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**International
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Court**

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ARTICLE 85 CHAMBER

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

SITUATION IN COTE D'IVOIRE

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

Public Document

**Victims' submissions on their participation in proceedings
held pursuant to article 85 of the Statute**

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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I. INTRODUCTION

1. Victims who participated in a case against an acquitted person have the right to participate in proceedings held pursuant to article 85 of the Rome Statute (the “Statute”) and arising from the same case. In fact, a decision taken by a Chamber under rule 89 of the Rules of Procedure and Evidence (the “Rules”) applies throughout the proceedings in the same case. Requests for compensation under article 85 of the Statute involve issues arising from and inextricably linked to the proceedings *a quo*. The ensuing proceedings are therefore so intimately connected to be considered an extension of that “*same case*” in the terms of regulation 86(8) of the Regulations of the Court (the “Regulations”).

2. Moreover, article 68(3) of the Statute vests the Chamber with the power and the duty to permit Victims’ views and concerns to be presented and considered at stages of the proceedings it determines to be “*appropriate*”. Consequently, the fact that rule 174(1) of the Rules does not explicitly refer to Victims and/or the episodic absence of submissions by Victims in two previous cases, does not, and cannot, limit the statutory discretion of a Chamber under said provision to allow Victims’ participation in the proceedings when it deems it apposite.

3. Finally, the Legal Representative of Victims (the “Legal Representative”) stresses that, while Trial Chamber I found Mr Blé Goudé not guilty of the charges brought against him, it also found that the facts alleged by the Prosecution about the victimisation were established. As active participants in the criminal proceedings *a quo*, Victims have a personal interest in the resolution of any challenge to the manner in which said proceedings were conducted. As such, their interests are affected by article 85 proceedings and their participation is appropriate.

II. PROCEDURAL BACKGROUND

4. On 9 September 2021, Mr Blé Goudé filed a request for compensation under article 85 of the Rome Statute (the “Statute”) (“Mr Blé Goudé’s Request” or the “Request”).¹

5. On 14 September 2021, the Presidency constituted a Chamber for the purpose of the Request.²

6. On 17 September 2021, the Prosecution filed its response 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.³

7. On 20 September 2021, the Legal Representative filed her Response to Mr Blé Goudé’s request for a hearing pursuant to rule 174(2) of the Rules (the “Victims’ Response”).⁴

8. On 22 September 2021, Mr Blé Goudé filed a motion to strike the Victims’ Response from the case record (the “Motion to strike”).⁵

¹ See the “Public Redacted Version of “Mr Blé Goudé’s Request for Compensation pursuant to Article 85(3) of the Rome Statute” (ICC-02/11-01/15-1411-Conf-Exp)”, [No. ICC-02/11-01/15-1411-Red](#), 9 September 2021 (“Mr Blé Goudé’s Request” or the “Request”).

² See the “Decision constituting a chamber and referring a request arising under article 85 concerning ‘Public Redacted Version of “Mr Blé Goudé’s Request for Compensation pursuant to Article 85(3) of the Rome Statute” (ICC-02/11-01/15-1411-Conf-Exp), 9 September 2021’ dated 9 September 2021 (ICC-02/11-01/15-1411-Red)” (Presidency), [No. ICC-02/11-01/15-1413](#), 14 September 2021.

³ See 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”, [No. ICC-02/11-01/15-1414](#), 17 September 2021.

⁴ See the “Victims’ Response to Mr Blé Goudé’s request for a hearing pursuant to rule 174(2) of the Rules of Procedure and Evidence”, [No. ICC-02/11-01/15-1415](#), 20 September 2021 (the “Victims’ Response”).

⁵ See the “Public Redacted Version of “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)”, ICC-02/11-01/15-1417-Conf-Exp, 22 September 2021”, [No. ICC-02/11-01/15-1417-Red](#), 22 September 2021 (the “Motion to strike”).

