

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: English

No.: ICC-02/11-02/11
Date: 9 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. CHARLES BLÉ GOUDÉ***

PUBLIC

Registry's Observations on the "Order scheduling a status conference and setting a provisional agenda"

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 Geert-Jan Alexander Knoops

Ms N'dry Claver

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 23 January 2015 (the “Order of 23 January 2015”);¹

CONSIDERING that in its Order of 23 January 2015, the Chamber requested the Registry to make submissions on items b, d and e of the provisional agenda issued for the status conference on 13 February 2015;²

CONSIDERING that the “extension of time to 9 February 2015 for the submissions pertaining to the status conference extends to the Registry and LRV as well as the Prosecution”;³

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:

¹ ICC-02/11-02/11-200.

² ICC-02/11-02/11-205, paras. 6(b)(d)(e) and 7.

³ See confirmation email from Legal Officer Trial Chamber I received on Friday 30 January 2015 at 18.16 hours.

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;

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 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.

Other witness related matters

3. The Registry takes this opportunity to inform the Chamber that Pre-Trial Chamber I issued on 5 May 2014 a "Second decision on issues related to disclosure of evidence" in which the Single Judge established a procedure governing the conditions under which the investigating party is allowed to contact the other party's witnesses who are included in the ICCPP and those who are not included in the ICCPP.⁴

⁴ ICC-02/11-02/11-67, par. 17-20.

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 at trial in the case of *the Prosecutor v. Charles Blé Goudé*” which was filed before the Pre-Trial Chamber in the record of the case by the VWU on 30 July 2014⁵. However, the VWU wishes to inform the Chamber that following an order from the Trial Chamber in the Gbagbo case, the parties, the participants and the VWU are directed to file their submissions on the familiarisation protocol on 27 February 2015⁶. In order to promote a uniform practice, the VWU would support that the same document, as already filed before the Pre-Trial Chamber in the current case, be filed in both cases.

5. The Registry also informs the Chamber that in accordance with rule 88 of the Rules of Procedure and Evidence, the Unit upon a request from the Chamber provides 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 vulnerable witnesses” which was also filed before the Pre-Trial Chamber by the VWU in the record of the case, on 30 July 2014.⁷

6. Finally, 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 on the “Proposed mechanism for exchange of information on individuals enjoying dual status” (the “proposed mechanism”) introduced in the Lubanga case.⁸ Some consultations are currently taking place in the Gbagbo case in order to file the proposed mechanisms on 27 February 2015. The VWU is ready to file in the record of

⁵ ICC-02/11-02/11-110-Anx1.

⁶ ICC-01/04-02/06-416.

⁷ ICC-02/11-02/11-110-Anx2.

⁸ ICC-01/04-01/06-1379, para 53 to 78.

the present case and upon instruction by the Chamber the version agreed by the parties and the participants.

II. On item d):

Update on victims' applications and the procedure for allowing victim to participate in the trial proceedings;

7. As regards point (d) of the Order of 23 January 2015, 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 Case that builds on previous experience and furthers the Court-wide effort to make victim participation more efficient, sustainable and meaningful.

II. 1. Update on Victims' Applications

8. To date, the Registry has received a total of approximately 569 applications for participation in the proceedings⁹ in relation to the Côte d'Ivoire Situation. Of these, 476 applications¹⁰ linked to the case *The Prosecutor v. Charles Blé Goudé* (the "Case") were transmitted¹¹ to the Chamber and the Parties during the pre-trial stage of the proceedings,¹² and 469 victims¹³ were accepted to participate at the confirmation of charges hearing.¹⁴

⁹ Excluding 14 duplicates, 1 application withdrawn and 3 applications submitted by 2 applicants who have passed away.

¹⁰ This number includes 6 collective applications grouping a total of 101 individual applicants.

¹¹ 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.

