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**TRIAL CHAMBER I**

**Before:** Judge Geoffrey Henderson, Presiding Judge  
Judge Olga Herrera Carbuccion  
Judge Bertram Schmitt

**SITUATION IN THE REPUBLIC OF CÔTE D'IVOIRE**

***IN THE CASE OF***

***THE PROSECUTOR***

***v. LAURENT GBAGBO and CHARLES BLÉ GOUDÉ***

**PUBLIC**

**Prosecution Observations on the Modalities of Victim Participation at Trial**

**Source:** Office of the Prosecutor

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

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**REGISTRY**

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**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

**Other**

## I. Introduction

1. On 21 April 2015, the Trial Chamber ordered the Parties and participants to submit their observations on the modalities of victim participation at trial by 21 May 2015.<sup>1</sup>
2. In accordance with the Chamber's order, the Prosecution submits these observations, responding to matters raised in the written submissions of the Legal Representative of the Victims ("LRV"), dated 14 April 2015 ("LRV Submissions"),<sup>2</sup> as necessary.

## II. Submissions

### (i) *Participation in opening and closing statements*

3. The LRV should be entitled to make opening and closing statements, as in previous cases.<sup>3</sup> As requested, the LRV should be granted 30 minutes to make her opening statement.<sup>4</sup> The Prosecution has addressed the issue of the order of opening statements in its separate observations on the conduct of the proceedings.<sup>5</sup>

### (ii) *Participation in hearings*

4. The LRV should be entitled to attend trial hearings whether they are in public, private, or closed session. Attendance at *ex parte* hearings should be determined on a case by case basis.<sup>6</sup>
5. The Appeals Chamber has defined the framework for the participation of victims, holding that "participating victims are not Parties to the proceedings",<sup>7</sup> and do

<sup>1</sup> ICC-02/11-01/15-T-1-CONF-ENG ET, pp. 56-57.

<sup>2</sup> ICC-02/11-01/15-36.

<sup>3</sup> See ICC-01/04-01/07-1665-Corr, ("Katanga Directions for the conduct of proceedings"), paras.1-2 ; ICC-01/05-01/08-T-32-ENG; ICC-01/05-01/08-T-364-ENG; ICC-01/04-01/06-T-107-ENG; ICC-01/04-01/06-T-356-ENG; ICC-01/09-01/11-847-Corr, para.4.

<sup>4</sup> LRV Submissions, para. 8.

<sup>5</sup> Prosecution's observations on the conduct of the proceedings [to be filed], Annex A (Protocol on the Conduct of the Proceedings).

<sup>6</sup> LRV Submissions, para.11. See ICC-01/04-01/06-1119 ("Lubanga Decision on victims' participation"), para.113; ICC-01/09-02/11-498, para.70; ICC-01/04-01/07-1788-tENG, paras.69-71.

not have an absolute right to lead or challenge evidence.<sup>8</sup> Further, article 68(3) of the Statute does not provide an “unfettered right” for victims to participate.<sup>9</sup> Rather, they are required to demonstrate why their interests are affected by the evidence or issue and it is then for the Chamber to decide whether or not to allow such participation.<sup>10</sup>

*(iii) Authorisation to question a Party’s witness*

6. Should the LRV wish to question a witness, she should submit a written application on notice to the Parties, no later than seven days in advance of the witness’ expected date of testimony.<sup>11</sup> The application should (i) include the topics on which the LRV wishes to examine the witness, and the questions, to the extent possible;<sup>12</sup> and (ii) provide reasons for separate questioning, apart from the questioning by the Prosecution.<sup>13</sup> Documents proposed to be used during the examination, or references thereto, where appropriate, should also be provided at this time.<sup>14</sup> After the examination-in-chief, and in the witness’s absence, the Parties should be given an opportunity to make oral submissions on the LRV’s request prior to the Chamber’s oral ruling on the application.<sup>15</sup>
7. If, after examination-in-chief by the Party calling the witness, the Chamber is of the view that the matters raised in the LRV’s proposed topics have not been

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<sup>7</sup> ICC-01/04-01/07-2288 (“*Katanga* Appeals Judgment on modalities of victim participation”), para.39.

<sup>8</sup> See ICC-01/04-01/06-1432 (“*Lubanga* Appeals Judgment on victims participation”), para.99.

