



Original: English

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

With public Annex A

**Prosecution's request to designate a person authorised to witness a declaration
under rule 68(2)(b) of the Rules of Procedure and Evidence**

Source: Office of the Prosecutor

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 Mr Laurent Gbagbo

Mr Emmanuel Altit

Ms Agathe Bahi Baroan

Counsel for Mr Charles Blé Goudé

Mr Geert-Jan Alexander Knoops

Mr Claver N'dry

Legal Representatives of the Victims

Ms Paolina Massidda

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

Defence Support Section

Deputy Registrar

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

Introduction

1. For the purposes of the presentation of its case, the Office of the Prosecutor ("Prosecution") intends to introduce prior statements/testimonies of a number of its witnesses in whole or in part at trial. Thus, the Prosecution requests that the Trial Chamber designate a person authorised to witness a declaration under rule 68(2)(b) of the Rules of Procedure and Evidence ("Rules").
2. In view of the scheduling of the proceedings and considering the logistical arrangements necessary to obtaining the required declarations, the Prosecution requests that the Trial Chamber grant the requested relief as expeditiously as possible.

Submissions

3. The Prosecution envisages introducing in its case in chief the prior recorded statement/testimony¹ of a number of witnesses, in whole or part, under rule 68(2)(b) of the Rules. The Prosecution believes that this may assist in a more concise and streamlined presentation of evidence.
4. For the prior recorded statement/testimony of a witness to be admitted under rule 68(2)(b), it must be "accompanied by a declaration by the testifying person that the contents of the prior recorded testimony are true and correct to the best of that person's knowledge and belief."²
5. The declaration must be witnessed by a person authorised to witness such a declaration by the relevant Chamber, or in accordance with the law and procedure of a State. The person witnessing the declaration must verify in writing

¹ Chambers of this Court have previously extended the notion of "prior recorded testimony" to include written witness statements, transcripts of interviews, and exhibits associated with these recordings: ICC-01/09-01/11-1938-Corr-Red2, paras.31-33; ICC-01/04-01/06-1603, para.18; ICC-01/04-01/07-2289-Corr-Red, para.11; ICC-01/04-01/07-2362, para.13; ICC-01/05-01/08-2012-Red, paras.134-136 and ICC-01/05-01/08-1386, OA 5 OA 6, paras.79-81.

² Rule 68(2)(b)(ii) of the Rules.

the date and place of the declaration and must ensure that the person making the declaration: (i) is the person identified in the prior recorded testimony; (ii) assures that he or she is making the declaration voluntarily and without undue influence; (iii) states that the contents of the prior recorded testimony are, to the best of that person's knowledge and belief, true and correct and (iv) was informed that if the contents of the prior recorded testimony are not true then he or she may be subject to proceedings for having given false testimony.”³

6. In recent decisions, the Trial Chambers in the *Ntaganda*⁴ and *Bemba et al.*⁵ cases have designated the Registry Legal Counsel, or an appropriate person delegated by him, as the “person authorised to witness such a declaration”, within the meaning of rule 68(2)(b)(iii). The Prosecution proposes that the same practice is adopted in this case.
7. For the Trial Chamber’s convenience and consideration, the Prosecution provides, at Annex A, forms adopted for use in the *Bemba et al.* case.⁶ These forms were adapted by the Prosecution from forms used by the ICTY’s Registry,⁷ then further amended by the Registry to greater reflect the wording of rule 68(2)(b)(iii) of the Rules. The attached Annex provides forms both for the declarant and for the person authorised to witness the declaration.

³ Rule 68(2)(b)(iii) of the Rules.

⁴ ICC-01/04-02/06-729, para.5.

⁵ ICC-01/05-01/13-1109, para.6.

⁶ See ICC-01/05-01/13-1150, ICC-01/05-01/13-1150-AnxA and ICC-01/05-01/13-1150-AnxB.

⁷ Since rule 68(2)(b)(ii) and (iii) of the Rules is nearly identical in form to rule 92bis(B)(i) and (ii) of the ICTY’s Rules of Procedure and Evidence.

Conclusion

8. Based on the foregoing, the Prosecution requests that the Trial Chamber designate a person authorised to witness declarations made under rule 68(2)(b) of the Rules. The Prosecution is prepared to liaise directly with such person or unit to provide all necessary information, and logistical or practical arrangements concerning the relevant witnesses.



Fatou Bensouda, Prosecutor

Dated this 15th September 2015

At The Hague, The Netherlands