9. On 23 September 2021, the Chamber issued an Order setting the deadline of 15 November 2021 for the Prosecution to respond to the Request; and instructing the Office of Public Counsel for Victims (the “OPCV”) to explain within seven days from the notification of said Order on what legal basis Victims ought to be permitted to be part of the article 85 proceedings.⁶

III. SUBMISSIONS

1. Legal basis for Victims’ participation in proceedings under article 85 of the Statute

10. At the outset, the Legal Representative notes with concern the derogatory remarks of Mr Blé Goudé towards Victims and their fundamental right to express their voice.⁷ In particular, the Legal Representative stresses the right of Victims to convey their views and concerns on the propriety of the proceedings they actively participated in for almost a decade and the alleged “*manifest miscarriage of justice*” – especially given the scope and gravity of Mr Blé Goudé’s claim. By silencing the Victims, the alleged commitment of Mr Blé Goudé “*to actively contribute to the transitional process in Côte d’Ivoire*”⁸ and “*to allow the country and its people to reconcile and heal from their hurtful past*”⁹ appears in fact to be destitute of any actual meaning. The same holds true in relation to Mr Blé Goudé’s statement to devote part of the compensation, if awarded, to assist the victims of the 2010-2011 post-election violence.¹⁰

11. The Legal Representative recalls that regulation 86(8) of the Regulations provides, in relevant part, that “[a] *decision taken by a Chamber under rule 89 shall apply throughout the proceedings in the same case*”. In this regard, since requests pursuant to article 85 of the Statute involve issues arising from the proceedings *a quo*, the ensuing proceedings are so inextricably linked to be considered an extension of that “*same case*”.

⁶ See the “Order setting a deadline for a response” (Article 85 Chamber), No. [ICC-02/11-01/15-1418](#), 23 September 2021.

⁷ See the Motion to strike, *supra* note 5, in particular paras. 19-21.

⁸ *Idem*, para. 21.

⁹ *Ibid.*

¹⁰ *Idem*, para. 22.

As such, the status, personal interest and/or participatory rights accorded to Victims in the case - as established by the relevant Chamber during the criminal proceedings - should not be affected by the Chamber dealing with any subsequent article 85 request concerning the same proceedings. Instead, given the Victims' prior participation in the proceedings which gave rise to the Request, the same criteria underlying their participation must be assumed for the purposes of the article 85 proceedings.¹¹

12. In fact, the Request relies on decisions issued by the Pre-Trial Chamber and the Trial Chamber in the case.¹² In this regard, 198 Victims were recognised as participants at the confirmation stage before Pre-Trial Chamber I,¹³ and 727 Victims were allowed to participate in the ensuing trial before Trial Chamber I and were represented by Counsel from the OPCV.¹⁴ Accordingly, all Victims who participated in the previous proceedings in the case against Mr Blé Goudé are entitled to participate in the article 85 proceedings.

13. The eventual result of the previous proceedings in an acquittal is not *per se* determinant of the Victims' participatory rights in the subsequent article 85

¹¹ For the same rationale, see the approach of the Appeals Chamber in relation to the victims' automatic participation in interlocutory appeals in the *Gbagbo and Blé Goudé* case, "Reasons for the "Decision on the 'Request for the recognition of the right of victims authorized to participate in the case to automatically participate in any interlocutory appeal arising from the case and, in the alternative, application to participate in the interlocutory appeal against the ninth decision on Mr Gbagbo's detention (ICC-02/11-01/15-134-Red3)'" (Appeals Chamber), [No. ICC-02/11-01/15-172 EO T OA6](#), 31 July 2015, para. 17.

¹² See the Motion to strike, *supra* note 5, paras. 15, 21, referring, *inter alia*, in the *Blé Goudé* case to the "Decision on the confirmation of charges against Charles Blé Goudé" (Pre-Trial Chamber I), [No. ICC-02/11-02/11-186](#), 12 December 2014; and in the *Gbagbo and Blé Goudé* case, the "Order on the further conduct of the proceedings" (Trial Chamber I), [No. ICC-02/11-01/15-1124](#), 9 February 2018, respectively.

