In light of the above, the Defence respectfully submits that the LRV's request should be rejected.

RELIEF SOUGHT

For the foregoing reasons, the Defence respectfully requests the Chamber to:

- REJECT the LRV's request of non-disclosure of the identity of 258 new participating victims to the Defence.

Respectfully submitted,



Mr. Knoop, Lead Counsel and Mr. N'Dry, Co-Counsel

Dated this

16 March 2016

At The Hague, the Netherlands