

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-02/11-01/15

Date: 15 May 2015

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

Public Redacted version of "Registry's Report on the Legal Representation of Victims for the Purpose of the Trial pursuant to Decision ICC-02/11-01/11-800", notified on 30 April 2015 (ICC-02/11-01/15-49-Conf-Exp)

Source: Registry

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

The Office of the Prosecutor

Counsel for the Defence

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 Massidda

**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

Detention Section

**Victims Participation and Reparations
Section**

Ms Fiona McKay

Other

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

NOTING the Decision of the Single Judge of Pre-Trial Chamber I (the “Single Judge”) notified on 4 June 2012, appointing a counsel from the Office of Public Counsel for Victims (the “OPCV”) as the common legal representative of all victims admitted to participate at the Confirmation of Charges Hearing and in the related proceedings in the case *The Prosecutor v. Laurent Gbagbo* (the “*Gbagbo Case*”) (the “Decision of 4 June 2012”);¹

NOTING the Decision of the Single Judge of Pre-Trial Chamber I notified on 11 June 2014, appointing the OPCV as the common legal representative of all victims admitted to participate in the pre-trial proceedings and related issues in the case *The Prosecutor v. Charles Blé Goudé* (the “*Blé Goudé case*”);²

NOTING the submissions made by the Common Legal Representative of victims in the *Gbagbo* case, informing Trial Chamber I (the “Chamber”) of her availability to represent the interests of the participating victims at the trial stage, notified on 27 October 2014;³

NOTING the Decision of the Chamber on victim participation notified on 6 March 2015, whereby the Chamber directed the Registry, *inter alia*, to consult, as appropriate, with the victims, the applicants and with their representatives and to submit by 30 April 2015 a report on the legal representation of victims for the purpose of trial proceedings in the *Gbagbo* case updating the information provided to the Chamber on, *inter alia*: i) the victims’ preferences; ii) the grouping of victims; as

¹ ICC-02/11-01/11-138, para. 44 and operative paragraph p.26. The Registry notes that the Single Judge appointed one Counsel of the OPCV as the lead counsel within the common legal representation team and decided that such Counsel should be assisted by a team member with wide knowledge of the context and based in Côte d’Ivoire.

² ICC-02/11-02/11-83, para. 24 and operative paragraph p. 20. The Registry notes that the Single Judge decided that the same team representing victims in the *Gbagbo* case should represent victims in the *Blé Goudé* case and that the appointment of a counsel from the OPCV assisted by a team member with a wide knowledge of the context and based in Côte d’Ivoire was still the most appropriate and cost effective system.

³ ICC-02/11-01/11-706, para. 44.

well as iii) the composition of the legal team supported by the legal aid scheme (the “Decision of 6 March 2015”);⁴

NOTING the Decision of the Chamber notified on 11 March 2015, joining the *Gbagbo* case and the *Blé Goudé* case and deciding that all decisions and orders made in both cases shall continue to apply in the joint case (the “Case”), as appropriate and until ordered otherwise;⁵

NOTING article 68(3) of the Rome Statute, rules 16 and 90 of the Rules of Procedure and Evidence (the “Rules”), regulations 23 bis, 24 bis(2), 79 and 86(9) of the Regulations of the Court, and regulation 112 of the Regulations of the Registry (the “Regulations”);

CONSIDERING that in order to implement the Decision of 6 March 2015, the Victims Participation and Reparations Section (the “VPRS”) conducted a mission in Abidjan (Côte d’Ivoire), and consulted victims both in groups and individually between 26 March and 21 April 2015;

CONSIDERING that the Registry is filing this Report Confidential *EX PARTE*, available only to the Registry and the common legal representative who represented participating victims at the pre-trial stage of the *Gbagbo* case and of the *Blé Goudé* case (the “LRV”), since it concerns the work of the LRV;

TRANSMITS to the Chamber the Registry’s Report on the Legal Representation of Victims at the trial stage (the “Report”);

RESPECTFULLY SUBMITS AS FOLLOWS:

1. The present document provides the Chamber with the main findings of the consultation, followed by preliminary observations (Section A), a description of the conduct of the victim consultation exercise directed by the Chamber (Section

⁴ ICC-02/11-01/11-800, para. 63 and operative paragraph p. 25.