¹³ See in the *Gbagbo* case, the "Decision on Victims' Participation and Victims' Common Legal Representation at the Confirmation of Charges Hearing and in the Related Proceedings" (Pre-Trial Chamber I, Single Judge), [No. ICC-02/11-01/11-138](#), 4 June 2012, pp. 25-26; and the "Corrigendum to the Second decision on victims' participation at the confirmation of charges hearing and in the related proceedings" (Pre-Trial Chamber I, Single Judge), [No. ICC-02/11-01/11-384-Corr](#), 6 February 2013 (corrigendum notified on 8 February 2013), pp. 22-23. See also, in the *Blé Goudé* case, the "Decision on victims' participation in the pre-trial proceedings and related issues" (Pre-Trial Chamber I, Single Judge), [No. ICC-02/11-02/11-83](#), 11 June 2014, pp. 19-20; and the "Second Decision on victims' participation in the pre-trial proceedings and related issues" (Pre-Trial Chamber I, Single Judge), [No. ICC-02/11-02/11-111](#), 1 August 2014, pp. 13-15.

¹⁴ See in the *Gbagbo* case, the "Decision on victim participation" (Trial Chamber I), [No. ICC-02/11-01/11-800](#), 6 March 2015, paras. 42-46 and p. 24; and the "Decision on victims' participation status" (Trial Chamber I), [No. ICC-02/11-01/15-379](#), 7 January 2016, p. 23.

proceedings. In this regard, the Legal Representative recalls that regulation 86(8) of the Regulations provides, in relevant part, that a prior decision of a Chamber concerning Victims' participation is only "*subject to the powers of the relevant Chamber in accordance with rule 91(1)*".¹⁵

14. In response to Mr Blé Goudé's arguments,¹⁶ unlike in proceedings pursuant to article 75 of the Statute - which formally open a new procedural stage¹⁷ - Victims in the proceedings at hand are not moving participants asserting their rights (*e.g.* to reparation),¹⁸ but responsive participants addressing claims by the acquitted person regarding criminal proceedings they took part in.

15. Moreover, the Legal Representative notes that, in any case, article 68(3) of the Statute vests the Chamber with the power and the duty to permit Victims' views and concerns to be presented and considered at stages of the proceedings it determines to be "*appropriate*". Contrary to Mr Blé Goudé's argument,¹⁹ the fact that rule 174(1) of the Rules does not explicitly refer to Victims, does not, and indeed cannot, limit the statutory discretion of a Chamber under article 68(3) of the Statute to allow Victims' participation in the proceedings when it deems it apposite. In this regard, the episodic absence of submissions by Victims in the *Ngudjolo* and *Bemba* cases referred to by Mr Blé Goudé²⁰ cannot *per se* limit the Chamber's statutory discretion.

¹⁵ For the same rationale, see the approach of the Appeals Chamber in the *Gbagbo and Blé Goudé* case in relation to the victims' participation in interlocutory appeals in the "Reasons for the 'Decision on the Request for the recognition of the right of victims authorized to participate in the case to automatically participate in any interlocutory appeal arising from the case and, in the alternative, application to participate in the interlocutory appeal against the ninth decision on Mr Gbagbo's detention (ICC-02/11-01/15-134-Red3)'" , *supra* note 11, para. 17.

¹⁶ See the Motion to strike, *supra* note 5, para. 19.

¹⁷ See in the *Lubanga* case, the "Decision on the admissibility of the appeals against Trial Chamber I's 'Decision establishing the principles and procedures to be applied to reparations' and directions on the further conduct of proceedings" (Appeals Chamber), [No. ICC-01/04-01/06-2953 A1 A2 A3](#), 14 December 2012, para. 70.

