

**Cour
Pénale
Internationale**

**International
Criminal
Court**



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No.: ICC-02/11-01/11
Date: 3 February 2015

TRIAL CHAMBER I

Before: Judge Geoffrey Henderson, Single Judge

SITUATION IN THE REPUBLIC OF CÔTE D'IVOIRE

IN THE CASE OF
THE PROSECUTOR v. LAURENT GBAGBO

CONFIDENTIAL

**Registry's Observations on the " Soumissions conjointes de la Représentante
légal des victimes et de la Défense de M. Laurent Gbagbo portant sur certaines
questions relatives à la participation des victimes au procès" (ICC-02/11-01/11-748)**

Source: Registry

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

The Office of the Prosecutor

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Counsel for the Defence

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Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

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REGISTRY

Registrar

Mr Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Ms Fiona McKay

Other

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

NOTING the joint submissions of Mr Laurent Gbagbo (the “Defence”) and the Legal representative for Victims (the “LRV”), notified on 19 January 2015, concerning the participation of victims at the trial stage of the proceedings (the “Joint Submissions of 19 January 2015”);¹

NOTING the Order issued by the Single Judge of Trial Chamber I (the “Single Judge”) on 23 January 2015, requesting the Registry to file observations in relation to the Joint Submissions of 19 January 2015, by 3 February 2015 (the “Order of 23 January 2015”);²

NOTING article 68(1) of the Rome Statute, rules 16 and 89 of the Rules of Procedure and Evidence (the “Rules”), regulations 81(4) and 86 of the Regulations of the Court and regulations 97 to 101, 107 and 108 of the Regulations of the Registry;

RESPECTFULLY SUBMITS AS FOLLOWS:

A. Regarding the lifting of redactions on applications for participation in the case *the Prosecutor v. Laurent Gbagbo* (the “Case”)

(1) Applications for participation of victims already authorised to participate at the preliminary stage of the Case

1. The Registry believes that the LRV is best placed to advise on any lifting of redactions on the applications of already participating victims, and the amount and scope of such revision, in light of their knowledge of the client's circumstances. The Registry draws to the Chamber's attention the fact that in some instances, lifting redactions in an application of a victim already authorized to participate could result in revealing identifying information regarding other

¹ ICC-02/11-01/11-748.

² ICC-02/11-01/11-751-Conf.

individuals or third parties not represented by the LRV. For these reasons, the Registry respectfully recommends that the Registry transmits lesser redacted versions to the Defence, after consultation with the LRV.

(2) New applications for participation at the trial stage of the Case

2. Mindful of the need to ensure the efficiency of the proceedings, and considering the role of the Office of Public Counsel for Victims (the "OPCV") in the Case,³ the Registry proposes to consult the OPCV whenever feasible on the scope of any redactions to apply to applications to be transmitted to the Parties before it files such redacted versions.

B. Regarding the procedure for allowing victims to participate at trial

(1) The use of the 7 page standard application form

3. The Registry has already provided its observations on the procedure for allowing victims to participate at Trial in the present Case.⁴ As stated in those observations, in the Registry's view, based on its experience and lessons learnt, the options proposed in those observations would improve the victim system's effectiveness and efficiency.

(2) The timetable for transmission of new applications for participation

4. It appears to the Registry that the timetable for dealing with new applications for participation in the proceedings might differ depending on which application system is adopted by the Chamber, including whether or not the Chamber decides to continue accepting new victims to participate after the trial has started. Whatever application system is adopted, the Registry would be able to begin implementing it as soon as the Decision on the system for victims' participation for the upcoming trial currently scheduled to start in July 2015⁵ has been issued by the Chamber.

³ The OPCV was appointed to represent the victims authorised to participate in the case at the Pre-Trial stage (ICC-02/11-01/11-138 paras 44 and 66), and also has the general role of providing support and assistance to victims under regulation 81 of the Regulation of the Court.

⁴ ICC-02/11-01/11-705, paras 11-23.

⁵ ICC-02/11-01/11-723.

