

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

**No.: ICC-02/11-01/11
Date: 27 October 2014**

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

Registry's Observations on the "Order scheduling a status conference and setting a provisional agenda" (ICC-02/11-01/11-692)

Source: 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

Mr Esteban Peralta-Losilla

Victims and Witnesses Unit

Mr Nigel Verrill

Detention Section

**Victims Participation and Reparations
Section**

Ms Fiona McKay

Other

Ms. Alexandra Tomic

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

NOTING the “*Order scheduling a status conference and setting a provisional agenda*” issued by Trial Chamber I (the “Chamber”) on 8 October 2014 (the “Order of 8 October 2014”);¹

CONSIDERING that in its Order of 8 October 2014, the Chamber requested the Registry to make submissions on items b, d and e of the provisional agenda issued for the status conference on 4 November 2014;²

NOTING articles 43(6), 64(3) and 68(1) and (4) of the Rome Statute (the “Statute”), rules 16 to 19, 85, 88, 89 and 132(1) of the Rules of Procedure and Evidence (the “Rules”), regulations 54 and 86 of the Regulations of the Court (the “Regulations”) and regulations 79 to 96 of the Regulations of the Registry;

RESPECTFULLY SUBMITS AS FOLLOWS:

I. On item b):

Whether the Prosecution anticipates issues concerning the protection of witnesses and other persons (including the need for redactions), the disclosure of identities of witnesses, as well as referrals to the Court’s witness protection program

(1) Protection referrals

1. The Victims and Witnesses Unit (the “VWU” or “Unit”) encourages the parties to follow the procedure established in regulations 80(1) and 96(2) of the Regulations of the Registry for any issues concerning the protection of witnesses and referrals

¹ ICC-02/11-01/11-692.

² *Ibid*, paras. 4(b)(d)(e) and 5.

to the Court's witness protection program. The Unit remains available to assist the parties and to provide them with a protection referral form to facilitate any request.

2. Upon receipt of a referral for protection, the Unit will perform a threat and risk assessment of the security situation of the individual for whom protection measures are requested. For the purpose of assessment and recommendation of the appropriate protective measures it is essential that the parties provide the VWU with specific information on the nature of the threat or risk the individual could be exposed to.

(2) Other witness related matters

3. The Registry takes this opportunity to inform the Chamber that Pre-Trial Chamber III issued on 6 March 2012 a *"Decision on the Protocols concerning the disclosure of the identity of witnesses of the other party and the handling of confidential information in the course of investigations"*³ in which the Pre-Trial Chamber decided that the parties shall apply the protocols adopted by the decision.
4. In relation to familiarisation, the Registry informs the Chamber that prior to any witness giving testimony, the VWU is usually required to carry out a witness familiarisation procedure for the benefit of those witnesses. In this respect, the VWU refers to the *"Unified Protocol on the practices used to prepare and familiarise witnesses for giving testimony"* which was filed by the VWU on 16 April 2012 upon instruction of Pre-Trial Chamber I.⁴
5. The Registry also informs the Chamber that in accordance with rule 88 of the Rules, the Unit, upon a request from the Chamber, will provide its assessment on the need for special measures to be implemented for the benefit of potentially vulnerable witnesses. In this regard, the VWU refers to the *"Protocol on the vulnerability assessment and support procedure used to facilitate the testimony of*

³ ICC-02/11-01/11-49.

⁴ ICC-02/11-01/11-93-Anx1.

vulnerable witnesses”, which was also filed by the VWU on 16 April 2012 upon instruction of Pre-Trial Chamber I.⁵

6. Furthermore, subject to the approach of the present Chamber and in the event the parties and participants are to call dual status’ witnesses, the Unit informs the Chamber in order to promote a uniformed practice, on the “*Proposed mechanism for exchange of information on individuals enjoying dual status*” (the “proposed mechanism”) introduced in the case of *The Prosecutor v. Thomas Lubanga Dyilo*. This proposed mechanism was filed by the VWU in the case of *The Prosecutor v. Abdallah Banda Abakaker Nourain* on 11 April 2014, subsequent to the required consultation between the Unit and the parties and participants as directed by Trial Chamber IV.⁶ The VWU is ready to file the proposed mechanism in the record of the present case with the necessary adjustments to reflect the practice in the present case, upon instruction by the Chamber.

II. On item d):

Update on victims’ applications and the procedure for allowing victims to participate in the trial proceedings

7. As regards item d) of the Order of 8 October 2014, the Registry will provide below an update on the victims’ applications received so far by the Victims Participation and Reparations Section (the “VPRS”) (Section 1) and observations on the procedure for allowing victims to participate in the trial proceedings (Section 2). In Section 2, the Registry’s observations aim to assist the Chamber to settle on a victim admission system for the present case that builds on previous experience and furthers the Court-wide effort to make victim participation more efficient, sustainable and meaningful.