¹⁸ See in the *Katanga* case, the "Order for Reparations pursuant to Article 75 of the Statute" (Trial Chamber II), [No. ICC-01/04-01/07-3728-tENG](#), 24 March 2017, paras. 14-18. See also, in the *Lubanga* case, the "Order for Reparations" (Appeals Chamber), [No. ICC-01/04-01/06-3129-AnxA A A2 A3](#), 3 March 2015, para. 22.

¹⁹ See the Motion to strike, *supra* note 5, para. 18.

²⁰ *Ibid.*

16. Lastly, the Legal Representative notes that other procedures taking place after the closure of the criminal proceedings - such as proceedings pursuant to articles 84 and 110 of the Statute - are expressly open to the “*participants in the original proceedings*”²¹ and to the “*the victims or their legal representatives who participated in the proceedings*”, respectively.²² Victims in these proceedings are explicitly granted the possibility to file a response or observations without a prior request for leave - a possibility that has already been judicially implemented.²³ The Legal Representative posits that the express language included in the Rules regarding the participation of Victims in articles 84 and 110 proceedings cannot to be read to limit the participatory rights granted to Victims by article 68(3) of the Statute in *other* proceedings, such as those held pursuant to article 85. Given the different nature of said proceedings, to do otherwise would be inconsistent with the principle of “*expressio unius est exclusio alterius*”.

2. The interests of the Victims are affected by article 85 proceedings and their participation is not inappropriate

17. The Legal Representative submits that the Victims can and must be permitted to present observations in proceedings pursuant to article 85(3) of the Statute, considering their role in the proceedings *a quo*. Pre-Trial Chamber I²⁴ and Trial Chamber I²⁵ recognised that the personal interests of the Victims participating in the

²¹ See regulation 66 of the Regulations of the Court.

²² See rule 224(1) and (5) of the Rules of Procedure and Evidence.

²³ See in the *Lubanga* case, the “Scheduling order for the review concerning reduction of sentence of Mr Thomas Lubanga Dyilo” (Appeals Chamber), [No. ICC-01/04-01/06-3137](#), 15 June 2015. See also in the *Katanga* case, the “Scheduling order for the review concerning reduction of sentence of Mr Germain Katanga” (Three Judges of the Appeals Chamber appointed for the review concerning reduction of sentence), [No. ICC-01/04-01/07-3574](#), 13 August 2015.

²⁴ See the “Decision on Victims’ Participation and Victims’ Common Legal Representation at the Confirmation of Charges Hearing and in the Related Proceedings”, *supra* note 13, paras. 46-47; the “Corrigendum to the Second decision on victims’ participation at the confirmation of charges hearing and in the related proceedings”, *supra* note 13, para. 47; the “Decision on victims’ participation in the pre-trial proceedings and related issues”, *supra* note 13, paras. 26-27; and the “Second Decision on victims’ participation in the pre-trial proceedings and related issues”, *supra* note 13, paras. 16-17.

²⁵ See in the *Gbagbo and Blé Goudé* case, the “Annex A to Decision adopting amended and supplemented directions on the conduct of the proceedings” (Trial Chamber I), [No. ICC-02/11-01/15-498-AnxA](#), 4 May 2016, paras. 15 and 18.

criminal proceedings were affected and determined the scope of their participation on a case-by-case basis within the context of the judicial proceedings. Similarly, Victims currently have a personal interest in the adjudication of the Request and wish to have their views and concerns considered by the Chamber.

18. Firstly, the litigation of the Request will involve a discussion of the criminal proceedings in which the Victims participated and of the evidence heard in the case. The Legal Representative made oral and written submissions on behalf of the Victims in the pre-trial, trial and appeal phases.²⁶ In addition, 17 participating Victims provided evidence as witnesses called by the Prosecution before Trial Chamber I and some were questioned by Mr Blé Goudé's counsel.²⁷ Mr Blé Goudé now claims that the Prosecutor's investigation and some of the Chambers' decisions were "*egregious*", "*faulty*", "*weak*" and "*not properly rendered*".²⁸ As active participants in the criminal proceedings, Victims have a personal interest in the resolution of any challenge to the manner in which proceedings were conducted, such as the one made in the Request.