5. As a first step, the Registry would undertake activities in the field to assist potential additional applicants, as rapidly as possible after the Chamber has issued its decision. These activities would include disseminating information on the procedure, and training selected intermediaries on the relevant application form and procedure, with a view to ensuring as far as possible that forms are properly completed and that only those applicants who may fall within the scope of the present Case complete a form. Received applications would then be processed and assessed against the requirements of Rule 85 of the Rules of Procedure and Evidence.
6. In the Registry's experience, these activities take time, and attempting to implement them without sufficient time involves risks. Conducting such an exercise without sufficient time may result in victims not fully understanding the process or not providing the information required, insufficiently trained intermediaries assisting victims, or the Registry not being able to process all the applications. In light of this context, and competing demands on the limited resources of the Victims Participation and Reparation Section of the Registry (the "VPRS"), the Registry would propose that the Chamber establishes a deadline of 30 days before the start of the trial for the Registry to file new victim's applications that will be decided upon before the start of the trial.⁶

C. On the use of pseudonyms for intermediaries

7. As a preliminary remark, the Registry does not consider that the Decision on the Protocol establishing a redaction regime⁷ mentioned by the Defence in the Joint Submissions of 19 January 2015⁸ should apply in this case. This protocol applies *inter partes* and is based on their disclosure obligation for any material to be relied on at trial. However, in his/her application form the applicant provides information to the Chamber only for the purposes of substantiating an

⁶ The Registry notes that the deadline of 15 April 2015 proposed in the Joint Submissions of 19 January 2015 (ICC-02/11-01/11-748-Anx204) for the transmission of new applications would in the Registry's view not be sufficient to reach the victims, enable them to make their applications and process those applications.

⁷ ICC-02/11-01/11-737.

⁸ ICC-02/11-01/11-748, para 24.

application for participation but not to give evidence on either points of fact or law.⁹ For this reason a distinction must be made between, on the one hand, the role of an intermediary of the Office of the Prosecutor (the «OTP »), and on the other hand, an intermediary assisting victims in coordination with the VPRS. Unlike the intermediaries of the OTP, the role of VPRS intermediaries' is not to assist in the conduct of investigations, rather, they assist (potential) victims to submit their application for participation and/or reparations.

8. Additionally the Registry concurs with the LRV that the security situation of intermediaries assisting the work of the VPRS must be assessed differently from intermediaries of other sections and organs of the Court. Indeed although several parts of the Court as well as Counsel cooperate with intermediaries, the nature of the relationship and level of support they receive, particularly regarding protecting measures, vary significantly between different organs and units of the Court, and Counsel.¹⁰
9. Finally, should the person assisting an applicant in completing an application form for participation in the proceedings be systematically identified, even by pseudonym, the Registry believes this could lead to the identification of this individual, and/or of other applicants he or she has assisted, through the identification of patterns and by connecting information found in the applications' forms.

D. Regarding the use of a new referencing system for participating victims

10. In relation to the request of the Defence to allocate each participating victim a common letter and a number,¹¹ the Registry takes this opportunity to explain the current referencing system used for victims' applications for participation and/or reparations received by the Registry.

⁹ See for example, ICC-01/09-01/11-169, para 9.

¹⁰ See the Guidelines Governing the Relations between the Court and Intermediaries, March 2014.

¹¹ ICC-02/11-01/11-748, para. 26.

11. The letter "a" means that the document received is an application for participation and/or reparations.¹² The last two digits correspond to the year when the application was received by the Registry in The Hague. The five digits in between the "a" and the last two digits is a number assigned chronologically, in order of receipt, from a range of numbers allocated to the Situation in the Republic of Côte d'Ivoire at the beginning of each year.
12. In this way, each application received bears a unique reference number, which enables the Registry and different relevant stakeholders to deal with thousands of applications received each year in all the proceedings before the Court. This system was adopted when the first victims' applications began to be received by the Court and has been integrated into the Court's wider record management system.
13. The existing referencing system enables the Registry to retrieve any application that is linked to any situation or case before the Court when additional information or supplementary information is received. Establishing a separate referencing system only for applicants and victims participating in the present Case would constitute a modification of this agreed referencing system. Such a modification would have a significant impact on this overall system used in all other proceedings before the Court, and would need to be done in consultation with the Court Management Section and other relevant stakeholders.¹³ Should the system recommended by the Defence be implemented, the consequences would be that all parties involved would have to keep a double record and the Registry would have to stamp again and transmit again all applications of all persons and organisations which have been granted victim status in the present Case and in any other case in which they have also been granted this status. Implementing the Defence proposed new referencing system would moreover render more complex the cross checking of information in relation to victims.

¹² When the number assigned to a document starts with an "r", it means that the Registry has received a victim representation in accordance with article 15.3 of the Rome Statute.

¹³ Other sections from the Registry such as the Victims and Witnesses Unit, the OTP, the Defence, the legal representatives of victims and applicants, victims, applicants and intermediaries who have been informed of the reference number attributed to a specific application would need to be consulted.

14. Based on the above, the Registry would strongly recommend not to change the referencing system for victims' applications for one case.

RESPECTFULLY SUBMITTED,



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

Dated this 3 February 2015

At The Hague, The Netherlands.