



Original: **English**

No.: **ICC-02/11-01/15**
Date: **31 January 2017**

TRIAL CHAMBER I

Before: Judge Cuno Tarfusser, Presiding Judge
Judge Olga Herrera Carbuccion
Judge Geoffrey Henderson

SITUATION IN THE REPUBLIC OF CÔTE D'IVOIRE

IN THE CASE OF

THE PROSECUTOR

v. LAURENT GBAGBO and CHARLES BLÉ GOUDÉ

Public

With Confidential Annexes A, B and C

**Prosecution's submission of information pursuant to Chamber's order
ICC-02/11-01/15-787**

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 for
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

Mr Nigel Verrill

Detention Section

**Victims Participation and Reparations
Section**

Other

Introduction

1. The Prosecution submits, in compliance with the Trial Chamber's order of 23 January 2017,¹ a consolidated list which provides the calling order of the remaining witnesses it intends to call, the time projected for their examination, whether it intends to rely on rule 68 and, when known, if In-Court Protective Measures ("ICPM") are envisaged. This list is attached at Annex A.² The current overall projected number of hours for the Prosecution to complete its case is 154 hours and 15 minutes.

2. The Prosecution also provides in a separate list, at Annex B, the identity of the witnesses who have already testified, together with the witnesses whose evidence has been submitted to date under rule 68(2)(b) of the Rules of Procedure and Evidence ("Rules") or submitted pursuant to paragraph 43 of the Directions on the conduct of the proceedings.³ A further consolidated list indicating the witnesses that are now withdrawn by the Prosecution is also provided, at Annex C.

Confidentiality

3. The Prosecution submits Annexes A, B and C as confidential since they relate to Prosecution witnesses. The information that can be disclosed to the public is provided in the submission below.

Submission

4. As noted by the Chamber in its Order, 29 witnesses have testified since 6 February 2016. The Prosecution notes that two witness reports have been

¹ ICC-02/11-01/15-787 ("Order").

² *Ibid.*, p. 6.

³ ICC-02/11-01/15-498-AnxA ("Directions").

submitted in the record of the case *in lieu* of the their testimony⁴ and two witness statements submitted pursuant to rule (68)(2)(b).⁵ The Prosecution has previously withdrawn three witnesses from its List of Witnesses.⁶

5. The Prosecution shares the Presiding Judge's concern as to the expeditiousness of the proceedings. With this objective in mind, the Prosecution has conducted a comprehensive review of all of its witnesses in order to determine whether certain witnesses could be withdrawn, or whether their projected time of examination-in-chief could be reduced given the evidence already on record or through the use of rule 68(2) or 68 (3) applications or the submission of their evidence pursuant to paragraph 43 of the Directions.
6. As a result, the Prosecution now withdraws a further 16 witnesses. Notice is also provided that one witness has died; and an application under rule 68(2)(c) will be made in relation to this witness. The Prosecution will submit request under rule 68(2)(b) for 16 witnesses and rule 68(3) requests for 33 witnesses. It will further seek to submit reports related to a further 7 witnesses, under paragraph 43 of the Directions.
7. The Prosecution currently estimates that it should be in a position to complete its evidence-in-chief within 154 hours and 15 minutes. Notwithstanding these measures, the Prosecution will endeavour to review its List of Witnesses on a rolling basis with a view to streamline and expedite the presentation of its case where possible.

⁴ ICC-02/11-01/15-629-Red, para. 35-40.

⁵ ICC-02/11-01/15-683-Conf.

⁶ See submission ICC-02/11-01/15-704 and ICC-02/11-01/15-T-103-Red-ENG WT, p. 74, line 17.

Annex A – the calling order of the remaining prosecution witnesses

Calling order of witnesses

8. In order to further expedite the proceedings and streamline its case, the Prosecution has identified in Annex A witnesses for whom it will be filing rule 68(2)(b) applications, since their evidence “cannot reasonably be said to provide evidence that can assist the Chamber in resolving the central issues of the case.”⁷ If the rule 68(2)(b) requests are not granted, these witnesses will testify at their designated position in the sequence at Annex A. In this scenario, the Prosecution would request that these witnesses testify under rule 68(3), and estimates that 30 minutes would be sufficient time for their examination-in-chief, thereby adding eight hours to the total number of hours for the Prosecution to complete its case. This would bring the total number of hours to 162 hours and 15 minutes.
9. For ease of reference, the list submitted as Annex A also details whether the Prosecution intends to request audio-video link (“AVL”) and also includes both the original and revised projected time estimates for the examination of each witness.

Annexes B and C – additional information for the Chamber

10. In order to further assist the Chamber, the Prosecution has also provided two additional lists, Annexes B and C, which detail respectively the evidence which has already been submitted or heard by the Chamber, and Prosecution witnesses who have been withdrawn to date.
11. The Prosecution notes in relation to the proposed calling order and its anticipated requests for ICPMs the following caveat: it is difficult to foresee how unfolding future events may impact upon the availability of witnesses and their security needs. It may become necessary over the coming months - for reasons outside the

⁷ ICC-02/11-01/15-573-Red, para. 20.