19. Secondly, the eventual adjudication of the Request may involve "*grant[ing] [Mr Blé Goudé] compensation for the damages he has suffered since the inception of the case against him due to a grave and manifest miscarriage of justice*".²⁹ In other words, as stated by Mr Blé Goudé, the Chamber may determine that the conduct of the criminal proceedings in which the Victims participated amounted to a "*certain and undeniable miscarriage of justice [...] giv[ing] rise to a clear violation of the applicant's fundamental rights and caus[ing] serious harm to the applicant*".³⁰ Such a decision will undoubtedly affect the personal

²⁶ See e.g. the transcript of the hearing in the *Gbagbo and Blé Goudé* case, held on 29 January 2016, No. [ICC-02/11-01/15-T-10-ENG ET WT](#), pp. 43-59; the "Public redacted version of the 'Response to Defence Submissions on the specific factual issues for which the evidence presented could be insufficient to reasonably support a conviction (ICC-02/11-01/15-1198-Conf and ICC-02/11-01/15-1199)', 10 September 2018, ICC-02/11-01/15-1206-Conf", [No. ICC-02/11-01/15-1206-Red](#), 28 September 2018; and the "Public Redacted Version of 'Victims' Observations on the issues on appeal affecting their personal interests', ICC-02/11-01/15-1326-Conf, 8 April 2020", [No. ICC-02/11-01/15-1326-Red](#), 22 April 2020.

²⁷ See e.g. the transcripts of the hearings in the *Gbagbo and Blé Goudé* case, held on 6 December 2016, [No. ICC-02/11-01/15-T-112-Red2-ENG CT](#), pp. 66-78; on 7 July 2017, [No. ICC-02/11-01/15-T-174-Red2-ENG CT](#), pp. 94-98; and on 14 September 2017, [No. ICC-02/11-01/15-T-192-Red2-ENG CT](#), pp. 75-88.

²⁸ See the Motion to strike, *supra* note 5, paras. 21 and 33.

²⁹ *Idem*, para. 20.

³⁰ See the Request, *supra* note 1, para. 10.

interests of the Victims recognised as such by the same proceedings now subject to challenge. Admittedly, Trial Chamber I found Mr Blé Goudé not guilty of the charges brought against him, but it also found that the facts alleged by the Prosecution about the victimisation were established.³¹ Thus, any claim - such as the one made in the Request - that the criminal proceedings where Victims were acknowledged as such involved a “grave and manifest miscarriage of justice” impacts *per se* the Victims’ personal interests.

20. In fact, the interests of the Victims are undeniably affected by proceedings triggered by a request under article 85(3) of the Statute. 727 courageous Victims participated in the proceedings now under review, and some of them bravely appeared before the Court to testify. They do have a fundamental interest in their voice to be publicly heard by the Chamber, regarding the propriety of the proceedings in which they actively took part and contributed to for almost a decade and that so heavily affected their lives, the life of their families and their communities.

21. Thirdly, in light of the central role given to Victims in the framework of the Statute, the Legal Representative advocates for an interpretation of the statutory provisions which takes into full account their rights to truth and justice. In this regard, she stresses that Victims have often similar but distinct interests and views from the Prosecution, hence the importance of their participation in the procedure as

³¹ See in the *Gbagbo and Blé Goudé* case, the “Opinion of Judge Cuno Tarfusser”, [No. ICC-02/11-01/15-1263-AnxA](#), 16 July 2019, para. 75; the “Public Redacted Version of Reasons of Judge Geoffrey Henderson”, [No. ICC-02/11-01/15-1263-AnxB-Red](#), 16 July 2019, paras. 7 and 1392; and the “Public Redacted Version of Dissenting Opinion Judge Herrera Carbuccion”, [No. ICC-02/11-01/15-1263-AnxC-Red](#), 16 July 2019, para. 7.

autonomous actors,³² with an “*independent voice and role*”.³³ The non-recognition of said interests would result in irreparable prejudice to the Victims.