⁵ ICC-02/11-01/11-93-Anx2.

⁶ ICC-02/05-03/09-556-Conf-Anx.

(1) Update on Victims' Applications

8. To date, the Registry has received a total of approximately 569 applications for participation in the proceedings⁷ in relation to the Côte d'Ivoire Situation. Of these, 220 applications⁸ linked to the present case were transmitted⁹ to the Chamber and the parties during the pre-trial stage of the proceedings,¹⁰ and 199 victims¹¹ were accepted to participate at the confirmation of charges hearing.¹²
9. All 199 victims admitted as participants in the present case were also authorised to participate in the proceedings related to the case of *The Prosecutor v. Charles Blé Goudé* (the "Blé Goudé Case"), on the basis that the subject-matter of the two cases as well as the crimes alleged and the incidents supporting the charges appeared to be the same.¹³ In the Blé Goudé Case, an additional 271 victims linked to the same four incidents set out in the Confirmation of Charges Decision in the present case were recognised.¹⁴ In light of this overlap, the Registry anticipates that these 271 additional victims accepted to participate in the

⁷ Including 14 duplicates, 1 application withdrawn and 2 applications submitted by two applicants who have passed away.

⁸ This number includes 6 collective applications grouping a total of 101 individual applicants.

⁹ The Registry notes that the remaining applications for participation in the proceedings were not transmitted during the pre-trial stage of the proceedings because they were assessed by the Registry as incomplete or falling outside the scope of the Case.

¹⁰ The VPRS transmitted these applications in 3 batches between 16 May 2012 and 18 January 2013 (see ICC-02/11-01/11-121; ICC-02/11-01/11-122; ICC-02/11-01/11-309; ICC-02/11-01/11-311; ICC-02/11-01/11-364 and ICC-02/11-01/11-366. Original non-redacted versions of the applications were transmitted to the Pre-Trial Chamber and the Prosecution and redacted versions were transmitted to the Defence, in compliance with Pre-Trial Chamber I's Second Decision on issues related to the victims' application process, notified on 5 April 2012 (ICC-02/11-01/11-86).

¹¹ The Registry notes that out of these, participating victim a/20163/12 has died and her status of participating victim was terminated (see ICC-02/11-02/11-111, para. 29).

¹² ICC-02/11-01/11-138 and ICC-02/11-01/11-384-Corr.

¹³ ICC-02/11-02/11-83, paras 12-20. The Registry notes that a fifth incident (described as the attack on Yopougon from 25 to 28 February 2011) was included in the Prosecutor's Document containing the charges against Mr Blé Goudé, on top of the 4 incidents brought against Mr Gbagbo.

¹⁴ Namely: the attacks related to the demonstrations at the RTI building (16-19 December 2010); the attack on a women's demonstration in Abobo (3 March 2011); the shelling of Abobo market and the surrounding area (17 March 2011) and the attack on Yopougon (on or around 12 April 2011) (see ICC-02/11-01/11-656-Red).

proceedings against Mr Blé Goudé may also wish to apply to participate in the present case.¹⁵

10. As to new applications that can be expected, considering that the scope of the present case remains limited to the four incidents,¹⁶ and on the basis of information currently available to it, the Registry does not expect to receive more than a further 150 to 200 applications for participation. At this point, therefore, the Registry does not expect that the total number of victims seeking to participate at trial in the present case would exceed 700.¹⁷ The Registry will inform the Chamber if there is any change in this estimate.

(2) Observations on the Procedure for Allowing Victims to Participate at Trial

11. The Registry welcomes the opportunity to provide its observations on the admission system for victims to participate in trial proceedings and is mindful of the condition noted by various Chambers that any system that is adopted needs to ensure that victim participation under article 68(3) of the Statute is “meaningful” as opposed to “purely symbolic”.¹⁸ It is in this spirit that the Registry has undertaken an overall review exercise of the victim application system with a view to identifying ways to improve its efficiency, sustainability and effectiveness. While divergences now exist in important aspects of the victim admission system, the Registry is convinced that variations between cases can be addressed effectively within one system, and that there are compelling reasons for settling on a standard victim admission system.¹⁹ Taking this into account,

¹⁵ If the Chamber so instructs, the Registry could transmit the reports under regulation 86(5) related to these applications for participation in the proceedings that were notified in the record of the Blé Goudé Case into the record of the present Case, since the assessment carried out by the VPRS against rule 85 of the Rules requirements would remain the same in the present Case.

¹⁶ See *supra*, footnote 14.

¹⁷ This total number includes the 271 victims admitted to participate in the Blé Goudé Case.