⁵ ICC-02/11-01/15-1, operative paragraph p.33.

B), the results of the consultation (Section C), conclusions (Section D) and recommendation (Section E).

Main Findings

2. The main finding of the consultation is that the current system of common legal representation of victims in the Case and, in particular, the criteria used to choose the legal representative of victims, the grouping of victims and the composition of the LRV team, are approved by the victims and their LRV. The Registry also found during this consultation that the performance of the current LRV seems to satisfy the majority of her clients. A significant number of the victims consulted wish to have a more continuous flow of information between them and the LRV, and wish to see an available member of the LRV team based in the field.

A. Preliminary Observations

3. In 2012, pursuant to the Decision of the Single Judge of Pre-Trial Chamber I,⁶ the Registry consulted with applicants at the pre-trial stage in the *Gbagbo* case as to their wishes with regard to legal representation.⁷ In this context the Registry reported to the Single Judge the following selection criteria identified by the victims: (i) victims expressed their wish to be represented by someone who shows honesty, sincerity and empathy, who is attentive to their needs and who can understand their personal situation; (ii) for most of the victims a priority was to be represented by a highly committed and skilled lawyer, with appropriate experience; (iii) it was considered important by the victims that the lawyer be able to understand the historical and political context of the country and the complexity of the case; and (iv) victims considered essential that their legal

⁶ ICC-02/11-01/11-86, para. 44.

⁷ In conformity with the Registry's functions in respect of organisation of legal representation, as set out in Rules 16(1)(b) and 90 of the Rules.

representative takes the time to listen to them and to inform them on a continuous basis.⁸

4. In the same report, the Registry informed the Single Judge that, at that stage, it was not aware of any reason why participating victims could not be represented by a single legal team.⁹ Finally, taking into account the opinions expressed by victims as well as the context of the *Gbagbo* case, the Registry recommended a team structure which would combine expertise and experience in international criminal litigation, an understanding of the case and the victims' situation in the field, as well as a capacity to continuously inform and receive instructions and guidelines from the LRV's clients. Accordingly the Registry recommended that participating victims be represented by a team composed of (1) a principal counsel, (2) a team-member based in the field, and (3) a case manager.¹⁰
5. The Registry notes that in directing the Registry to conduct the consultation, the Chamber in its Decision of 6 March 2015 asked to be updated, *inter alia*, on the aforementioned issues and it took this into account when designing the consultation exercise.

B. Conduct of the Victim Consultation Exercise Directed by the Chamber

1. Preparation of the Consultation Exercise

(i) Selection of a representative sample of victims

6. For the purpose of this exercise the VPRS aimed to consult around 15% of all participating victims representing, as far as possible, the main characteristics of the participating victims as a whole.¹¹ The VPRS endeavoured to consult victims

⁸ ICC-02/11-01/11-120, para. 10.

⁹ ICC-02/11-01/11-120, para. 7.

¹⁰ ICC-02/11-01/11-120, paras. 15 and 21.

¹¹ Individuals were selected according to criteria such as gender and age. The Registry endeavoured to consult victims related to all incidents charged against the accused, as set out in the Decisions confirming the Charges (ICC-02/11-01/11-656-Red and ICC-02/11-02/11-186). The Registry notes that all applications received so far in the *Gbagbo* case and the *Blé Goudé* case relate to harm suffered in the context of the following four incidents: 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

who had participated in the pre-trial stage of the *Gbagbo* case and victims who had only participated in the pre-trial stage of the *Blé Goudé* case.

7. In compliance with the Decision of 6 March 2015, the VPRS also endeavoured to consult applicants who had submitted applications to participate in proceedings that had not yet been filed with a Chamber.¹²

(ii) *Consultation with the LRV and the intermediaries*¹³

8. The VPRS consulted the LRV on the sample of participating victims it proposed to meet and shared preliminary lists of victims to be consulted. The LRV provided information regarding particular measures that should be put in place when meeting specific victims.¹⁴
9. In compliance with the Decision of 6 March 2015,¹⁵ the VPRS also consulted with the LRV to obtain her views on, *inter alia*, the composition of her team, the victims' grouping, and on her communication and interaction with her clients.¹⁶
10. The VPRS moreover consulted the intermediaries that work with the LRV and the VPRS for the purposes of organising the meetings with victims and to ensure that, for security and confidentiality reasons, victims who would be met together knew of each other's participation in the proceedings. At the beginning of the Field Mission the Registry team¹⁷ also held meetings with these intermediaries¹⁸ in order to obtain their advice on how best to frame the questions to put to victims.

