

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-02/11-01/11
Date: 27 February 2015

TRIAL CHAMBER I

Before: Judge Geoffrey Henderson, Presiding Judge
Judge Cuno Tarfusser
Judge Olga Herrera Carbuccion

SITUATION IN THE REPUBLIC OF CÔTE D'IVOIRE

**IN THE CASE OF
*THE PROSECUTOR v. LAURENT GBAGBO***

PUBLIC

Victims and Witnesses Unit's submission on the Protocol on the vulnerability assessment and support procedure used to facilitate the testimony of vulnerable witnesses pursuant to Order ICC-02/11-01/11-739

Source: The Registry

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

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

**The Office of Public Counsel for
Victims**

Ms Paolina Massida

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

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Mr Nigel Verrill

Detention Section

**Victims Participation and Reparations
Section**

Other

The Registrar of the International Criminal Court (the “Court”);

NOTING the “Registry’s Observations on the ‘Order scheduling a status conference and setting a provisional agenda’ (ICC-02/11-01/11-692)” filed by the Registry on 27 October 2014;¹

NOTING the “Order setting deadlines for the filing of submissions on outstanding protocols” issued by Trial Chamber I (the “Chamber”) on 18 December 2014;²

NOTING articles 43(6), 44 and 68(1) and (4) of the Rome Statute, rules 16 to 19 and 88 of the Rules of Procedure and Evidence and regulations 79 to 96 of the Regulations of the Registry;

NOTING the “Victims and Witnesses Unit’s submission of the “Protocol on the vulnerability assessment and support procedure used to facilitate the testimony of vulnerable witnesses” (the “Vulnerability Protocol”) filed by the Victims and Witnesses Unit (the “VWU” or the “Unit”) on 16 April 2012 upon instruction of Pre-Trial Chamber I;³

CONSIDERING that in its Order the Chamber directed “the Prosecution, the Defence, the LRVs and the VWU to file their submissions, if any, on the draft Protocol on vulnerable witnesses no later than 27 February 2015”;

CONSIDERING that the Prosecution and the Legal Representative agreed that the version of the Vulnerability Protocol previously filed should be submitted in the

¹ ICC-02/11-01/11-705.

² ICC-02/11-01/11-739.

³ ICC-02/11-01/11-93-Anx2.

present case and that the calling party and the Legal Representative in case of individual enjoying dual status, will be provided by the VWU with a copy of the recommendation of the vulnerability assessment performed by the Unit;⁴

CONSIDERING that the VWU does not support the amendments made by the Defence to the Vulnerability Protocol and circulated to the Prosecution, the Legal Representative and the VWU on 25 February 2015;⁵

CONSIDERING that the VWU has provided its comments, which are included in the current submission, on the Defence amendments to the Parties and the Legal representative on 26 February 2015;⁶

RESPECTFULLY SUBMITS, the Victims and Witnesses Unit's submission on the Protocol on the vulnerability assessment and support procedure used to facilitate the testimony of vulnerable witnesses pursuant to Order ICC-02/11-01/11-739:

1. The VWU includes staff with expertise in trauma and trauma related to crimes of sexual violence as required by Article 43(6) of the Statute and specialists in psychology in criminal proceeding as stipulated by Rule 19 of the RPE. As such, the specialists who intervene within the scope of the Vulnerability Protocol are qualified staff members of the Court with the relevant expertise to assess and assist vulnerable witnesses, who fulfil the highest standards of efficiency, competency and integrity required under article 44 of the Rome Statute.
2. The VWU, as a section of the Registry, which is the neutral and impartial organ of the Court, is also ensuring an equal provision of services to all

⁴ Emails from the Legal Representative sent to the VWU on 23 February 2015 at 15h34 and from the Prosecution on 24 February 2015 at 9h27.

⁵ Email sent at 18h02.

⁶ Email sent at 16h23.

parties in the proceedings. The VWU's neutrality and its positioning in the Registry were expressly found by the Appeals Chamber an essential guarantee of its capacity to fulfil the same functions *vis-à-vis* all Parties and participants alike.⁷ In this respect, the VWU is of the view that the assessment of vulnerable witnesses and the recommendation to the Chamber of the measures required to ensure the well-being of the witnesses during their testimony should be done by a specialist of this neutral Unit. The parties should not, according to the VWU, be in charge of designating a specialist in order to conduct the assessment of the witnesses or require any special measures.

3. The calling party is not excluded from the process and is always kept informed throughout the process, as stipulated by the Protocol, and will receive a copy of the recommendations transmitted to the Chamber. This will be stipulated in the cover filing.
4. As already acknowledged in ICC case law, the VWU provides its expertise to the Chamber in order to assist the latter in the determination of the required protective measures.⁸ As a consequence of its neutrality, the VWU is not mandated to assist one party of the proceedings.⁹
5. The VWU is not conducting any interview or assessment without having first received the full consent of the witness who can always oppose the process. This practice which is required for any psychological assessment is always followed by the Unit. In addition, the reports submitted are treated confidentially as all medical files and are only transmitted to the Chamber. The witness is always duly informed of this process.

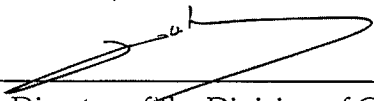
⁷ ICC-01/04-01/07-776, par. 74-90.

⁸ ICC-01/04-01/06-514, pp. 7-8.

⁹ ICC-02/04-01/05-147, par. 36-49.

6. The VWU would like to clarify that the intervention of the Unit is not in any case directed to assess the credibility, influence the witness or to interfere in any way with his testimony. The support that is provided by the representative of the Unit while he/she is present during the testimony of the witness is only aimed to provide all the necessary support to the witness for his/her well-being in order to facilitate his/her testimony before the Court. In all the cases, an authorisation of the Chamber is always required to allow the presence of the psychologist in the courtroom which ensures the fairness of the proceedings.
7. Regarding the special measures that are listed in annex A of the Protocol and challenged by the Defence, the VWU would like to stress that they are always ordered by the Chamber which therefore guarantee that they are not prejudicial to the rights of the accused. The VWU is in this case consulted by the Chamber in its capacity of a specialised Unit.

8. Lastly, the VWU would like to reiterate that this Vulnerability Protocol has been applied by the VWU as part of an established practice since the Lubanga case, that it has been adopted in most of the cases before the Court¹⁰ and that a uniform application guarantees an equal treatment of all vulnerable witnesses before the Court.



Marc Dubuisson, Director of the Division of Court Services
per delegation of
Herman von Hebel, Registrar

Dated this 27 February 2015

At The Hague, The Netherlands

¹⁰ *The Prosecutor v. Jean-Pierre Bemba Gombo* (ICC-01/05-01/08-974-Anx2) in the case of *The Prosecutor v. William Samoei Ruto and Joshua Arap Sang* (ICC-01/09-01/11-303-Anx) in the case of *The Prosecutor v. Charles Blé Goudé* (ICC-02/11-02/11-110-Anx2) and in the case of *The Prosecutor Bosco Ntaganda* (ICC-01/04-02/06-445-Anx1).