22. Lastly, in accordance with regulation 86(8) of the Regulations, there is no “*compelling reason*”³⁴ to re-evaluate the participation of the Victims concerned pursuant to rule 91(1) of the Rules. Their envisaged participation in the article 85 proceedings will not exceed the filing of a response to the Request and the attendance to any hearing eventually held before the Chamber.³⁵

³² The independent role of victims in criminal proceedings stems from the internationally recognised rights to truth, justice and reparations. See IACtHR, *La Cantuta v. Perú*, [Judgment \(Merits, Reparations and Costs\)](#), 29 November 2006, para. 222; *Vargas-Areco v. Paraguay*, [Judgment \(Merits, Reparations and Costs\)](#), 26 September 2006, paras. 153; *Almonacid-Arellano et al v. Chile*, [Judgment \(Preliminary Objections, Merits, Reparations and Costs\)](#), 26 September 2006, para. 148; *Moiwana Community v. Suriname*, [Judgment \(Preliminary Objections, Merits, Reparations and Costs\)](#), 15 June 2005, para. 204; and *Velásquez-Rodríguez v. Honduras*, [Judgment Merits](#), 29 July 1988, paras. 162-166 and 174. See also ECtHR, *Hugh Jordan v. United Kingdom*, [Judgment](#), 4 May 2001, paras. 16, 23, 157 and 160; *Selmouni v. France*, [Judgment](#), 28 July 1999, para. 79; *Kurt v. Turkey*, [Judgment](#), 25 May 1998, para. 140; *Selçuk and Asker v. Turkey*, [Judgment](#), 24 April 1998, para. 96; *Aydın v. Turkey*, [Judgment](#), 25 September 1997, para. 103; and *Aksoy v. Turkey*, [Judgment](#), 18 December 1996, para. 98.

³³ See in the *Situation in the Democratic Republic of the Congo*, the “Decision on the Applications for Participation in the Proceedings of VPRS 1, VPRS 2, VPRS 3, VPRS 4, VPRS 5 and VPRS 6” (Pre-Trial Chamber I), [No. ICC-01/04-101-tEN-Corr](#), 17 January 2006, para. 51, referring to ECtHR, *Berger v. France*, App. No. 48221/99, [Judgment](#), 3 December 2002, para. 38 and ECtHR, *Perez v. France*, App. No. 47287/99, [Judgment](#), 12 February 2004, para. 68.

³⁴ See *mutatis mutandis* the “Decision on victims’ participation status”, *supra* note 14, para. 46.

³⁵ For the same rationale, see the approach of the Appeals Chamber in the *Gbagbo and Blé Goudé* case in relation to the victims’ participation in interlocutory appeals in the “Reasons for the “Decision on the ‘Request for the recognition of the right of victims authorized to participate in the case to automatically participate in any interlocutory appeal arising from the case and, in the alternative, application to participate in the interlocutory appeal against the ninth decision on Mr Gbagbo’s detention (ICC-02/11-01/15-134-Red3)”, *supra* note 11, para. 18.

IV. CONCLUSION

23. For the foregoing reasons, the Legal Representative of Victims respectfully requests the Chamber to dismiss Mr Blé Goudé's Motion to strike and to recognise that Victims may convey their views and concerns in the article 85 proceedings.

A handwritten signature in black ink, appearing to read 'Paolina Massidda', with a horizontal line drawn underneath the name.

Paolina Massidda
Principal Counsel

Dated this 29th day of September 2021

At The Hague, The Netherlands