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. At the time of the consultation, however, no participating victim or applicant had alleged having suffered harm as a result of the incident of the attack on Yopougon on or around 12 April 2011 also included in the confirmed charges against Charles Blé Goudé.

¹² The VPRS received eight applications linked to the case which were incomplete at the time of the deadline set by Pre-Trial Chamber I to receive applications in the *Gbagbo* case or in the *Blé Goudé* case. Five of these applications have been completed since, and three remain incomplete. Of these eight applicants, three were not available to meet for the purpose of the current consultation.

¹³ The Registry refers here to individuals who facilitate contact or provide links between the victims and the Counsel, as per the definition in the Guidelines Governing the Relations between the Court and Intermediaries.

¹⁴ [REDACTED]

¹⁵ See paragraph 63.

¹⁶ [REDACTED]

¹⁷ The interviews were conducted by VPRS staff, with the assistance of an interpreter, when needed.

¹⁸ [REDACTED]

(iii) *Methodology used to consult the participating victims and the applicants*

11. In light of the consultation ordered by the Chamber and previous experience of the Registry,¹⁹ the VPRS decided that a combination of group discussions followed by the administration of individual questionnaires would be the most effective and comprehensive way of updating the participating victims' preference regarding their legal representation. The VPRS prepared two questionnaires. The first questionnaire was administered to the participating victims to seek their views on their experience with their legal representation and comprised the following questions:

1. Does the victim think that he/she has a good understanding of the Case because of the explanations provided by the lawyer or her associate?
2. Does the victim have the opportunity to communicate his or her opinions to the lawyer or to her associate?
3. Does the lawyer and/or her associate treat him/her with respect and consideration?
4. Does the victim think that his or her lawyer represents him/her well?
5. Does the victim want the lawyer to continue representing him/her in the proceedings?

12. The second questionnaire was for applicants. Since they had not yet experienced legal representation the questionnaire centred around the general preference of victims regarding their legal representation:

1. According to the victim, what is the work of a legal representative?
2. According to the victim, what should be the skills/qualities of a legal representative?
3. Does the victim think it is a problem that one lawyer represents all the victims of the different incidents?
4. Does the victim have any objection that the victims' lawyer is based in The Hague and her assistant is in the field? If yes, would the victim prefer

¹⁹ The Registry was ordered to consult victims on their continued legal representation and to report back to the Chamber as to the result of this consultation in the case *The Prosecutor v. Bosco Ntaganda*, ICC-01/04-02/06-449, para. 54.

the opposite scenario: that the victims' lawyer is based in the field and her associate is in The Hague?

2. Implementation of a Field Mission

(i) *Consultation with victims and applicants*

13. The meetings with participating victims were held between 26 March 2015 and 1 April 2015 in Abidjan. The victims were met in groups of 4 to 12. A total of 84 participating victims were met in 10 different group sessions, and 79 completed individual questionnaires.²⁰ During the group discussions the VPRS first endeavoured to assess the level of knowledge of the victims regarding legal representation. The VPRS then sought the victims' views on desired criteria for their legal representative, on their legal representation so far, on the current grouping and on the current organization of the legal team. Subsequently, between 19 and 21 April 2015, three applicants and one person acting on behalf of two applicants were met in Abidjan and completed individual questionnaires. All completed questionnaires were entered into the VPRS database for the purpose of generating results for the present Report.

(ii) *Observations on the results*

14. In the Registry's experience, the issue of common legal representation at the Court is a complex and abstract concept for many victims, who have rarely had previous experience or understanding of judicial proceedings, even within their own communities. It is also the Registry's experience that consulting victims on common legal representation is a difficult exercise due to many factors, such as the complexity of the topic, the difficulty for victims to evaluate the work of their lawyer and their overall satisfaction with it, the social and cultural distance between the victims and their interviewers, and the short amount of time to establish a rapport of trust for the purpose of obtaining this information.