<sup>9</sup> See ICC-01/09-01/11-460 (“*Ruto* Decision on victims’ representation and participation”), para. 11.

<sup>10</sup> See *Lubanga* Appeals Judgment on victims participation, para.99. See also *Lubanga* Appeals Judgment on victims participation, para. 101 (victims challenging the admissibility or relevance of evidence).

<sup>11</sup> See rule 91(3) of the Rules of Procedure and Evidence; ICC-01/09-01/11-847-Corr (“*Ruto* General Directions 1”), para.19; ICC-01/05-01/08-1023 (“*Bemba* Directions for the conduct of proceedings”), para.18. See LRV Submissions, para. 22.

<sup>12</sup> See rule 91(3); *Ruto* General Directions 1, para.19; ICC-01/05-01/08-1023 (“*Bemba* Directions for the conduct of proceedings”), para.18; ICC-02/05-03/09-545 (“*Banda Abakaer Nourain* Decision on the participation of victims”), para.32. See LRV Submissions, para. 22.

<sup>13</sup> See *Ruto* General Directions 1, para.19.

<sup>14</sup> See *Ruto* General Directions 1, para.19.

<sup>15</sup> See *Ruto* General Directions 1, para.19.

sufficiently addressed by the witness, it may authorise the LRV to question the witness before cross-examination.<sup>16</sup>

8. Where the LRV did not anticipate putting questions to a particular witness, but during examination-in-chief by the Party calling the witness, an unforeseen issue arises that pertains directly to the interests of the victims, the LRV may submit a question to the Chamber, which may decide to put it to the witness, if it considers this necessary for the ascertainment of the truth or to clarify the testimony of the witness.<sup>17</sup>.

*(iv) Presentation of views and concerns of victims and testimony by individual victims*

9. The LRV Submissions propose that “the Chamber may envisage the possibility for victims to either present their views in person or in writing,”<sup>18</sup> and draw a distinction between victims giving evidence and victims presenting their views and concerns in person *via* unsworn statements.<sup>19</sup>
10. It is the Prosecution’s position that, as a general principle, victims in these proceedings should submit their views and concerns *via* the LRV.<sup>20</sup> Indeed, that is the purpose for which the LRV was appointed.<sup>21</sup> The jurisprudence of the Court has identified that there is no absolute statutory right of victims to participate in proceedings *in person*.<sup>22</sup> In this case, having in mind that the Chamber is required to ensure the fair and expeditious conduct of the proceedings and to safeguard

<sup>16</sup> See *Katanga* Directions for the conduct of proceedings, para.88.

<sup>17</sup> See *Katanga* Directions for the conduct of proceedings, para.89.

<sup>18</sup> LRV Submissions, para.18.

<sup>19</sup> LRV Submissions, paras. 13-15. See also oral submissions by the LRV at the Status Conference on 21 April 2015: ICC-02/11-01/15-T-1-CONF-ENG ET, p.56.

<sup>20</sup> See ICC-02/05-03/09-545 (“*Banda* Decision on the participation of victims”), para.20. The Prosecution opposes, in all circumstances, the LRV’s proposal that victims authorised to appear in court to present their views and concerns “should not automatically be required to lift their anonymity” (LRV Submissions, para.16). The Prosecution sees no reason to depart from this Court’s established jurisprudence requiring victims appearing directly before the Chamber to relinquish their anonymity: *Banda* Decision on the participation of victims, para. 19; *Katanga* Directions for the conduct of proceedings, para.22.

<sup>21</sup> See Article 68(3) of the Statute.

<sup>22</sup> See *Banda* Decision on the participation of victims, para. 20. See also ICC-01/05-01/08-807-Corr (“Corrigendum to *Bemba* Decision on participation of victims”), para.27; ICC-01/04-01/06-2032-Anx (“*Lubanga* Decision on request by victims”), para.17.

the rights of the Accused pursuant to article 64(2), the Prosecution proposes that the views and concerns of victims be presented, as a matter of course, *via* the LRV.<sup>23</sup> Any intervention, otherwise, by victims must be in a manner which is not prejudicial to, or inconsistent with, the rights of the Accused to a fair and impartial trial.<sup>24</sup>