¹⁸ See ICC-01/09-02/11-498, para. 9 [referring to ICC-01/04-01/06-1119, para. 85; ICC-01/04-01/06-1432, para. 97; ICC-01/04-01/07-1328, para. 10(a); ICC-01/05-01/08-1005, para. 9(a)]. See also ICC-02/11/01/11-33, para. 5.

¹⁹ The Registry considers that a uniform approach would allow organisation of victim participation to be completed much faster and more efficiently in advance of specific proceedings, making

and in light of the Registry's experience and lessons learnt, the Registry would respectfully not recommend repeating the partly collective approach²⁰ which was implemented at the pre-trial stage of the present case, for the reasons explained below. Rather, the Registry would respectfully submit two other options for victim admission systems for the Chamber's consideration.

12. While the experience in implementing the partly collective approach at the pre-trial stage of the present case presented an invaluable opportunity to test a more collective management of a victim's application process the Registry would not recommend repeating this approach at the trial stage of the present case for the reasons outlined in its observations before Pre-Trial Chamber II in the case of *The Prosecutor v. Bosco Ntaganda* (the "Ntaganda Case").²¹ In summary, the Registry observed that in Côte d'Ivoire, where most of the groups of victims were not pre-existing or self-identified, whether due to the nature of the harm suffered (such as sexual violence) or due to tensions or lack of trust, not all victims felt comfortable speaking in front of groups of other victims in the meetings organised for the purpose of completing a group application form. A further lesson learnt was that linking individual victims to a group in the records relating to a case can create problems later if the same victim wishes to participate in relation to another case. Since the Registry does not recommend that this approach be followed at the trial stage of the present case, it respectfully submits two alternative options for victim admission systems for the Chamber's consideration.

proceedings more efficient and expeditious and requiring less judicial time. It is indeed time consuming and inefficient for Chambers to tailor a new system for each case, and for parties and victims' legal representatives to adapt to differing systems; it is also resource intensive to create a new system each time or implement several differing systems simultaneously, which creates a lack of certainty and predictability for potential applicants.

²⁰ The partly collective approach consists of two elements: (i) a group form, which allows for a number of individuals to describe elements common to them as a group (the "group form"); and (ii) an individual declaration, which connects the individual application to the information provided in the group form and includes the information necessary under the statutory provisions. This approach is set out in Pre-Trial Chamber I's Second decision on issues related to the victims' application process, notified on 5 April 2012 (ICC-02/11-01/11-86).

²¹ ICC-01/04-02/06-57.

13. The variations in the victims' admission systems envisageable are such that while the Registry can advise on the best way to implement the system, there are certain matters of principle that are for the Chamber, and not the Registry to determine. In particular, the role of the Chamber (whether it will only set the criteria for victims to be accepted, or whether it will also apply these and determine the status of individual victims) and the parties (whether they will receive detailed information about individual victim applicants and have the opportunity to provide observations on these or not) fall into this category. In light of this, the Registry will present the following two options for the Chamber's consideration. The Registry notes at the outset that the different options proposed have differing resource implications. For instance, Option 1 involves significant staff time for the Registry in preparing redactions, as well as preparing victims' applications and individual assessment reports for filing, which Option 2 does not.

Option 1: Ntaganda Pre-Trial Approach

14. Should the Chamber decide that judicial consideration of individual applications for participation in the proceedings is appropriate, the Registry would propose an admission system similar to that adopted at the pre-trial stage of the Ntaganda case (the "Ntaganda Pre-Trial Approach"). The Registry notes that if this option were to be followed, the Registry would like to be given the opportunity to propose some amendments in light of the lessons learnt from implementing that system.
15. The parameters of the Ntaganda Pre-Trial Approach were set out by the Single Judge in her *"Decision Establishing Principles on the Victims' Application Process"* dated 28 May 2013 and *"Decision on Victims' Participation at the Confirmation of Charges Hearing and in the Related Proceedings"* dated 15 January 2014.²² The main elements of the system are: (1) A short simplified application form, with only information concerning the crime and the harm alleged to have been suffered,

²² ICC-01/04-02/06-67 and ICC-01/04-02/06-211.

transmitted to the parties (to the Defence, in redacted form), and all other information provided by the applicant, including supporting documents such as proof of identity, made available only to the Chamber; (2) Administrative grouping of victims based on the incidents in which the victim applicants were involved or the harm that they suffered; (3) A Confidential report on the applications prepared by the Registry in accordance with regulation 86(5) of the Regulations, including basic security information and statistics compiled on the groups of victims, notified to the Chamber and the parties; (4) A table attached to the above mentioned report, containing the Registry's assessment of each application against rule 85 of the Rules, notified in non-redacted version to the Chamber and Prosecution and in a redacted version to the Defence.