²⁰ The Registry notes that it was not always clear to the victims whom they had met, especially if they had been in contact with different individuals working for the Court. In some instances, victims could also have confused the intermediary with the LRV Field Assistant. The results of the consultation must be interpreted accordingly.

15. During the consultation the VPRS found that indeed, many victims seemed to have only a basic understanding of the Court, the proceedings, the participation of victims and the role of the LRV. In particular, the participating victims seemed to have difficulty distinguishing between the different actors of the Court and their respective roles, including those who assist the VPRS and/or the LRV, such as intermediaries. It appeared to the Registry team that victims are often confused about the role of the LRV, in that they expect the LRV to make the proceedings against the accused move forward and tend to evaluate the work of their LRV based on the progression of the proceedings.
16. It also appeared to the Registry team that, overall, victims have a high degree of deference towards those who take the time to travel long distance to meet and talk to them, and that they often evaluate their legal representation based on the type and quality of the interaction they had with their LRV, as opposed to, for example, the quality of the advice received, or the LRV's interventions in the proceedings. The outcome of the present consultation should be assessed in light of these factors.

C. Results of the Consultation

17. The Registry has taken into account opinions expressed in the course of group meetings with participating victims as well as answers provided in the 83 questionnaires administered to both victims and applicants.²¹ The Registry also took into account the observations submitted to the VPRS by the LRV.²² The results of the consultation were as follows.

1. Victims' preferences

18. The great majority of victims consulted endorsed the criteria previously identified and reported by the Registry to the Single Judge of Pre-Trial

²¹ This figure includes 79 questionnaires administered to participating victims and four questionnaires administered to three applicants and one person acting on behalf of two applicants.

²² [REDACTED]

Chamber I.²³ During the group meetings with participating victims and in the applicants' questionnaires, victims said that they wished for a legal representative with the following qualities: honesty; neutrality; someone who takes the time to listen to them and to communicate information to them on a regular basis;²⁴ someone accessible and available; someone close to the victims, who knows the realities they face and who meets with them where they are; someone with the capacities and knowledge to defend them in the proceedings and who will make the proceedings advance. Victims also said they wanted to be represented by a legal representative who reassures them and who will provide referrals to relevant services when they need assistance. A common image the victims gave to illustrate what they expected from their legal representative was that of a mother taking care of her children.

2. Grouping

19. Victims overwhelmingly accepted that all participating victims would be represented by one legal representative. Among the few who had reservations (mostly applicants), the reason mentioned was the fear that the legal representative would not be able to represent such a large number of clients.
20. When asked if she had any observation to provide regarding the grouping of victims (past and foreseen) in light of regulation 112(2)(e) of the Regulations, the LRV indicated that in her view all victims authorised to participate in the Case could be represented in one group, as the grouping adopted at the pre-trial phase of the proceedings has created no issue so far, and no conflicts of interest are foreseen. The LRV further noted that the anticipated number of victims and the fact that [REDACTED] reside in Abidjan are further reasons for a single group.²⁵

²³ See *supra*, para. 3.

²⁴ The Registry Team noted that victims often mentioned that, given the expeditious way information is transmitted in the media, they needed to be informed "in real time" (*temps réel*) so that rumours can be promptly addressed or dismissed.

²⁵ [REDACTED]

3. Composition of the legal team

21. The Registry is informed by the LRV that the position of legal assistant in the field has been vacant since January 2015, following the resignation of Mr. Zoro-Bi Ballo. The LRV informed the VPRS that she is currently in the process of identifying a suitable candidate for that position, with the aim of appointing someone by June.
22. Most victims approved of the system put in place whereby their LRV is based in The Hague and she is assisted by someone based in the field who provides her with the knowledge related to the Ivorian context, and the realities faced by the victims and who communicates with them regularly. Those few who were not in favour of this structure mentioned that they wanted proximity with their legal representative so she could be closer to them to communicate and understand their reality.