¹² The VPRS transmitted these applications in 3 batches between 19 June 2014 and 10 July 2013 (see ICC-02/11-02/11-87; ICC-02/11-02/11-95 and ICC-02/11-02/11-104). Original non-redacted versions of the applications were transmitted to the Pre-Trial Chamber and the Prosecution and redacted versions

9. As to new applications that can be expected, considering that the scope of the present case is limited to five incidents,¹⁵ and on the basis of information currently available to it, the Registry does not expect to receive more than a further 250 to 350 applications for participation in the proceedings. 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 850. The Registry will inform the Chamber if there is any change in this estimate.

II. 2. Observations on the Procedure for Allowing Victims to Participate at Trial

10. 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”.¹⁶ 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

were transmitted to the Defence, in compliance with Pre-Trial Chamber I’s Decision on victims’ participation in the pre-trial proceedings and related issues, notified on 11 June 2014 (ICC-02/11-02/11-83).

¹³ The Registry notes that out of these, 198 are also victims admitted as participants in the case of *The Prosecutor v. Laurent Gbagbo* (the “*Laurent Gbagbo Case*”) on the basis that the subject-matter of the two cases as well as the crimes alleged and four out of the five incidents supporting the charges appeared to be the same (ICC-02/11-02/11-83, paras 12-20). The Registry moreover notes that participating victim a/20163/12 is deceased and his status as participating victim was terminated (see ICC-02/11-02/11-111, para. 29).

¹⁴ ICC-02/11-02/11-83 and ICC-02/11-02/11.

¹⁵ Namely: 1) the attacks related to the demonstrations at the RTI building between 16 and 19 December 2010; 2) the attack in Yopougon between 25 and 28 February 2011; 3) the attack on a women’s demonstration in Abobo on 3 March 2011; 4) the shelling of Abobo market and the surrounding area on 17 March 2011 and 5) the attack on Yopougon on or around 12 April 2011 (see Decision on the confirmation of charges against Charles Blé Goudé issued on 11 December 2014, ICC-02/11/02/11-186).

¹⁶ 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.

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.¹⁷

11. Taking this into account and given the similarities between the present case and the *Laurent Gbagbo* Case,¹⁸ including the possibility that some victims could be applying in both cases,¹⁹ the Registry would recommend that the same procedure for allowing victims to participate at trial is implemented in both cases, and repeats below the observations it has provided to the Chamber in the Laurent Gbagbo case on the same issue.²⁰

Option 1: Ntaganda Pre-Trial Approach

12. 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 *Prosecutor v. Bosco 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.

13. 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*”

¹⁷ 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 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.

¹⁸ See *supra*, footnote 5.

¹⁹ See ICC-02/11-01/11-706, para, 17.

²⁰ ICC-02/11-01/11-705, paras 14 to 23.

Hearing and in the Related Proceedings” dated 15 January 2014.²¹ 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, 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.

14. 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.

15. 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

16. 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

²¹ ICC-01/04-02/06-67 and ICC-01/04-02/06-211.

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.

17. 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.

18. 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.

19. 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.

20. 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.

21. 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

22. 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 Office of the Prosecutor and the Office of Public Counsel for Victims anticipate that the languages to be used in the proceedings are English, French, Dioula and Bambara. The Defence for Mr Blé Goudé, however, has indicated that, considering the recent appointment and on-going team composition arrangement, they are not in a position to provide any information on item e) at this stage.

23. For languages other than English and French (i.e. the two situation languages expected to be used in the trial, Dioula and Bambara), the Registry has established a roster of freelance interpreters. It will therefore be possible to have simultaneous interpretation throughout the trial.

24. Nevertheless, for languages other than English and French, the period of six weeks' notice before the expected start of testimony in a situation language remains necessary so that travel and visa issues can be addressed as well as briefing and preparation. In addition, grouping witnesses who speak the same language would significantly ease logistical matters and make a more efficient use of the Court's resources.

RESPECTFULLY SUBMITTED,



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

Dated this 9 February 2015

At The Hague, The Netherlands.