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Date: **6 March 2015**

TRIAL CHAMBER I

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

SITUATION IN THE REPUBLIC OF CÔTE D'IVOIRE

IN THE CASE OF THE PROSECUTOR v. LAURENT GBAGBO

Public

Prosecution's Submissions of the proposed mechanisms for exchange of information on individuals enjoying dual status and on the Protocol on the vulnerability assessment and support procedure used to facilitate the testimony of vulnerable witnesses

Source: Office of the Prosecutor

Document 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 the Defence

Mr Emmanuel Altit
Ms Agathe Bahi Baroan

Legal Representatives of the Victims

Ms Paolina Massidda

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(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 Herman von Hebel

Defence Support Section

Deputy Registrar

Victims and Witnesses Unit

Mr Nigel Verril

Detention Section

**Victims Participation and Reparations
Section**

Other

Mr Geert-Jan Alexander Knoops
Mr Claver N'dry

1. The Prosecution (“OTP” or “Prosecution”) submits its proposals as to the proposed mechanisms for exchange of information on individuals enjoying dual status (“Protocol on dual status witnesses”) and the Protocol on the vulnerability assessment and support procedure used to facilitate the testimony of vulnerable witnesses (“Protocol on vulnerable witnesses”) (together “Protocols”), and requests that they be adopted by Trial Chamber I (“Chamber”).
2. The Proposed Protocols are based on the corresponding protocols adopted in the case of the *Prosecutor v. Bosco Ntaganda*.¹

Procedural History

3. On 27 November 2014, the Chamber issued a scheduling order and agenda for the status conference of 4 December 2014.² The agenda included an item requesting the views of the parties and participants, and any update on any ongoing discussions, on a number of protocols including the Protocol on dual status witnesses and the Protocol on vulnerable witnesses.³
4. During the 4 December 2014 status conference, the parties and the Legal Representative of Victims (“LRV”) presented their views on a number of draft protocols.⁴ The Chamber then encouraged the parties to continue their active discussions as to these protocols.⁵
5. On 18 December 2014, the Chamber issued an order setting deadlines for the filing of submissions on outstanding protocols (the “Order”).⁶ The Order specifically directed the Prosecution, the Defence, the OPCV and the VWU to file their submissions on the Protocols by 27 February 2015.⁷

¹ ICC-01/04-02/06-412-AnxA.

² ICC-02/11-01/11-730.

³ ICC-02/11-01/11-730, para. 3(b) (internal citation omitted).

⁴ ICC-02/11-01/11-T-27-CONF-ENG.

⁵ ICC-02/11-01/11-T-27-CONF-ENG, p.19-31.

⁶ ICC-02/11-01/11-739.

⁷ ICC-02/11-01/11-739, p.6.

6. On 27 February 2015, the Prosecution and the LRV submitted a joint request for an extension of time until 6 March 2015 to file their submissions on the Protocols.⁸ On that same date, the defence team for Mr Gbagbo (“Defence”) indicated that it does not oppose this request as long as the Defence is granted the same extension of time.⁹
7. That same day, by way of email, the Single Judge granted the parties and the LRV the requested extension of time.¹⁰ The Chamber subsequently issued the Decision on Requests for an extension of time to submit observations on the outstanding protocols.¹¹

Submissions

8. The Prosecution has engaged in discussions and exchanges of drafts with the Defence and the LRV regarding the two outstanding Protocols. After these various consultations, the Prosecution’s position is that the approach adopted in the equivalent protocols in the case of the *Prosecutor v. Bosco Ntaganda*¹² should also be adopted in this case with the suggestion of two edits to the Protocol on dual status witnesses as detailed below.

Protocol on dual status witnesses

9. The Prosecution has carefully analysed the equivalent protocol in the *Prosecutor v. Bosco Ntaganda*¹³ and sees no reason to depart from it, save two additions.
10. In Section 2 (c), “Dual status witnesses participating in the ICCPP”, the Prosecution is in agreement with the Defence and the LRV that the clause “unless the Chamber orders otherwise” can be added at the end of the sentence.

⁸ ICC-02/11-01/11-785-Conf.

⁹ Email from the Defence to the Chamber, 27 February 2015, 10:44.

¹⁰ Email from the Chamber, 27 February 2015, 14:44.

¹¹ ICC-02/11-01/11-796.

¹² ICC-01/04-02/06-464.

¹³ ICC-01/04-02/06-464; ICC-01/04-02/06-430-Anx1.

This addition only serves to give the Chamber greater discretion if the particular circumstances of a dual status witness in the International Criminal Court Protection Program require a degree of non-disclosure.

11. In section 5, the Prosecution and the LRV suggest the addition of “the Prosecution” to both the section sub-title and the text of the clause. The clause would then read: “The Defence shall inform the legal representative and the Prosecution if it becomes aware that a victim is a potential witness for the Defence.” This addition would render sections 4 and 5 equivalent in the sense that if either party becomes aware that one of its witnesses is also a victim, it shall inform both the LRV and the other party. As currently drafted, there is an imbalance between the Prosecution and Defence’s respective obligations in this respect.

Protocol on vulnerable witnesses

12. The Prosecution supports the approach adopted in the *Prosecutor v. Bosco Ntaganda*¹⁴ as submitted by the VWU¹⁵ and sees no reason to depart from it. The Prosecution opposes the Defence proposal which in essence removes much of VWU’s central role in assessing the need for special measures with respect to vulnerable witnesses called to testify.

¹⁴ ICC-01/04-02/06-464; ICC-01/04-02/06-445-Anx1.

¹⁵ ICC-01/04-02/06-445-Anx1.

Conclusion

13. The Prosecution requests the Chamber to accept its proposals on the Protocol on dual status witnesses and the Protocol on vulnerable witnesses.



Fatou Bensouda, Prosecutor

Dated this 6th day of March 2015

At The Hague, The Netherlands