4. Other findings

23. A large majority (91%) answered in question 5 of the questionnaire that they wished to continue being represented by their current LRV.²⁶ Of these, around 20% added that they wanted continuity from those who had already started the work and were familiar with their file (or said they did not want to bring in someone new).
24. Around 86% of victims in their questionnaire said they believed their legal representative represents them well.²⁷ While it was often stated in group and individual meetings that it is difficult for victims to evaluate the work performed by their lawyer at the Court, victims overall assume their LRV is competent,

²⁶ Two individuals said that they wished to change legal representation, four did not have an opinion and one did not answer this question.

²⁷ One individual said he was not satisfied with the quality of services provided by the lawyer, nine expressed not being in a position to assess the quality of legal representation and one did not answer this question.

based on, *inter alia*, the way she communicates with the victims,²⁸ the fact that the proceedings have progressed, or because they trust her. The Registry notes that 95% of the victims in their questionnaire commended the respect paid to them by the LRV during their interactions,²⁹ emphasizing her communication skills, politeness and the fact that they feel at ease during meetings.

25. Victims raised the following issues during the group and individual meetings:

(i) *Flow of information*

26. While 68% of participating victims said they had a good understanding of the Case as a result of the information provided by the LRV, 28% said they did not.³⁰ The reasons given were *inter alia*, that they did not understand the explanations/information provided, and/or that information and updates have not been provided on a regular basis.

27. While 73% of participating victims said they believe they have the opportunity to communicate their opinions to their lawyers, 22% said they did not.³¹ Of the 22%, most linked this issue with the fact that they only meet their legal representative in group meetings, an environment in which they feel it is difficult to communicate.³²

(ii) *Availability of the person in the field*

28. During the group and individual meetings the victims often made a clear distinction between the work performed by the LRV and that of her Field Assistant. While the victims gave mostly positive feedback on the work of the LRV, it emerged from several group meetings that the victims feel that the Field Assistant had not been available enough, some victims saying that they only met

²⁸ At least 40% of the victims consulted mentioned that they appreciated their lawyer's communication skills, including the fact that they feel that their lawyer takes the necessary time to listen to them.

²⁹ Only two participating victims responded negatively to question 3 in their individual questionnaire, one had no opinion and one did not respond to the question.

³⁰ Only three participating victims expressed no opinion regarding question 1. The Registry did not aim to verify the extent of knowledge of the applicant regarding the proceedings.

³¹ Only four participating victims expressed no opinion regarding question 2.

³² In particular, it was the experience of the Registry team that during group meetings women tended not to speak in the presence of men.

with him when the LRV was in Abidjan. More than 15% answered in their questionnaires that they did not know, or had had no interaction with the Field Assistant. Around 32% of the victims who expressed their wish to retain their current lawyer also wanted the Field Assistant to act as a liaison between the legal representative and the victims and to be available to them.

D. Conclusions

29. In light of the results of the consultation, it appears to the Registry that the current LRV fulfils the criteria sought by the victims in a legal representative, which are for the most part identical to those previously reported by the Registry at the pre-trial stage of the *Gbagbo* case.
30. Based on the consultation and information available to the Registry, the Registry is not aware of any reason why the current grouping of victims for the purpose of common legal representation should be modified. Should any conflict of interest be reported, either immediately or during the course of proceedings, the Registry would be able to make a recommendation on the organisation of legal representation for a separate group.
31. Lastly, it emerges from the consultation that having a member of the LRV's team who knows the context and who is based in the field remains essential to ensure proximity and allow for frequent and quality contact between the LRV, members of her team and her clients, during the trial.³³

E. Recommendation

32. The Registry recommends to maintain the current system for legal representation during the trial phase, in order to ensure proximity and a continuous flow of information between the victims and the LRV and her team, with a view to

³³ As highlighted by the Registry in the past, it is of critical importance that a legal team keeps victims informed of judicial developments before the Court and should therefore allocate resources to facilitate communication with victims. See ASP-12-3 of 4 June 2013, para. 62.

reducing the distance between the seat of the Court and the victims and making participation as meaningful as possible.

33. The Registry stands ready to file a Confidential or Public version of this Report, if the Chamber so orders.

RESPECTFULLY SUBMITTED,



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

Dated this 15 May 2015

At The Hague, The Netherlands.