16. Should the Ntaganda Pre-Trial Approach be adopted in the present case, the Registry submits that a deadline for transmission of applications to the Chamber and the parties, as well as a shorter deadline for submission of applications to the VPRS, would greatly assist.
17. The Registry remains available should the Chamber require any further detail on the potential implementation of an approach similar to the Ntaganda Pre-Trial Approach in the present Case, including its proposed amendments to that approach.

Option 2: Registration of victims by the Registry on the basis of criteria established by the Chamber

18. Option 2 has similarities with the system of victim' participation implemented at the trial stage in the two Kenya Cases before the Court. Under the admission system devised by Trial Chamber V, victims seeking to participate in the proceedings through the common legal representative could do so without going through the application procedure established by rule 89 of the Rules (the "Kenya Approach"). Such victims could register with the Registry, if they wished to do so on a rolling basis, and the Registry files reports with detailed statistics and information on the general situation of the victims on a bi-monthly basis.

Under the Kenya Approach, only those victims who wish to apply to appear in person before the Chamber would go through the standard rule 89 of the Rules application process.

19. The Registry would however recommend that important changes be made to the Kenya Approach if it is to be adopted. First, the Chamber would give to the Registry the responsibility to verify whether or not victim applicants fulfil the rule 85 of the Rules criteria before registering them as participating victims and transmitting their details to the Common Legal Representative. Second, the registration of participating victims with the Registry would be mandatory (rather than optional, as in the Kenya Approach). In the submission of the Registry, these two elements would provide a greater degree of oversight to the Court, assign responsibility for applying the criteria established by the Chamber to a neutral body, and provide greater certainty and consistency for victims. The Registry would thus make sure that all registered victims qualify, in its assessment, under rule 85 of the Rules. Another advantage would be to obtain more foreseeability as to the number of victims possibly concerned by subsequent reparations proceedings, if any.
20. Under this amended approach, the Chamber would establish, at the beginning of the phase, principles and criteria for admitting victims to participate in the trial proceedings, and could seek submissions from the parties on these. The application of those principles to specific applications would be undertaken by the Registry. The Registry, as a neutral organ within the Court, would apply the criteria established by the Chamber and “register” victims in the Case, and transmit the applications of qualifying victims to the common legal representative of the victims (the “CLR”). Where the Registry requires further instructions from the Chamber in order to make determinations on issues arising in specific applications, it could raise these questions with the Chamber.
21. For the sake of transparency of the process and in order to facilitate its oversight, the Chamber might wish to consider additionally requesting the Registry, in cooperation with the CLR, to prepare periodic reports on the activities of the

Registry and the CLR in relation to victims, statistics on the victims' applications transmitted to the CLR grouped administratively by incident, the general situation of victims participating in the present case, security related information of relevance to the proceedings and victims participating in the present case.

22. Considering that an admission system is not an end in itself and that its purpose is to enable qualifying victims to participate in the proceedings, the Registry notes that such an approach would have the advantage of reducing the amount of resources required by the Chamber, the parties and the Registry, for dealing with victims' applications to participate in the proceedings, and allowing the Registry to focus its limited resources on efficiently registering victims according to the Chamber's pre-established criteria, while at the same time allowing for effective oversight by the Chamber and focused input by the parties.
23. The Registry remains available to provide any further information relating to the options presented above, or to assist the Chamber in any other respect in best organising the participation of victims for the trial phase.

III. On item e):

Languages to be used in the proceedings, in particular, the languages spoken by the witnesses the parties intend to call and victims the legal representatives may seek authorization to call

24. The Registry has consulted the parties and the participants in relation to the languages to be used in the proceedings, in particular, the languages spoken by the witnesses the parties intend to call and victims the legal representatives may seek authorisation to call. At this stage the parties and participants anticipate that the languages to be used in the proceedings are English, French, Dioula and Bambara. The Office of the Prosecutor further indicated

that they are currently identifying any other Western African languages which have been used during interviews with their witnesses.

25. For languages other than English and French, the Registry is in the process of ascertaining which freelance simultaneous interpreters have these languages and are able to work at hearings in simultaneous mode as this would be the most efficient way of proceedings. However, in the event that it is not possible to find simultaneous interpreters for the languages other than English and French, the Registry will bring in operational/freelance interpreters to work in consecutive mode at trial. It should be noted that interpretation in consecutive mode would add on average 30% to the length of hearings. Interpreters interpreting into Dioula or Bambara would interpret from and into French and that would be used as relay for English.
26. In addition, for languages other than English and French, a notice period of a minimum of six weeks before the expected start of testimony would be required to arrange for the travel and visa of freelance interpreters as well as for their briefing and preparation.

RESPECTFULLY SUBMITTED,



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

Dated this 27 October 2014

At The Hague, The Netherlands.