Prosecution's control - to review both the calling order and the Prosecution's provisional assessments as to witness security needs.

Changes in the calling order of witnesses

12. The Prosecution draws to the attention of the Chamber, Parties and participants that it has slightly modified the order of the next witnesses as was previously notified in its last Order of Witnesses.⁸ Witness P-0108 is now in position 37 and Witness P-0109 at position 43. The Prosecution notes that this change is nevertheless compliant with the Chamber's Directions.⁹

Rule 68(3) witnesses and AVL testimony

13. As to rule 68(3) witnesses, the Prosecution has proceeded on the assumption that all crime-base witnesses could and should appropriately first, have their written statements submitted under rule 68(3), and second, testify from a remote location with the use of AVL. For vulnerable witnesses – in particular witnesses as to sexual and gender-based crimes – the Prosecution has sought to avoid the combination of both rule 68(3) and use of AVL since vulnerable witnesses may find the combination of no or limited examination-in-chief and testifying from a remote location, particularly challenging. These witnesses are considered on a case by case basis in Annex A.

14. With regards to rule 68(3) witnesses, the Prosecution notes that in its consolidated list it has indicated whether it will be applying for the entirety of the witness's statement to be submitted into evidence (*in whole*) or simply certain portions (*in part*). In either case, the Prosecution will be guided by the objective of conducting its examination-in-chief in the most efficient manner.

⁸ ICC-02/11-01/15-735-Conf-AnxA.

⁹ ICC-02/11-01/15-498-AnxA, para. 4.

Changes relating to the manner in which evidence will be heard

15. Given the Chamber's concerns with the expeditiousness of the case, the Prosecution will be filing an application requesting that the evidence of Witness P-0573 be submitted pursuant to rule 68(2)(b) instead of rule 68(3) as previously granted by the Chamber.¹⁰ Likewise, the Prosecution will be applying for Witness P-0344 to be heard *viva voce* for the entirety of the testimony instead of pursuant to rule 68(3), as was previously granted.¹¹ As has been previously ordered by the Chamber in respect of similarly vulnerable witnesses, it is envisaged that this Witness's evidence (both in examination-in-chief and in questioning by the Defence) would be limited to the relevant incident.¹²

Expert witnesses

16. The Prosecution will be calling 10 expert witnesses to testify *viva voce* and will seek to have their respective reports admitted through the witnesses themselves.¹³

Request pursuant to paragraph 43 of the Directions

17. The Prosecution notes that it intends to submit the evidence of seven witnesses pursuant to paragraph 43 of the Directions since this evidence relates to the chain of custody of documents reviewed and obtained in the course of the investigation. The Prosecution will follow, in this respect, the Chamber's precedent in respect of the submission of the evidence of Witnesses P-0549 and P-0550.¹⁴

¹⁰ ICC-02/11-01/15-573-Red.

¹¹ ICC-02/11-01/15-573-Red.

¹² ICC-02/11-01/15-T-110-CONF-ENG ET, p. 5, lines 12-24.

¹³ This was the practice before Trial Chamber V(a). See ICC-01/09-01/11-844. A similar practice is also currently being applied in the Ongwen case.

¹⁴ ICC-02/11-01/15-629-Red, para. 35-40.

Request pursuant to Regulation 35 of the Regulations of the Court (“Regulations”)

18. The Prosecution now forecasts that it intends to make a request under regulation 35 of the Regulations in relation to the evidence of Witness P-0541.¹⁵ The Prosecution has instructed Witness P-0541 to produce a report – including a list - outlining and summarising the content of videos of the *RTI Journal Télévisé* in the Prosecution’s possession, to serve as a useful tool for easily identifying relevant news clips and their content. It is anticipated that Witness P-0541 will complete this report by the end of March 2017. The Prosecution will then file its regulation 35 request forthwith.

Request for a Status Conference

19. The Prosecution reiterates its request for a Status Conference to be held in order to (1) further elaborate on and answer any questions regarding its remaining List of Witnesses and (2) discuss the Chamber’s order pertaining to the filing of a consolidated submission of documentary evidence by 28 February 2017.

20. In this regard, the Prosecution would like to update the Chamber on its current state of planning and work with regards to the submission of documentary evidence. It will also be respectfully requesting additional time to comply with this order given the complexity of the task and the fact that the current order of insider witnesses will be drawing much of the team’s resources. The Prosecution believes that holding a Status Conference will help expedite this matter as it will permit the Prosecution to fully inform the Chamber, and both Parties will be present to answer any questions.

Conclusion

21. For the foregoing reasons, the Prosecution respectfully requests that the Trial Chamber take note of the current submission of the order of the remaining witnesses, their mode of testimony and protective measures, as illustrated in

¹⁵ Witness P-0541 is schedule to testify in position 113 at the end of the presentation of the Prosecution’s case.

Annexes A-C. Furthermore, the Prosecution requests that a Status Conference be held as soon as possible for the reasons submitted in paragraphs 19-20 above.

A handwritten signature in blue ink, appearing to read 'Bensouda', with a horizontal line drawn through it.

Fatou Bensouda, Prosecutor

Dated this 31st day of January 2017

At The Hague, The Netherlands