

**Cour
Pénale
Internationale**

**International
Criminal
Court**



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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 observations on the « divulgation de l'identité des témoins lors des enquêtes, l'utilisation de matériel confidentiel pendant les enquêtes, la divulgation d'information par inadvertance et les contacts entre une partie et un témoin de la partie adverse » 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 “Order setting deadlines for the filing of submissions on outstanding protocols” issued by Trial Chamber I (the “Chamber”) on 18 December 2014;¹

NOTING the “Submissions of the Common Legal Representative of victims pursuant to the order setting deadlines for the filing of submissions on outstanding protocols (ICC-02/11-01/11-739)” filed on 20 February 2015;²

NOTING the “ Prosecution’s Proposed Protocol on the ‘divulgence de l’identité des témoins lors des enquêtes, l’utilisation de matériel confidentiel pendant les enquêtes, la divulgation d’information par inadvertance et les contacts entre une partie et un témoin de la partie adverse’” filed on 20 February 2015;³

NOTING the “ Soumissions de la Défense relative à l’adoption des : 1. Protocole régissant la divulgation de l’identité des témoins de la partie adverse ou du représentant légal des victimes ; 2. Protocole régissant l’utilisation de matériel confidentiel par les parties et le représentant légal des victimes pendant les enquêtes, 3. Protocole portant sur la divulgation de matériel qui ne devait pas être divulgué ou qui aurait dû être divulgué dans une version expurgée 4. Protocole régissant les contacts entre une partie et un témoin de la partie adverse” filed on 20 February 2015;⁴

¹ ICC-02/11-01/11-739.

² ICC-02/11-01/11-776.

³ ICC-02/11-01/11-777-Conf+AnxA.

⁴ ICC-02/11-01/11-778-Conf + Conf-Anx.

NOTING the exchange of emails between the Victims and Witnesses Unit (the “VWU” or the “Unit”) and Trial Chamber I (the “Chamber”) on 23 February 2015;⁵

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

CONSIDERING that in its email, the Chamber instructed the VWU to promptly submit the information contained in its email *via* a proper filing;

CONSIDERING that the VWU agrees with the document filed by the Prosecution as an annex to its submission but has some reservations concerning some proposals of the Defence;

CONSIDERING that the Defence was informed, in an email also sent to the parties and participants on 19 February 2015, about the reasons supporting the VWU’s position after the discussion with the Prosecution and the Legal Representative took place in order to finalize the document that was subsequently sent to the Defence and filed in the case;⁶

RESPECTFULLY SUBMITS THE FOLLOWING :

I. The necessity to obtain the prior consent of the witness in case of divulgation of his identity

1. The VWU supports the following paragraph h) as included in the document filed by the Prosecution:

⁵ Email respectively sent at 12h26 and 14h09.

⁶ Email sent at 18h04.

« Il incombe aux parties et au représentant de s'assurer que les témoins qu'ils entendent citer à comparaître soient informées des conséquences de leur interaction avec la Cour. A cette fin, les témoins donnent, si possible, un consentement écrit, avant ou au moment de fournir une déclaration. Les parties et le représentant ont une responsabilité particulière à cet égard dans le cas de témoins vulnérables. »

2. The Unit is of the view that witnesses may perceive themselves to be at a very high level of risk by realising that investigative activities related to them are conducted in the field. While this perception does not always correspond to the objective level of risk, it may still cause difficulties in the management of expectations and may ultimately have an effect on the willingness of those affected to cooperate with the Court. These concerns are amplified with regard to witnesses who are considered to be vulnerable.
3. In order to avoid such an adverse reaction to investigative activities, the individuals concerned must be informed from the outset that their involvement with the Court may also entail being the subject of investigations. The VWU considers that the inclusion of such paragraph is necessary in a document related to the handling of confidential information during investigations.

II. The involvement of the VWU in case of contact with the witness of the opposing party

4. The VWU is of the view that its involvement should be limited to the cases of protected witnesses, included in the Court Protection Programme (the "ICCPP") or vulnerable witnesses or when the organisation of an interview could create a security risk for the witness to be met by one of the parties. The Unit considers that in the case of non-protected or non-vulnerable witnesses,

the VWU should not intervene in the organisation of a meeting which is an *inter partes* process. The Unit is therefore in agreement with the text of the protocol as filed by the Prosecution.

5. The VWU is, as a consequence, opposed to the following proposals made by the Defence in its submission:

Paragraph b) « La partie qui souhaite rencontrer et/ou interroger un témoin de l'autre partie doit préalablement en avoir informé l'UVT, quelque soit le statut du témoin. »

Paragraph e) « L'UVT est le seul est le seul canal approprié à travers lequel la partie qui enquête peut commencer la procédure afin de contacter le témoin de la partie adverse que la partie demanderesse souhaite contacter et rencontrer ».

Parapgraph g) « En conséquence, conformément aux dispositions, la partie qui souhaite rencontrer ou interroger le témoin de la partie adverse, quelque soit son statut, protégé ou non, doit, en plus d'en informer la partie adverse préalablement en informer l'UVT afin qu'elle puisse prendre les mesures nécessaires pour organiser la rencontre et/ou l'entretien. Une fois le consentement du témoin obtenu, l'UVT aura la responsabilité de prendre toutes les dispositions nécessaires ».

Paragraph n) « L'UVT est chargée de prendre toutes les dispositions nécessaires pour faciliter la mise en contact entre le témoin et la partie demanderesse. Elle organise notamment les éventuels déplacements et voyages et la mise à disposition d'un lieu sécurisé pour l'entretien ».

Paragraph p) « Lorsque la partie qui enquête souhaite rencontrer et/ou interroger un témoin admis dans le Programme de protection, l'UVT informera ladite partie de l'endroit où se tiendra la réunion et prendra toute mesure logistique nécessaire afin de

permettre la présence du témoin à l'endroit indiqué à une date préalablement fixée avec la partie demanderesse."

6. The VWU would like to emphasize that the facilitation of investigative activities of the parties is not part of the VWU's mandate. The Section does not have neither the logistical means nor the financial capacity to organise all the meetings as requested by the Defence. The VWU is focusing on the organisation of the appearance of witnesses for trial and on the protection (physical and psychological) of witnesses. If the VWU would have to intervene in all the cases as requested by the Defence, it could delay the investigations of the parties.
7. However and as indicated in its correspondence to the Parties and Participants, the VWU is ready to intervene in specific cases where the situation requires so and upon an order of the Chamber in exceptional cases that are not regulated by the Protocol.
8. Lastly the VWU is opposed to the following paragraph q) and to the involvement of its representative in this case as an intervention of the VWU representative may still be possible if required by the Chamber in case of exceptional circumstances:

“« Un enregistrement vidéo ou audio de l'entièreté de l'entretien sera fourni à la partie ou au représentant qui appelle le témoin ou qui s'appuie sur sa déclaration dès que possible après la conclusion de l'entretien. Néanmoins, le témoin peut refuser l'enregistrement. Dans ce cas, le rapport du représentant de l'UVT présent lors de l'entretien fera foi.”



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