11. Separately, the Chamber has the power, under article 69(3), to request submission of all evidence that it considers necessary for the determination of the truth.<sup>25</sup> The Appeals Chamber has confirmed that this includes a Trial Chamber's authority to request victims to testify.<sup>26</sup>
12. Where an individual victim would like to testify at trial, the LRV should seek authorisation before the close of the Prosecution's case through a written application.<sup>27</sup> The Chamber should grant such applications only where the victim's testimony could make a genuine contribution to the ascertainment of the truth.<sup>28</sup>
13. Should the Chamber grant the LRV's request to hear individual victims, the individual victim should be called by the *Chamber*, pursuant to article 69(3),<sup>29</sup> after the conclusion of the Prosecution case.<sup>30</sup>
14. As for order of questioning, the victim should be questioned by the LRV,<sup>31</sup> followed by the Prosecution and the Defence.<sup>32</sup>

<sup>23</sup> See *Banda* Decision on the participation of victims, para.20.

<sup>24</sup> See *Lubanga* Decision on request by victims, para. 17. The Prosecution notes that in the *Bemba* case, the Trial Chamber found that certain victims may be authorised to express their views and concerns in person, as distinguished from testifying: ICC-01/05-01/08-2138 ("*Bemba* Decision on supplemented applications to present evidence and views and concerns of victims"), para.20.

<sup>25</sup> See *Banda* Decision on the participation of victims, para.24.

<sup>26</sup> See *Katanga* Appeals Judgment on modalities of victim participation, paras. 111-112.

<sup>27</sup> See *Katanga* Directions for the conduct of proceedings, para.25.

<sup>28</sup> See *Katanga* Directions for the conduct of proceedings, para.20.

<sup>29</sup> See *Katanga* Appeals Judgment on modalities of victim participation, para.111; *Banda* Decision on the participation of victims, paras.22, 24-26.

<sup>30</sup> See Prosecution's observations on the conduct of the proceedings [to be filed], Annex A (Protocol on the Conduct of the Proceedings).

<sup>31</sup> *Katanga* Directions for the conduct of proceedings, paras.31-32.

<sup>32</sup> *Katanga* Directions for the conduct of proceedings, para.32.

*(v) Presentation of other evidence*

15. If the victims wish to have other evidence introduced, whether during the questioning of witnesses or otherwise, they should file a written application setting out the reasons why their personal interests are affected and should satisfy the Chamber that such evidence is necessary for the determination of the truth within the terms of article 69(3) of the Statute, in which case the *Chamber* will order its submission.<sup>33</sup>
16. In principle, the LRV should not be permitted to request the Chamber to hear witnesses other than the victims she represents.<sup>34</sup> However, where the LRV has identified persons other than participating victims, who may be able to give evidence to the Chamber about issues that concern the victims' interests, she may bring this to the Chamber's attention.<sup>35</sup> If the Chamber considers that the proposed witness may indeed provide the Chamber with important information that was not hitherto included in the evidence called by the Parties, it may decide to call the witness on its own motion, in accordance with articles 64(6)(b),(d) and 69(3) of the Statute.<sup>36</sup>

*(vi) Scope and mode of questioning*

17. As for the scope and mode of questioning, the Prosecution refers the Chamber to its proposed Protocol on the Conduct of the Proceedings.<sup>37</sup>
18. The Prosecution supports the LRV's request that the Trial Chamber, under regulation 56, allow questions relating to reparations at trial.<sup>38</sup>

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<sup>33</sup> See *Katanga Appeals Judgment* on modalities of victim participation, para. 40; *Banda Decision* on the participation of victims, para. 27. See also ICC-01/05-01/08-1470 ("*Bemba* Order on submission of evidence"), paras.14 and 14(a).

<sup>34</sup> See *Katanga Directions* for the conduct of proceedings, para.45.

<sup>35</sup> See *Katanga Directions* for the conduct of proceedings, para.45.

<sup>36</sup> See *Katanga Directions* for the conduct of proceedings, para.45.

<sup>37</sup> Prosecution's observations on the conduct of the proceedings [to be filed], Annex A, paras.45-46.

<sup>38</sup> LRV Submissions, para.31.

### III. Conclusion

19. The Prosecution submits its observations on the modalities of victim participation at trial.



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Fatou Bensouda, Prosecutor

Dated this 8<sup>th</sup> day of May 2015

At The Hague, The Netherlands